

FINAL

*ENVIRONMENTAL
IMPACT REPORT
FOR
CRUMMER SITE
SUBDIVISION*

SCH NO. 2008091155

prepared for:

CITY OF MALIBU

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DECEMBER 2013

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1. Introduction

1.1 INTRODUCTION

This Final Environmental Impact Report (FEIR) has been prepared in accordance with the California Environmental Quality Act (CEQA) as amended (Public Resources Code Section 21000 et seq.) and CEQA Guidelines (California Administrative Code Section 15000 et seq.).

According to CEQA Guidelines, Section 15132, the FEIR shall consist of:

- (a) The Draft Environmental Impact Report (DEIR) or a revision of the Draft;
- (b) Comments and recommendations received on the DEIR either verbatim or in summary;
- (c) A list of persons, organizations, and public agencies comments on the DEIR;
- (d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process; and
- (e) Any other information added by the Lead Agency.

This document contains responses to comments received on the DEIR for the Crummer Site Subdivision during the public review period, which began April 3, 2013, and closed May 20, 2013. To facilitate review of the responses, each comment in the public hearing transcript has been reproduced and assigned a number. This document has been prepared in accordance with CEQA and the CEQA Guidelines and represents the independent judgment of the Lead Agency. The FEIR comprises this document and the circulated DEIR, in accordance with CEQA Guidelines, Section 15132.

1.2 FORMAT OF THE FEIR

This document is organized as follows:

Section 1, Introduction. This section describes CEQA requirements and content of this FEIR.

Section 2, Response to Comments. This section provides a list of agencies and interested persons commenting on the DEIR, copies of comment letters received during the public review period, and individual responses to written comments. This section also includes responses to written responses received at a Public Hearing held by the City on May 6, 2013, regarding the DEIR. To facilitate review of the responses, each comment letter has been reproduced and assigned a number (A-1 through A-5 for letters received from agencies, O-1 through O-10 organizations, R-1 through R-12 for letters received from residents, and PH-1 to PH-17 for comments made during the May 6, 2013 public hearing). Individual

1. Introduction

comments have been numbered for each letter, and the letter is followed by responses with references to the corresponding comment number.

Section 3. Revisions to the Draft EIR. This section contains revisions to the DEIR text and figures as a result of the comments received by agencies and interested persons as described in Section 2, and/or errors and omissions discovered subsequent to release of the DEIR for public review.

The responses to comments contain material and revisions that will be added to the text of the FEIR. City of Malibu staff has reviewed this material and determined that none of this material constitutes the type of significant new information that requires recirculation of the DEIR for further public comment under CEQA Guidelines Section 15088.5. None of this new material indicates that the project will result in a significant new environmental impact not previously disclosed in the DEIR. Additionally, none of this material indicates that there would be a substantial increase in the severity of a previously identified environmental impact that will not be mitigated, or that there would be any of the other circumstances requiring recirculation described in Section 15088.5.

1.3 CEQA REQUIREMENTS REGARDING COMMENTS AND RESPONSES

CEQA Guidelines Section 15204 (a) outlines parameters for submitting comments, and reminds persons and public agencies that the focus of review and comment of DEIRs should be “on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible. ... CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.”

CEQA Guidelines Section 15204 (c) further advises, “Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.” Section 15204 (d) also states, “Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency’s statutory responsibility.” Section 15204 (e) states, “This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.”

In accordance with CEQA, Public Resources Code Section 21092.5, copies of the written responses to public agencies will be forwarded to those agencies at least 10 days prior to certifying the environmental impact report. The responses will be forwarded with copies of this FEIR, as permitted by CEQA, and will conform to the legal standards established for response to comments on DEIRs.

2. General Responses

A number of issues were raised by multiple commenters. This section provides a general response to each of those issues. The issue area is followed by a comprehensive response.

2.1 LAND USE

2.1.1 History of Crummer Project Site

Roy E. Crummer purchased the project site in the 1950s and left his holdings to the Crummer Realty Management Trust (Crummer Trust). The Crummer Trust initially planned to develop the project site as a hotel and a research facility for General Motors. After incorporation of the City in 1991, the project site was designated as RR-2. The Crummer Trust focused on building eight homes on the property and donating a portion of the property to the City to be used for athletic fields and parking. Site plans reflecting these alternatives were prepared, and negotiations between the Crummer Trust and the City ensued on a development agreement reflecting this proposed development (the Development Agreement). On September 13, 2002, prior to the finalization of the Development Agreement, the California Coastal Commission (CCC) adopted a Local Coastal Program (LCP) for the City of Malibu.

The adjacent Malibu Bluffs Park has housed baseball fields since the early 1980s, when baseball fields were relocated there from Malibu Lagoon Park. At the time, Bluffs Park was owned by the State and the fields were intended to be an interim use. The terms of the draft Development Agreement provided that the fields were expected to be relocated to the Crummer site, and up to eight houses may be built on the project site. In 2002, when the CCC was drafting the City's LCP, the City of Malibu, Crummer Trust and Department of State Parks were negotiating the transfer of the baseball fields to the Crummer site. As a result, the CCC adopted a policy that reflected its knowledge of the then-ongoing negotiations. The LCP's Land Use Plan (LUP) Policy 2.78 states:

If an agreement is reached by the State Department of Parks and Recreation to relocate the existing athletic fields at Malibu Bluffs State Park out of the prime view shed of the park onto the 24.9-acre Crummer Family Trust parcel, which is adjacent to the State Park on the east and south of Pacific Coast Highway, up to 8 residential units shall be permitted on the remainder of the (Crummer Trust) site. Said agreement shall cause the redesignation of the subject site to Residential in the LCP. Said agreement shall not exempt the residential development from compliance with all other provisions of the LCP. If no agreement is reached to relocate the existing athletic fields, the permitted use on the Crummer Trust parcel shall remain CV-2 (Commercial Visitor Serving).

LUP Policy 2.78 policy stated that the Crummer Trust site was to remain CV-2 if the athletic fields were not relocated from Bluffs Park to the project site. On September 13, 2002, the CCC also adopted the LCP's Local

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Implementation Program (LIP), which designated the project site as Planned Development (PD) on all the LIP Land Use and Zoning Maps, as well as in the definitions of PD found in LUP 5.C.2, New Development, Land Use Policies, Land Use Designations, and in LIP 3.3(Q)(1), Zoning Designations and Permitted Uses. The PD designation was created to allow for a mix of residential and recreational uses contemplated in the Crummer Development Agreement, i.e., up to eight single-family residences on the property together with the relocation of the two athletic fields. Therefore, the LCP as adopted on September 13, 2002, contained an internal inconsistency with respect to the zoning designation of the project site.

2.1.2 The Project's Land Use Designation is Dictated by the LCP

The proposed project is subject to the City of Malibu General Plan, Malibu Municipal Code (M.M.C.), and Malibu LCP. Pursuant to Section 1.3.1 of the LCP Local Implementation Plan, if there is a conflict between the LCP and the General Plan or any other City-adopted plan, resolution, or ordinance not included in the LCP, the LCP takes precedence.

The LCP zoning and land use maps designate the project site as PD. The PD designation is specific to the project site. The LUP, as amended November 18, 2008, states that “The PD designation provides for a mix of residential and recreational development on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway.” The General Plan land use designation, as amended July 13, 2009, and zoning designation, as amended July 27, 2009, for the site are also PD.

2.1.3 Local Coastal Program Amendment and Zoning Text Amendment

Since it is not the City's intent to relocate the existing athletic fields from Bluffs Park, LUP Policy 2.78 is now obsolete. Therefore, a local coastal program amendment (LCPA) and corollary zoning text amendment are being requested—including language that specifies the type, density and intensity of development permitted in the PD zoning designation. The LCPA (LCPA No. 12-001) and zoning text amendment (ZTA No. 12-001) propose to omit LUP Policy 2.78; amend LUP Chapter 6, Land Use Designations; and incorporate the Planned Development Ordinance in the Local Coastal Program and the M.M.C.. The LCPA will be forwarded to the California Coastal Commission for certification. The proposed LCPA is intended to correct the inconsistency between the policy and the zoning designation and to incorporate development standards for the proposed project.

Site Plan Review Nos. 07-139 through 07-143 are being requested for construction over 18 feet in height on Lots 1 through 5.

2.2 PROJECT DESCRIPTION

2.2.1 Proposed Project

Vesting Tentative Tract Map

The proposed project entails the subdivision of the project site into seven individual lots. Lots 1 through 5 would be developed with single-family residences and various accessory structures. Lot 6 would be developed

2. General Responses

with a private gated street, a gatehouse, an onsite wastewater treatment system (OWTS), landscaping, and open space to be owned and maintained by the homeowners association (HOA). Lot 7 would be dedicated to the City of Malibu for active and passive recreational use. A portion of the OWTS (the seepage pits) would also be located on Lot 7 (shown in DEIR Figure 3-6, *Site Plan/Vesting Tentative Tract Map*).

Residential Use

Each of the five single-family residences would be two stories, with a maximum height of 28 feet, and would include a basement, attached garage, swimming pool and spa, fountains, vehicle entry gate, fencing, landscaping, and hardscape. Lot 1 includes a detached guest house, Lot 2 includes a detached gym, Lots 3 and 5 include a detached cabana and guesthouse, and Lot 4 includes a detached cabana. Additionally, each residence would have a wastewater septic tank, which would route wastewater to the OWTS.

The architectural style of the proposed structures would be generally characterized as Mediterranean with some modern updates. Visible construction materials would include textured clay tile, cement plasters, natural stone, wood trellises, metal roofs, and decorative walls and arches and colonnades. The project site would be landscaped, and vegetation native to the area, including trees, would be planted throughout the site in accordance with a landscape plan prepared for the proposed project, shown in Figure 3-7, *Landscape Plans*. Tree species would include fern pine, New Zealand Christmas tree, dragon tree, camphor tree, coast live oak, and toyon. The landscape plan proposes other native vegetation, such as crimson bottlebrush and dwarf yaupon holly.

The proposed private street providing access to the single-family homes (Lot 6) would include sufficient turnaround area in the event that vehicles intending to go to Bluffs Park inadvertently turn into the residential road. The private gated street would be 34 feet wide and terminate in a cul-de-sac, which would serve as a fire department turnaround and would be accessible from Winter Mesa Drive. The gatehouse would be approximately 280 square feet, 16 feet in height at its highest point, and would include an office and bathroom. The gatehouse would include an approved Knox Box, which is a wall-mounted safe that holds entry gate keys to allow access for emergency personnel to the project site.

Onsite Wastewater Treatment System

An OWTS Package Plant is proposed for the northwestern corner of Lot 6. The proposed OWTS Package Plant would treat wastewater generated from each of the residences and the gatehouse. It would be installed in the northwest corner of the site near the intersection of Winter Mesa Drive and Pacific Coast Highway (PCH). Clean effluent from the OWTS Package Plant would be discharged to seepage pits in the southernmost portion of Lot 7 along Winter Mesa Drive. The HOA would own and be responsible for the operation and maintenance of the OWTS and the seepage pits. The OWTS would be designed with a stub-out box and purple pipe to allow for connection to a municipal wastewater treatment in the Civic Center area in the future to process wastewater produced on the project site.

Water Line

The proposed project would require an extension of water service to the project site. A water line would be installed to connect the proposed project to an existing water line near the intersection of Malibu Canyon

2. General Responses

Road and Malibu Knolls Road, approximately 2,000 feet north of the project site. The proposed extension of the water line would be installed along Malibu Canyon Road. Due to the curvature of the roadway, this would require the installation of approximately 3,200 feet of water line. An existing 10-inch line underlies the site and is connected to a 12-inch crossing under PCH. This existing 10-inch line would be disconnected from the 12-inch crossing and connected to the proposed 12-inch line extension. A connection would be made to the existing 12-inch crossing, and approximately 140 feet of new 12-inch line would be installed in the south shoulder of PCH. An 8-inch, reduced-pressure detector assembly and a fire hydrant would be installed at the end of the main.

Dedication of Parkland

The project includes the dedication of Lot 7 to the City of Malibu to expand the portion of Malibu Bluffs Park owned by the City by 1.74 acres to the east and northeast. The City-owned portion of Malibu Bluffs Park currently has two baseball fields, a multipurpose field, the Michael Landon Center, picnic benches, viewing areas, and an 81-space parking lot. The proposed project will dedicate Lot 7 to the City; however, no physical development related to the recreational use of Lot 7 is proposed at this time. The recreational area has yet to be designed and would not be developed as part of this project.

Although no recreational improvements would be permitted as part of the applicant's current proposal, the land dedication is intended to expand Malibu Bluffs Park. Furthermore, the LCPA and corollary zoning text amendment being requested—including language that specifies the type, density and intensity of development permitted in the PD zoning designation—applies to all seven lots.

Future Development of Lot 7

According to the CEQA Guidelines, “In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project” (CEQA Guidelines § 15064(d)). The CEQA Guidelines then further define the term “indirect physical change” as follows: “An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable” (CEQA Guidelines § 15064(d)(3)).

The CEQA Guidelines define cumulative impacts as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts” (Guidelines § 15355). The individual effects may be changes resulting from a single project or more than one project.

The 2012 Parks and Recreation Master Plan found that Malibu Bluffs Park is heavily used and that onsite parking lot does not adequately serve park patrons during peak times. Once Lot 7 is dedicated to the City, active recreation areas, passive recreation areas, and an expanded parking lot are all foreseeable future uses. Based on the community's needs, the City believes that Lot 7 may be developed as a baseball field (expansion of existing organized sport uses) or a skate park (the City's Skate Park Committee is working with a skate park design firm).

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In addition, a portion of Lot 7 may be developed with a parking lot for Bluffs Park open to the general public, a City-owned maintenance shed, and passive recreational uses such as public sitting areas and picnic tables. The new parking lot, when combined with a portion of parking provided on Winter Mesa Drive, could contain up to 94 parking spaces. The existing parking lot at Malibu Bluffs Park contains 81 spaces, an additional 40 vehicles can be parallel parked along both sides of Winter Mesa Drive. As shown in DEIR Table 3-1, with implementation of the future recreational facilities, the 40 parallel parking spaces along both sides of Winter Mesa Drive would be eliminated and replaced with a new 94-space parking lot on the project site, resulting in a net increase of approximately 54 new parking spaces for Bluffs Park. Therefore, the total number of parking spaces to serve the existing Malibu Bluffs Park and any future recreational uses would be 175 spaces (81 existing spaces plus 94 proposed spaces).

Therefore, these recreational uses are reasonably foreseeable, and in addition to the proposed project, the DEIR evaluated the cumulative impacts of development of Lot 7, to the extent feasible.

Dedication of Conservation Easement

In 2009, the applicant's predecessor in interest, AZ Winter Mesa, LLC, voluntarily agreed to dedicate to the Mountains Recreation and Conservation Authority (MRCA) a conservation easement totaling approximately 6.23 acres along the southern portion of the project site and the eastern property line of the adjacent property. MRCA agreed to accept the dedication of the conservation easement.

The project owner has agreed to voluntarily dedicate the conservation easement to the MRCA subject to the same terms and conditions and intends to enter into an agreement with the MRCA.

All requested project approvals are listed in Section 2.1.3 above.

2.3 AESTHETIC

2.3.1 The Proposed Project Will Not Create a Significant Aesthetic Impact

Some commenters express opposition to the proposed project on the basis of aesthetic impacts and believe that the DEIR's conclusion that impacts are less than significant is flawed. All views are not created equal. Potential subjectivity is inherent in any discussion of aesthetics. Since it is impossible to entirely remove subjectivity from a view impact analysis, the DEIR's analysis is based in part on professional view simulations.

The DEIR concluded that the potential for the proposed project to alter scenic resources is less than significant, and the potential for the proposed project to alter the visual appearance of the project site is also less than significant. Although the DEIR acknowledges that "the proposed project would alter the skyline of the bluff and would create buildings prominent from this vantage in an area where no buildings currently exist," the DEIR nevertheless concludes that the proposed project "would not affect the primary visual resources of PCH, namely the views of the ocean to the south and mountains to the north." The DEIR concluded that though "the proposed project would alter the visual appearance of the project site," the proposed project "would not substantially degrade visual character of the [project] site or introduce any aesthetic elements incompatible with the project area."

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The DEIR's analysis is based in part on professional view simulations created for the project by S.A. Johnson Architectural Simulation. On August 14, 2012, multiple photographs were taken from locations specified by the City of Malibu. Story poles were erected on the project site showing the location and dimensions of the proposed single-family residential development. The story poles were placed to depict the precise outlines of the specific residences designed by the project architect. A professional land surveyor verified the accuracy of the location and height of the story poles and their conformance to the exhibit prepared by the architect and approved by the City. During the August 14, 2012, project site visit conducted by S.A. Johnson, multiple photographs were taken from 10 areas specified by the City's Planning Department. The location where each photograph was taken was established by a GPS data logger. Once the photographs and locations were reviewed, 14 were chosen to provide a broad sample of views from areas surrounding the project site, as follows:

- View 1: Rancho Malibu Site looking south to southeast across PCH to the project site
- View 2: Rancho Malibu Site (future casita placement, 2nd floor) looking south across PCH to the project site
- View 3: Rancho Malibu Site (future casita placement, 2nd floor) looking southeast across PCH to the project site
- View 4: Blue Dane Lane (Malibu Country Estates) looking southeast toward the project site
- View 5: Vantage Point Terrace (Malibu Country Estates) looking southeast toward the project site
- View 6: PCH and Cross Creek Road looking west toward the project site
- View 7: Malibu Colony Beach looking west toward the project site
- View 8: Malibu Legacy Park looking west toward the project site
- View 9: PCH & Webb Way looking west toward the project site
- View 10: Coast View Drive (Malibu Knolls) looking south toward the project site
- View 11: Malibu Canyon Road looking south toward the project site
- View 12: Malibu Road looking northeast toward the project site
- View 13: Bluffs Park (Santa Monica Mountains Conservancy) looking east toward the project site
- View 14: Bluffs Park (baseball outfield) looking east toward the project site

On May 6, 2013, City of Malibu's Planning Commission held a hearing to provide an opportunity to the general public and the Planning Commissioners to comment on the DEIR. In addition, the City received written comments on the DEIR during the public comment period. A number of comments were received requesting that the City provide visual simulations from additional public viewpoints. In addition, a number of comments requested that the DEIR analyze another alternative, which would include a mixture of reducing the height, density (square footage), and massing of some of the residences in the proposed project to address concerns about visual impacts. Based on these comments, the Planning Department requested visual simulations to be provided from 12 additional locations, 7 of which are from public viewpoints, and 5 are on the campus of Pepperdine University (the "Additional Locations"), as follows:

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- View 15: Pepperdine University - Brock House Lawn
- View 16: Pepperdine University - Thornton Administrative Center
- View 17: Pepperdine University - Campus Walk
- View 18: Pepperdine University - Lake Sidewalk
- View 19: Pepperdine University - Alumni Park
- View 20: Surfrider Beach
- View 21: Malibu Colony Beach
- View 22: Malibu Pier (southern end of Pier)
- View 23: Malibu Library
- View 24: Malibu Bluffs Park
- View 25: Adamson House
- View 26: Pacific Coast Highway (west of entrance to Bluffs Park)

The five locations on the Pepperdine University campus were selected by the university, which provided the consultant with their GPS coordinates. Although Pepperdine University is considered private property, the locations were selected based on a combination of their use (foot and vehicular traffic, etc.) and their location for important university-related or-sponsored events. Photographs were taken from the Additional Locations on June 17, 2013.

S.A. Johnson Architectural Simulation prepared updated view simulations, dated September 30, 2013, which includes 78 visual simulations for analysis, as follows:

- Proposed project: 26 visual simulations
- One-Story Alternative: 26 visual simulations
- Reduced Project Alternative: 26 visual simulations

The September 30, 2013, S.A. Johnson Architectural Simulation view simulations were peer reviewed by The Planning Center|DC&E. This peer review is based on a comprehensive review of the study's methods for establishing the view simulations, the project's architectural plans, landscape plans, site photographs, and story poles. Each of the 78 views and view simulations are described in detail and measured against CEQA thresholds assessed within the context of the extensive and diverse surrounding residential and commercial uses when analyzing the potential impacts from the proposed project to visual resources. The project site is in an area that has seen substantial development. Development within approximately one-half of a mile from the project site includes single-family residential development on Malibu Road; the Malibu Knolls (229 homes) and Malibu Country Estates (97 homes) subdivisions; two condominium developments totaling 152 units; office buildings, including the HRL Research complex (approximately 225,000 square feet); Malibu City Hall and Los Angeles County offices; two wastewater treatment plants; Pepperdine University; and the Malibu Colony Plaza Shopping Center.(See FEIR Appendix A).

2. General Responses

Proposed Project. Whether analyzed as each individual viewpoints or generalized across all of the representative viewpoints for the proposed project as a whole, the proposed project would not: (i) obstruct or otherwise substantially impact scenic views or resources; (ii) degrade the visual appearance of the project site or its surroundings; (iii) substantially degrade the visual character of the site or introduce any aesthetic elements incompatible with the project area; or (iv) block any significant scenic resources from public view sheds or from protected private view corridors.

One-Story Alternative. This alternative reduces the maximum building height of each home to 18 feet. The total square footage of each of the homes and the lot sizes would remain the same as in the proposed project. The simulations from Views 1 to 26 of the One-Story Alternative are attached to the Supplemental View Simulation Report (FEIR Appendix A). The proposed project's two-story residences allow for greater separation between the homes, which preserves existing view sheds and allows for more open space than single-story homes of a similar square footage. The One-Story Alternative would result in substantially larger footprints, encroaching into lateral (horizontal) views to a greater extent and reducing open space between the homes. Because the One-Story Alternative has a larger horizontal footprint than the proposed project, when viewed from certain locations, it would result in a marginal increase in horizontal view blockage and a marginal decrease in vertical view blockage when compared to the proposed project. In general, the One-Story Alternative results in an immaterial reduction to visual impacts when compared to the proposed project's less than significant impacts. Moreover, because the One-Story Alternative residences have larger footprints than the proposed project, the visual effect of the One-Story Alternative is somewhat more monolithic, the overall aesthetic appearance is less varied than the proposed project and the character of the One-Story Alternative seems to be of higher density and intensity than the proposed project. Accordingly, the One-Story Alternative does not materially reduce the visual impact compared to the proposed project's less than significant impacts.

Reduced Project Alternative. The Reduced Project Alternative consists of: (i) a reduction the square footage of each residence to comply with the maximum permitted under the City's development regulations, (ii) reduction of the height of the residence on Lot 2 to no more than 18 feet, (iii) reduction of the size of the second floor on the two residences on Lots 1 and 4, and (iv) modifications of the landscaping plan. The visual simulations for the Reduced Project Alternative demonstrate that, from certain viewpoints, at elevations lower than the project site, the project can be seen against the background of the sky. At these viewpoints the Reduced Project Alternative shows a slightly lower profile for the residences on Lot 1 and Lot 2. Similarly, the modified landscaping plan of the Reduced Project Alternative, when seen from these viewpoints, shields the residences somewhat more than the proposed project when viewed from the same locations. These changes result in a slightly reduced profile and somewhat less prominent appearance than the proposed project. However, the Reduced Project Alternative does not materially reduce the visual impact compared to the proposed project's less than significant impacts.

The Supplemental View Simulation Report is provided in its entirety in Appendix A of this FEIR.

2. General Responses

2.3.2 The Proposed Project Does Not Significantly Impact Protected Viewsheds

The City of Malibu has adopted the following methodologies for analyzing impacts to certain view sheds. However, the proposed project does not significantly impact any views protected by City ordinances or state regulations as follows:

Malibu Country Estates View Restoration and Preservation Ordinance - Malibu Municipal Code Chapter 17.43 (Ordinance 317, 2007)

The purpose of this chapter is to establish a right for property owners and legal occupants of property in the Malibu Country Estates to a “primary view,” as defined within the chapter (M.M.C. §§ 17.43.020, 17.43.040).

Section 17.43.030 defines a “primary view” as “visually impressive scenes of the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines as viewed from the primary view area. ‘Primary view’ does not include a view of the sky, yards or structure interiors on neighboring properties, or vacant land that is developable under the zoning ordinance or the [LCP].” The ordinance ensures that primary views, as defined, shall be “unimpeded *by trees within* the Malibu Country Estates subdivision,” and no person may plant, maintain, or permit to grow any tree that causes an obstruction of the primary view from the primary view area of any area *within* the Malibu Country Estates” (M.M.C. §§ 17.43.040, 17.43.050; emphasis added).

The proposed project does not include landscaping within the Malibu Country Estates subdivision and is therefore not subject to this chapter of the Municipal Code.

Citywide View Restoration Ordinance - Malibu Municipal Code Chapter 17.45 (Ordinance 361, 2012)

The purpose of this ordinance is to establish a right for property owners to restore a pre-existing view, as defined in Section 17.45.030, which has been significantly obstructed by foliage while striking an equitable balance between the right to reasonable use of one’s property, including the maintenance of privacy, and the right to protection against unreasonable loss of views.

Section 17.45.030(K) defines “Pre-existing view” as “a primary view within the structure’s assessed primary view corridor that existed on or after February 13, 2012.” The ordinance further defines “Primary view” as “visually impressive scenes of the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines” (M.M.C. § 17.45.030(L)). “Primary view corridor” means a 180-degree view “assessed by the Planning Director or designee from a single fixed location and direction *within the main viewing area*, at an elevation of five feet as measured from the room floor or on an abutting outdoor deck or patio at any one point within ten feet of the nearest outside wall of the structure as selected by the affected property owner and the City” (M.M.C. § 17.45.030(M); (emphasis added).

The ordinance establishes a “right to restore a pre-existing view that has been significantly obstructed by foliage located within one thousand (1,000) feet of the point of the main viewing area from which the claimant’s primary view corridor has been assessed.” (M.M.C. § 17.45.040; see also § 17.45.100(B) [exempting foliage that is located more than 1,000 feet from the point where the Claimant’s primary view is assessed]). The nearest residence in Malibu Country Estates is approximately 2,000 feet away from the project site. The

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nearest parcel within the Malibu Knolls neighborhood is approximately 2,000 feet away from the proposed project. In addition, M.M.C. Section 17.45.030 defines “Main viewing area” as:

“[T]he ground floor of a commercial, institutional or principal residential structure unless the primary living area of a principal residential structure (excluding bedrooms) is not located on the ground floor. If the primary living area of a principal residence is not located on the ground floor, the main viewing area means the primary living area of the principal residence or an abutting outdoor deck or patio area located at relatively the same elevation as the primary living area, whichever has the superior view corridor. Hallways, closets, mechanical rooms, bathrooms and garages shall not be considered main viewing areas.”

Application of a primary view corridor, as defined by the ordinance, requires an established “main viewing area.” The proposed Rancho Malibu Hotel site is currently vacant and does not have an established “main viewing area,” and therefore does not have a protected primary view corridor pursuant to this chapter.

View Protection When A Site Plan Review Is Requested for Construction over 18 feet – Malibu Municipal Code Section 17.40.040(A)(17)

As discussed in DEIR Section 5.1, *Aesthetics*, due to the distance of the project site from nearby structures, the proposed project would not obstruct any primary views, as defined in M.M.C. Section 17.40.040(A)(17). The nearest residence in Malibu Country Estates is approximately 2,000 feet away from the project site. These views are not “primary views” within 1,000 feet of a proposed structure, as defined and protected by M.M.C. Section 17.40.040(A)(17). Views of ocean and mountains from nearby residences would not be obstructed. The project site is on a bluff, elevated above the ocean, and there are no structures adjacent to the project site; therefore, there are very few structures from which the proposed project could conceivably obstruct views of the ocean. Any such locations would necessarily be a substantial distance from the project site, and the proposed project would therefore not constitute a substantial obstruction to primary views.

Upcoming View Restoration Ordinance

The View Restoration Ordinance will be a private right of action to restore a pre-existing view ordinance. For the purpose of this program, a pre-existing view is a view that existed on the date of City incorporation (March 28, 1991) or the date the property was purchased, whichever is more recent. If a private homeowner has documented his or her primary view with the City by submitting a primary view determination request and that view is later obstructed by a neighbor’s foliage, the homeowner would initiate informal talks with their neighbor to have the foliage removed. Should informal talks fail, the complainant would offer mediation and binding arbitration. If all options fail, the complainant could request a non-binding advisory opinion from the Planning Director. The complainant could then initiate court action to restore a pre-existing view.

As shown, the proposed project does not result in any significant and unavoidable impacts to any views protected by the City’s existing or proposed viewshed ordinances.

The project site is not subject to the jurisdiction of Bureau of Land Management (BLM), the United States Forest Service (USFS), the United States Department of Transportation (USDOT), and the California

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Department of Transportation (Caltrans), although commenters suggest that methodologies utilized by those other state agencies should have been analyzed by the DEIR.

The BLM Visual Resource Management process involves rating the visual appeal of a tract of land, measuring public concern for scenic quality, and determining whether the tract of land is visible from travel routes or observation points. BLM is responsible for ensuring that the scenic values of public lands are considered before allowing uses that may have negative visual impacts. The project site is not on public land and this methodology is not applicable.

The USDOT methodology is based on a field guide intended to help those who prepare or review the coverage of visual impacts for highway projects. Likewise, the purpose of the California Scenic Highway Program administered by Caltrans is to preserve and protect scenic highway corridors from changes that will diminish the aesthetic value of lands adjacent to highways. These methodologies measure impacts of development of highway projects and analysis generally focuses on the view from the road and the view of the road. These methodologies are also not directly applicable to the proposed project. The proposed project is not a highway project and views of the project site are not from a scenic highway corridor.

The purpose of all of the methodologies above is to establish a process to remove subjectivity, to the extent feasible, from view impact analyses. All of the methodologies establish a baseline, assess the change that would be introduced by a project; and determine the visual impact. The methodology utilized in the DEIR Section 5.1, *Aesthetics*, identifies the baseline by establishing the visual environment of the project using professionally prepared view simulations. Then, the DEIR assessed the resource change that would be introduced by the project and the associated viewer response. The DEIR's findings are supported by substantial evidence by the Revised View Simulation Report discussed in General Response 2.3.

The DEIR is an informational document that will be used by the lead agency. The authority to make a determination regarding the project's aesthetic and land use impacts rests with the lead agency, as discussed in the DEIR's executive summary.

2.4 SLOPE STABILITY AND SUBSURFACE WATER

There are geologic and hydrologic hazards at the site. However, detailed exploration and analyses of the site by Leighton (2001; 2003; 2007; 2008a, b; 2009a, b; and 2012a–h) and by Psomas (2012a–e; 2013) have demonstrated that such hazards can be effectively mitigated and the site made suitable for structures intended for human occupancy. These studies have been approved by the City of Malibu.

Impacts related to slope stability are less than significant with mitigation. The Feasibility-Level Grading Plan Review and related documents concluded that the proposed project is feasible from a geotechnical standpoint, provided that the geotechnical recommendations of the reports are followed and incorporated in the design and construction of the project. The mitigation measures identified would reduce potential impacts associated with geology and soils to a level that is less than significant. Therefore, no significant unavoidable adverse impacts relating to geology and soils have been identified.

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2.4.1 Assessment of Groundwater Levels

The term “daylighting” refers to the emergence of a subsurface geological feature at the ground surface. It typically refers to the emergence of geologic bedding planes or groundwater surfaces on the faces of slopes. The assessment of whether groundwater and the associated treated effluent would daylight or not, and whether it would reactivate the landslides along the southern slope, was based on a characterization of the maximum possible groundwater levels beneath the site.

An assessment of the groundwater conditions across the site and the adjacent bounding slopes was made by Earth Consultants International (2009; 2012; 2013).

The groundwater surface that was depicted on the geotechnical cross-sections and used in the slope stability analyses was the “hypothetical/severe” groundwater condition. This condition considered all potential sources of water and potentially extreme conditions that could result in a maximum groundwater level beneath the site. The following groundwater recharge mechanisms were assessed:

- surface runoff from up-gradient locations
- existing treated water disposal systems up-gradient of the site
- rainfall

An assessment was also made by Earth Consultants International, Inc. (2009) of “groundwater sinks,” i.e., locations or processes by which groundwater is discharged. Such discharge mechanisms included discharge to rivers or oceans, evapotranspiration by vegetation, or discharge by pumping wells. The baseline groundwater conditions beneath the site were based on 15 groundwater monitoring wells over a four-year time period. Data was supplied from 9 groundwater monitoring wells at the project site, 5 groundwater monitoring wells at the adjacent “Towing” site to the east, and 1 groundwater monitoring well on Malibu Road south of the Towing site.

Earth Consultants International (2009; 2012) assessed a variety of different scenarios in order to assess the influence that factors outside the site would have on groundwater levels beneath the site. The maximum groundwater-level increases considered were the maximum contributions estimated from the following sources:

- up-gradient Winter Canyon treated water recharge
- treated water from Malibu Bluffs Park
- treated water dispersal from the adjacent Towing site to the east
- treated water dispersal from the project site

Given these four contributions to the maximum groundwater levels beneath the site, the hypothetical/severe groundwater condition was defined.

Earth Consultants International (2012) demonstrated that, as a result of the proposed project, there was no measurable effect on the groundwater levels south of the site, and that an increase in groundwater levels

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ranging from approximately 0.06 feet ($\frac{3}{4}$ inch) to 0.26 feet (3 inches) was predicted in the bounding slopes to the east.

The groundwater levels were then used to prepare geotechnical cross-sections that were used in the slope stability analyses.

2.4.2 Slope Stability

Effluent

For the purpose of slope stability, geotechnical cross-sections were only drawn in critically representative areas (i.e., locations at the site that were anticipated to have “worst-case” geotechnical conditions), which included either adverse geology, steep slopes, high predicted groundwater, or a combination of these.

The direction of the treated effluent and the direction of groundwater flow are the same, and this was one of the reasons that geotechnical cross-sections were drawn through the south-facing bluff.

Leighton (2012b) created Geotechnical Cross-Sections D and F, which extend through the south-facing bluff. The sections were based on an extensive dataset consisting of 53 onsite borings, 9 onsite borings that were converted into groundwater monitoring wells, 6 offsite groundwater monitoring wells, and 9 onsite test pits. The sections depict the hypothetical/severe groundwater condition, which includes the treated effluent. The hypothetical/severe groundwater condition does not daylight along the southern slope; therefore, by inference, the treated effluent also would not daylight.

The assessment of the hypothetical/severe groundwater condition by Earth Consultants International (2012) demonstrated that there was no measureable effect on groundwater levels in the south-facing bluff as a result of the proposed project. Studies adequately demonstrate that the potential for daylighting of the treated effluent is remote. The southerly-moving effluent will not contribute to movement or reactivation of the offsite landslides.

Given the preceding discussion and definition of terms, groundwater levels in the vicinity of the eastern bounding slope remain well below the critical surface, do not promote slope instability, and do not influence the results of the slope stability analyses. Therefore, the stability of the eastern bounding slope is not affected by the proposed project, and the slope stability analyses of Leighton (2007) is valid.

Ground Rupture

The geologic constraint of ground rupture will not be affected by the introduction of water into the subsurface soils. Faulting is induced by movement within deep-seated crustal bedrock as a result of regional plate tectonics. The introduction of surface waters into the shallow subsurface will have no bearing on this issue. Earth Consultants International (2000; 2001a, b; 2002a–c) has demonstrated that active faulting does not exist at the site and that the potential for onsite ground rupture due to the presence of active faulting is low. As a result of the work performed by Earth Consultants International, the State of California (2007a, b) removed their designation of an Alquist-Priolo Earthquake Fault Zone from the area, which included the Crummer site. (The Alquist-Priolo Earthquake Fault Zoning Act was created in 1972 and requires site-

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specific exploration for areas that are impacted by active faulting.) Earth Consultants International continues to conclude that the potential for onsite ground rupture due to the presence of active faulting is low.

The potential for strong ground shaking was assessed by Leighton (2007), and recommendations were provided for seismic design. As is customary, additional recommendations will be provided during the forthcoming Building Plan Check submittal process.

Landslides

There are historically active landslides along the southern project boundary, but landslides have not been mapped on the bounding slopes to the east of the project. There are offsite landslides; however, construction is not planned within the offsite landslides. An appropriate geotechnical setback from the offsite landslides has been defined, and the slope stability analyses accounted for all onsite and offsite landslides.

Within the landslides, there was no discernible difference in the groundwater elevations with and without contributions from the OWTS effluent. The OWTS is not forecast to induce a rise in groundwater elevations in the area. The proposed project would not adversely affect the existing historically active landslides along the southern boundary of the project. Therefore, an adverse effect on stability of the property to the south is not anticipated.

Surface Water and Slope Stability

With respect to soil settlement through the introduction of water into the subsurface, a surface drainage system would be incorporated on each lot and designed to intercept the majority of the surface drainage and direct it to storm drains at the toes of slopes via non-erodible devices.

Surface drainage will be directed toward an on-lot detention/stormwater quality treatment basin or an on-lot storm drain catch basin. The collected waters will be conveyed into underground stormwater detention/filtration tanks and then to drainage devices that outlet at the toes of the slopes in a controlled manner.

Given that surface waters will be collected on each lot and transported to the toes of the slopes in engineered devices, the transmission of surface water into the subsurface is minimized. Consequently, the potential for erosion, slope failure, and reactivation of mapped landslides along the south-facing bluffs as a result of stormwater discharge is also minimized.

3. Response to Comments

Section 15088 of the CEQA Guidelines requires the Lead Agency (City of Malibu) to evaluate comments on environmental issues received from public agencies and interested parties who reviewed the DEIR and prepare written responses.

This section provides all written responses received on the DEIR and the Lead Agency’s responses to each comment.

Comment letters and specific comments are given letters and numbers for reference purposes. Where sections of the DEIR are excerpted in this document, the sections are shown indented. Changes to the DEIR text are shown in underlined text for additions and ~~strikeout~~ for deletions.

The following is a list of agencies and persons that submitted comments on the DEIR during the public review period.

Number Reference	Commenting Person/Agency	Date of Comment	Page No.
Agencies			
A1	Comments Department of Fish and Wildlife (Betty Courtney)	May 14, 2013	3-3
A2	County of Los Angeles (Frank Vidales)	April 25, 2013	3-21
A3	Metropolitan Transportation Authority (Nick Saponara)	May 17, 2013	3-35
A4	Native American Heritage Commission (Dave Singleton)	April 5, 2013	3-45
A5	County of Los Angeles (Toan Duong)	June 3, 2013	3-51
Organizations			
O1	AEI Consultants (Kent Vollmer)	May 10, 2013	3-57
O2	ESA (Mitch Marken, Ph.D.)	May 16, 2013	3-83
O3	Gaines and Stacey, LLP	May 20, 2013	3-87
O4	Malibu Colony HOA (Sara Blake)	May 17, 2013	3-149
O5	Meridian Consultants (Tony Locacciato)	May 15, 2013	3-153
O6	PCH Project Owner LLC (Robert Gold)	May 20, 2013	3-161
O7	Pepperdine University (Rhiannon Bailard)	May 20, 2013	3-169
O8	Southern California Edison (Mark A. Olson)	May 6, 2013	3-173
O9	Wishtoyo Foundation (Jason Weiner) dated May 17, 2013	May 17, 2013	3-177
O10	Geosoils (Rudy F Ruberti)	May 13, 2013	3-199

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Number Reference	Commenting Person/Agency	Date of Comment	Page No.
Residents			
R1	Berk, Aristid and Hope	N/A	3-219
R2	Bogie, Ron and Roberta	April 25, 2013	3-223
R3	Tim Elkins; Joan and Paul Almond	May 20, 2013	3-229
R4	Patt Healy	May 19, 2013	3-237
R5	Patt Healy	May 20, 2013.	3-257
R6	Russell Kern	April 20, 2013	3-265
R7	Kari Kramer	May 6, 2013	3-269
R8	Joan Lavine	May 13, 2013	3-323
R9	Henri Lenny	May 13, 2013	3-341
R10	Carol Randall	May 6, 2013	3-365
R11	Jo Ruggles	May 20, 2013	3-369
R12	Jo Ruggles	May 20, 2013	3-373
Public Hearing			
PH1 to PH16	Robert Briskin, Anson Williams, Robert Gold, Hope Berk, Luhui Isha, Mati Waiya, Ryan Embry, Paul Grisanti, Carol Randall, Ron Bogie, Kari Kramer, Fred Gains, Farima Damavandi, Mr. Mazza, Mr. Pierson, Jeffrey Jennings	May 6, 2013	3-381

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LETTER A1- Department of Fish and Wildlife (6 page[s])



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



May 14, 2013

Ms. Ha Ly
City Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
hly@malibucity.org

Subject: Draft Environmental Impact Report for Crummer Site Subdivision City of Malibu, Los Angeles County, (SCH #2008091155)

Dear Ms. Ly:

The Department of Fish and Wildlife (Department) has reviewed the City of Malibu's (City) draft Environmental Impact Report (DEIR) for a project which includes the subdivision of a 24-acre project site into seven individual lots. Lots 1 through 5 would be developed with single-family residences and various accessory structures. Lot 6 would be developed with a private gated street, a gatehouse, an onsite wastewater treatment system Package Plant, landscaping, and open space to be owned and maintained by the homeowners association. Lot 7 would be dedicated to the City of Malibu for active and passive recreational use. The recreational area has yet to be designed and would not be developed as part of this project. Although no recreational improvements would be permitted as part of the applicant's current proposal, the land dedication is intended to expand Bluffs Park. Therefore, active recreation areas, passive recreation areas, and an expanded parking lot are all foreseeable future uses.

The project also includes installation of a new 12-inch water line connection to the proposed residential portion of the project. The water line is approximately 3,400 linear feet long and will be placed within an existing roadway.

A1-1

Three project alternatives are analyzed in the DEIR: the Two-Story Homes with Skate Park Only Alternative, the One-Story Homes with Skate Park or Baseball Field Alternative and the No Project, Foreseeable Development Alternative.

The project site is located at 24120 Pacific Coast Highway (PCH) in the City of Malibu, County of Los Angeles. The site is atop a bluff, and steep slopes descend to the south and east. Malibu Bluffs Park borders the project site to the west, PCH borders the site to the north, and a privately owned parcel borders the site to the east. Winter Mesa Drive, a small road connecting PCH to Malibu Bluffs Park, provides access to the project site.

The water line portion of the project will be located at the southeast corner of the intersection of Pacific Coast Highway and Malibu Canyon Road and will run approximately 3,400 linear feet up Malibu Canyon Road to connect to an existing water line near the residential portion of the project site.

The residential portion of the project site supports mixed sage scrub (1.35 acres), coastal sage chaparral scrub (7.76 acres), non-native grassland (disced areas) (14.56 acres), and eucalyptus

Conserving California's Wildlife Since 1870

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trees (0.21 acre). The development of the project site would remove the majority of the native scrub and annual grassland and eucalyptus trees within the development footprint. There are two ephemeral drainages located within the project site that will not be impacted by the project.

The waterline portion along Malibu Canyon road is adjacent to developed landscaped areas and coastal sage scrub. No native vegetation is expected to be directly impacted by the pipeline portion of the project.

The California Wildlife Action Plan, a recent Department guidance document, identified the following stressors affecting wildlife and habitats within the project area: 1) growth and development; 2) water management conflicts and degradation of aquatic ecosystems; 3) invasive species; 4) altered fire regimes; and 5) recreational pressures. The Department looks forward to working with the City of Malibu to minimize impacts to fish and wildlife resources with a focus on these stressors. Please let Department staff know if you would like a copy of the plan to review.

A1-1
cont'd

The Department is California's Trustee Agency for fish and wildlife resources, holding these resources in trust for the People of the State pursuant to various provisions of the California Fish and Game Code. (Fish & G. Code, §§ 711.7, subd. (a), 1802.) The Department submits these comments in that capacity under the California Environmental Quality Act (CEQA). (See generally Pub. Resources Code, §§ 21070; 21080.4.) Given its related permitting authority under the California Endangered Species Act (CESA) and Fish and Game Code section 1600 *et seq.*, the Department also submits these comments likely as a Responsible Agency for the project under CEQA. (*Id.*, § 21069.)

Project Impacts to Biological Resources

1. **Special Status Botanical Species** – The DEIR describes that the project site is not expected to support special status plant species due to the disturbed nature of the site and based upon the results of botanical survey evaluations conducted in 2006, 2007, 2009, and 2012. Studies were conducted before and after a 2007 wildfire that burned through portions of the site. Although the site supports habitat for the Braunton's milk-vetch (*Astragalus brauntonii*), this species was not observed on the site in 2012 by a consulting biologist. As a precaution the DEIR proposes Mitigation Measure 3-1(a), which will require a focused survey for Braunton's milk-vetch prior to the issuance of a grading permit. The focused survey shall occur within onsite suitable habitat (i.e., mixed sage scrub and coastal sage chaparral scrub) that may be disturbed as a result of the proposed project implementation, during the typical blooming period (February through July). This survey shall be conducted in accordance with the methodologies used for performing focused plant surveys per the CDFW's 2000 *Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Plant Communities*.

A1-2

Exotic landscape vegetation control and restrictions are also proposed in the DEIR to limit invasive landscaping plants from establishing onto native habitats in the vicinity of the project area.

- a. Braunton's milk-vetch is federal endangered and listed by the California Native Plant Society as a 1B.1 rare plant. Direct impacts or indirect impacts through habitat modifications on any species identified as a candidate, sensitive, or special-status

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- species in local or regional plans, policies, or regulations, or by the Department or U.S. Fish and Wildlife Service (USFWS) would be significant without mitigation. A1-2
cont'd
- b. The EIR should clarify the survey methodology used to survey for plant species on the project site. The survey methodology should be described within the biological section in the EIR. Although several botanical evaluations were described and referenced in the DEIR, it is unclear what specific survey methods were used, what time of year they were conducted, and if they were focused on detecting plant species on a floristic level or focused on only searching for special status species that were determined to potentially occur on site. The Department recommends following the Department's current Guidelines for Assessing Impacts to Rare Plants and Rare Natural Communities. See 2009 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities at: <http://www.dfg.ca.gov/habcon/plant/>. A1-3
- c. Performing pre construction surveys should not be considered appropriate mitigation for impacts to Braunton's milk-vetch or any other special status plant species that may be found on or adjacent to the project site. Focused surveys are designed to identify potential special status species in order to plan for project avoidance, or other specific mitigation measures. Please provide specific mitigation measures for project impact to special status plant species observed, based on current survey methods recommend by the Department. Mitigation could include avoidance, preservation or acquisition and protection of habitat supporting special status species observed on the site. Mitigation habitat should be protected in perpetuity under a conservation easement managed by a local conservancy. A1-4
- d. The Department does not generally support the translocation of special status plants as mitigation measure because these efforts are experimental in nature and often are not successful. Impacts to state listed plants, if any, would require further consultation with the Department under CESA prior to initiation of the project. A1-5
- e. The Department concurs that invasive exotic species should be prohibited from being planted on the project site or otherwise becoming established into areas of native habitat left in the area following development of the project. A1-6
- f. The Department recommends that species native to the project location be planted within the project site and that irrigation be restricted from entering any remaining native habitats. A1-7
- 2. Impacts to Native Vegetative Communities - The project site supports mixed sage scrub (1.35 acres) and coastal sage chaparral scrub (7.76 acres) and 14.51 acres of nonnative grassland. The majority of these habitats will be removed by the project leaving 0.14 acres remaining that will consist of mixed sage scrub and annual grassland. The DIER concludes that "the plant communities on the project site are fragmented, not unique and occur elsewhere within the surrounding areas. Therefore, the implementation of the proposed project would not eliminate any plant or animal community. These resources would continue to exist within the surrounding area and other places within the larger region." A1-8

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- a. Vacant land near the Pacific Ocean, such as the project site are rare and continue to decline due to development and associated degradation and fragmentation which results in loss of habitat for native wildlife and botanical resources. The loss of the native vegetative component and non-native annual grassland component on the site resulting from the project should be considered a direct and cumulative significant impact unless mitigated below a significant level. Measures should be proposed to avoid and protect areas of native scrub on the project site. Coastal sage scrub is considered threatened and supports important refugia for wildlife during wildfires in this region. Annual grasslands provide important foraging habitat for raptors that breed and winter in the area. A1-9
- b. The Department recommends mitigation at a no less than 1:1 ratio for areas of native coastal sage scrub that cannot be avoided and a mitigation ratio of no less than 1/2:1 for unavoidable loss of annual grasslands on the project site. Mitigation land should be preserved in perpetuity, with an appropriate endowment, and managed by a local natural open space land conservancy. A1-10
3. Impacts to Wildlife Species – The DEIR describes that the site does not support habitat for special status species based upon habitat quantity and quality.
- a. The habitat on the project site, although fragmented from larger core habitat areas, does support habitat for a variety of species including native birds. Wildlife species make use of habitat patches for foraging and as refugia during wildfire events. The Department recommends maintaining a wildlife habitat component on the project site. Areas along the two streams identified in the DEIR may offer opportunity for maintaining a larger, more diverse protected open space supporting native vegetation and providing wildlife habitat value in addition to the proposed 100-foot buffers. A1-11
- b. The project site supports annual grasslands which provide some of the last remaining breeding, foraging and wintering habitat in Coastal Los Angeles County and Southern California for western burrowing owl (*Athene cunicularia*) a California species of special concern. The EIR should discuss project related impacts to western burrowing owl and their habitat, impacts to which should be considered a direct and cumulative adverse impact under CEQA. The Department recommends burrowing owl be included in the environmental impact assessment following the Department's Guidelines (see 2012 Staff Report on Burrowing Owl Mitigation at: www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf) A1-12
4. Riparian Resources – The DEIR states: "The City of Malibu GIS Database depicts no streams within the site. There are two drainage channels located on the site; however, there is no resource dependent riparian vegetation present, and only elements of the coastal sage chaparral scrub community are present on the site. The proposed area of development for the project would not disturb or impact either of these channels. Moreover, an approximately placed 100-foot buffer would be incorporated between the developed portions of the site and these two onsite drainage features. In addition, Glenn Lukos and Associate's jurisdictional report concluded that the site did not contain streams that would be subject to the jurisdiction of US Army Corps of Engineers, California Department of Fish and Wildlife or the California Coastal Commission. A1-13

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|---|--------------|
| <p>a. The Department concurs that all streams should be avoided by the project and provided with a minimum 100-foot buffer as described in the DEIR.</p> | <p>A1-14</p> |
| <p>b. The Department has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource. For any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) or a river or stream or use material from a streambed, the project applicant (or "entity") must provide written notification to the Department pursuant to Section 1600 <i>et seq.</i> of the Fish and Game Code. Based on this notification and other information, the Department then determines whether a Lake and Streambed Alteration Agreement (LSAA) is required. The Department's issuance of a LSA may be a project that is subject to CEQA. To facilitate our issuance of the LSA or CESA Permit, the Department as a Responsible Agency under CEQA may consider the local jurisdiction's (Lead Agency) document for the project. To minimize additional requirements by the Department under CEQA the document should fully identify the potential impacts to the lake, stream or riparian resources and any listed species and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA or CESA Permit. Early consultation is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. Further information on the Department's Lake and Streambed Alteration Program and initiating a Department streambed jurisdiction determination may be found at: www.dfg.ca.gov/1600/index.html.</p> | <p>A1-15</p> |
| <p>c. The Department cannot concur that the two drainage channels on the project site are not considered jurisdictional by the Department and recommends further consultation with the Department to clarify Department jurisdiction for any erosional features found within the project site impact footprint.</p> | <p>A1-16</p> |
| <p>d. If fuel modification will infringe upon waters of the state within Department jurisdiction, a LSAA may be required between the operator and the Department prior to such activity.</p> | <p>A1-17</p> |
| <p>5. <u>Fencing Design</u> – If fencing is proposed for use during construction or during the life of the project, fences should be constructed with materials that are not harmful to wildlife. Prohibited materials include, but are not limited to, spikes, glass, razor, or barbed wire. All hollow fence posts should be capped to prevent birds and other wildlife from entering and becoming entrapped. Open bolt holes on metal fence posts can entrap raptors alighting upon the top of the post. These holes should be sealed near the top to prevent raptor mortality. Fencing should also be minimized so as not to restrict free wildlife movement through habitat areas.</p> | <p>A1-18</p> |
| <p>6. <u>General Salvage of Wildlife</u> - A biological monitor should be on site prior to and during initial ground disturbance activities to locate and salvage of low mobility that will be killed or injured by grubbing and grading activities. Salvaged wildlife should be relocated to adjacent appropriate habitat out of harm's way.</p> | <p>A1-19</p> |

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Thank you for this opportunity to provide comments. Please contact Mr. Scott Harris, Environmental Scientist at (626) 797-3170 if you should have any questions and for further coordination on the proposed project.

Sincerely,



Betty Courtney
Environmental Program Manager
South Coast Region

cc: Ms. Erinn Wilson, CDFW, Los Alamitos
Ms. Kelly Schmoker, CDFW, Laguna Niguel
Mr. Scott Harris, CDFW, Pasadena
State Clearinghouse, Sacramento

3. Response to Comments

A1. Response to Comments from Comments Department of Fish and Wildlife (Betty Courtney), dated May 14, 2013.

Responses are based in part on the following technical report(s) prepared in response to comments:

- Glenn Lukos Associates, Inc. (GLA). 2013, July. Biological Resources Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site”, 24108, 24120, 24134, 24150, 24174 Pacific Coast Highway, City of Malibu, California
- GLA. 2013, September. Responses to Comments

Complete copies of these studies are included in Appendix B to this FEIR.

A1-1 This comment is a set of general, introductory remarks. It presents no environmental issues and no specific response is necessary. The CDFW correctly states that they are a trustee Agency; however, pursuant to Pub Res Code Section 21069, since CDFW does not have responsibility for carrying out or approving the project, they are not considered a Responsible Agency.

A1-2 The first paragraph of this comment is a summary of the DEIR’s findings as they relate special status plant species. The site is not expected to support Braunton’s milkvetch, as set forth on page 5 of the March 12, 2013 Glenn Lukos Associates (GLA) report and that the species was not observed on the Site in a 2012 inspection. See also Response to Comment O3-44. Nevertheless, because it was previously determined that there was slight potential for occurrence and as a precaution, pre-construction focused surveys for Braunton’s milk-vetch will be performed in accordance with Mitigation Measure 3-1(a) in the DEIR. Implementation of Mitigation Measure 3-1(a) will protect against a significant impact to special status plant species.

In addition, the project’s landscape plan was prepared in accordance with the requirements of the City of Malibu prohibiting the use of exotic landscape vegetation. A copy of the project’s landscape plan, which was approved by the City of Malibu, contains the proposed plant species for the project and is included in DEIR Appendix F. Mitigation Measure 3-1(b) will protect native plants from the effect of introduced invasive plant species. In addition, CC&Rs for the project will implement exotic landscape vegetation control and restrictions to ensure that no invasive species can escape from the project site into adjacent open space. Finally, the proposed project will remove all currently existing invasive plant species within the area of proposed grading.

A1-3 As set forth in the Impact Sciences 2009 Biological Resource Study (included in DEIR Appendix H), botanical surveys were conducted in a manner, both with respect to site coverage and timing based on flowering periods, sufficient to determine whether special-status plants occur on the site. Furthermore, the surveys were conducted in a manner consistent with the Department’s 2009 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. The following

3. Response to Comments

excerpt from page 6 of the Impact Sciences 2009 Biological Resource Study shows that the surveys were consistent with the Department's 2009 protocols such that full visual coverage was provided and that surveys were conducted during optimal periods for detection.

“Special-status plant and wildlife species with the potential to occur on project site were determined based on Impact Sciences’ 2006 biological resource assessment and BonTerra Consultants’ 1999 biological due diligence survey for the project site, and on the database search described above in Section 3.1. Biologists walked transects approximately 20 feet apart for 100 percent visual coverage in (accessible) suitable habitats located on the project site where special-status plants or wildlife could occur. Potentially suitable habitats located within approximately 100 feet from the west boundary of the project site were also evaluated. Focused surveys, as the name implies, concentrate the site inspection on discovering evidence to the presence or absence of the special-status species identified in the manner described above. To determine whether any special-status plants or wildlife species are present on the project site, focused surveys were conducted by Impact Sciences biologists on April 20, May 9, and June 1, 2007, as well as during the day of the biological resource assessment on May 3, 2006. All focused plant surveys in both 2006 and in 2007 were conducted during the appropriate flowering period for identification of special status plant species with the potential to occur on project site...”

According to GLA (2013), it is important to note that during the surveys referenced in the excerpt above, two special-status plant species, the Catalina mariposa lily and the California black walnut were detected and mapped, further supporting the adequacy of the surveys. Finally, as suggested by the Department, it is important to note that the surveys were floristic in nature as evidenced by the floral compendium included as Table 1 of the above-referenced Impact Science's 2009 Report.

The GLA Update to *2009 Biological Resource Study, 24200 Pacific Coast Highway a.k.a. Crummer Site, City of Malibu, California Prepared for Crummer Project, City of Malibu, Los Angeles County, California* dated May 22, 2012 and included in DEIR Appendix H summarizes GLA's site visit conducted on April 16, 2012. The site visit did not include focused surveys for special-status plants; however, as noted in GLA's May, 2012 update to the Impact Sciences 2009 Report, “the entire Site was walked in a careful manner so as to ensure visual inspection of the entire Site.” This level of survey effort was sufficient to confirm that the conditions on the site were such that the conclusions set forth in the 2009 Impact Sciences Report were still accurate.

3. Response to Comments

A1-4 The CDFW correctly states that performing pre-construction surveys should not be considered appropriate mitigation for impacts to special-status plant species that may be found on or adjacent to the project site. As substantiated on page 5 of the March 12, 2013 GLA report, there is at best, very low potential for Braunton's milkvetch to occur on the site based on a number of previous surveys which failed to detect it, including a survey in February 2008 by Impact Sciences following a fire in 2007 that created optimal conditions for the plant. Furthermore, according to GLA (2013) based on the history of the site, the only areas of suitable habitat occur within areas of scrub habitat associated with the two ravine areas and the slope at the eastern boundary of the site. Ongoing disturbance of the grassland areas have rendered these areas as unsuitable for the Braunton's milkvetch. Nevertheless, because the 2009 Impact Science's Report proposed pre-construction surveys to ensure that the species was not present, this mitigation measure was retained "in an abundance of caution". It is also important to note that since the areas of suitable habitat occur within areas of scrub habitat that will be retained because they are beyond the limits of development and which are intended to be subject to a conservation easement (See Response to Comment R4-39), even if the species were discovered, it would not be in areas subject to impacts.

Based on the negative results of multiple rare plant surveys conducted both pre- and post-fire on site, impacts to special-status plant species were accurately determined to be considered less than significant. Despite the DEIR's best intention as "an abundance of caution," no mitigation is warranted and impacts are less than significant.

A1-5 Please refer to response A1-4. As no additional surveys are proposed, no relocation of plants would be proposed.

In the unlikely event that Braunton's milkvetch were discovered during preconstruction surveys, the milkvetch would be subject to translocation in accordance with a translocation plan that would be developed by a biologist familiar with the ecology of the species and the plan would be approved by the U.S. Fish and Wildlife Service prior to implementation.

While the Department typically does not support translocation efforts for rare plants, it is important to note that GLA conducted a translocation program for Braunton's milkvetch for the Oak Park Project, in Ventura County. The translocation program occurred in phases and was monitored over a 10-year period and was highly successful, in large measure because many characteristics of the plant (e.g., produces lots of highly viable seed that is easy to germinate in proper conditions) make it highly capable of translocation.

Page 5.3-32, Section 5.3.7, Mitigation Measure 3.-1(a) of the DEIR is hereby modified as follows:

3. Response to Comments

3-1(a) A focused survey for Braunton's milk-vetch shall occur prior to the issuance of a grading permit. The focused survey shall occur within onsite suitable habitat (i.e., mixed sage scrub and coastal sage chaparral scrub) that may be disturbed as a result of the proposed project implementation, during the typical blooming period (February through July). This survey shall be conducted in accordance with the methodologies used for performing focused plant surveys per the CDFW's 2000 *Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Plant Communities*, and the CNPS's 2001 *Botanical Survey Guidelines of the California Native Plant Society*. In the event that Braunton's milkvetch are discovered during focused preconstruction surveys, a translocation plan shall be developed by a biologist familiar with the ecology of the species and the plan would be approved by the U.S. Fish and Wildlife Service prior to issuance of grading permit.

A1-6 As stated on page 5.3-25 of the DEIR, the City of Malibu prohibits the introduction of invasive plant species in a project's landscape plan. The project's landscape plan was prepared in accordance with the requirements of the City of Malibu prohibiting the use of invasive exotic landscape vegetation pursuant to LIP Section 3.12.1(A)(2).. A copy of the project's landscape plan, which was approved by the City of Malibu, contains the proposed plant species for the project and is included in Appendix F to the DEIR.

A1-7 The project's landscape plan complies with the Department's recommendation. Malibu LIP Section 3.12.1 (A) specifies which plant species are permitted and which species are prohibited on new development. Specifically, the following are the only species allowed to be planted:

“Plantings shall be native, drought-tolerant plant species, and shall blend with the existing natural vegetation and natural habitats on the site, except as noted in Section 3.10.1 (A)(3) of the Malibu LIP. The native plant species shall be chosen from those listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996..... Non-invasive ornamental plants and lawn may be permitted in combination with native, drought tolerant species within the irrigated zone (Zone A) required for fuel modification nearest approved residential structures. Irrigated lawn, turf and ground cover shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.”

In addition, LIP Section 3.12.1(A)(2) provides: “Invasive plant species, as identified by the California Native Plant Society, Santa Monica Mountains Chapter, in their document

3. Response to Comments

entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996 and identified in the City of Malibu’s Invasive Exotic Plant Species of the Santa Monica Mountains, dated March 17, 1998, that tend to supplant native species and natural habitats shall be prohibited.”

The project’s landscape plan contained in DEIR Appendix F has been reviewed and approved by the City’s Biologist as in conformance with Section 3.12.1 of the LIP. Other than some non-invasive ornamental plants and 1,500 square feet of lawn on each residential lot in Fuel Modification Zone A, all of the plant species proposed for the project site are native to the project site’s location, as recommended and contained in the *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996. Remaining native habitat areas shall not be irrigated.

A1-8 This comment is generally a set of introductory remarks and is a summary of the DEIR’s findings. It presents no environmental issues and no specific response is necessary.

A1-9 The DEIR concluded that 1.26 acres out of 1.35 acres of mixed sage scrub and all 7.76 acres of coastal sage chaparral scrub would be impacted. As shown on Table 5.3-3 “Acreages of Plant Communities on the project site” the DEIR conservatively considered all plant communities within any of the Fuel Modification Zones (A, B or C) would be 100 percent impacted by grading and/or thinning activities. Based on the most conservative estimate, the DEIR determined that impacts would be less than significant.

As stated on DEIR page 5.3-18 and as noted by Impact Sciences in 2009 and by GLA in 2012, the project site does not contain any habitats designated in the California Natural Diversity Database (CNDDDB) as rare. No portions of the site are designated as Environmentally Sensitive Habitat Area (ESHA) in the Malibu Local Coastal Program. The grassland onsite consists of non-native grassland, which has no special status. The majority of the scrub consists of coastal sage chaparral scrub, an ecotonal habitat that is not listed in the CNDDDB and has no special status (chaparral is the most common scrub community in California). Venturan coastal sage scrub is not considered rare; however it is listed as G3/S3 in the CNDDDB, which in larger blocks in undisturbed settings could trigger a finding of significant impact. However, the limited area of coastal sage scrub (1.35 acres) on the project site depicted in DEIR Figure 5.3-1, is located on a cut slope overlooking Pacific Coast Highway and exhibits minimal habitat value due to its limited size and proximity to a major roadway and does not support any significant habitat functions and as such, impacts to this area would not be considered significant.

As discussed on page 5.3-21 of the DEIR, to identify plant communities that would be directly affected by the proposed project, the development boundary of the project site—which includes the daylight grading limits and Fuel Modification Zone A—was evaluated and overlain on a map of the surveyed plant communities within the project

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site (DEIR Figure 5.3-1). The total acreage of each plant community occurring on the project site was calculated using a GIS database by Impact Sciences in 2009.

The GLA March 2013 Update (included in DEIR Appendix H) separates the impacts by fuel modification zone—the DEIR took a conservative approach and assumed everything in the fuel modification zones was impacted. Based on the most conservative estimate, the DEIR still determined that impacts would be less than significant. However, as discussed in GLA’s March 12, 2013 Update (included in DEIR Appendix H) and GLA’s response to comments (FEIR Appendix B) the proposed project and the Single Story Alternative result in the loss of 0.54 and 0.61 acre, respectively, within Fuel Modification Zone A, which as noted in the GLA 2012 Update is not considered significant. Additional areas of coastal sage scrub (0.72 acre and 0.61 acre, respectively), for the proposed project and Single Story Alternative would be subject to thinning but would not be eliminated and would continue to provide refugia habitat for common species during fires (this function is already extremely limited by the small size of the area). The GLA March 2013 Update (included in DEIR Appendix H) separates the impacts by fuel modification zone—the DEIR took a conservative approach and assumed everything in the fuel modification zones was impacted

Coastal sage chaparral scrub is located on the slopes of the erosional features/ravines and at the southeast corner of the site. Impacts associated with grading and fuel modification in Zone B were determined by Impact Sciences to be limited to only 0.43 acre of the 7.75 acres. Impact Sciences found this impact as not significant because (among other factors) this vegetation type is not considered sensitive and is widespread within the region and also because the area is not within defined ESHA. Under the approved fuel modification program, Zone B was expanded such that impacts to coastal sage chaparral scrub for the project now totals 1.29 acres and for the Single Story Alternative the impacts would total 1.44 acres. As noted, coastal sage chaparral scrub is not considered sensitive, does not support special-status species, and is not ESHA. Therefore GLA concurred that impacts to this habitat associated with grading and fuel modification within Zone B, would not be considered significant (GLA 2013)

Beyond impacts for grading and Zone B, there would be selective thinning of Fire Department defined “undesirable vegetation” within Zone C, all of which would occur within the limits of the property, and no impacts would extend into adjacent ESHA. The extent of thinning would be determined by the Fire Department; the maximum area of thinning under the project would be 6.47 acres and for the Single Story Alternative would be 6.32 acres. The thinning of coastal sage chaparral scrub within Zone C, which is not a sensitive habitat, supports no special-status species and is not ESHA would not be a significant impact. Furthermore, by performing selective thinning, which would leave much of the vegetation intact, the area would continue to provide habitat functions for a variety of native species and would also serve as refugia areas during nearby wildfires. Refugia areas are areas where wildlife can take shelter and

3. Response to Comments

find safe conditions during events such as wildfire that displaces them from their live-in habitat.

Finally, the site does not support breeding by any special-status raptors and foraging would be very limited due to the limited area of non-native grassland (14.56 acres) when considered in the context of the Santa Monica Mountains. For these reasons, the development of the project does not result in a significant impact to these biological resources.

- A1-10 As discussed above in response to Comment A1-9, given that the project will not result in significant impacts to special-status biological resources, no mitigation is required in accordance with CEQA. The loss or thinning of limited amounts of coastal sage scrub on the slope overlooking Pacific Coast Highway as well as the loss of or thinning of coastal sage/chaparral scrub would be adverse; however, the impacts do not meet the minimum threshold under CEQA or the LCP.
- A1-11 As noted for Response to Comment A1-9 above, impacts to plant communities are less than significant. Although the DEIR conservatively disclosed that 99 percent of the plant communities would be impacted, the project would retain 6.47 acres of native coastal sage chaparral habitat under the proposed project and 6.32 acres of native coastal sage chaparral habitat under the Single Story Alternative. While these areas would be subject to some thinning for fuel modification purposes, including the ravines, which as detailed below, do not contain jurisdictional drainages, these areas would remain as breeding, foraging, and dispersal habitat for a variety of common species, as well as potential refugia during nearby wildfires. For this reason, the Department's suggestion that a "wildlife habitat component" on the project site is not necessary.
- A1-12 There is very limited potential for wintering burrowing owls to occur on the site. Multiple survey visits to the project site during the Burrowing Owl breeding season were conducted on March 30, April 5, April 20, May 4, May 9, May 16, and June 1, 2007 by Impact Sciences as well as April 16, 2012 by GLA. As described by both Impact Sciences and GLA, many of these survey visits included walking transects across the entire site, approximately 20 feet apart, to allow visual coverage of the entire property. Burrowing owl habitat assessments are appropriately initiated when there are known occurrences of the species in the project area. To date, there are no records of burrowing owl within Malibu and the nearest record is from an area north of Highway 101 approximately 9.5 miles north of the project site (between Calabasas and Agoura Hills). No evidence of Burrowing Owl has ever been detected, and as such, it has not been necessary to conduct focused surveys as the Burrowing Owl is not expected to occur on the site during the breeding season as there are no records in the California Natural Diversity Database ("CNDDDB") of burrowing owl breeding or wintering for either the Malibu Beach or Point Dume quadrangles.

3. Response to Comments

As such, there is very limited potential for wintering burrowing owls to occur on the site, (generally between November 1 and February 28) based on habitat characteristics (e.g., flat areas with low-growing grasses). However, as noted there are no CNDDDB records of wintering burrowing owl in a large area in the surrounding the site and they are not expected to occur during the wintering season. Finally, pursuant to Section 8.4 of the LIP, the City of Malibu substantially prohibits all grading during the rainy season (November 1 to March 1), which coincides with the wintering season for burrowing owl, eliminating potential impacts on wintering owls.

Therefore, there is no reason to assume the presence of burrowing owls and subsequently, it is reasonable to make the determination that the project would not impact burrowing owls. Because there are no potentially significant impacts to this species, mitigation is not warranted.

- A1-13 Comment is a summary of the DEIR's findings. Comment noted. No response necessary.
- A1-14 The Department concurs that all streams should be avoided by the project and that a minimum 100-foot buffer be maintained as proposed. The project will maintain the 100-foot buffer as proposed with some potential for fuel modification within the 100-foot buffer.
- A1-15 The two ravines on the westerly half of the Site do not exhibit conditions consistent with jurisdictional drainages and as such GLA believes that the description of the two ravines on pages 5.3-1 and 5.3-26, the DEIR as "ephemeral drainages" is inaccurate. Specifically, these features were subject to a jurisdictional determination by GLA conducted in 2008, based on site visits on June 30 and August 25, 2008 at which time it was determined that these features did not meet the minimum required for a stream (nor are the ravines designated as streams on the City's ESHA Map) as defined by the Department as excepted below from the August 26, 2008 Jurisdictional Delineation Report by GLA¹:

1. Central Swale/Gully

*As noted above, for Corps jurisdiction, the Central swale/gully exhibits only limited signs of ephemeral flow. More importantly there is no evidence that surface water is present for sufficient duration to provide even minimal support for fish, other stream-dependent vertebrates such as mammals or amphibians, or invertebrates including aquatic insects (e.g., water striders, water boatmen, back swimmers, toe biters, or varieties of beetles) or insects that exhibit an aquatic larval form (e.g., dragonflies, mayflies, damselflies, or mosquitoes). In addition, the swale/gully supports no wetland or riparian vegetation of any kind. Rather the swale/gully supports only upland vegetation including: California encelia (*Encelia californica*,*

¹ Glenn Lukos Associates. August 26, 2008. Letter Report addressed to AZ Winter Mesa, LLC: Jurisdictional Determination for the Approximately 25-Acre Property Located at 24600 Pacific Coast Highway, in the City of Malibu, Los Angeles County a/k/a The Crummer Trust Property (the "Property").

3. Response to Comments

UPL), Laurel Sumac (*Malosma laurina* UPL), Giant Wildrye (*Leymus condensates*, UPL), California Morning Glory (*Calyptegia macrostegia*, UPL), Fennel (*Foeniculum vulgare*, UPL), and Coyote Brush (*Baccharis pilularis*, UPL). Site photographs of this feature are enclosed as Exhibit 4. Given these characteristics, the swale/gully does not meet CDFG's definition of a stream due to the absence of or potential to support any aquatic organisms or riparian habitat. This conclusion receives additional support from stream mapping performed by CDFG in northern California for purposes of managing fisheries habitat. For this application, CDFG "considers only solid blue line streams when determining stream order...on the USGS 1:24,000 topographic map[s]." As such, small swales, gullies and ravines such as on the Property are not considered "streams" by CDFG.

2. Westerly Swale/Gully

The westerly swale/gully receives limited runoff from Bluffs Park located immediately to the north and northwest, as storm water is conveyed along the adjacent road and picked up in a storm drain and discharged to the upper portions of the gully. Flows are ephemeral, only occurring in direct response to rainfall. The ephemeral hydrologic regime of the western swale/gully, as for the central swale/gully already discussed, is so brief that it is not capable of supporting aquatic organisms of any kind. Furthermore, the swale supports a predominance of upland vegetation with only one small individual clump of willow in the upper portions of the swale/gully, above where at least some sign of flow becomes evident (i.e., presence of litter and debris). The habitat is best characterized as chaparral, coastal sage scrub, and in some areas, invasive exotic species such as castor bean (*Ricinus communis*, FACU), Laurel Sumac (*Malosma laurina*, UPL), Giant Wildrye (*Leymus condensates*, UPL), California Morning Glory (*Calyptegia macrostegia*, UPL), Fennel (*Foeniculum vulgare*, UPL), Coyote Brush (*Baccharis pilularis*, UPL) and ashy-leaved buckwheat (*Eriogonum cinereum*, UPL). As discussed in detail above under Corps jurisdiction, there is one potential riparian indicator species within the upper portion of the swale; however, as noted in the above discussion, the willow in this context is dependent upon perched subsurface water and not stream flow and is not an indicator of stream-like conditions.

Given these characteristics, the westerly swale/gully does not meet CDFG's definition of a stream due to the absence of or potential to support any aquatic organisms or riparian habitat. As noted for the central swale/gully, this conclusion receives additional support from stream mapping performed by CDFG in northern California for purposes of managing fisheries habitat. For this application, CDFG "considers only solid blue line streams when determining stream order...on the USGS 1:24,000 topographic map[s]." As such, small swales, gullies and ravines such as on the Property are not considered "streams" by CDFG.

For reference, the Department's definition of a stream along with the definition of a stream provided in the Malibu LCP is provided below.

3. Response to Comments

CDFG Definition	Malibu LCP Definition
1. A stream is a body of water that flows at least periodically or intermittently through a bed or channel having banks	1. STREAM - is a topographic feature that at least periodically conveys water through a bed or channel having banks
2. and supports fish or other aquatic life	2.
3. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation.	3. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation.

The following conclusions are also excerpted from the GLA August 26, 2008 Report:

Both the Corps and CDFG provide reasonably clear definitions of what is required for the presence of a stream or watercourse that is subject to regulation under the Clean Water Act and California Fish and Game Code, respectively. In his written opinion on Rapanos, Justice Scalia concluded that under the Clean Water Act, the phrase “waters of the United States” includes only those relatively permanent, standing or continuously flowing bodies of water “forming geographic features” that are described in ordinary parlance as “streams” as defined in Webster’s New International Dictionary.²

The majority’s use of the term “forming geographic features” is similar to the Malibu LCP phrase “is a topographic feature” in defining what a stream is and is not. In addition, the use of these two phrases appears to be consistent with the “streams” mapped on the LCP ESHA Maps, which are generally limited to streams that in fact are considered streams in ordinary parlance. Furthermore, the language addressing streams in the Revised Findings is very consistent with this concept of a stream, both of which require the ability to support aquatic wildlife or (at a minimum) riparian habitat in order for a “geographic” or “topographic” feature to be defined as a stream.

Given these considerations, it is GLA’s opinion that the Central and Westerly Gullies on the Property are not streams under the LCP and that the proposed project, which proposes full avoidance of these features, exhibit no potential to affect streams as defined by the Corps; CDFG; or in the LCP, including the associated ESHA Maps and discussed in the Revised Findings.

Finally, these features are not subject to project impacts and there is no work proposed within these areas that would require coordination with or authorization by the Department.

Page 5.3-1, Section 5.3.1 of the DEIR, Environmental Setting is hereby modified as follows:

The project site is on top of a bluff. The majority of the project site is flat, but steep slopes descend from the project site along its south and east borders. The soils on the site are loose and friable and are classified

² Rapanos et ux., et al v. United States Nos. 04-1034 and 04-1384. United States Supreme Court, argued February 21, 2006, decided June 19, 2006, p 1.

3. Response to Comments

as loamy. The flat portion of the project site is vacant, but it has been disturbed by disking and weed abatement. It contains little vegetation. There is, however, natural vegetation on the slopes to the south and east. Two large ~~ephemeral drainages~~ ephemeral drainage features drain from northwest to southeast, down the slope toward Amarillo Beach. One of the drainages enters the project site from the southwest corner, and one enters the site from the center of the southern site boundary.

Page 5.3-26, Section 5.3.3 of the DEIR, Environmental Impacts is hereby modified as follows:

Impact Analysis: No riparian habitat occurs on the project site. The project site contains two ~~ephemeral drainages~~ ephemeral drainage features; however, GLA determined that these drainages are not streams according to Corps, CDFW, or CCC definitions. None of the plant communities identified as occurring on the project site are listed as sensitive communities by the California Department of Fish and Wildlife or the US Fish and Wildlife Service; therefore, no significant impacts to sensitive plant communities would occur as a result of the proposed project's implementation.

- A1-16 For the reasons stated in response to Comment A1-15, the small ravines on the project site do not support jurisdictional drainages. Additionally, these areas are not subject to project impacts and there is no work proposed within these areas that would require coordination with or authorization by the Department.
- A1-17 The two ravines on the westerly half of the on the project site do not support jurisdictional drainages as outlined in response to Comment A1-15 and A1-16. Additionally, these areas are not subject to project impacts and there is no work proposed within these areas that would require coordination with or authorization by the Department. Furthermore, because there are no streams and there is no riparian habitat that would be subject to regulation by the Department under the California Fish and Game Code Section 1602.
- A1-18 Project fencing will not include any materials that would be potentially harmful to wildlife, including but not limited to spikes, glass, razor or barbed wired. The project already includes the condition; "Necessary boundary fencing of any single area exceeding one half (1/2) acre shall be of an open rail-type design with a wooden rail at the top (instead of wire), be less than 40 inches high, and have a space greater than 14 inches between the ground and the bottom post or wire. A split rail design that blends with the natural environment is preferred." In order to ensure that project fencing is consistent with the Department's recommendation the following condition of approval is proposed:

Project fencing shall not include any materials that would be potentially harmful to wildlife, including but not limited to spikes, glass, razor or barbed wired. Prior to

3. Response to Comments

issuance of a grading permit, project plans that include fencing design and components will be reviewed by a qualified biologist who shall prepare a letter report to be submitted to the City of Malibu Biologist certifying that the fencing would not be harmful to wildlife. Prohibited materials include but are not limited to spikes, glass, and razor or barbed wired. All hollow fence posts shall be capped to prevent birds and other wildlife from entering and becoming entrapped. Fencing shall be minimized so as not to restrict free wildlife movement through habitat areas.

- A1-19 Grading associated with the project exhibits the potential for displacement of small mammals, reptiles and common avifauna; however, such impacts would not be considered significant impacts to common wildlife. Therefore, a biological monitor is not required relative to any incidental impacts that occur during clearing or grading to common wildlife. However, as a condition of approval, the applicant shall provide a qualified biologist with a CDFW Scientific Collectors' Permit shall be on site during initial ground disturbance activities to capture any wildlife in the path of harm and relocate them to adjacent habitat outside of the disturbance boundaries.

3. Response to Comments

LETTER A2 – County of Los Angeles Fire Department (8 page[s])



COUNTY OF LOS ANGELES
FIRE DEPARTMENT
1320 NORTH EASTERN AVENUE
LOS ANGELES, CALIFORNIA 90063-3294
(323) 881-2401

DARYL L. OSBY
FIRE CHIEF
FORESTER & FIRE WARDEN

RECEIVED
MAY 06 2013
PLANNING DEPT.

April 25, 2013

Ha Ly, Associate Planner
Planning Department
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Dear Ha Ly:

NOTICE OF AVAILABILITY, DRAFT ENVIRONMENTAL IMPACT REPORT, "CRUMMER SITE SUBDIVISION" TO ANALYZE THE POTENTIAL ENVIRONMENTAL IMPACTS OF THE PROPOSED DEVELOPMENT AT THE PROJECT SITE, CONSISTS OF A SUBDIVISION OF THE PROJECT SITE INTO SEVEN INDIVIDUAL LOTS, THIS PROJECT IS ON LOT 7, MALIBU (FFER #201300053)

The Draft Environmental Impact Report has been reviewed by the Planning Division, Land Development Unit, Forestry Division, and Health Hazardous Materials Division of the County of Los Angeles Fire Department. The following are their comments:

PLANNING DIVISION:

- 1. We have no comments at this time.

A2-1

LAND DEVELOPMENT UNIT:

- 1. The statutory responsibilities of the County of Los Angeles Fire Department, Land Development Unit, are the review of and comment on, all projects within the unincorporated areas of the County of Los Angeles. Our emphasis is on the availability of sufficient water supplies for firefighting operations and local/regional access issues. However, we review all projects for issues that may have a significant impact on the County of Los Angeles Fire Department. We are responsible for the review of all projects within Contract Cities (cities that contract with the County of Los Angeles Fire Department for fire protection services). We are responsible for all County facilities, located within non-contract cities.

A2-2

SERVING THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY AND THE CITIES OF:

AGOURA HILLS	CALABASAS	DIAMOND BAR	HIDDEN HILLS	LA MIRADA	MALIBU	POMONA	SIGNAL HILL
ARTESIA	CARSON	DUARTE	HUNTINGTON PARK	LA FUENTE	MAYWOOD	RANCHO PALOS VERDES	SOUTH EL MONTE
AZUSA	CERRITOS	EL MONTE	INDUSTRY	LAKEWOOD	NORWALK	ROLLING HILLS	SOUTH GATE
BALDWIN PARK	CLAREMONT	GARDENA	INGLEWOOD	LANCASTER	PALMDALE	ROLLING HILLS ESTATES	TEMPLE CITY
BELL	COMMERCE	GLENDALE	IRVINDALE	LAWNDALE	PALOS VERDES ESTATES	ROSEMEAD	WALNUT
BELL GARDENS	COVINA	HAWAIIAN GARDENS	LA CANADA FLINTRIDGE	LOMITA	PARAMOUNT	SAN DIMAS	WEST HOLLYWOOD
BELFLOWER	CUDAHY	HAWTHORNE	LA HABRA	LYNWOOD	PICO RIVERA	SANTA CLARITA	WESTLAKE VILLAGE
BRADBURY							WHITTIER

3. Response to Comments

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- | | | |
|-----|---|----------------|
| | The County of Los Angeles Fire Department, Land Development Unit may also comment on conditions that may be imposed on a project by the Fire Prevention Division, which may create a potentially significant impact to the environment. | A2-2
cont'd |
| 2. | The development of this project must comply with all applicable code and ordinance requirements for construction, access, water mains, fire flows and fire hydrants. | A2-3 |
| 3. | The County of Los Angeles Fire Department, Land Development Unit's comments are only general requirements. Specific fire and life safety requirements and conditions set during the environmental review process will be addressed and conditions set at the building and fire plan check phase. Once the official plans are submitted for review there may be additional requirements. | A2-4 |
| 4. | This property is located within the area described by the Forester and Fire Warden as a Fire Zone 4, Very High Fire Hazard Severity Zone (VHFHSZ). All applicable fire code and ordinance requirements for construction, access, water mains, fire hydrants, fire flows, brush clearance and fuel modification plans, must be met. | A2-5 |
| 5. | Every building constructed shall be accessible to Fire Department apparatus by way of access roadways, with an all-weather surface of not less than the prescribed width. The roadway shall be extended to within 150 feet of all portions of the exterior walls when measured by an unobstructed route around the exterior of the building. | A2-6 |
| 6. | When a bridge is required to be used as part of a fire access road, it shall be constructed and maintained in accordance with nationally recognized standards and designed for a live load sufficient to carry a minimum of 75,000 pounds. All water crossing designs are required to be approved by the public works department prior to installation. | A2-7 |
| 7. | The maximum allowable grade shall not exceed 15% except where topography makes it impractical to keep within such grade. In such cases, an absolute maximum of 20% will be allowed for up to 150 feet in distance. The average maximum allowed grade, including topographical difficulties, shall be no more than 17%. Grade breaks shall not exceed 10% in ten feet. | A2-8 |
| 8. | When involved with subdivision in a city contracting fire protection with the County of Los Angeles Fire Department, Fire Department requirements for access, fire flows and hydrants are addressed during the subdivision tentative map stage. | A2-9 |
| 9. | Fire sprinkler systems are required in some residential and most commercial occupancies. For those occupancies not requiring fire sprinkler systems, it is strongly suggested that fire sprinkler systems be installed. This will reduce potential fire and life losses. Systems are now technically and economically feasible for residential use. | A2-10 |
| 10. | Single family detached homes shall require a minimum fire flow of 1,250 gallons per minute at 20 pounds per square inch residual pressure for a two-hour duration. Two family dwelling units (duplexes) shall require a fire flow of 1,500 gallons per minute at 20 pounds per square inch residual pressure for a two-hour duration. When there are five or more units taking access on a single driveway, the minimum fire flow shall be increased to 1,500 gallons per | A2-11 |

3. Response to Comments

Ha Ly, Associate Planner
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minute at 20 pounds per square inch residual pressure for a two-hour duration. Fire Flow and flow duration for one family dwellings having a fire flow calculation area in excess of 3,600 square feet shall not be less than that specified in Table B105.1. See the Tentative Tract Map Conditions of Approval Water Systems Requirements sheet for actual fire flow for this project. A2-11 cont'd

- 11. Fire hydrant spacing shall be 600 feet and shall meet the following requirements:
 - a) No portion of lot frontage shall be more than 450 feet via vehicular access from a public fire hydrant.
 - b) No portion of a structure should be placed on a lot where it exceeds 750 feet via vehicular access from a properly spaced public fire hydrant. A2-12
 - c) When cul-de-sac depth exceeds 450 feet on a residential street, hydrants shall be required at the corner and mid-block.
 - d) Additional hydrants will be required if hydrant spacing exceeds specified distances.
- 12. A Fire Department approved turning area shall be provided for all driveways exceeding 150 feet in-length and at the end of all cul-de-sacs. A2-13
- 13. Fire Department access shall provide a minimum unobstructed width of 28 feet, clear-to-sky and be within 150 feet of all portions of the exterior walls of the first story of any single unit. If exceeding 150 feet, provide 20 feet minimum paved width "Private Driveway - Fire Lane" clear-to-sky to within 150 feet of all portions of the exterior walls of the unit. Fire lanes serving three or more units shall be increased to 26 feet. A2-14
- 14. Streets or driveways within the development shall be provided with the following:
 - a) Provide 36 feet in width on all streets where parking is allowed on both sides.
 - b) Provide 34 feet in width on cul-de-sacs up to 700 feet in length. This allows parking on both sides of the street.
 - c) Provide 36 feet in width on cul-de-sacs from 701 to 1,000 feet in length. This allows parking on both sides of the street. A2-15
 - d) For streets or driveways with parking restrictions: The entrance to the street/driveway and intermittent spacing distances of 150 feet shall be posted with Fire Department approved signs stating "NO PARKING - FIRE LANE" in three-inch high letters. Driveway labeling is necessary to ensure access for Fire Department use. Turning radii shall not be less than 32 feet. This measurement shall be determined at the centerline of the road.
- 15. All access devices and gates shall meet the following requirements:
 - a) Any single gated opening used for ingress and egress shall be a minimum of 26 feet in-width, clear-to-sky. A2-16

3. Response to Comments

Ha Ly, Associate Planner
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Page 4

- | | |
|---|-----------------|
| b) Any divided gate opening (when each gate is used for a single direction of travel i.e., ingress or egress) shall be a minimum width of 20 feet clear-to-sky. | A2-16
cont'd |
| c) Gates and/or control devices shall be positioned a minimum of 50 feet from a public right-of-way, and shall be provided with a turnaround having a minimum of 32 feet of turning radius. If an intercom system is used, the 50 feet shall be measured from the right-of-way to the intercom control device. | |
| d) All limited access devices shall be of a type approved by the Fire Department. | |
| e) Gate plans shall be submitted to the Fire Department, prior to installation. These plans shall show all locations, widths and details of the proposed gates. | |
| 16. All proposals for traffic calming measures (speed humps/bumps/cushions, traffic circles, roundabouts, etc.) shall be submitted to the Fire Department for review, prior to implementation. | A2-17 |
| 17. Disruptions to water service shall be coordinated with the County of Los Angeles Fire Department and alternate water sources shall be provided for fire protection during such disruptions. | A2-18 |
| 18. Submit three sets of water plans to the County of Los Angeles Fire Department, Land Development Unit. The plans must show all proposed changes to the fire protection water system, such as fire hydrant locations and main sizes. The plans shall be submitted through the local water company. | A2-19 |
| 19. When developing the infrastructure and when construction is proposed, all requirements as indicated on this report shall be incorporated into the proposed development plan submittals. | A2-20 |
| 20. The Fire Prevention Division, Land Development Unit, has no additional comments regarding this EIR. The conditions that were addressed in Tentative Map Review TR 70038, dated May 22, 2012, have not changed at this time. | |
| 21. Should any questions arise regarding subdivision, water systems, or access, please contact the County of Los Angeles Fire Department, Land Development Unit Inspector, Nancy Rodeheffer, at (323) 890-4243 or nrhodeheffer@fire.lacounty.gov. | A2-21 |
| 22. The County of Los Angeles Fire Department, Land Development Unit appreciates the opportunity to comment on this project. | |
| <u>FORESTRY DIVISION – OTHER ENVIRONMENTAL CONCERNS:</u> | |
| 1. The statutory responsibilities of the County of Los Angeles Fire Department, Forestry Division include erosion control, watershed management, rare and endangered species, vegetation, fuel modification for Very High Fire Hazard Severity Zones or Fire Zone 4, archeological and cultural resources, and the County Oak Tree Ordinance. | A2-22 |

3. Response to Comments

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2. The areas germane to the statutory responsibilities of the County of Los Angeles Fire Department, Forestry Division have been addressed.

A2-22
cont'd

HEALTH HAZARDOUS MATERIALS DIVISION:

1. The Health Hazardous Materials Division has no objection to the proposed project.

A2-23

If you have any additional questions, please contact this office at (323) 890-4330.

Very truly yours,



FRANK VIDALES, ACTING CHIEF, FORESTRY DIVISION
PREVENTION SERVICES BUREAU

FV:ij

Enclosure

3. Response to Comments

	COUNTY OF LOS ANGELES FIRE DEPARTMENT 5823 Rickenbacker Road Commerced, California 90040	A2-27
CONDITIONS OF APPROVAL FOR SUBDIVISIONS - INCORPORATED		
Subdivision No: <u>TR 70038</u>	Map Date <u>March 16, 2012</u>	
<u>24120 Pacific Coast Highway</u>		
C.U.P. _____	City <u>Malibu</u>	
<input type="checkbox"/>	FIRE DEPARTMENT HOLD on the tentative map shall remain until verification from the Los Angeles County Fire Dept. Planning Section is received, stating adequacy of service. Contact (323) 881-2404.	
<input checked="" type="checkbox"/>	Access shall comply with Section 503 of the Fire Code, which requires all weather access. All weather access may require paving.	
<input checked="" type="checkbox"/>	Fire Department Access shall be extended to within 150 feet distance of any exterior portion of all structures.	
<input checked="" type="checkbox"/>	Where driveways extend further than 150 feet and are of single access design, turnarounds suitable for fire protection equipment use shall be provided and shown on the final map. Turnarounds shall be designed, constructed and maintained to insure there integrity for Fire Department use. Where topography dictates, turnarounds shall be provided for driveways that extend over 150 feet in length.	
<input checked="" type="checkbox"/>	Private driveways shall be indicated on the final map as "Private Driveway and Firelane" with the widths clearly depicted and shall be maintained in accordance with the Fire Code. All required fire hydrants shall be installed, tested and accepted prior to construction.	
<input checked="" type="checkbox"/>	Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. All required fire hydrants shall be installed, tested and accepted prior to construction.	
<input type="checkbox"/>	This property is located within the area described by the Fire Department as "Very High Fire Hazard Severity Zone" (formerly Fire Zone 4). A "Fuel Modification Plan" shall be submitted and approved prior to final map clearance. (Contact Fuel Modification Unit, Fire Station #32, 605 North Angeleno Avenue, Azusa, CA 91702-2904, Phone (626) 969-5205, for details).	
<input checked="" type="checkbox"/>	Provide Fire Department or City approved street signs and building access numbers prior to occupancy.	
<input type="checkbox"/>	Additional fire protection systems shall be installed in lieu of suitable access and/or fire protection water.	
<input type="checkbox"/>	The final concept map, which has been submitted to this department for review, has fulfilled the conditions of approval recommended by this department for access only.	
<input type="checkbox"/>	These conditions shall be secured by a C.U.P. and/or Covenant and Agreement approved by the County of Los Angeles Fire Department prior to final map clearance.	
<input type="checkbox"/>	The Fire Department has no additional requirements for this division of land.	
Comments:	<u>Access is adequate as shown on the Vesting Tentative Map dated May 17, 2012 on file in this office with the following conditions: see additional sheet</u>	
INSPECTOR <u>Nancy Rickenbacker</u>	DATE <u>May 22, 2012</u>	
Land Development Unit – Fire Prevention Division – (323) 890-4243, Fax (323) 890-9783		
Form 266 9/01		

3. Response to Comments



COUNTY OF LOS ANGELES FIRE DEPARTMENT

A2-28

5823 Rickenbacker Road
Commerce, California 90040

WATER SYSTEM REQUIREMENTS – INCORPORATED

Subdivision No: TR 70038 Map Date March 16, 2012
24120 Pacific Coast Highway

Revised _____ City Malibu

- Provide water mains, fire hydrants and fire flows as required by the County of Los Angeles Fire Department, for all land shown on map which shall be recorded.
- The required fire flow for public fire hydrants at this location is 1375 gallons per minute at 20 psi for a duration of 2 hours, over and above maximum daily domestic demand. 1 Hydrant(s) flowing simultaneously may be used to achieve the required fire flow.
- The required fire flow for private on-site hydrants is 1375 gallons per minute at 20 psi.
- Fire hydrant requirements are as follows:
 Install public fire hydrant(s). Upgrade Verify (flow test) existing Public fire hydrant(s).
 Install 3 private on-site fire hydrant(s). Upgrade Verify (flow test) existing On-Site fire hydrant(s).
- All hydrants shall measure 6"x 4"x 2-1/2" brass or bronze, conforming to current AWWA standard C503 or approved equal. All on-site hydrants shall be installed a minimum of 25' feet from a structure or protected by a two (2) hour rated firewall.
 - Location: As per map on file with the office.
 - Other location: _____
- All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval. Vehicular access must be provided and maintained serviceable throughout construction.
- The County of Los Angeles Fire Department is not setting requirements for water mains, fire hydrants and fire flows as a condition of approval for this division of land as presently zoned and/or submitted.
- Additional water system requirements will be required when this land is further subdivided and/or during the building permit process.
- Hydrants and fire flows are adequate to meet current Fire Department requirements.
- Upgrade not necessary, if existing hydrant(s) meet(s) fire flow requirements.

SUBMIT COMPLETED (ORIGINAL ONLY) FIRE FLOW AVAILABILITY FORM TO THIS OFFICE FOR REVIEW.

COMMENTS: Per The County of Los Angeles Water Works 29, the Fire Flow Availability form dated March 30, 2012, indicates adequate flow from the existing public fire hydrant on Winter Mesa Drive. All required fire hydrants shall measure 6"x 4"x 2-1/2" brass or bronze, conforming to current AWWA standard C503 or approved equal and meet the required fire flow requirements as noted above. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.

All hydrants shall be installed in conformance with Title 20, County of Los Angeles Government Code and County of Los Angeles Fire Code, or appropriate City regulations. This shall include minimum six-inch diameter mains. Arrangements to meet these requirements must be made with the water purveyor serving the area.

By Inspector Nancy Rodabatter Date May 22, 2012

Land Development Unit – Fire Prevention Division – (323) 890-4243, Fax (323) 890-9783

3. Response to Comments



**COUNTY OF LOS ANGELES
FIRE DEPARTMENT**

5823 Rickenbacker Road
Commerce, California 90040

A2-29

SUBDIVISION, WATER AND ACCESS REQUIREMENTS

ADDITIONAL PAGE

SUBDIVISION NO. **TR 70038**
24120 Pacific Coast Highway

March 16, 2012

- 1 For Lot 1 & 5 the circular turnaround shall remain clear and unobstructed, no plantings, fountains or other features shall be allowed.
- 2 For Lot 2 the circular turnaround drive aisle shall be maintained at a minimum 20' in width with a 32' on centerline turning radius. If landscaping or other feature is to be located in the center it must not encroach into the drive aisle.
- 3 Provide evidence from a certified civil engineer that the "Bridge" feature on lot 5, shall support the minimum weight capacity of 75,000 pounds to accommodate fire apparatus.
* Once the "Bridge" is installed, provide recertification from a certified civil engineer that the "Bridge" portion of the driveway will support the minimum weight capacity of 75,000 pounds to accommodate fire apparatus PRIOR TO OCCUPANCY. The width of 15' shall be maintained clear and unobstructed for the Bridge portion of the Fire Department access.
- 4 Emergency access for firefighter pedestrian use shall be extended to all exterior walls of all proposed structures within the subdivision. Additional walking access shall be reviewed and approved by Fire Prevention Engineering prior to Building Permit issuance.
- 5 SUBMIT THREE COPIES OF THE FINAL MAP TO LACoFD, LAND DEVELOPMENT FOR REVIEW AND APPROVAL RECORDATION.
- 6 _____
- 7 _____
- 8 _____

By Inspector: Nancy Rodenhoffer

Date: May 22, 2012

Land Development Unit – Fire Prevention Division – (323) 890-4243, Fax (323) 890-4169

3. Response to Comments

A2. Response to Comments County of Los Angeles (Frank Vidales), dated April 25, 2013.

A2-1 The County of Los Angeles Fire Department Planning Division has no comments. No response is necessary.

A2-2 The Land Development Unit describes the statutory duties of the County of Los Angeles Fire Department to comment on projects within the County. No response is necessary.

A2-3 Page 5.7-11, Section 5.7.7 Mitigation Measure includes the following mitigation measures that ensure that the project complies with all applicable code and ordinance requirements for construction, access, water mains, fire flows, and fire hydrants:

7-1 In addition to compliance with existing requirements and standards of the Los Angeles County Fire Department (LACFD), the proposed project must comply with all requirements detailed in letters dated March 16, 2012, from the LACFD, included in Appendix M of the Draft EIR. Where the two letters differ, the more conservative approach shall be taken. The letters include the following requirements, among others:

- For Lot 1 and 5 the circular turnaround shall remain clear and unobstructed. No plantings, fountains, or other features shall be allowed;
- For Lot 2 the circular turnaround drive aisle shall be maintained at a minimum 20 feet in width with 32 feet on centerline turning radius. If landscaping or other features are to be located in the center, they must not encroach into the drive aisle.
- Provide evidence from a certified civil engineer that the "bridge" feature on Lot 5 shall support the minimum weight capacity of 75,000 pounds to accommodate fire apparatus. Once the "bridge" is installed, provide recertification prior to occupancy from a certified civil engineer that the "bridge" will support a minimum of 75,000 pounds. The width of 15 feet shall be maintained clear and unobstructed for the "bridge" portion of the fire department access.
- Emergency access for firefighter pedestrian use shall be extended to all exterior walls of all proposed structures within the subdivision. Additional walking access shall be reviewed and approved by Fire Prevention Engineering prior to building permit issuance.
- Department access shall be extended to within 150 feet distance of any exterior portion of all structures.

3. Response to Comments

- Access shall comply with Section 503 of the Fire Code, which requires all-weather access. All-weather access may require paving.
- Where driveways extend farther than 150 feet and are of single-access design, turnarounds suitable for fire protection equipment use shall be provided and shown on the final map. Turnarounds shall be designed, constructed, and maintained to ensure their integrity for fire department use. Where topography dictates, turnarounds shall be provided for driveways that extend over 150 feet in length.
- Private driveways shall be indicated on the final map as "Private Driveway and Fire Lane," with the widths clearly depicted, and shall be maintained in accordance with the Fire Code. All required fire hydrants shall be installed, tested, and accepted prior to construction.
- Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. All required fire hydrants shall be installed, tested, and accepted prior to construction.
- Prior to occupancy, provide street signs and building access numbers as approved by the Fire Department or City.
- Provide water mains, fire hydrants, and fire flows as required by the County of Los Angeles Fire Department for all land shown on map which shall be recorded.
- The required fire flow for public fire hydrants at this location is 1,375 gallons per minute at 20 psi for a duration of 2 hours, over and above maximum daily domestic demand. Hydrant(s) flowing simultaneously may be used to achieve the required fire flow.
- Three private fire hydrants shall be installed onsite. The required fire flow for private onsite hydrants is 1,375 gallons per minute at 20 psi.
- The required fire hydrants shall be installed, tested, and accepted or bonded for prior to Final Map approval.
- Vehicular access must be provided and maintained serviceable throughout construction;
- Additional water system requirements will be required when this land is further subdivided and/or during the building permit process.

3. Response to Comments

- Per the County of Los Angeles Water Works 29, the Fire Flow Availability form dated March 30, 2012, indicates adequate flow from the existing public fire hydrant on Winter Mesa Drive. All required fire hydrants shall measure 6 inches x 4 inches x 2-1/2 inches, brass or bronze, conforming to current AWWA standard C503 or approved equal and meet the required fire flow requirements (1,375 gallons per minute at 20 psi).
- 7-2 The proposed project shall comply with all recommendations contained in the fire protection plan and in the fuel modification plan prepared for the proposed project. Compliance with the fire protection plan and fuel modification plan would reduce the vulnerability of the proposed structures and the project site to wildland fires. The recommendations would minimize the likelihood of ember (firebrand) penetration or direct flame impingement, ensure that fire sprinklers and fire alarms are installed in the proposed residences, that the infrastructure of the site and surrounding area allow emergency personnel and vehicles to access the proposed project, and that the project site is landscaped in such a way that the proposed residences are not immediately adjacent to significant amounts of vegetation that could fuel wildfires.
- 7-3 The covenants, conditions, and restrictions for the proposed residences shall require the regular maintenance of the vegetation on the project site to ensure compliance with the fuel modification plan.
- 7-4 The applicant shall participate in an appropriate financing mechanism, such as a developer fee or an in-kind consideration in lieu of developer fees, to provide funds for fire protection facilities that are required by residential development in an amount proportional to the demand created by this project. Currently, the developer fee is a set amount per square foot of building space, adjusted annually, and is due and payable at the time a building permit is issued. In the event that the developer fee is no longer in effect at the time of building permit issuance, alternative mitigation measures may be required.
- A2-4 Comment noted.
- A2-5 The project site is identified as being located in Very High Fire Hazard Severity Zone (VHFHSZ) in Chapter 5.7, *Hazards and Hazardous Materials*. See Response A2-3.
- A2-6 The proposed project will comply with fire hydrant spacing and all applicable code and ordinance requirements for construction, access, water mains, fire flows, and fire hydrants. See Response A2-3, mitigation measure 7-1.
- A2-7 The proposed project will comply with fire hydrant spacing and all applicable code and ordinance requirements for construction, access, water mains, fire flows, and fire hydrants. See Response A2-3, mitigation measure 7-1.

3. Response to Comments

- A2-8 The proposed project will comply with fire hydrant spacing and all applicable code and ordinance requirements for construction, access, water mains, fire flows, and fire hydrants. See Response A2-3, mitigation measure 7-1.
- A2-9 Comment noted. See also Response A2-3, mitigation measure 7-1.
- A2-10 Comment noted.
- A2-11 See Response A2-3, mitigation measure 7-1 which incorporates Tentative Tract Map Conditions of Approval Water Systems Requirements sheet for actual fire flow for this project.
- A2-12 The proposed project will comply with fire hydrant spacing and all applicable code and ordinance requirements for construction, access, water mains, fire flows, and fire hydrants. See Response A2-3, mitigation measure 7-1.
- A2-13 The proposed project will comply with all applicable code and ordinance requirements for construction, access, water mains, fire flows, and fire hydrants. See Response A2-3, mitigation measure 7-1.
- A2-14 The proposed project will comply with all applicable code and ordinance requirements for construction, access, water mains, fire flows, and fire hydrants. See Response A2-3, mitigation measure 7-1.
- A2-15 The proposed project will comply with all applicable code and ordinance requirements for construction, access, water mains, fire flows, and fire hydrants. See Response A2-3, mitigation measure 7-1.
- A2-16 All access devices and gates will comply with all applicable code and ordinance requirements for construction and access. See Response A2-3, mitigation measure 7-1.
- A2-17 The proposed project will comply with all applicable code and ordinance requirements for construction and access as they relate to traffic calming measures. See Response A2-3, mitigation measure 7-1.
- A2-18 Comment noted. The proposed project will comply with all applicable code and ordinance requirements.
- A2-19 Comment noted. The proposed project will comply with all applicable code and ordinance requirements.
- A2-20 The proposed project will comply with all applicable code and ordinance requirements for construction, access, water mains, fire flows, and fire hydrants. See Response A2-3, mitigation measure 7-1.

3. Response to Comments

- A2-21 Comment noted. The proposed project will comply with all applicable code and ordinance requirements.
- A2-22 The Forestry Division describes the statutory duties of the County of Los Angeles Fire Department to comment on projects within the County. No response is necessary.
- A2-23 The Health Hazardous Materials Division has no objection to the proposed project. No response is necessary.

3. Response to Comments

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3. Response to Comments

LETTER A3 – Metropolitan Transportation Authority (8 page[s])



Metro

Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000 Tel
metro.net

May 17, 2013

Ms. Ha Ly
Associate Planner
City of Malibu Planning Department
23825 Stuart Ranch Road
Malibu, CA 90265

RE: Crummer Site Subdivision – Draft Environmental Impact Report

Ms. Ly,

Thank you for the opportunity to comment on the Draft Environmental Impact Report (EIR) for the Crummer Site Subdivision. This letter conveys recommendations from the Los Angeles County Metropolitan Transportation Authority (LACMTA) concerning issues that are germane to our agency's statutory responsibilities in relation to the proposed project.

In the response to the Notice of Preparation, LACMTA provided comments in a letter dated May 23, 2012 regarding Traffic Impact Analysis (TIA) requirements as required per the State of California Congestion Management Program (CMP) statute. One component of the CMP requirements is a Transit Impact Review, which appears to be lacking in the Draft EIR. Please note the following:

1. All projects preparing an EIR should consult with affected Transit Operators and analyze the potential impacts of the project on Transit Services. The specific requirements for EIR transit consultation and analysis are detailed in Appendix D Section D.8.4 of the 2010 Congestion Management Program (attached).

MTA looks forward to reviewing the Final EIR. If you have any questions regarding this response, please call Nick Saponara at 213-922-4313 or by email at SaponaraN@metro.net. Please send the Final EIR to the following address:

MTA CEQA Review Coordination
Attn: Nick Saponara
One Gateway Plaza MS 99-23-4
Los Angeles, CA 90012-2952

Sincerely,

Nick Saponara
CEQA Review Manager, Strategic Initiatives

Attachment

A3-1

3. Response to Comments

APPENDIX

D

GUIDELINES FOR CMP TRANSPORTATION IMPACT ANALYSIS

Important Notice to User: This section provides detailed travel statistics for the Los Angeles area which will be updated on an ongoing basis. Updates will be distributed to all local jurisdictions when available. In order to ensure that impact analyses reflect the best available information, lead agencies may also contact MTA at the time of study initiation. Please contact MTA staff to request the most recent release of "Baseline Travel Data for CMP TIAs."

D.1 OBJECTIVE OF GUIDELINES

The following guidelines are intended to assist local agencies in evaluating impacts of land use decisions on the Congestion Management Program (CMP) system, through preparation of a regional transportation impact analysis (TIA). The following are the basic objectives of these guidelines:

- Promote consistency in the studies conducted by different jurisdictions, while maintaining flexibility for the variety of project types which could be affected by these guidelines.
- Establish procedures which can be implemented within existing project review processes and without ongoing review by MTA.
- Provide guidelines which can be implemented immediately, with the full intention of subsequent review and possible revision.

These guidelines are based on specific requirements of the Congestion Management Program, and travel data sources available specifically for Los Angeles County. References are listed in Section D.10 which provide additional information on possible methodologies and available resources for conducting TIAs.

D.2 GENERAL PROVISIONS

Exhibit D-7 provides the model resolution that local jurisdictions adopted containing CMP TIA procedures in 1993. TIA requirements should be fulfilled within the existing environmental review process, extending local traffic impact studies to include impacts to the regional system. In order to monitor activities affected by these requirements, Notices of Preparation (NOPs) must be submitted to MTA as a responsible agency. Formal MTA approval of individual TIAs is not required.

The following sections describe CMP TIA requirements in detail. In general, the competing objectives of consistency & flexibility have been addressed by specifying standard, or minimum, requirements and requiring documentation when a TIA varies from these standards.

2010 Congestion Management Program for Los Angeles County

3. Response to Comments

APPENDIX D - GUIDELINES FOR CMP TRANSPORTATION IMPACT ANALYSIS PAGE D-2

D.3 PROJECTS SUBJECT TO ANALYSIS

In general a CMP TIA is required for all projects required to prepare an Environmental Impact Report (EIR) based on local determination. A TIA is not required if the lead agency for the EIR finds that traffic is not a significant issue, and does not require local or regional traffic impact analysis in the EIR. Please refer to Chapter 5 for more detailed information.

CMP TIA guidelines, particularly intersection analyses, are largely geared toward analysis of projects where land use types and design details are known. Where likely land uses are not defined (such as where project descriptions are limited to zoning designation and parcel size with no information on access location), the level of detail in the TIA may be adjusted accordingly. This may apply, for example, to some redevelopment areas and citywide general plans, or community level specific plans. In such cases, where project definition is insufficient for meaningful intersection level of service analysis, CMP arterial segment analysis may substitute for intersection analysis.

D.4 STUDY AREA

The geographic area examined in the TIA must include the following, at a minimum:

- All CMP arterial monitoring intersections, including monitored freeway on- or off-ramp intersections, where the proposed project will add 50 or more trips during either the AM or PM weekday peak hours (of adjacent street traffic).
- If CMP arterial segments are being analyzed rather than intersections (see Section D.3), the study area must include all segments where the proposed project will add 50 or more peak hour trips (total of both directions). Within the study area, the TIA must analyze at least one segment between monitored CMP intersections.
- Mainline freeway monitoring locations where the project will add 150 or more trips, in either direction, during either the AM or PM weekday peak hours.
- Caltrans must also be consulted through the Notice of Preparation (NOP) process to identify other specific locations to be analyzed on the state highway system.

If the TIA identifies no facilities for study based on these criteria, no further traffic analysis is required. However, projects must still consider transit impacts (Section D.8.4).

D.5 BACKGROUND TRAFFIC CONDITIONS

The following sections describe the procedures for documenting and estimating background, or non-project related traffic conditions. Note that for the purpose of a TIA, these background estimates must include traffic from all sources without regard to the exemptions specified in CMP statute (e.g., traffic generated by the provision of low and very low income housing, or trips originating outside Los Angeles County. Refer to Chapter 5, Section 5.2.3 for a complete list of exempted projects).

D.5.1 Existing Traffic Conditions. Existing traffic volumes and levels of service (LOS) on the CMP highway system within the study area must be documented. Traffic counts must

2010 Congestion Management Program for Los Angeles County

3. Response to Comments

APPENDIX D - GUIDELINES FOR CMP TRANSPORTATION IMPACT ANALYSIS PAGE D-3

be less than one year old at the time the study is initiated, and collected in accordance with CMP highway monitoring requirements (see Appendix A). Section D.8.1 describes TIA LOS calculation requirements in greater detail. Freeway traffic volume and LOS data provided by Caltrans is also provided in Appendix A.

D.5.2 Selection of Horizon Year and Background Traffic Growth. Horizon year(s) selection is left to the lead agency, based on individual characteristics of the project being analyzed. In general, the horizon year should reflect a realistic estimate of the project completion date. For large developments phased over several years, review of intermediate milestones prior to buildout should also be considered.

At a minimum, horizon year background traffic growth estimates must use the generalized growth factors shown in Exhibit D-1. These growth factors are based on regional modeling efforts, and estimate the general effect of cumulative development and other socioeconomic changes on traffic throughout the region. Beyond this minimum, selection among the various methodologies available to estimate horizon year background traffic in greater detail is left to the lead agency. Suggested approaches include consultation with the jurisdiction in which the intersection under study is located, in order to obtain more detailed traffic estimates based on ongoing development in the vicinity.

D.6 PROPOSED PROJECT TRAFFIC GENERATION

Traffic generation estimates must conform to the procedures of the current edition of Trip Generation, by the Institute of Transportation Engineers (ITE). If an alternative methodology is used, the basis for this methodology must be fully documented.

Increases in site traffic generation may be reduced for existing land uses to be removed, if the existing use was operating during the year the traffic counts were collected. Current traffic generation should be substantiated by actual driveway counts; however, if infeasible, traffic may be estimated based on a methodology consistent with that used for the proposed use.

Regional transportation impact analysis also requires consideration of trip lengths. Total site traffic generation must therefore be divided into work and non-work-related trip purposes in order to reflect observed trip length differences. Exhibit D-2 provides factors which indicate trip purpose breakdowns for various land use types.

For lead agencies who also participate in CMP highway monitoring, it is recommended that any traffic counts on CMP facilities needed to prepare the TIA should be done in the manner outlined in Chapter 2 and Appendix A. If the TIA traffic counts are taken within one year of the deadline for submittal of CMP highway monitoring data, the local jurisdiction would save the cost of having to conduct the traffic counts twice.

D.7 TRIP DISTRIBUTION

For trip distribution by direct/manual assignment, generalized trip distribution factors are provided in Exhibit D-3, based on regional modeling efforts. These factors indicate Regional Statistical Area (RSA)-level tripmaking for work and non-work trip purposes.

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3. Response to Comments

APPENDIX D - GUIDELINES FOR CMP TRANSPORTATION IMPACT ANALYSIS PAGE D-4

(These RSAs are illustrated in Exhibit D-4.) For locations where it is difficult to determine the project site RSA, census tract/RSA correspondence tables are available from MTA.

Exhibit D-5 describes a general approach to applying the preceding factors. Project trip distribution must be consistent with these trip distribution and purpose factors; the basis for variation must be documented.

Local agency travel demand models disaggregated from the SCAG regional model are presumed to conform to this requirement, as long as the trip distribution functions are consistent with the regional distribution patterns. For retail commercial developments, alternative trip distribution factors may be appropriate based on the market area for the specific planned use. Such market area analysis must clearly identify the basis for the trip distribution pattern expected.

D.8 IMPACT ANALYSIS

CMP Transportation Impact Analyses contain two separate impact studies covering roadways and transit. Section Nos. D.8.1-D.8.3 cover required roadway analysis while Section No. D.8.4 covers the required transit impact analysis. Section Nos. D.9.1-D.9.4 define the requirement for discussion and evaluation of alternative mitigation measures.

D.8.1 Intersection Level of Service Analysis. The LA County CMP recognizes that individual jurisdictions have wide ranging experience with LOS analysis, reflecting the variety of community characteristics, traffic controls and street standards throughout the county. As a result, the CMP acknowledges the possibility that no single set of assumptions should be mandated for all TIAs within the county.

However, in order to promote consistency in the TIAs prepared by different jurisdictions, CMP TIAs must conduct intersection LOS calculations using either of the following methods:

- The Intersection Capacity Utilization (ICU) method as specified for CMP highway monitoring (see Appendix A); or
- The Critical Movement Analysis (CMA) / Circular 212 method.

Variation from the standard assumptions under either of these methods for circumstances at particular intersections must be fully documented.

TIAs using the 1985 or 1994 Highway Capacity Manual (HCM) operational analysis must provide converted volume-to-capacity based LOS values, as specified for CMP highway monitoring in Appendix A.

D.8.2 Arterial Segment Analysis. For TIAs involving arterial segment analysis, volume-to-capacity ratios must be calculated for each segment and LOS values assigned using the V/C-LOS equivalency specified for arterial intersections. A capacity of 800 vehicles per hour per through traffic lane must be used, unless localized conditions necessitate alternative values to approximate current intersection congestion levels.

2010 Congestion Management Program for Los Angeles County

3. Response to Comments

APPENDIX D - GUIDELINES FOR CMP TRANSPORTATION IMPACT ANALYSIS PAGE D-5

D.8.3 Freeway Segment (Mainline) Analysis. For the purpose of CMP TIAs, a simplified analysis of freeway impacts is required. This analysis consists of a demand-to-capacity calculation for the affected segments, and is indicated in Exhibit D-6.

D.8.4 Transit Impact Review. CMP transit analysis requirements are met by completing and incorporating into an EIR the following transit impact analysis:

- Evidence that affected transit operators received the Notice of Preparation.
- A summary of existing transit services in the project area. Include local fixed-route services within a ¼ mile radius of the project; express bus routes within a 2 mile radius of the project, and; rail service within a 2 mile radius of the project.
- Information on trip generation and mode assignment for both AM and PM peak hour periods as well as for daily periods. Trips assigned to transit will also need to be calculated for the same peak hour and daily periods. Peak hours are defined as 7:30-8:30 AM and 4:30-5:30 PM. Both “peak hour” and “daily” refer to average weekdays, unless special seasonal variations are expected. If expected, seasonal variations should be described.
- Documentation of the assumption and analyses that were used to determine the number and percent of trips assigned to transit. Trips assigned to transit may be calculated along the following guidelines:
 - Multiply the total trips generated by 1.4 to convert vehicle trips to person trips;
 - For each time period, multiply the result by one of the following factors:
 - 3.5% of Total Person Trips Generated for most cases, except:
 - 10% primarily Residential within 1/4 mile of a CMP transit center
 - 15% primarily Commercial within 1/4 mile of a CMP transit center
 - 7% primarily Residential within 1/4 mile of a CMP multi-modal transportation center
 - 9% primarily Commercial within 1/4 mile of a CMP multi-modal transportation center
 - 5% primarily Residential within 1/4 mile of a CMP transit corridor
 - 7% primarily Commercial within 1/4 mile of a CMP transit corridor
 - 0% if no fixed route transit services operate within one mile of the project

To determine whether a project is primarily residential or commercial in nature, please refer to the CMP land use categories listed and defined in Appendix E, *Guidelines for New Development Activity Tracking and Self Certification*. For projects that are only partially within the above one-quarter mile radius, the base rate (3.5% of total trips generated) should be applied to all of the project buildings that touch the radius perimeter.

- Information on facilities and/or programs that will be incorporated in the development plan that will encourage public transit use. Include not only the jurisdiction’s TDM Ordinance measures, but other project specific measures.

2010 Congestion Management Program for Los Angeles County

3. Response to Comments

APPENDIX D - GUIDELINES FOR CMP TRANSPORTATION IMPACT ANALYSIS PAGE D-6

- Analysis of expected project impacts on current and future transit services and proposed project mitigation measures, and;
- Selection of final mitigation measures remains at the discretion of the local jurisdiction/lead agency. Once a mitigation program is selected, the jurisdiction self-monitors implementation through the existing mitigation monitoring requirements of CEQA.

D.9 IDENTIFICATION AND EVALUATION OF MITIGATION

D.9.1 Criteria for Determining a Significant Impact. For purposes of the CMP, a significant impact occurs when the proposed project increases traffic demand on a CMP facility by 2% of capacity ($V/C \geq 0.02$), causing LOS F ($V/C > 1.00$); if the facility is already at LOS F, a significant impact occurs when the proposed project increases traffic demand on a CMP facility by 2% of capacity ($V/C \geq 0.02$). The lead agency may apply a more stringent criteria if desired.

D.9.2 Identification of Mitigation. Once the project has been determined to cause a significant impact, the lead agency must investigate measures which will mitigate the impact of the project. Mitigation measures proposed must clearly indicate the following:

- Cost estimates, indicating the fair share costs to mitigate the impact of the proposed project. If the improvement from a proposed mitigation measure will exceed the impact of the project, the TIA must indicate the proportion of total mitigation costs which is attributable to the project. This fulfills the statutory requirement to exclude the costs of mitigating inter-regional trips.
- Implementation responsibilities. Where the agency responsible for implementing mitigation is not the lead agency, the TIA must document consultation with the implementing agency regarding project impacts, mitigation feasibility and responsibility.

Final selection of mitigation measures remains at the discretion of the lead agency. The TIA must, however, provide a summary of impacts and mitigation measures. Once a mitigation program is selected, the jurisdiction self-monitors implementation through the mitigation monitoring requirements contained in CEQA.

D.9.3 Project Contribution to Planned Regional Improvements. If the TIA concludes that project impacts will be mitigated by anticipated regional transportation improvements, such as rail transit or high occupancy vehicle facilities, the TIA must document:

- Any project contribution to the improvement, and
- The means by which trips generated at the site will access the regional facility.

D.9.4 Transportation Demand Management (TDM). If the TIA concludes or assumes that project impacts will be reduced through the implementation of TDM measures, the TIA must document specific actions to be implemented by the project which substantiate these conclusions.

2010 Congestion Management Program for Los Angeles County

3. Response to Comments



**COUNTY OF LOS ANGELES
FIRE DEPARTMENT**

5823 Rickenbacker Road
Commerce, California 90040

A2-29

SUBDIVISION, WATER AND ACCESS REQUIREMENTS

ADDITIONAL PAGE

SUBDIVISION NO. **TR 70038**
24120 Pacific Coast Highway

March 16, 2012

- 1 For Lot 1 & 5 the circular turnaround shall remain clear and unobstructed, no plantings, fountains or other features shall be allowed.
- 2 For Lot 2 the circular turnaround drive aisle shall be maintained at a minimum 20' in width with a 32' on centerline turning radius. If landscaping or other feature is to be located in the center it must not encroach into the drive aisle.
- 3 Provide evidence from a certified civil engineer that the "Bridge" feature on lot 5, shall support the minimum weight capacity of 75,000 pounds to accommodate fire apparatus.
* Once the "Bridge" is installed, provide recertification from a certified civil engineer that the "Bridge" portion of the driveway will support the minimum weight capacity of 75,000 pounds to accommodate fire apparatus PRIOR TO OCCUPANCY. The width of 15' shall be maintained clear and unobstructed for the Bridge portion of the Fire Department access.
- 4 Emergency access for firefighter pedestrian use shall be extended to all exterior walls of all proposed structures within the subdivision. Additional walking access shall be reviewed and approved by Fire Prevention Engineering prior to Building Permit issuance.
- 5 SUBMIT THREE COPIES OF THE FINAL MAP TO LACoFD, LAND DEVELOPMENT FOR REVIEW AND APPROVAL RECORDATION.
- 6 _____
- 7 _____
- 8 _____

By Inspector: Nancy Rodenhoffer

Date: May 22, 2012

Land Development Unit – Fire Prevention Division – (323) 890-4243, Fax (323) 890-4169

3. Response to Comments

A3. Response to Comments from Metropolitan Transportation Authority (Nick Saponara), dated May 17, 2013.

A3-1 According to the Guidelines for CMP Transportation Impact Analysis, which is Appendix B of the Los Angeles County Congestion Management Program (CMP), a traffic analysis shall address all CMP arterial monitoring intersections where the proposed project would add 50 or more trips during the weekday peak hour and any mainline freeway monitoring locations where the project would add 150 or more trips in either direction during the peak hour. The only CMP arterial roadway in the vicinity of the project site is PCH (SR 1), which runs along the north edge of the project site. As the intersection of Malibu Canyon Road/PCH is a CMP arterial monitoring location, this intersection was evaluated in the traffic impact analysis. According to the CMP criteria for determining a significant impact, a CMP intersection would be significantly impacted by a project if the project would result in an increase in the V/C ratio of 0.02 or greater at an intersection that is projected to operate at LOS F.

Other CMP intersections in the project vicinity are PCH at Decker Canyon Road, Kanan Dune Road, and Las Flores Canyon Road. Based on the assumed distribution of project-generated traffic, a maximum of 50 percent of the project traffic would travel through any of these intersections, which equates to less than 50 trips during the peak hours. As the resulting project trip assignment would be below the CMP threshold of 50 peak hour trips, a CMP traffic analysis was not required for these other arterial monitoring intersections. With regard to freeways, there are no freeways in the project area. The project would not, therefore, add 150 or more trips to a freeway and a CMP freeway analysis would not be required. Per the CMP TIA requirements, CMP intersection of Malibu Canyon Road/PCH was appropriately analyzed.

There is an existing MTA bus route, Route 534 – Trancas Canyon to Washington/Fairfax Transit Hub, that currently serves the project study area (Malibu Bluffs Park) on weekdays, weekends, and holidays. Bus stops for Route 534 are found on both sides of Malibu Canyon Road, north of PCH. However, based on the land uses of the proposed uses (five single-family homes and a future additional baseball field or skatepark), any increase in transit ridership would be nominal and would not significantly impact the operations of (bus) Route 534. The use that would generate the most park users would be the baseball field during Saturday games. However, since game times for teams would vary, and other additional family members would come and spectate, it is likely that a majority of these local park users would come to the site in their personal automobiles, and thus, would not use transit.

3. Response to Comments

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3. Response to Comments

LETTER A4 – Native American Heritage Commission (4 page[s])

STATE OF CALIFORNIA *Edmund G. Brown, Jr., Governor*
NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
(916) 657-5390 - FAX

April 5, 2013

RECEIVED
APR 8 - 2013
PLANNING DEPT.

Ha Ly, Planner
CITY OF MALIBU
23825 Stuart Ranch Road
Malibu, CA 90265

RE: SCH# 2008091155 CEQA Notice of Completion;; draft Environmental Impact Report (DEIR) for the **Crummer Site Subdivision Project**; located in the City of Malibu; Los Angeles County, California

Dear Ha Ly:

The Native American Heritage Commission (NAHC) has reviewed the CEQA Notice regarding the above referenced project. In the 1985 Appellate Court decision (170 Cal App 3rd 604), the court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources impacted by proposed projects, including archaeological places of religious significance to Native Americans, and to Native American burial sites.

A4-1

The California Environmental Quality Act (CEQA) states that any project that causes a substantial adverse change in the significance of an historical resources, which includes archeological resources, is a significant effect requiring the preparation of an EIR (CEQA guidelines 15064(b)). To adequately comply with this provision and mitigate project-related impacts on archaeological resources, the Commission recommends the following actions be required:

Contact the appropriate Information Center for a record search to determine if a part or all of the area of project effect (APE) has been previously surveyed for cultural places(s). The NAHC recommends that known traditional cultural resources recorded on or adjacent to the APE be listed in the draft Environmental Impact Report.

If an additional archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey. We suggest that this be coordinated with the NAHC, if possible. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure pursuant to California Government Code Section 6254.10. Contact has been made to the Native American Heritage Commission for a Sacred Lands File Check. A list of appropriate Native American Contacts for consultation concerning the project site has been provided and is attached to this letter to determine

A4-2

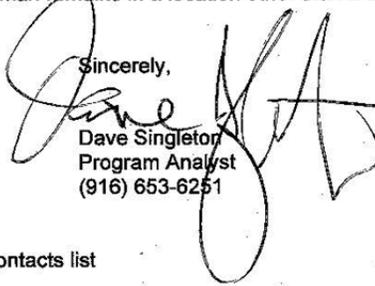
3. Response to Comments

if the proposed active might impinge on any cultural resources. Lack of surface evidence of archeological resources does not preclude their subsurface existence.

Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, per California Environmental Quality Act (CEQA) §15064.5(f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities. Lead agencies should include in their mitigation plan provisions for the disposition of recovered artifacts, in consultation with culturally affiliated Native Americans. Lead agencies should include provisions for discovery of Native American human remains in their mitigation plan. Health and Safety Code §7050.5, CEQA §15064.5(e), and Public Resources Code §5097.98 mandates the process to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery.

A4-3

Sincerely,



Dave Singleton
Program Analyst
(916) 653-6251

CC: State Clearinghouse

Attachment: Native American Contacts list

3. Response to Comments

**Native American Contacts
Los Angeles County
April 5, 2013**

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Thousand Oaks, CA 91362
805 492-7255
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Tataviam
Fernandefio

Owl Clan
Qun-tan Shup
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mupaka@gmail.com
(805) 472-9536 phone/fax
(805) 835-2382 - CELL

Chumash

Barbareno/Ventureno Band of Mission Indians
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(805) 646-6214

Chumash

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Moorpark, CA 93021
ndnRandy@yahoo.com
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Chumash
Fernandefio
Tataviam
Shoshone Paiute
Yaqui

Patrick Tumamait
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(805) 640-0481
(805) 216-1253 Cell

Chumash

Coastal Band of the Chumash Nation
Toni Cordero, Chairwoman
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cordero44@charter.net
805-964-3447

Chumash

San Luis Obispo County Chumash Council
Chief Mark Steven Vigil
1030 Ritchie Road
Grover Beach CA 93433
(805) 481-2461
(805) 474-4729 - Fax

Chumash

Carol A. Pulido
165 Mountainview Street
Oak View, CA 93022
805-649-2743 (Home)

Chumash

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH2008091155; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the Crummer Site Subdivision Project; located in the City of Malibu; Los Angeles County, California.

3. Response to Comments

**Native American Contacts
Los Angeles County
April 5, 2013**

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Santa Ynez Tribal Elders Council
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com

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805-684-8281

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed ;SCH2008091155; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the Crummer Site Subdivision Project; located in the City of Malibu; Los Angeles County, California.

3. Response to Comments

A4. Response to Comments from Native American Heritage Commission (Dave Singleton), dated April 8, 2013.

A4-1 The Native American Heritage Commission (NAHC) was contacted by letter in July 2007 and October 2008 regarding any concerns over potential heritage resources noted in there sacred lands files for the project site. In letters dated July 17, 2007 and October 20, 2008 the NAHC indicated that they had conducted Sacred Lands File (SLF) searches of the project area and did not identify any cultural resources within 1/2 mile radius of the project site/area of potential effect (APE). CEQA Guidelines § 15064.5(d) requires the lead agency to work with the Native Americans identified by NAHC if the Initial Study identifies the presence or likely presence of Native American human remains within the APE. The Initial Study and DEIR did not identify the likely presence of human remains or cultural resources. In addition, as discussed in Response to Comment Letter O2, response 2 and O9, response 3 and response A4-2 below, additional physical testing at the project area was conducted with the assistance of a Native American Representative of the Ventureneno Chumash to ensure that buried cultural resource remains were not inadvertently missed during the field surveys. Impacts remain less than significant. The comment letters are included as Appendix C of this FEIR.

A4-2 An Updated Phase 1 Archaeological Study and Cultural Resource Sensitivity Testing has been conducted for a portion of a 24-Acre parcel located at 24200 Pacific Coast Highway (APN No's 4458-018-002, 4458-018-018 and, 4458-018-019) City of Malibu, Los Angeles County, California, HEART, was completed in June 2013.

An updated records search was performed by RPA certified archaeologist, Wayne Bonner on June 10, 2013 at the SCCIC which indicated that no previously recorded prehistoric or historic archaeological sites lie within the project site. In addition, nine prehistoric archaeological sites are recorded within a 1/2-mile radius of the project site: CA-LAn-264 (The village of Humaliwu lies to the east of the project site at the Adamson House and Malibu Lagoon State Historic Park), CA-LAn-266, CA-LAn-267, CA-LAn-386, CA-LAn-404, CA-LAn-1417, CA-LAn-1715, CA-LAn-1991, CA-LAn-2247.

Additional physical testing at the project area was conducted to ensure that buried cultural resource remains were not inadvertently missed during the field surveys. Although disked for many years, there was still a slight potential for buried resources to exist just under the plow zone (15 cm – 20 cm). Between June 16, 2013 to June 19, 2013, 76 soil augers were excavated, representing 76-person hours of field labor. The augers were excavated within a pre-placed grid to completely cover the area of proposed project area (nine acres of the proposed 24-acre parcel). All soil was mechanically excavated and screened through 1/8" wire-screened mesh. Notes, photographs and GPS points were taken in the field to confirm coverage. Each auger was excavated to a minimum depth of 40 cm or until a noticeable soil change occurred, so as to identify the

3. Response to Comments

disked soil from the subsoil. The completion of this testing phase revealed no evidence of surface or buried cultural resource remains inclusive of artifacts, shellfish, fauna, features or human remains. Based on the results of this test phase, no additional archaeological work was recommended within the boundaries of the proposed project. As stated in Section 5.4 of the DEIR, with mitigation, potential impacts associated with cultural resources would be reduced to a level that is less than significant. No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

A4-3 The DEIR on Page 5.4-9, Section 5.4.7, Mitigation Measures, provides two mitigation measures for the identification and evaluation of accidentally discovered archeological resources. Mitigation 4-1 requires a qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards (48 Federal Register 44738-39) be retained by the applicant to monitor all ground-disturbing activities, including but not limited to all grading, excavation, and site preparation. The project archaeologist shall have the authority to halt any activities adversely impacting potentially significant resources. Any significant archaeological resources found shall be preserved as determined necessary by the project archaeologist and offered to the South Central Coastal Information Center at California State University, Fullerton, the designated repository for Los Angeles, Ventura and Orange Counties. Any resulting reports shall also be forwarded to the South Central Coastal Information Center at California State University, Fullerton.

Mitigation 4-2 requires that a Native American Monitor of Chumash descent shall be retained to monitor all ground-disturbing activities, including but not limited to all grading, excavation, and site preparation.

As noted by the commenter, existing regulations (Health and Safety Code §7050.5, CEQA §15064.5(e), and Public Resources Code §5097.98) already mandate the process to be followed in the event of an accidental discovery of any remains in a location other than a dedicated cemetery. Therefore, additional mitigation is not needed.

3. Response to Comments

LETTER A5 – County of Los Angeles (3 page[s])

June 3, 2013

Ms. Ha Ly
Associate Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA. 90265

Dear Ms. Ly:

**DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
CRUMMER SITE SUBDIVISION PROJECT
24120 PACIFIC COAST HIGHWAY (PCH)
CITY OF MALIBU**

Thank you for the opportunity to review the Draft EIR for the project site located at 24120 PCH, in the City of Malibu. The proposed project entails the subdivision of the project site into seven individual lots. Lots 1 through 5 would be developed with single-family residences and various accessory structures. Lot 6 would be developed with a private gated street, a gatehouse, an onsite wastewater treatment system (OWTS) package plant, landscaping, and open space to be owned and maintained by the homeowners association (HOA). Lot 7 would be dedicated to the City of Malibu for active and passive recreational use. The recreational area has yet to be designed and would not be developed as part of this project.

A5-1

The following County of Los Angeles, Department of Public Works comments are for your consideration and relate to the environmental document only:

General Comments

1. Replace “Department of Fish and Game” with *Department of Fish and Wildlife* throughout the document. The California agency changed its name on January 1, 2013.

A5-2

3. Response to Comments

Ms. Ly
June 3, 2013
Page 2

If you have any questions regarding the general comment, please contact Ms. Renee Enriquez of Land Development Division at (626) 458-4947 or renriquez@dpw.lacounty.gov.

Hydrology/Water Quality

- | | |
|---|------|
| 1. Section 5.8.1 Environmental Setting, subsection Hydrologic Conditions, item Watershed and Regional Drainage, Page 5.8-2, and throughout the entire document: Revise the document to distinguish the Los Angeles County Flood Control District (LACFCD) from the County of Los Angeles (LAC). LACFCD is a distinct and separate entity from LAC. | A5-3 |
| 2. Section 5.8.1 Environmental Setting, subsection Regulatory Setting, item Federal, Page 5.8-12: For the MS4 permit, LAC is a separate permittee from LACFCD and the 84 incorporated cities. Please keep this distinction clear throughout the report. | A5-4 |
| 2.1 Last paragraph: LAC (the entity) is also a permittee under the MS4 permit for the County of Los Angeles region. LAC does not issue the MS4 permit and this statement implies that it does. All references to "Los Angeles County MS4 permit" in the DEIR should be rephrased so there is no confusion between State Water Resources Control Board (SWRCB), LAC, LACFCD and the City of Malibu. | A5-5 |
| 2.2 Last paragraph: The MS4 permit requires either the 0.75 inch or the 85th percentile storm, whichever is greater, to be mitigated for, not just the 0.75 inch storm. It is unclear from the available documents if the DEIR has accounted for the 85th percentile storm discharge. | A5-6 |
| 3. Page 5.8-24: clarify which permit or entity that the City of Malibu is complying with. LAC (the entity) does not govern the BMP for the city. | A5-7 |
| 4. Appendix N- Hydrology Studies is missing from the DEIR web page. | A5-8 |
| 5. If there are any proposed new connections to the existing LACFCD drains/facilities, or new drains/facilities construction to be transferred to LACFCD for maintenance after completion, a connection/construction permit from LACFCD prior to construction is required. Plans must be submitted to Los Angeles County Department of Public Works for review and approval prior to any construction. Contact Land Development Division, Permits Section for | A5-9 |

3. Response to Comments

Ms. Ly
June 3, 2013
Page 3

submittal requirements and permit fees at (626) 458-4940.

If you have questions regarding the hydrology/water quality comments, please contact Toan Duong of Land Development Division at (626) 458-4945 or tduong@dpw.lacounty.gov.

If you have any other questions or require additional information, please contact Ms. Renee Enriquez of Land Development Division at (626) 458-4947 or renriquez@dpw.lacounty.gov.

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3. Response to Comments

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3. Response to Comments

A5. Response to Comments from County of Los Angeles (Toan Duong), dated June 3, 2013.

- A5-1 This comment summarizes the project description. No response is necessary.
- A5-2 Comment noted. The reference to “Department of Fish and Game” is replaced with “Department of Fish and Wildlife” throughout the document.
- A5-3 Comment noted. The FEIR has been updated to distinguish the Los Angeles County Flood Control District (LACFCD) from the County of Los Angeles (LAC).

Page 5.8-2, Section 5.8.1, Environmental Setting of the DEIR is hereby modified as follows:

The Los Angeles County Flood Control District (LACFCD), which is a separate entity from the County of Los Angeles (LAC), is responsible for the construction and maintenance of the county storm drain systems, which consist of pipelines, catch basins, manholes, open channels, and detention basins.

- A5-4 Comment is noted. See Response A5-3.
- A5-5 Comment is noted. See Response A5-3.

Page 5.8-2, Section 5.8.1, Environmental Setting of the DEIR is hereby modified as follows:

Municipal discharges of stormwater runoff are regulated under the NPDES General Permit for Municipal Separate Storm Sewer Systems (MS4). The SWRCB issued an MS4 permit (NPDES No. CAS004001) to the ~~Los Angeles County Flood Control District~~ LACFCD and its 84 incorporated cities, including the City of Malibu. The permit covers approximately 3,100 square miles and serves a population of about 10 million. The MS4 permit requires permittees to develop and implement their own programs for stormwater management. To comply with this requirement, the City of Malibu developed a Clean Water Program in 2001 and participated with Los Angeles County in a 2006 campaign to identify bacteria sources along Malibu beaches.

~~Los Angeles County's~~ LACFCD's MS4 permit also requires implementation of standard urban stormwater mitigation plans (SUSMP) and design standards for BMPs.

- A5-6 The MS4 permit states that the project will be required to mitigate the greater of the 0.75-inch, 24-hour storm event or the 85th percentile, 24-hour storm event. Usually, the 0.75-inch storm event is the greater. Psomas, the project's engineer provided calculations to verify. According to the State of California Regional Water Quality Control Board, Los Angeles Tentative Order R4-2012-0175, NPDES Permit No. CAS004001, effective December 28, 2012, storm water quality design volume--defined as runoff from the 0.75-inch, 24-hour storm event, or runoff from the 85th percentile, 24-hour storm event,

3. Response to Comments

whichever is greater—must be treated. For the Crummer site, the 0.75-inch, 24-hour rainfall event generates the greater peak mitigation flows and volumes. The minimum design storm water mitigation volumes per lot are provided in FEIR Appendix D.

A5-7 Comment noted. See Response A5-3.

Page 5.8-24, Section 5.8.3, Environmental Impacts of the DEIR is hereby modified as follows:

However, the City of Malibu has more stringent sizing criteria for treatment of BMPs than ~~Los Angeles County~~ LACFCO.

A5-8 Due to the large file sizes, DEIR Appendix J (Geotechnical Studies) and DEIR Appendix N (Hydrology Studies) were not available on the City's website. However, as stated on the City's website, the appendices were available by contacting planning staff during the public review period.

A5-9 Comment is noted.

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LETTER O1 – AEI Consultants (5 page[s])



May 10, 2013

HA LY
Associate Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

SUBJECT: COMMENT LETTER RE: DRAFT EIR
The Crummer Site Subdivision Project
24120 Pacific Coast Highway
Malibu, CA
AEI Project No. 319100

Dear Ms. Ly:

AEI Consultants (AEI) is pleased to present this Comment Letter in response to a review of the Hydrology and Water Quality Section 5.8 and Appendix N of the Draft Environmental Impact Report (DEIR) for the above referenced site. In addition, Section 5.5 Environmental Analysis of the DEIR was reviewed. AEI's services consisted of registered professionals' detailed review of the various study methodologies and data included in the referenced documents of the DEIR completed by other firms and preparation of the following summary of any possible omissions or areas of work that may require additional study.

The following documents were available through the City of Malibu for AEI review:

- *Draft Crummer Site Subdivision Environmental Impact Report (DEIR), Sch No. 2008091155, Section 5.8 Hydrology and Water Quality*, prepared by The Planning Center/DC&E, dated April 2013.
- DEIR Appendix N Hydrology Studies:
 - *EDR Radius Report for 24120 Pacific Coast Highway, Malibu, California 90265*; Inquiry No. 2280109.2s; dated July 29, 2008.
 - Lawrence Young, *Percolation Test Report, 24200 Pacific Coast Highway, Malibu, California 90265*; dated September 12, 2008.
 - Lawrence Young, *Response to Environmental Health Conformance Review by the City of Malibu, RE: 24200 Pacific Coast Highway, Malibu, California 90265*; dated May 19, 2010.
 - Leighton and Associates, *Geotechnical Evaluation of Proposed Onsite Wastewater Treatment System, Proposed Residential Development "Crummer Site", 24200 Pacific Coast Highway, Malibu, California; Project No. 03-1793-015*; dated September 21, 2009.

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- PSOMAS, *Hydrology Study for Malibu Bluffs Crummer Site, Project No. 1AZW010100*; dated January 21, 2009.
- Earth Consultants International (ECI), *Hydrogeological/Treated Water Mounding Report for the Proposed Malibu Bluffs Residential Development at 24200 Pacific Coast Highway (aka Crummer Site), Malibu, California; Project No. 2803*; dated September 21, 2009.
- ECI, *Response to City of Malibu Comments on Earth Consultants International Report Entitled "Hydrogeological/Treated Water Mounding Report"*; dated March 7, 2012.
- Ensitu Engineering, *Proposed Wastewater Treatment System Design Intent for Malibu Crummer Site, 24120 (aka 24200) Pacific Coast Highway, TTM 07-003*; dated April 16, 2012; March 7, 2012; *Response to Environmental Health Questions*, dated December 21, 2009; and *Geologic Investigation Summary and Engineering Design*, dated March 7, 2012.
- City of Malibu *Environmental Health Review Sheets*; dated April 16, 2012; December 21, 2009; February 11, 2008; December 10, 2007; *Lots 1-5 Environmental Health Approval*, dated May 29, 2012.

Review of these reports indicated that the investigations were conducted in substantial compliance with the standards established by local and state agencies that govern the performance of such assessments; however, a number of deficiencies are identified as discussed herein. All opinions, conclusions and/or recommendations are based upon review of the available documents listed above and knowledge of the governing regulations. Conclusions beyond those stated and reported herein should not be inferred from this document.

O1-1
cont'd

Project Summary

The project site is approximately 24 acres in size and is located at 24120 Pacific Coast Highway (PCH) in the City of Malibu, County of Los Angeles. The project site is located atop a bluff with steep descending slopes to the south and east. Malibu Bluffs Park borders the project site to the west, PCH borders the project site to the north, and privately owned parcels border the site to the east and south. Winter Mesa, a small road connecting PCH to Malibu Bluffs Park, provides access to the project site.

The proposed project entails the subdivision of the site into seven individual lots. Lots 1 through 5 would be developed with single-family residences and various accessory structures. Lot 6 would be developed with a private gated street, a gatehouse, an onsite wastewater treatment system (OWTS), landscaping, and open space to be owned and maintained by the homeowners association (HOA). Lot 7 would be dedicated to the City of Malibu for active and passive recreational use. Each residence would have a wastewater septic tank, which would route wastewater to the OWTS. Additionally, each residence (and the private street) will have underground stormwater detention tanks to mitigate potential flooding and erosion impacts.

Onsite Wastewater Treatment System

An OWTS Package Plant is proposed for the northwestern corner of Lot 6. The proposed OWTS Package Plant would treat wastewater generated from each of the residences and the gatehouse. It would be installed in the northwest corner of the site

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near the intersection of Winter Mesa Drive and PCH. Clean effluent from the OWTS Package Plant would be discharged to seepage pits in the southernmost portion of Lot 7 along Winter Mesa Drive. The HOA would own and be responsible for the operation and maintenance of the OWTS and the seepage pits. Exhaustive investigative efforts and modeling by others have been completed related to the OWTS with review, comments, and response to comments accepted by the governing agencies.

01-1
cont'd

Potential issues identified based upon review of the listed documents related to the OWTS include:

1. Long term operations maintenance and monitoring (OM&M) program for OWTS to include specific constituents and frequency of testing as regulated by the local agency. 01-2
2. Point(s) of compliance (POCs). We assume they will be located prior to discharge and routine monitoring will be addressed. 01-3
3. Protocol for failure of the OWTS, or portion thereof. How will the protocol ensure water quality in case of system failure (i.e., seismic event, landslide, power failure, fire, operator/maintenance error, etc.)? What if a connection(s) from one or more lots is/are compromised? 01-4
4. Sufficient number of groundwater monitoring wells? It is our understanding that there are currently two groundwater monitoring wells along the eastern and western margins (cross gradient) of the proposed leach field. 01-5
5. Groundwater monitoring plan to re-evaluate/confirm mounding study modeling after OWTS in operation. 01-6
6. The Geotechnical Report (L&A, 2009) states that the existing east-west trending faults act as a groundwater barrier and that OWTS effluent will travel along faults. This issue was addressed and modeled by ECI (2009) and L&A (2009). According the geotechnical map (Plate 1, L&A, 2009) no mapped fault exists within or south of the dispersion field in Lot 7 (see recommendation below). 01-7
7. No geologic cross section through leach field in a downslope direction (Cross section A-A' from ECI [2009] in an east west direction). 01-8
8. Statement of the "potential not likely" for effluent to daylight on south-facing bluff; however, that is in the direction of groundwater flow. See recommendations. 01-9
9. No documents reviewed discussed a contingency of an economic adverse condition, such as if the HOA responsible for the system were to lose its operating revenue and was not fiscally able to maintain the system. Would the City assume the responsibilities thereof? 01-10

Stormwater Runoff

The Construction phase of the project has highest susceptibility for runoff, to adversely affect water quality, and cause erosive damage to slopes and possibly to the existing homes below the site. Stormwater runoff management is well regulated and can be mitigated by typical accepted grading and construction practices as outlined in the DEIR.

01-11

Potential issues identified based upon review of the listed documents related to stormwater runoff include:

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- | | |
|---|-----------------|
| 1. Will the stormwater detention tanks on each lot mitigate adverse water quality (i.e., oil/grease, paint, solvents, fertilizer, etc.) or provide treatment before discharge? | 01-11
cont'd |
| 2. Is there a contingency for failure/partial failure of the detention tank system? | 01-12 |
| 3. How can the public be assured that the runoff water quality standards are maintained and no increase in drainage through adjacent residential areas? | 01-13 |
| 4. Will stormwater discharge to slopes and canyons below the proposed site result in adverse geologic conditions (i.e., erosion, slope failure, affect mapped landslides along the south facing bluffs, etc.)? | 01-14 |
| 5. Planned earthen berms at top of bluffs to divert runoff will channelize flow which in turn increases the runoff energy and rate which will increase erosive potential along slope faces and in canyons below the site. | 01-15 |
| 6. How will the individual lot owner be responsible for their own storm water runoff quality as stated in the DEIR? | 01-16 |
| 7. Can the existing public stormwater system handle the component of runoff that is not detained and released as well as the controlled released volumes? | 01-17 |

Recommendations

Although the various investigations and studies have been performed to current regulatory standards, AEI recognizes several deficiencies that should be addressed in the DEIR:

- | | |
|--|-------|
| 1. Conduct a pilot-type study of inert fluid injection at estimated effluent discharge volume (peak total) and of duration long enough to study the relationship between groundwater water quality, groundwater elevation change, and how offsite (specifically southern slope) areas are affected versus the three day percolation test study with low volumes. | 01-18 |
| 2. Addition of monitoring wells on- and offsite for assurance of groundwater quality and confirmation of theoretical mounding study (ECI, 2009). Ideal locations include the top of (bluff) slope south of the dispersion field, north of dispersion field near the planned private road, and downstream from the site along Malibu Canyon Road. | 01-19 |
| 3. POCs downstream of dispersion field, including along Malibu Canyon Road and possibly along eastern and western margins of site. | 01-20 |
| 4. Development (and approval by governing agency) of a contingency if OWTS system or portion thereof fails. | 01-21 |
| 5. Modeling and figures other than Figure 7 (Groundwater Difference Contour Map, ECI 2012) of effluent dispersion with flow rates based upon accepted hydraulic conductivity (K) value. This may be better developed if a pilot-type study (see #1 above) is conducted. | 01-22 |
| 6. Development (and approval by governing agency) of OM&M program of stormwater detention systems. | 01-23 |
| 7. Further exploration of Lawrence Young's response #4 to City of Malibu Environmental Health Conformance Review dated May 19, 2010. Response seems vague (" <i>some indication as to the absorption rate...that theoretically... should remain the same</i> "). Response lends itself to a long duration pilot study (see #1 above). | 01-24 |
| 8. Full scale test of completed OWTS prior to agency final approval of system. | 01-25 |

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- 9. Demonstrate how effluent moving south (groundwater flow) will not daylight or contribute to movement/reactivation of landslides along southern slope. This was addressed and studied (ECI and L&A) but at the theoretical level. Re-evaluate after performance of #1 above. | 01-26
- 10. Contingency for adverse economic scenario of the HOA maintenance of the OWTS system. | 01-27

The recommendations listed above are based solely on the information reviewed. This review did not include consideration of any information provided beyond the previous reports listed above.

AEI sincerely appreciates the opportunity to be of service. Please call our office at (310) 798-4255 if you have any questions.

Sincerely,

Kent Vollmer, PG, CEG
Department Manager

3. Response to Comments

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3. Response to Comments

O1. Response to Comments from AEI Consultants (Kent Vollmer), dated May 10, 2013.

Responses are based in part on the following technical report(s) prepared in response to comments:

- Earth Forensics, Inc. 2013, May. Hydrogeological Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site,” 24108, 24120, 24134, 24150, 24174 Pacific Coast Highway, City of Malibu, California.
- ENSITU, Engineering Inc. 2013, July. Crummer Residential Project Located at 24120 (aka 24200) Pacific Coast Highway, Malibu, CA – Response to Comments to DEIR.
- Lawrence Young, Registered Environmental Health Specialist. 2013, July. The Crummer Site Subdivision Project 24200 Pacific Coast Hwy., Malibu, CA 90265

Complete copies of these studies are included in appendices of this FEIR.

O1-1 This comment is generally a set of introductory remarks and a summary of the project’s description. The commenter has reviewed the reports outlined in this comments and concedes that the “[r]eview of these reports indicated that the investigations were conducted in substantial compliance with the standards established by local and state agencies that govern the performance of the assessment.” This comment presents no environmental issues and no specific response is necessary.

O1-2 The commenter requests that the long term operations maintenance and monitoring (OM&M) program for OWTS include specific constituents and frequency of testing as regulated by the local agency.

This development project will obtain a Waste Discharge Requirements (WDR) permit from the Los Angeles Regional Water Quality Control Board (LARWQCB). An Application/Report of Wastewater Discharge General Information Form (Form 200) was filed with the LARWQCB on October 26, 2009. It is further understood that the Homeowners Association (HOA) established for this residential project will be responsible, through Covenants, Conditions, and Restrictions (CC&Rs) for ensuring that the wastewater system is properly operated and maintained in perpetuity required by the project’s conditions of approval. In addition, the OWTS shall comply with the City of Malibu LCP Local Implementation Plan, Chapter 18, Onsite Wastewater Treatment System Standards Ordinance, including Chapter 18.9, which regulates ongoing maintenance, operation, and monitoring.

Prior to receiving Environmental Health final approval, the project owner shall legally establish a homeowners’ association governing document that obligates the collection of assessments, specifies how the OWTS shall be operated and maintained, creates the ongoing obligation of the homeowner’s association to comply with all permitting requirements, references all applicable LCP/LIP requirements with respect to package

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wastewater treatment plants, and establishes a financial assurance mechanism acceptable to the City of Malibu. The CC&R's shall be reviewed and approved by City Attorney's office and then submitted to the Environmental Health Administrator.

- O1-3 The commenter states that they assume the point(s) of compliance (POCs) will be located prior to discharge and routine monitoring will be addressed.

As discussed in the Design Intent letter prepared by Ensitu on April 16, 2012 the point of compliance for the following constituents will be at end of pipe (at the point of discharge to the seepage pits): Biological Oxygen Demand (BOD); Suspended Solids; Fecal Coliform; Enterococcus; pH; Ammonia-N; Nitrate-Nitrogen; and Total Nitrogen. The point of compliance for all other constituents will be from groundwater monitoring well(s) (locations on the project site to be determined by Earth Forensics Inc. and approved by the LARWQCB). The treated effluent produced by the treatment and disinfection components of the proposed system is intended to meet similar WDR requirements, General WDR Order No. 01-031, and California Ocean Plan water quality objectives

- O1-4 This comment asks what the protocol for failure of the OWTS, or portion thereof is and how the protocol will ensure water quality in case of system failure (i.e., seismic event, landslide, power failure, fire, operator/maintenance error, etc.) even if connections from one or more lots are compromised.

Five 2,000-gallon and one 1,500-gallon two-compartment precast concrete Septic Tanks and a 35,000 gallon, four-compartment, fiberglass Septic/Recirculation/Polishing/Dosing Tank will serve as the processing tanks for the subject site. The individual septic tanks (one on each residential lot and at the gate house), are designed and manufactured in accordance with the ASTM C1227 standard and were selected specifically to provide storage in the event of a system failure. Additionally the first compartment of the fiberglass tank (located on Lot 6), is manufactured to applicable requirements of UL 1316 and ANSI/AWWA D120 and provides 14,770 gallons of storage. Altogether the system provides 5 days of emergency storage. All tanks shall be equipped with audio and visual alarms as well as remote telemetry to the system maintenance provider in the event of a component failure. These features are sufficient to protect against a system malfunction caused by the events listed in the comment.

No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

- O1-5 This comment asks if there is a sufficient number of groundwater monitoring wells.

It is anticipated that the operation of the OWTS will be permitted through a site-specific LARWQCB-issued Wastewater Discharge Requirements (WDR). A groundwater monitoring plan will be designed to meet the monitoring requirements set

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forth in the WDR, which will be subject to the approval of the LARWQCB. These requirements will likely include the installation of up-gradient and down-gradient groundwater monitoring points (monitoring wells) that will be utilized to evaluate the OWTS' impacts on regional groundwater levels and groundwater chemistry. The exact locations of the monitoring points and the data collection and reporting requirements will be identified after the WDR process has been completed and all of the comments are contained in the standard WDR.

O1-6 This comment appears to ask if a groundwater monitoring plan will re-evaluate/confirm mounding study modeling after OWTS in operation. Groundwater monitoring shall be conducted in compliance with WDR issued by the LARWQCB. No substantial evidence had been provided to call in to question the City's findings stated in the DEIR. See also Response to Comment O1-5.

O1-7 The commenter asserts that no mapped fault exists within or south of the dispersion field in Lot 7 and cites a Leighton and Associates, Inc. (Leighton) report dated September 21, 2009. A review of the report that is cited by AEI Consultants was conducted but no discussion of faulting as related to the OWTS, effluent and groundwater was found. Similarly, there were no such statements in any of the other Leighton reports for the site (Leighton, 1989; 1993; 1994; 2000; 2001; 2003; 2007; 2008a, b; 2009a, b; 2012a-h).

However, Earth Consultants International (2009; 2012) has discussed the issue and Earth Forensics provides further discussion on this issue in their responses to this comment (Earth Forensics, 2013).

The statement that "... no mapped fault exists within or south of the dispersion field in Lot 7 ...", is not accurate, as shown on Plate 1 Leighton (2009a). While faults have not been mapped within the proposed dispersion field, faults south of the proposed dispersion field are shown on the referenced Plate 1 as west-/east-trending dashed or dotted black lines. In addition, please also refer to Response to Comment O3-09 which discusses the definition of other subsurface faults which have not been mapped at the ground surface. The discussion concludes that the faults act as impediments to the flow of groundwater and that the likelihood of daylighting of groundwater in the south-facing bluff is remote.

See also Response to Comment O1-09.

O1-8 The purpose of Leighton's geological (geotechnical) cross-sections was to provide an estimation of the subsurface conditions such that slope stability analyses could then be performed. The groundwater surface that was depicted on the geotechnical cross-sections and used in the slope stability analyses was the "hypothetical/severe" groundwater condition developed by Earth Consultants International, (2009, 2012). The hypothetical/severe groundwater condition considered all potential sources of water,

3. Response to Comments

and potentially extreme conditions, which could result in a maximum groundwater level beneath the site. Three groundwater recharge mechanisms were assessed: surface runoff from up-gradient locations; existing treated water disposal systems up-gradient of the site; and rainfall.

Just as an assessment was made of the potential contributions to groundwater, an assessment was also made by Earth Consultants International, Inc. (2009) of “groundwater sinks”, i.e. locations or processes by which groundwater is discharged. Such discharge mechanisms included discharge to rivers or oceans, evapotranspiration by vegetation or discharge by pumping wells. (Please see Section 4.3, page 6, last paragraph, of Earth Consultants International, 2012.)

Earth Consultants International, Inc. (2009, 2012) assessed “baseline” groundwater conditions beneath the site using fifteen groundwater monitoring wells over a four-year time period. Data was supplied from nine groundwater monitoring wells at the Crummer site (CCB-22, CCB-23, LMW-1, LMW-2, LMW-3, LMW-4, LMW-5, LMW-6 and LMW-7), five groundwater monitoring wells at the adjacent “Towing” site to the east (MW-1, MW-2, MW-3, MW-4 and MW-5), and one groundwater monitoring well on Malibu Road south of the Towing site (SMBRP-11) – please see Figure 1 of Earth Consultants International (2012). Based on these data, groundwater levels that were observed in onsite and offsite groundwater monitoring wells after the wetter than “normal” water year of 2010-2011 were selected to form the basis of the “hypothetical / severe” groundwater condition assessment. (Please see Section 2b, page 10, second paragraph, of Earth Consultants International, 2012.)

Thereafter, Earth Consultants International (2009, 2012) assessed a variety of different scenarios in order to assess the influence that factors outside the site would have on groundwater levels beneath the site. The maximum groundwater level increases that were considered were the maximum contributions estimated from the following sources:

- up-gradient Winter Canyon treated water recharge
- treated water from Malibu Bluffs Park
- treated water dispersal from the adjacent “Towing” site adjacent to the east
- treated water dispersal from the Crummer site

Given the four contributions to the maximum groundwater levels beneath the site that are listed above, the “hypothetical/severe” groundwater condition of Earth Consultants International (2012) was defined by them and used by Leighton in its analyses. (Please see Section 4.2, page 5, of Earth Consultants International, 2009.)

For the purpose of slope stability, geotechnical cross-sections were only drawn in critically representative areas (i.e. locations at the site that were anticipated to have ‘worst-case’ geotechnical conditions) and which included either adverse geology, steep

3. Response to Comments

slopes or high predicted groundwater, or a combination of the preceding. Geotechnical Cross-Sections D and F of Leighton (2009) and Sections I, J and K of Leighton (2012a) were used for this purpose and extended through the south-facing bluff at the locations shown by Leighton (2009, 2012a), which are south and southeast of the proposed seepage pits. They included the hypothetical / severe groundwater conditions of Earth Consultants International (2009, 2012). A section through the proposed leach field in a “downslope direction” would not portray critically representative conditions in the bluff south of the proposed leach field, is not warranted and was not performed. This is because an assessment of the stability of the slopes in the canyon south of the proposed leach field had already been made by Leighton (2012a) in order to verify the location of the geotechnical setback line. For example, Geotechnical Cross-Section L-L’ of Leighton (2012a) extends through the eastern side of the canyon and a geotechnical setback of approximately 50 feet from the bluff edge was confirmed. At this location, the canyon slope is steeper and higher than would be the case if a geotechnical cross-section had been drawn through the leach field towards the canyon to the south. In addition, the proposed leach field is further away from slopes than is the case for Geotechnical Cross-Section L-L’, that being approximately 110 feet.

- O1-9 On page 5.5-11 the DEIR concluded that the potential for treated effluent to daylight at the south-facing bluff is not likely due to the presence of east–west–trending buried faults between the seepage pit area and the bluff face (Earth Consultants International, 2009). The Leighton (2012b) report, page 7, first paragraph, states that: “..... we believe that the potential for daylighting of the effluent is remote.” The term “daylighting” refers to the emergence of a subsurface geological feature at the ground surface. It is typically used in relation to the emergence of either geologic bedding planes or groundwater surfaces on the faces of slopes.

The commenter correctly states that the treated effluent and the direction of groundwater flow are the same. This this was one of the reasons that geotechnical cross-sections were drawn through the south-facing bluff. Geotechnical Cross-Sections D and F (Leighton, 2009, 2012a) each show the hypothetical/severe groundwater condition at their respective locations. Given that the hypothetical/severe groundwater condition (which contains the contributions estimated by Earth Consultants International (2009, 2012) from the treated effluent) does not daylight, and given that this groundwater level is the maximum predicted by Earth Consultants International (2009, 2012), the conclusion that the potential for daylighting of the treated effluent is remote is correct.

This issue has been discussed in detail by Leighton (2012a) in response to a prior City review comment (please refer to our response to Comment 3 in Leighton, 2012a). In summary, the assessment of whether groundwater and the associated treated effluent would daylight or not, and whether it would reactivate the landslides along the southern slope was based on a characterization of the maximum possible groundwater levels

3. Response to Comments

beneath the site by Earth Consultants International (2009, 2012). They characterized these maximum levels as the “hypothetical/severe” groundwater condition, which has been summarized herein in Response to Comment O-8. The “hypothetical / severe” groundwater condition was based on fifteen onsite and offsite groundwater monitoring wells that generated data over a four-year period.

Leighton (2012b) has presented Geotechnical Cross-Sections D and F which extend through the south-facing bluff. The sections were not “theoretical”, but considered an extensive dataset consisting of 53 onsite borings, 9 onsite borings that were converted into groundwater monitoring wells, 6 offsite groundwater monitoring wells and 9 onsite test pits. The sections depict the hypothetical/severe groundwater condition, which includes the treated effluent. The hypothetical/severe groundwater condition does not daylight along the southern slope; therefore, by inference, the treated effluent will also not daylight.

The assessment of the hypothetical/severe groundwater condition by Earth Consultants International (2012) demonstrated that there was no measureable effect on groundwater levels in the south-facing bluff as a result of the proposed project. We conclude that southerly-moving effluent will not contribute to movement or reactivation of the offsite landslides. The potential for reactivation of the landslides is also discussed in Response to Comments R7, Comment 19.

Based on a review of Earth Forensics (2013), an injection study to further model the transport of subsurface waters is unnecessary, is not required by applicable codes and regulations, and need not be performed. Given that an injection study is not necessary, a re-evaluation of the potential for daylighting of effluent and landslide reactivation is also not necessary and will not be performed. The work performed by Earth Consultants International (2009, 2012) was approved by the City of Malibu (2012a).

See also Response to Comment O1-08.

- O1-10 See Response to Comment O1-02. This comment asks if there is a contingency for adverse an economic scenario of the HOA maintenance of the OWTS system. The HOA established for this residential project will be responsible, through CC&Rs for ensuring that the wastewater system is properly operated and maintained in perpetuity as required by the project’s standard conditions. Under the CC&Rs, each homeowner will be responsible for contributing a predetermined share of the operating and maintenance costs of the OWTS, typically on a monthly basis as a portion of the HOA fees and expenses payable under the CCRs. Under typical CC&Rs for a residential development of this kind, if a homeowner fails to make a required payment, the HOA will be entitled to a lien against the homeowner’s real property that is subject to the CC&Rs. The HOA can collect the defaulted payment by exercising its’ remedies with respect to the lien. This arrangement and the rights of the HOA are sufficient to protect against the

3. Response to Comments

possibility of a homeowner defaulting in its' payments for OWTS maintenance as required by the CC&Rs.

- O1-11 The commenter asks "Will the stormwater detention tanks on each lot mitigate adverse water quality (i.e., oil/grease, paint, solvents, fertilizer, etc.) or provide treatment before discharge?"

The purpose of the detention tanks is to detain storm water until the peak storm passes. A secondary consequence of the tank is to reduce the transport of sediment downstream. Each residential lot will have at least one detention tank which is designed to hold the difference in stormwater flow between the existing undeveloped condition and the proposed developed condition. Since different storm events create different amounts of flow, the 2, 10, and 100 year storm events are studied and the largest flow difference becomes the amount of designed detention. The outlet of the detention tank will have a small pipe that will only allow the pre-development flow to be released downstream. This results in two benefits. First, erosion downstream is minimized as a result of slowing the rate in which the stormwater would otherwise sheet flow off the Site. Second, the amount of pollutants that would otherwise be deposited into the ocean will be reduced because detaining the stormwater in the detention tanks will allow suspended sediments in the storm water to settle into the detention tanks. Short term pollutants during construction such as paints, solvents, fertilizer, and other on-site construction materials will be contained through the use of Best Management Practice (BMP) devices specified in the Water Quality Management Plan (WQMP). In addition to the detention tanks, after completion of construction pollutants such as oil/grease, suspended metals, and bacteria suspended in stormwater will be first treated on each lot permanently through at least one bio-retention facility located in the landscaping areas, each capable of cleaning 2,000 to 3,000 cubic feet of storm water runoff. The bio-retention facilities are designed to, within a 48-hour period, hold temporarily small storms that would typically occur about 10 times per year, resulting in approximately 6" to 12" of stormwater on the surface of the landscaped yard. The storm water will seep into the landscaping soil layer and pollutants will be removed from the water as the water percolates through the soil. The plants in the landscaped area will, over time, break down many of these pollutants and often absorb them as nutrients. A layer of gravel beneath the soil will allow the clean water to settle and be collected in a storm drain pipe. An impervious liner under the gravel will prevent the stormwater from percolating any deeper into the hillside, as recommended by the geotechnical engineer. The cleaned storm water will be rerouted through storm drain pipes and then to existing storm drains. Any trash that is remaining on the surface of the bio-retention facility will be removed by the residents as it will be in plain sight within their yards. This method is an effective way to remove the types of pollutants expected and the use of bio-retention facilities is promoted by the State Water Resources Control Board.

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No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

- O1-12 The commenter asks if there a contingency for failure/partial failure of the detention tank system.

Yes, the contingency for failure or partial failure of the detention tank and bio-retention tank system is repair or replacement of the tank. In the event of replacement of the tank, construction crews will dig up and remove the old tank and install a new one of the same size. None of the tanks are located within the proposed conservation easement. Each homeowner will be responsible for proper maintenance, which consists of yearly inspections and removal of sediment that has been deposited in the tank. The maintenance and functionality of the stormwater treatment systems, which includes the detention tanks, is enforced through the recordation of a BMP covenant agreement, signed by the owner and recorded in the official records of the County Recorder, obligating the owner to provide periodic inspection and maintenance/repair of the system in perpetuity. The covenant runs with the land and binds all successive owners of the property. Proper water quality and water quantity are also enforced by the City of Malibu municipal code as described in Comment 3 below. The tank fails if it is unable to detain water, or if sediment has built up to prevent discharge of the water. Cracking of the tank is highly unusual and would occur only if heavy trucks drive over them, which is unlikely in sloping, landscaped areas. Heavy sedimentation in the tanks would occur if maintenance were neglected. Furthermore, maintenance and monitoring of the detention tanks will be included in the covenants and responsibilities of the Homeowners Association (HOA), which will be able to ensure that periodic, independent professional review of the tanks occurs. The tanks and bio-retention facilities will be inspected annually to make any necessary repairs, and to remove sediment and trash which was deposited in the tank.

No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

- O1-13 The commenter asks how the public can be assured that the runoff water quality standards are maintained and no increase in drainage through adjacent residential areas would occur.

See Response O1-12 for assurance that the runoff water quality standards are maintained. The project includes drainage features that divert storm water through a drainage system into an existing storm drain and the project will not increase drainage through adjacent residential areas. Additionally, potential increase in drainage through adjacent residential areas is prohibited without review of a hydrology study and issuance of a building permit by the City of Malibu. Any new development on undeveloped land or a subdivision is prohibited unless a storm water management plan is approved by the

3. Response to Comments

Department of Public Works and the Department of Environmental Sustainability Building Safety confirming that the new development will not increase storm water runoff from existing conditions. Specifically, Malibu Municipal Code Section 13.04.100 contains requirements with respect to drainage and storm water of undeveloped land prior to the issuance of a building permit and is provided in part as follows:

- A. Prior to issuance of a building permit for any new development (on undeveloped land) or final map approval for any subdivision of property the applicant shall be required to have approval of a storm water management plan from the department of public works and the department of environmental and building safety.
- B. The stormwater management plan shall incorporate the following elements:
 - 1. Construction erosion control, as required under Title 15, building regulations of this code;
 - 2. Storm drainage improvement measures to mitigate any offsite/downstream negative impacts due the proposed development. This includes, but not limited to:
 - a. Mitigating increased runoff rate due to new impervious surfaces through on-site detention such that peak runoff rate after development does not exceed the peak runoff of the site before development for the one hundred (100) year clear flow storm event (note; Q/100 is calculated using the Caltrans Nomograph for converting to any frequency, from the Caltrans “Hydraulic Design and Procedures Manual”). The detention basin/facility is to be designed to provide attenuation and released in stages through orifices for two-year, ten (10)-year and one hundred (100)-year flow rates, and the required storage volume of the basin/facility is to be based upon one-inch of rainfall over the proposed impermeable surfaces plus one-half-inch of rainfall over the permeable surfaces. All on-site drainage devices, including pipe, channel, and/or street and gutter, shall be sized to cumulatively convey a one hundred (100) year clear flow storm event to the detention facility,
 - b. Demonstrating by submission of hydrology/hydraulic report by a registered engineer that determines entire downstream storm drain conveyance devices (from project site to the ocean outlet) are adequate for twenty-five (25)-year storm event,
 - c. Constructing necessary off-site storm drain improvements to satisfy subsection (B)(2)(b) of this section, or

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- d. Other measures accomplishing the goal of mitigating all offsite/downstream impacts;
- 3. Storm drain pollution prevention measures including all construction elements and best management practices (BMP's) to address the following goals in connection with both construction and long-term operation of the site;
 - a. Maximize, to the extent practicable, the percentage of permeable surfaces in order to allow more percolation of runoff into the ground,
 - b. Maximize, to the extent practicable, retention of dry-weather runoff on-site to allow percolation into the ground, or installation of other treatment measures thereby preventing pollutants from entering the storm drain system.

As discussed in the DEIR and noted above, the project's grading and drainage plan satisfy the requirements of the Malibu Municipal Code Section 13.04.100. In addition to Municipal Code Section 13.04.100 as a means of enforcement, if an increase in drainage is identified Malibu Municipal Code Section 13.04.120 which provides an enforcement mechanism, including a right of action by the City of Malibu to seek injunctive relief and recover its costs, as follows:

A. Violations Deemed a Public Nuisance.

- 1. Any condition caused or permitted to exist in violation of:
 - a. Any of the provisions of this chapter;
 - b. Any failure to comply with any applicable requirement of either the SUSMP or an approved stormwater mitigation plan with respect to a property;
 - c. Any false certification or verification, or any failure to comply with a certification or verification provided by a project applicant or the applicant's successor in interest; or
 - d. Any failure to properly operate and maintain any structural or treatment control BMP on a property in accordance with an approved stormwater mitigation plan or the SUSMP, is hereby determined to be a threat to the public health, safety and welfare, is declared and deemed a public nuisance, and may be abated or restored by any authorized enforcement officer, and a civil or criminal action to abate, enjoin or otherwise compel the cessation of such nuisance may be brought by the city attorney.

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2. The cost of such abatement and restoration shall be borne by the owner of the property and the cost thereof shall be invoiced to the owner of the property, as provided by law or ordinance for the recovery of nuisance abatement costs.
 3. If any violation of this chapter constitutes a seasonal and recurrent nuisance, the city manager shall so declare. The failure of any person to take appropriate annual precautions to prevent such violations after written notice of a determination under this paragraph shall constitute a public nuisance and a violation of this chapter.
- B. Concealment. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation of such provision.
- C. Civil Actions. In addition to any other remedies provided in this section, any violation of this chapter may be enforced by civil action brought by the city. In any such action, the city may seek, as appropriate, any or all of the following remedies:
1. A temporary and/or permanent injunction;
 2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;
 3. Costs incurred in removing, correcting, or terminating the adverse effects resulting from violation;
 4. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life.
- D. Administrative Enforcement Powers. In addition to the other enforcement powers and remedies established by this chapter, the authorized enforcement officer has the authority to issue a cease and desist order to require remediation of any existing or potential violation of this chapter. When an authorized enforcement officer finds that a violation of this chapter has taken place or is likely to take place, the officer may issue an order to cease and desist such action and direct that those persons not complying shall: (i) comply with the requirement; (ii) comply with a time schedule for compliance; and (iii) take appropriate remedial or preventive action to prevent the violation from recurring.
- E. Violations and Penalties. In addition to any criminal, civil or other legal remedy established by law that may be pursued to address violations of the municipal code, violations of the provisions of this chapter are subject to the administrative penalty provisions of Chapter 1.10. Each day that a violation continues shall constitute a separate offense.

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- F. Permit Revocation. To the extent the city makes a provision of this chapter or any identified BMP a condition of approval to the issuance of a permit or license, any person in violation of such condition is subject to the permit revocation procedures set forth in this code.
- G. Remedies. Remedies specified in this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.
- H. Authority to Conduct Samplings and Establishing Sampling Devices. With the consent of the owner or occupant or pursuant to an inspection warrant, any authorized enforcement officer may establish on any property such devices as necessary to conduct sampling and monitoring activities necessary to determining the concentrations of pollutants in stormwater and/or nonstormwater runoff. The inspections provided for herein may include but are not limited to:
1. Inspecting efficiency or adequacy of construction or post construction BMPs;
 2. Inspection, sampling and testing any area runoff, soils in areas subject to runoff, and or treatment system discharges;
 3. Inspection of the integrity of all storm drain and sanitary sewer systems, including the use of smoke and dye tests and video survey of such pipes and conveyance systems;
 4. Inspection of all records of the owner, contractor, developer or occupant of public or private property relating to BMP inspections conducted by the owner, contractor, developer or occupant and obtaining copies of such records as necessary;
 5. Identifying points of stormwater discharge from the premises whether surface or subsurface and locating any illicit connection or discharge. (Ord. 235 § 11, 2008; Ord. 243 § 18, 2003; Ord. 219 § 6, 2001; Ord. 157 § 1, 1996; prior code § 5410)

Finally, the five residences included in the project will be subject to covenants, conditions and restrictions (CC&Rs) that will require the homeowners to properly maintain the drainage systems on their property. The HOA established for the project will have the right to enforce the covenants and will also maintain any drainage systems located on the Lot 6 common area. If a homeowner failed to properly maintain the drainage systems located on its property, the HOA will have the right to take steps to maintain the drainages system and recover the cost of doing so from the property owner. If other neighboring property owners in the Project detect redirection of runoff

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onto their property, this could also be a violation of the CC&Rs and authorize the affect property owner or the HOA to take steps to remedy the problem.

No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

- O1-14 The commenter asks whether stormwater discharge to slopes and canyons below the proposed site result in adverse geologic conditions (i.e. erosion, slope failure, affect mapped landslides along the south facing bluffs, etc.). Page 5.5-9 of the DEIR, Impact 5.5-1, fifth paragraph states that "Based on the findings summarized in all referenced Leighton reports, the proposed development would be safe from hazards posed by landslides, settlement, or slippage provided that the recommendations in the reports are implemented. Moreover, Leighton determined that the proposed development would not adversely impact the geotechnical stability of property outside of the project site." The DEIR concluded that no significant unavoidable adverse impacts relating to geology and soils have been identified and that impacts are less than significant.

As stated by Leighton in each of the lot-specific geotechnical reports (Leighton, 2012d-h; see the top of page 3 in each report), surface drainage will be directed towards an on-lot detention/stormwater quality treatment basin or an on-lot storm drain catch basin. Thereafter, the collected waters will be conveyed into underground stormwater detention/filtration tanks and then to drainage devices that outlet at the toes of the slopes in a controlled manner.

According to Leighton (2013) given that surface waters will be collected on each lot and transported to the toes of the slopes in engineered devices, the transmission of surface water into the subsurface is minimized. Consequently, the potential for erosion, slope failure, and reactivation of mapped landslides along the south facing bluffs as a result of stormwater discharge is also minimized.

- O1-15 The commenter asserts that planned earthen berms at top of bluffs to divert runoff will channelize flow which in turn increases the runoff energy and rate which will increase erosive potential along slope faces and in canyons below the site.

According to Psomas Civil Engineering (2013), the berms at the top of the bluffs provide an opportunity to divert runoff off of unprotected slopes and into a controlled storm drain system. The portion of the berms that capture channelized flow will be lined with a concrete swale to prevent erosion and the swale will contain small check dams or "rip rap" (rock used to armor drainage channels) to control the runoff velocity. Compared to existing conditions where the runoff is not currently controlled, the energy of the runoff will be reduced to zero at check dams, thus decreasing erosive potential along slope faces and in the drainage channels below the Site. Stormwater will be collected in non-erosive devices and discharged into level dispersal drainage structures which spread out the flow per City of Malibu Dispersal Structure Example

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detailed drawing. The Dispersal Structure Example detailed drawing is an acceptable design detail consisting of a U-shaped concrete trough with ½” slots on the downhill side to allow storm water to trickle into boulders of 3” to 8” diameter and intermittent planting before being released to the natural slope below. The spreading out of storm water reduces the erosive effect of storm water to less than significant.

No substantial evidence had been provided to call in to question the City’s findings stated in the DEIR.

- O1-16 The commenter asks how individual lot owners would be responsible for their own storm water runoff quality as stated in the DEIR. See Response to Comments O1-12 and O1-13 above.

Figures 5 (Baseline Groundwater Elevation Contour Map) and 6 (Mounded Groundwater Elevation Contour Map) of Earth Consultants International’s (ECI) March 2012 report show that groundwater at the site flows in a south-southeasterly direction in the western portion of the site and in a southeasterly direction in the eastern portion of the site, not in a directly southern direction as supposed by commenters to the DEIR. The existing groundwater elevation data, collected from 15 onsite and offsite well over a five-year period, also shows that the groundwater flow gradients vary between the northern portion of the Site (0.05), between monitoring wells LMW-6 and LMW-7, and the southern extents of the site (0.28), between monitoring wells LMW-5 and CCB-22 (see figure 5; ECI, 2012). The gradient change indicates that a geologic structure between these two areas is changing the flow rates at the site. The steep groundwater gradient present to the south of monitoring well LMW-5 is interpreted to be the expression of the inactive fault zone (fault gouge and offset lithologic layers) impeding the flow of groundwater in a southerly direction. This impediment to groundwater flows causes a 95-foot drop in groundwater elevation between the buried faults and the edge of the bluff. Treated effluent will migrate vertically after it is discharged as it moves down-gradient of the dispersion field and become part of the groundwater system. “There are no known continuous conduits from the dispersal area that would carry wastewater to areas other than those indicated by the groundwater mounding results” (page 14; ECI, 2012).

The numerical groundwater flow model predicts that the proposed treated effluent discharge from the site and neighboring Tow Yard development will cause the groundwater levels at the properties to the south of the Site to rise between 0.03 and 0.04 feet (or less than half of an inch). Such changes in groundwater elevation should have no adverse impacts on the offsite landslides because; 1) the depth to groundwater (65 to 143 feet below the ground surface), 2) irrigation water, applied in appropriate quantities in association with the high evapotranspiration rate (44.2 inches per City of Malibu Ord. No 343), 3) the limited wastewater discharge (approximately 5,000 gallons per day), 4) the deep capping depth of the seepage pits, 5) the location of the seepage

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pits (upgradient of the fault), 5) the presence of an inactive fault between the seepage pits and the off-site landslide and 6) the predicted groundwater rise of less than one-half inch as a result of the wastewater discharge in these off-site areas should not result in the “lubrication” of the off-site landslides. (page 13; ECI, 2012) For further discussion of “lubrication” as it relates to the off-site slide plane, see Leighton response July 1, 2013.

Converse Consultants (1986) mapped fault F-1 to the west of trench CCT-104 (see Leighton & Associates (2009) Plate I for location of trench). ECI (2000) conducted fault trenching activities at the Site in 1999 and logged trench ECIT-1 (see Plate I of Leighton & Associates, 2009 for location of trench). ECI’s trench log (Figure 4A – See Appendix B of Leighton and Associates, 2007) shows that the faults were mapped in the western wall of this trench, which suggests that the faults continue to the west of this trench. Additionally, Eldon Gath (report undated) produced a report that deals with the recency of fault activity at the subject that depicts faults F-1 and F-3 extending almost to the western boundary of the Site. In addition to the faults identified by the trenching studies conducted by Converse Consultants and ECI, faults and shear zones were identified by Leighton and Associates, Inc. in borings PTB-7 and PTB-12. Both of these borings were downhole-logged in 2008 prior to their use as percolation pits for Lawrence Young’s percolation tests. PTB-7 is located within the proposed dispersion field and boring PTB-12 is located in the northwestern corner of the Site. The presence of the fault in these borings shows that fault zones are present in the area of the proposed dispersion field and farther to the west. For further information please see Leighton Response, 2013.

The fact that the faults are buried by terrace deposits has no bearing on their ability to impede the flow of groundwater, as groundwater is present in the unoxidized bedrock zone, not the terrace deposits. The boundaries between the unoxidized and oxidized bedrock was further defined in the Aquifer Science and Technology, 2008 report and subsequently utilized within the groundwater flow model to define the bedrock morphology.

One commenter recommends that an inert fluid injection test of peak volume of effluent discharge be conducted in order “to study the relationship between ground water quality, groundwater elevation change and how offsite (specifically the southern slope) areas are affected versus the three day percolation test study with low volumes. With respect to potential groundwater elevation changes and how offsite (specifically the southern slope) areas would be affected by the proposed OWTS, based on the quantity, quality and length of time during which the Site specific data was collected, it is our opinion that the groundwater mounding model accurately assesses the commenter’s concerns and as such an injection test was not conducted. (See Ensitu 2013 with respect to groundwater quality) It should also be noted that such an injection test is not

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required by the codes and regulations of the City of Malibu. Further the previous work conducted by ECI, 2009 and 2012, was approved by the City of Malibu.

- O1-17 The commenter asks if the existing public stormwater system can handle the component of runoff that is not detained and released as well as the controlled released volumes.

As discussed in Response O1-13, Malibu Municipal Code Section 13.04.100 provides that “Prior to issuance of a building permit for any new development (on undeveloped land) or final map approval for any subdivision of property” both of which conditions apply to the project site, “the applicant shall be required to have approval of a storm water management plan from the department of public works and the department of environmental and building safety.” Such storm water management plan must mitigate “increased runoff rate due to new impervious surfaces through on-site detention such that peak runoff rate after development does not exceed the peak runoff of the site before development for the one hundred (100) year clear flow storm event”. Psomas prepared a Hydrology Study that quantified the amount of detention for each lot. Residential lot detention ranged from approximately 2,000 to 3,000 cubic feet; private street detention was approximately 5,000 cubic feet, Lot 7 detention was also quantified for both a possible additional ball field, of approximately 1,000 cubic feet, and a 12,500 square foot skate park, of approximately 1,300 cubic feet. These additional volumes will be detained and released after the peak storm event so that the existing storm drain systems do not experience an increase in runoff. As a result, the proposed development of the project site will have no negative impact on the existing storm water system. To the contrary, in certain instances the proposed development of the project site will have a positive impact on the existing storm water systems by (i) detaining storm water runoff from the project site which in its current state is uncontrolled, thus reducing the volume of runoff entering the existing storm water system (ii) redirecting storm water runoff away from locations that have experienced damage as a result of uncontrolled storm water runoff and (iii) improving the quality of the water that would otherwise carry sediment to the ocean through collection of pollutants in the detention tanks and installation of non-erosive drainage devices.

See also Response to Comment O1-16

No substantial evidence had been provided to call in to question the City’s findings stated in the DEIR.

- O1-18 The commenter requests that a pilot-type study be conducted of inert fluid injection at estimated effluent discharge volume (peak total) and of duration long enough to study the relationship between groundwater water quality, groundwater elevation change, and how offsite (specifically southern slope) areas are affected versus the three day percolation study with low volumes.

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The standard three day percolation test conducted by Lawrence Young for the design of a seepage pit type subsurface sewage effluent disposal system in August and September 2008 was conducted in accordance with the requirements of City of Malibu Environmental Health, and in accordance with the requirements of County of Los Angeles Environmental Health.

The percolation test methodology used meets accepted industry, and jurisdictional standards. On the first day of the percolation test, each percolation test hole was filled with potable water to the capping depth recommended by the project geologist, Leighton & Associates, Inc. This first fill is called the presoak, which is designed to pre-saturate the subsurface soil/rock strata prior to percolation testing. The objective is to percolation test the percolation test holes after the subsurface soil/rock strata is presoaked to determine the absorption rate of the soil/rock strata when saturated with water, because when the seepage pits are eventually constructed, and put into use, the soil/rock strata in which the seepage pits are located will be continuously receiving sewage effluent and, therefore, will be continuously wet.

On the second day of the percolation test, each percolation test hole was filled with potable water to the capping depth. This second fill is actually the beginning of the percolation test. A static head/metered percolation test was then conducted, which has the advantage of maintaining the maximum water head pressure, and maintaining the maximum square footage of absorption area for the duration of the percolation test. Static head means, as the percolation test holes absorb the water, more water is added to keep the percolation test holes full to the capping depth for the entire eight hour percolation test period. Metered means, the amount of water absorbed is accurately known down to the last gallon absorbed, as all water put into the percolation test holes passes through a calibrated 1 ½ inch water meter.

On the third day of the percolation test, each percolation test hole is observed to determine the amount of water, if any, remaining in the percolation hole after the prior day's percolation test. This water is deducted from the metered results of the prior day, which reveals the exact amount of water absorbed.

According to Lawrence Young (Young 2013) this simple percolation test methodology is used worldwide, and has proven over many years to be an accurate prediction as to the function, and longevity of a seepage pit type subsurface sewage effluent disposal system. Even a conventional septic system, i.e. one consisting of a septic tank offering only primary treatment prior to discharge, will historically last over 20 years before a seepage pit failure. According to County of Los Angeles Environmental Health, the premature failure rate is less than one percent.

Since the City of Malibu Plumbing Code will require the installation of a tertiary sewage effluent treatment system prior to discharge to the proposed seepage pit type subsurface

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sewage effluent disposal system, the seepage pits serving subject development should maintain the same absorption rate as the rate obtained as a result of my percolation test literally forever... or at least as long as the treatment system is properly maintained. In short, since the percolation test was conducted with clean water, and only clean water will be discharged into the proposed seepage pits, then the proposed seepage pits should never fail.

Furthermore, since only clean water will be discharged into the proposed seepage pits, groundwater contamination will not be a factor. Prior to discharge the sewage effluent will be tertiary treated, after discharge the clean water discharged will be further treated by percolation through the subsurface soil/rock strata, which acts as a natural filter.

The DEIR concluded that percolation testing (Lawrence Young 2008) confirmed that the use of seepage pits at the proposed Lot 7 location would meet the requirements of the LIP and the City of Malibu's Plumbing Code and impacts would be less than significant.

No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

- O1-19 See Responses to Comment O1-05 and O1-6.
- O1-20 See Responses to Comment O1-05 and O1-6.
- O1-21 This comment asks if there is a contingency for adverse an economic scenario of the HOA maintenance of the OWTS system. See Response to Comment O1-10.
- O1-22 The percolation tests conducted by Lawrence Young between August 2008 and September 2008 (Young, 2008) at the Site were conducted at depths (60' to 65' below ground surface) consistent with the depths (61' to 67' below ground surface) of the designed treated effluent discharge pits. Therefore the results of the percolation tests show that the geologic materials in the discharge zone are suitable to handle the potential effluent from Lots 1 through 5. ECI (2012) describes the discharge zone as follows:

With respect to the point of discharge, the dispersal zone of each proposed seepage pit (between the cap and the pit bottom) is primarily within the oxidized bedrock. The bottoms of the pits are generally located just above the oxidized/unoxidized boundary or slightly below, and are more than 10 feet above the water-bearing portion of the bedrock. Consequently, the flow path of the effluent horizontally is predominantly in the oxidized bedrock, which is not presently water-bearing, and the flow path between the bottom of the dispersal zone and the water table consists predominantly of fractured unoxidized bedrock, with localized oxidized zones. There are no known continuous conduits from the dispersal area that would carry wastewater to areas other than those indicated by the groundwater mounding results (see ECI, 2012 - Figure 7).

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The results from the percolation tests conducted at the Site were utilized to calculate the hydraulic conductivities used in the numerical groundwater flow model. (ECI, 2009 and ECI, 2012) The percolation test data was utilized to calculate the hydraulic conductivity of the oxidized bedrock zone (ECI, 2012).

K-values used in our analysis were derived from data obtained during percolation testing at the site. In order to obtain site-specific data, pressure transducers were placed inside of the percolation test pits during percolation tests conducted by Lawrence Young. The changes in water elevations during the tests were then used to estimate the hydraulic conductivity of the receiving materials (oxidized bedrock zone). The following equation from Mulqueen and Rodgers (2001) was used to analyze the water level data:

$K_{fs} = 3.9/t_m$ (m/day), where K_{fs} is the saturated hydraulic conductivity of the earth material, 3.9 is a conversion constant and t_m is the time required for the water to drop 25 mm.

A conservative approach was taken by choosing the largest t_m found in the data sets (5 minutes). Using 5 minutes for t_m in the above equation results in a K_{fs} value of 2.45 ft/day. A K value of 2 ft/day was used for layer 2 (oxidized bedrock) in the revised groundwater flow model. The use of the 2 ft/day value was considered conservative in that it was 25% lower than that calculated by the field measurements.

- O1-23 The commenter asserts that development (and approval by governing agency) of OM&M program of stormwater detention systems is needed. See response to comment O1-12 for detention system operations, maintenance and monitoring. No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.
- O1-24 The commenter requests further exploration of Lawrence Young's response #4 to City of Malibu Environmental Health Conformance Review dated May 19, 2010. The commenter states that the response seems vague and claims that response lends itself to a long duration pilot study.

Refer to Response to Comment O1-18.
- O1-25 See Responses to Comment O1-05 and O1-6.
- O1-26 The commenter requests the City to demonstrate how effluent moving south (groundwater flow) will not daylight or contribute to movement/reactivation of landslides along southern slope.

See Response to Comments O1-08, O1-09, and O1-14. No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.
- O1-27 See Response to Comment O1-21.

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LETTER O2 – ESA (1 page[s])



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May 16, 2013

Ha Ly
Associate Planner, City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Subject: Review of EIR Section 5.4 of the Crummer Site DEIR, Malibu, Ca.

Dear Ms. Ly:

Per the request Gaines & Stacey LLP, ESA reviewed Section 5.4 of the Crummer Site Subdivision DEIR. The following comments represent our opinion regarding the level of effort, and possible deficiencies.

- 1. The 2007 archaeology study cited and used as the basis for the analysis may be considered too old to be considered acceptable. The State Historic Preservation Officer (SHPO) normally requires that the study needs to be less than 2 years old. The records search conducted in 2007 would not have included a number of studies conducted over the past 6 years in the area, and conditions on site may have changed. 02-1
- 2. There is no mention of a sacred site search or consultation with the Native American Heritage Commission or local tribes. 02-2
- 3. Monitoring in a sensitive area is not a defensible mitigation measure because CEQA is clear about deferred mitigation. Given the sensitivities of the area, more work needs to be conducted to determine if the project area contains an historic resource (archeological site) below the disturbed surface. To demonstrate that the project site does not contain archaeological deposits, we would recommend a subsurface testing program be developed in consultation with the appropriate tribe to ensure planned construction does not adversely affect a previously undocumented resource. 02-3

Should you have any questions, please call me at 310-971-1500.

Sincerely,

Mitch Marken, Ph.D.
Vice President
ESA

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O2. Response to Comments from ESA (Mitch Marken, PhD), dated May 15, 2013.

O2-1 An Updated Phase 1 Archaeological Study and Cultural Resource Sensitivity Testing has been conducted for a portion of a 24-Acre parcel located at 24200 Pacific Coast Highway (APN No's 4458-018-002, 4458-018-018 and, 4458-018-019) City of Malibu, Los Angeles County, California, HEART, was completed in June 2013.

An updated records search was performed by RPA certified archaeologist, Wayne Bonner on June 10, 2013 at the SCCIC which indicated that no previously recorded prehistoric or historic archaeological sites lie within the project site. In addition, nine prehistoric archaeological sites are recorded within a 1/2-mile radius of the project site: CA-LAn-264 (The village of Humaliwu lies to the east of the project site at the Adamson House and Malibu Lagoon State Historic Park), CA-LAn-266, CA-LAn-267, CA-LAn-386, CA-LAn-404, CA-LAn-1417, CA-LAn-1715, CA-LAn-1991, CA-LAn-2247.

Additional physical testing at the project area was conducted to ensure that buried cultural resource remains were not inadvertently missed during the field surveys. Although disked for many years, there was still a slight potential for buried resources to exist just under the plow zone (15 cm – 20 cm). Between June 16, 2013 to June 19, 2013, 76 soil augers were excavated, representing 76-person hours of field labor. Susie Ruiz (Native American Representative of the Ventureno Chumash) assisted in the excavation.

The augers were excavated within a pre-placed grid to completely cover the area of proposed project area (nine acres of the proposed 24-acre parcel). All soil was mechanically excavated and screened through 1/8" wire-screened mesh. Notes, photographs and GPS points were taken in the field to confirm coverage. Each auger was excavated to a minimum depth of 40 cm or until a noticeable soil change occurred, so as to identify the disked soil from the subsoil. The completion of this testing phase revealed no evidence of surface or buried cultural resource remains inclusive of artifacts, shellfish, fauna, features or human remains. Based on the results of this test phase, no additional archaeological work was recommended within the boundaries of the proposed project. As stated in Section 5.4 of the DEIR, with mitigation, potential impacts associated with cultural resources would be reduced to a level that is less than significant. No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

O2-2 The Native American Heritage Commission (NAHC) was contacted by letter in July 2007 and October 2008 regarding any concerns over potential heritage resources noted in their sacred lands files for the project site. In letters dated July 17, 2007 and October 20, 2008 the NAHC indicated that they had conducted Sacred Lands File (SLF) searches of the project area and did not identify any cultural resources within 1/2 mile radius of the project site/area of potential effect (APE). CEQA Guidelines § 15064.5(d) requires

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the lead agency to work with the Native Americans identified by NAHC if the Initial Study identifies the presence or likely presence of Native American human remains within the APE. The Initial Study and DEIR did not identify the likely presence of human remains or cultural resources. In addition, as indicated above, additional physical testing at the project area was conducted with the assistance of a Native American Representative of the Ventureño Chumash to ensure that buried cultural resource remains were not inadvertently missed during the field surveys. Impacts remain less than significant. The comment letter is included as Appendix C of this FEIR.

- O2-3 See Response to Comment O2-1. As stated in Section 5.4 of the DEIR, with mitigation, potential impacts associated with cultural resources would be reduced to a level that is less than significant. No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

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LETTER O3 – Gaines and Stacey, LLP (87page[s])

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May 20, 2013

ORIGINAL BY MAIL

VIA E-MAIL hly@malibucity.org

Ha Ly
Associate Planner
City of Malibu - Planning Department
23825 Stuart Ranch Road
Malibu, CA 90265

Re: Comment Letter - Crummer Site Subdivision Draft Environmental Impact Report No. 09-001

Dear Ms. Ly,

This law office represents Green Acres, LLC with regard to its ownership and development of 4000 Malibu Canyon Road, otherwise known as the proposed Rancho Malibu Hotel project. Revised entitlement applications for the Rancho Malibu Hotel are pending at the City of Malibu (the "City") while environmental review is being conducted. The Green Acres site already has an approved Coastal Development Permit and Conditional Use Permit for a hotel project at its property. The proposed Crummer Site Subdivision (the "Project") is located immediately across Pacific Coast Highway ("PCH") to the south and, if approved, will have severe and long-lasting impacts on the Rancho Malibu Hotel site, the City of Malibu, and surrounding environment. **For the reasons set forth in this letter, the Crummer Site Subdivision's Draft Environmental Impact Report ("DEIR") is legally inadequate and must be substantially revised and recirculated in accordance with the California Environmental Quality Act ("CEQA").**¹

03-1

¹ It should be noted that the arguments and evidence presented herein are in addition to any other arguments or evidence which the City has received or may receive from our client or its consultants at any or all public hearings on the DEIR and/or the Project.

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I.

INTRODUCTION.

CEQA requires a lead agency to certify a final Environmental Impact Report (“EIR”) as complete and in compliance with CEQA, and to consider the information contained therein, before approving a project. See Public Resources Code §§ 21000 et seq.; State CEQA Guidelines (“Guidelines”), California Code of Regulations, Title 14, §15090. An adequate EIR must be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of the environmental consequences of the project being studied. See Guidelines § 15151. The EIR must include detail sufficient to enable those who did not participate in its preparation to understand and consider meaningfully the issues raised by the proposed project. See Laurel Heights Improvement Association v. Regents, 47 Cal. 3d 376, 405 (1988). Although CEQA does not mandate perfection, prejudicial abuse of discretion occurs if the failure to include relevant information in the EIR precludes informed decision making and informed public participation, thereby “thwarting the statutory goals of the EIR process.” See Laurel Heights, supra, 47 Cal. 3d at 403-405. In short, CEQA requires an EIR to include a good faith effort at full disclosure. See Guidelines §15151.

Achieving the CEQA purpose of preserving and enhancing the environment requires adequate disclosure of project information and active involvement of the public at each stage of the decision making process. Under CEQA, decisions regarding a proposed project cannot be made in a vacuum or under a veil of secrecy. Rather, they must be made under the watchful eye of the public so as to reassure “an apprehensive citizenry that the agency has, in fact, considered the ecological implications of its actions,” No Oil, Inc. v. City of Los Angeles, 13 Cal. 3d 68, 86 (1974), and to affirmatively demonstrate that the environment is being protected. People ex rel. Department of Public Works v. Bosio, 47 Cal. App. 3d 495, 528 (1975).

As the foundation on which project decisions are made, the EIR is the “heart” of this public review process. See County of Inyo v. Yorty, 32 Cal. App. 3d 795, 810 (1973); Laurel Heights Improvement Association v. Regents (“Laurel Heights II”), 6 Cal. 4th 1112, 1123 (1993); Guidelines §15003(a). The EIR serves as an “environmental alarm bell” whose purpose it is to alert the public and its responsible officials to the environmental impacts associated with a proposed project. See County of Inyo, 32 Cal. App. 3d at 810. The public’s ability to analyze and make comments on the adequacy of the EIR is therefore critical to insure all relevant information is considered before a decision with potentially significant and irreversible effects is made. See Laurel Heights, supra, 47 Cal. 3d at 392; Laurel Heights II, supra, 6 Cal. 4th at 1123; and Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 564 (1990).

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cont'd

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The principles of public comment and informed decision making apply with full force to the DEIR for the Project. However, as discussed below, both the Project and the DEIR are seriously defective and, therefore, do not meet the requirements mandated by CEQA. The DEIR is so fundamentally flawed that CEQA's goal of meaningful public participation and informed decision making can only be achieved by further revising and recirculating the DEIR. Many of the Project's most significant environmental impacts have been understated or swept under the rug, and certification of the DEIR in its current form would constitute a prejudicial abuse of discretion. Accordingly, our client requests that the following comments be responded to and the EIR be revised and recirculated in accordance with CEQA.

03-3

II.

THE DEIR IS LEGALLY INADEQUATE AND CERTIFICATION WOULD CONSTITUTE PREJUDICIAL ERROR AND ABUSE OF DISCRETION.

A. The Project Description is Insufficient (Section 3).

CEQA sets forth minimum requirements for the Project Description. See Guidelines § 15124. Recirculation of an EIR for additional public review and comment is required when the new information constitutes "significant new information" which discloses: (1) a new substantial environmental impact or new mitigation measure; (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted; (3) a feasible project alternative or mitigation measure that would lessen the environmental impacts of the project that the proponents decline to adopt; or (4) that the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was meaningless. (See Pub. Resources Code, § 21092.1; Communities for a Better Environment v. City of Richmond, 184 Cal. App. 4th 70 (2010); Laurel Heights Improvement Assn. v. Regents of University of California, 6 Cal. 4th 1112, 1126-1132 (1993); Western Placer Citizens for an Agr. and Rural Environment v. County of Placer, 144 Cal. App. 4th 890 (2006).)

03-4

Here, there are fundamental flaws with the Project Description that render the entire DEIR insufficient. Recirculation of the entire DEIR, therefore, is imperative pursuant to CEQA.

Flaws in the Project Description include:

- The DEIR must evaluate all uses intended for Lot 7 so that the "whole" of the action (or Project) can be evaluated. Failure to include all proposed uses in the DEIR deprives the public of its right to comment and review. See Public Resources Code § 21065. When actions are related to each other, they must be evaluated as a single project.

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- According to public statements made by the Project proponent, \$1 million is being given to the City for the development of recreational facilities on Lot 7. It is presumed that the development of Lot 7 is, therefore, contingent upon the City's receipt of those funds. However, no mention of this "donation" is made in the DEIR. All details describing the payment (and timing of the payment) for the recreational uses must be fully described in the DEIR as they are critical components of the Project. 03-5
- The absence of fully evaluating future recreational uses of Lot 7 is unacceptable and constitutes project splitting under CEQA. Lot 7, as part of the pending Vested Tentative Tract Map application, is part of the Project. The Project Description describes and evaluates other proposed development for Lot 7 (such as parking, an expansion of Bluffs Park, seepage pits for the wastewater treatment system, etc.), but it defers analysis of recreational uses until a later unspecified date. 03-6
- The DEIR states that "possible" skate park and baseball field uses are allegedly evaluated for Lot 7 in the DEIR, although they are not part of the Project Description. The Project Alternatives section then proposes alternatives for the recreational uses. It is illogical that a different recreational use can be an alternative to the Project when no recreational use is part of the Project Description. 03-7
- There is a lack of clarity regarding Lot 7 in that the DEIR appears to evaluate some of the uses proposed for Lot 7, but not all of the uses for Lot 7. Some uses for Lot 7 are part of the Project and some of the uses for Lot 7 are not part of the Project. This results in a misleading and confusing project scope. 03-8
- There is only a brief mention of the seepage pits for the onsite wastewater treatment system that are intended for Lot 7 (see, under "Onsite Wastewater Treatment System" on Page 3-10). In fact, most of the sections discussing the uses intended for Lot 7 do not even mention the seepage pits (see, under Vesting Tentative Tract Map on Page 3-10 and under Dedication of Parkland on Page 3-19) or the maintenance building, resulting in inconsistent descriptions of the proposed uses of Lot 7. The intended location of the seepage pits in relation to the public and recreational areas of the site, as well as any resulting impacts, must be included in every description of the development of Lot 7. In other words, the proposed uses for Lot 7 must be complete and consistent throughout the DEIR. 03-9
- The impacts associated with having seepage pits located adjacent to public recreational uses must be described and analyzed in the DEIR. 03-10
- The environmental setting must include discussion of any inconsistencies between the Project and applicable general, regional, and statewide plans. See Guidelines § 15125. 03-11

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- The DEIR downplays the significance of the proposed Zoning Text Amendment (“ZTA”) and Local Coastal Program Amendment (“LCPA”), in part, by stating that Land Use Plan (“LUP”) Policy 2.78 is “obsolete.” The proposed amendments do more than simply provide zoning consistency; the amendments make specific changes to the zoning code and Local Coastal Plan (“LCP”), and the DEIR must thoroughly evaluate the consequences the amendments will have on the physical environment. City of Redlands v. County of San Bernardino, 96 Cal.App.4th 398 (2002).

03-12
- The DEIR generally describes how the wastewater from the five homes on Lots 1 through 5 will be routed to an OWTS package plant on Lot 6 where the wastewater will be treated. The treated effluent will be discharged into 6-foot diameter “seepage pits” that are between 61 and 65 feet deep. These seepage pits are proposed to be located in the southernmost portion of Lot 7, which will be dedicated to the City of Malibu and be developed with recreational uses and a parking lot. (DEIR at pages 3-10, 5.8-25 and 27.) The DEIR states that, even after the City acquires Lot 7, the private homeowners’ association will “own” and be generally responsible for ongoing maintenance of the seepage pits. (DEIR at page 3-10.) There is no clear description of the respective public/private “ownerships” of Lot 7, as well as the on-going maintenance covenants. The DEIR must evaluate these issues and identify specific mitigation measures associated with those on-going maintenance and liability requirements.

03-13
- Page 3-2 states that in “2009, a zoning map amendment and general plan map amendment were processed to correct the land use designation to PD in order to be consistent with the LCP Land Use Maps.” This statement is inconsistent with the language on Page 3-9 which states that the “General Plan was amended on July 13, 2008, to designate the project site as PD.” This inconsistency must be corrected or explained.

03-14
- Page 3-10 (under Vesting Tentative Tract Map) states that Lot 7 “would be dedicated to the City of Malibu for active and passive recreational use.” It does not mention that parking and seepage pits are also proposed for Lot 7. As stated above, the description of all the uses proposed for Lot 7 must be consistent throughout the DEIR.

03-15
- Page 3-19 “Dedication of Parkland” fails to include information about the seepage pits and about the HOA assuming responsibility for the seepage pits. This must be fully disclosed and analyzed.

03-16
- Page 3-19 “Dedication of Parkland” insufficiently describes a dedication of land for which the proposed use is speculative.

03-17

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- Pages 3-19 and 3-20 “Dedication of Parkland” states that recreational uses have not been determined yet and that they are not part of the Project, then goes on to analyze two different developments: 1) 5 SFHs with baseball field and 2) 5 SFHs with skate park. This is confusing and misleading. 03-18
- Page 3-24 “Local Coastal Program Amendment and Zoning Text Amendment” is unclear. The DEIR must further explain statement that “LUP Policy 2.78 is obsolete.” 03-19
- The Project Background (Section 3.3.1) is incomplete. A previous version of the Project was proposed (minus PD development standards) and went through the City and Coastal Commission approval process. There is no mention of those proceedings here, however, they are relevant and provide the public with context and a more complete understanding of the Project. The DEIR must include a more thorough Project Background. 03-20

1.) The Project Fails to Meet Project Objectives (Section 3.2).

The Project falls short of the following Project Objectives (DEIR Section 3.2):

“Contribute to the range of housing choices in the City of Malibu.”

- The construction of five 11,000 square foot mansions does not contribute to the “range” of housing choices in the City of Malibu. There are already many large high end homes available in the surrounding community. The DEIR must explain how the Project achieves this objective. 03-21

“Dedicate land sufficient for the City of Malibu to expand Bluffs Park and design a recreational facility that meets the community’s needs for active recreation.”

- If the recreational uses proposed for Lot 7 were part of the Project, then it would be more likely that the Project would meet this objective. However, this objective is not met by the Project because the recreational uses for Lot 7 are not part of the Project. The Project, therefore, does not include the design of a recreational facility that meets the community’s needs for active recreation included in the Project. 03-22

“Preserve view sheds, maximize open space, and maintain the area’s rural character.”

- This project objective is not met given an excessive proposed height of 28’, which is 10’ higher than the City’s maximum residential height limitations. Smaller homes of 18’ in height would better achieve this objective. Other alternatives, including open space uses, visitor serving uses, and/or recreational uses must be evaluated as those uses would have more potential of meeting this objective. 03-23

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"Develop a project consistent with codes, regulations, procedures, and consistent with the City's General Plan and Local Coastal Program."

- The Project is inconsistent with a number City and State land use regulations. Areas of inconsistency include, but are not limited to: height of residential buildings - this is the only area in Malibu that a 28' building would be allowed by right, if the PD standards are approved; public access to the shore; visitor serving uses; LUP policies that seek to protect visual resources and maintain land use compatibility. There must be more description and analysis regarding the land use changes proposed for the site, including a more thorough Project Background section. 03-24

"Preserve public bluewater ocean views."

- As detailed further in this correspondence and attachments, public bluewater views are not preserved by the Project. The Project would better achieve this objective with other uses or with smaller house that are kept to 18' in height. 03-25

B. The Analysis of Impacts to Aesthetics is Inadequate (Section 5.1).

1.) The DEIR Must Incorporate and Address Issues Identified by Henry Lenny.

Henry Lenny, principal architect and designer of Henry Lenny Design Studio (an architectural design firm), reviewed Section 5.1 of the DEIR and provided detailed comments in a letter and visual graphics addressed to the City, dated May 13, 2013. The Henry Lenny letter and visual graphics note a number of deficiencies in Section 5.1 that must be further studied and expanded upon in a revised and recirculated DEIR. (Please see correspondence dated May 13, 2013 from Henry Lenny, attached hereto as Exhibit A.) 03-26

2.) The Project Will Result in Substantial Impacts to Aesthetics.

In addition to the deficiencies identified by Henry Lenny, the DEIR must also be revised to include the following information. 03-27

- The DEIR must be revised to include additional graphics and information explaining how the Project obstructs public and private ocean views from additional vantage points. 03-28
- The DEIR must acknowledge rights and impacts to public views of the Pacific Ocean under applicable State and City laws. Graphics and substantial evidence show that public views of the Pacific Ocean would be impacted by the Project. Photos taken from a variety of nearby areas with views of the site are conspicuously absent from the DEIR.

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- The DEIR must be revised to include additional information regarding the Project's affect on scenic resources, including public rights of way and vista points. | 03-29
- The DEIR must expand upon the landscaping proposed for the site and show additional graphics of landscaping at full maturity. | 03-30
- The DEIR must include an analysis that shows the balancing of the goal of preserving public views of the Pacific Ocean with providing five mansion-sized private residences. | 03-31
- The DEIR must include graphics and discussion about how smaller single story homes could mitigate impacts to aesthetics. | 03-32
- The DEIR must include citations to relevant view protection policies and ordinances. | 03-33
- The DEIR fails to include a single mitigation measure for impacts to aesthetics, including but not limited to the most standard mitigation measures such as: the maintenance and trimming of landscaping, an approved landscape plan, non-glare materials for roofs, the undergrounding of utilities, compliance with applicable City Codes and the LCP, concealment of drainage devices, Project lighting, night illumination and glare, and smaller structures. | 03-34
- The DEIR must be revised to include all City and State regulations that deal with view protection and include an analysis of the Project as it relates to those provisions. | 03-35

3.) There is Nothing in the DEIR Regarding the City's New View Protection and Restoration Ordinances.

The City has taken recent steps to protect and restore views, highlighting the environmental importance that views play in the region. Green Acre's letter to the City, dated June 11, 2012, regarding the scoping for the DEIR specifically mentioned that this issue must be addressed. See Guidelines § 15083. The DEIR must review the history, research, and staff reports behind these new City ordinances and study whether any aspects of the Crummer Site Subdivision conflict with the City's view related findings and new legal requirements. | 03-36

C. The Analysis of Impacts to Biological Resources is Inadequate (Section 5.3).

The DEIR fails to address a number of specific, valid comments raised by the Santa Monica Mountains Conservancy (SMMC) regarding the biological resources and value of the project site. The DEIR analysis of biological resources is inadequate without responding to each of these comments from this important Trustee Agency. | 03-37

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1.) The Conservation Easement Issue Must be Addressed, Described, and Analyzed.

The DEIR Project Description and all other sections do not commit to the granting of a conservation easement identified by the California Coastal Commission (CCC) and Santa Monica Mountains Conservancy (SMMC) as necessary to mitigate the significant impacts of the proposed Project on important biological resources. On page 5.9-7, the DEIR states the Project “may” include a conservation easement in favor of the SMMC that includes the eastern and southern facing bluffs on the site and then bases the determination that the Project is consistent with Policy 1.2 in the City’s General Plan Open Space Element based on this possibility. This easement is not discussed, however, in the DEIR Project Description section. Page 5.3-26 states the applicant has reached an agreement with the SMMC to provide this conservation easement. The DEIR is inconsistent in its discussion of this easement and provides no description of the location and boundaries of this easement area or how it would mitigate the identified significant impacts of the Project on biological resources.

03-38

2.) Habitat Linkage and Ecological Context of the Site Require Further Description and Analysis.

The project site is identified by the SMMC as providing a critical portion of the important habitat linkage between the large block of natural habitat located immediately northeast of the Malibu Canyon entrance to Pepperdine University and the Malibu Bluffs Conservancy property. The DEIR addresses wildlife movement impacts based on a 2009 Biological Resources study, which does not identify or describe this important habitat linkage. The 2012 update of the 2009 biological resource survey, prepared by a different consultant, merely quotes from the 2009 study and does not include any update of the information in the 2009 study or any independent analysis. The SMMC commented that the City’s DEIR would be deficient if it does not acknowledge the ecological context of the site and address how wildlife move in and out of the site. The DEIR fails to address this important biological resource issue and is inadequate for this reason.

03-39

3.) Bluff Habitat Must be Further Evaluated as Possible ESHA.

The SMMC also notes that the DEIR further evaluate the bluff habitat present on site as an “Environmentally Sensitive Area” or ESHA as required by Local Implementation Policy (“LIP”) 4.3 in the City’s LCP. The LCP states that any area not designated ESHA on the ESHA Overlay Map in the LCP may be considered as ESHA based on a site-specific biological resource study. As this bluff habitat is similar in quality to the ESHA designated property on the adjacent Malibu Bluffs Conservancy Property, this evaluation is required. The DEIR is deficient for not providing any analysis of the suitability of the bluff habitat on the site as ESHA.

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4.) Impacts on Adjacent Open Space from Domestic Animals Must be Addressed and Analyzed.

Potential indirect impacts are also not adequately analyzed. The SMMC notes that domestic animals, specifically cats, can wreak havoc on native bird communities and recommends mitigation measures. Page 5.3-26 of the DEIR discusses that the Project will include a fence specifically designed to allow the passage of small animals, but does not discuss the impacts from domestic animals passing through this fence into adjacent natural open space areas. The DEIR fails to address this potentially significant impact or appropriate mitigation for this and other indirect impacts of the Project.

03-41

5.) Biological Impacts of Night Lighting Must be Addressed and Analyzed.

The SMMC requested the DEIR contain a thorough analysis of night lighting impacts to the sensitive biological resources present in the adjacent Malibu Bluffs Conservancy property. Specifically, if the proposed ballfields will be lighted for night use and how this lighting could impact wildlife. The analysis of night lighting impacts in Section 5.1, Aesthetics, of the DEIR, fails to even mention this adjacent resource area.

03-42

6.) Impacts from the Loss of Foraging Habit Must be Addressed and Analyzed.

Hawks and other raptors have been identified as sensitive biological resources in other City EIRs. While page 5.3-5 of the Biological Resources section states no active or abandoned raptor nests were identified in the five blue gum trees on the site during the 2012 and earlier surveys, the value of the site as foraging habitat and the potential cumulative impacts from loss of the foraging habitat on the site is not addressed.

03-43

7.) Deferred Mitigation for Impacts to Sensitive Plants is Improper.

The City's DEIR improperly defers analysis and, therefore, identification of potential impacts to sensitive plant species. Specifically, Mitigation Measure 3-1(a) requires a subsequent survey for a sensitive plant species, Branton's milk-vetch. The DEIR notes that the site has suitable habitat for this species. Another sensitive plant species, the Plummer's mariposa lily was not found on the site in earlier surveys of the site, but was found to be present in later surveys. This alone demonstrates the same could occur with Branton's milk-vetch. Despite these circumstances and basic CEQA standards, the DEIR requires as mitigation, a survey to determine if this sensitive plant species is present onsite. The DEIR does not, however, identify an impact to this species or appropriate mitigation. This is clearly inadequate per CEQA. (Please see correspondence dated May 15, 2013 from Tony Locacciato of Meridian, attached hereto as Exhibit B.)

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D. The Analysis of Impacts to Cultural Resources is Inadequate (Section 5.4).

Section 5.4, Cultural Resources, is flawed and must be revised as follows.

03-45

1.) The Archeology Study is Outdated.

The 2007 archaeology study cited and used as the basis for the analysis is too old to be considered acceptable. The State Historic Preservation Officer (SHPO) typically requires that the study must be less than two years old. Here, the study is approximately six years old. The records search conducted in 2007 would not have included a number of studies conducted over the past 6 years in the area, and conditions on site may have changed. Therefore, the archeology study must be updated, the analysis revised accordingly, and the DEIR recirculated for public review and comment.

03-46

2.) The DEIR Does Not Mention or Discuss the Required Sacred Site Search.

The DEIR does not mention a sacred site search or consultation with the Native American Heritage Commission or local tribes. These issues are standard components of cultural resources review under CEQA and must be included in the analysis.

03-47

3.) A Subsurface Testing Program Must be Developed.

Monitoring in a sensitive area is not a defensible mitigation measure because CEQA is clear about deferred mitigation. Given the sensitivities of the area, more work needs to be conducted to determine if the Project area contains an historic resource (archeological site) below the disturbed surface. To demonstrate that the project site does not contain archaeological deposits, there must be a subsurface testing program developed in consultation with the appropriate tribe to ensure planned construction does not adversely affect a previously undocumented resource. (Please see correspondence dated May 16, 2013 from Dr. Mitch Marken of ESA, attached hereto as Exhibit C.)

03-48

E. The Analysis of Impacts to Geology and Soils is Inadequate (Section 5.5).

1.) The DEIR Must Incorporate and Address Issues Identified by GeoSoils Consultants.

Rudy Ruberti of GeoSoils, a geotechnical, geologic, and environmental consulting firm, reviewed Section 5.5 of the DEIR and provided detailed comments in a letter addressed to the City, dated May 13, 2013. The GeoSoils letter notes a number of deficiencies in Section 5.5 that must be further studied and expanded upon in a revised and recirculated DEIR. (Please see correspondence dated May 13, 2013 from Rudy Ruberti of GeoSoils, attached hereto as Exhibit D.)

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F. The Analysis of Impacts to Hydrology and Water Quality is Inadequate (Section 5.8).

1.) The DEIR Must Incorporate and Address Issues Identified by AEI Consultants.

AEI Consultants, an environmental and engineering services firm, reviewed Section 5.8 of the DEIR and has provided detailed comments in a letter addressed to the City, dated May 10, 2013. The AEI letter notes a number of deficiencies in Section 5.8 that must be further studied and expanded upon in a revised and recirculated DEIR. (Please see correspondence dated May 10, 2013 from Kent Vollmer of AEI, attached hereto as Exhibit E.)

03-50

In addition to the deficiencies identified by AEI, the DEIR must also be revised to include the following information.

2.) The DEIR Must Describe and Analyze What Happens as to the Water Quality Discharge Project Features in 2019 if No Community Sewer System Connection Is Then Available.

The DEIR very generally describes the fact that, ultimately, the proposed OWTS and seepage pits are proposed to be replaced by a connection to the Malibu community sewage treatment facility. (See DEIR page 5.8-28: the Project and all future development within the Civic Center area “must connect to the Civic Center wastewater treatment facility by 2019”). Other than indicating that this connection is anticipated to take place sometime prior to 2019, however, the DEIR says nothing about the future connection. For example, at page 5.3-11, the DEIR does not describe the sewage pipeline connection as a future “offsite improvement” whose development may impact biological resources.

03-51

More importantly, the DEIR does not (and must be revised to) comment on what happens as to the proposed residences and the on-site OWTS/seepage pits in the event that the Malibu plant is *not* built and/or that Malibu Civic Center residents vote *not* to connect to the community plant in Phase Two.

03-52

According to the LARWQCB’s November 2009 prohibition, like all existing residences in the Civic Center area, the new residential units can no longer make any wastewater discharges after 2019.

03-53

- What will happen to the Project residences at that point?

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- Are the anticipated “interim” water quality impacts expected to be any worse or aggravated simply because the interim system design may, in fact, become permanent? | 03-54
- Will the dwellings be abandoned? | 03-55
- Will treated effluent be trucked off-site? | 03-55
- What are the expected impacts of any of these eventualities? | 03-56

3.) Connection to the Community Sewer System is Speculative.

The DEIR provides little information about what the polluting discharges from the Project’s OWTS into the groundwater will be. The DEIR must quantify the projected amount of effluent from the five new residences and indicate the specific (average or peak flow) amounts of contaminants projected to be contained in the effluent before and after treatment. (Instead, it vaguely states that the OWTS will treat and disinfect the effluent before discharging it into the seepage pits, so that the projected biological oxygen demand (BOD) and total suspended solids (TSS) in the treated effluent are expected to be only 20 mg/l or less and the nitrate nitrogen concentrations would be only 10 mg/l or less.) | 03-57

Although expected contamination levels are not provided, the DEIR asserts that fecal/pathogen contamination “would be controlled by disinfection [and chlorination] of the effluent prior to discharge into the seepage pits and filtration through the subsurface.” (DEIR at page 5.8-25 and 27.) The lowest points of the seepage pits will be between 17 and 22 feet above the existing groundwater levels. (DEIR at page 5.8-25) These OWTS and seepage pits design features would allegedly “significantly reduce” the BOD, TSS and nitrate levels in the effluent from pre-treatment levels and they would “control” the fecal/pathogen contamination.” (DEIR at page 5.8-27.) Nonetheless, according to the DEIR, seepage of the treated effluent from the seepage pits into the groundwater “could result in increased levels of nitrogen and pathogens (fecal coliform)” and this projected “degradation may contribute to surface water quality issues.” (DEIR at page 5.8-25 and 27.) The DEIR then leaps to the conclusion that these water quality degradation impacts would not be “significant.” (DEIR at page 5.8-28.) More explanation regarding how this conclusion is reached must be included in the DEIR. | 03-58

4.) The DEIR Must Acknowledge and Analyze the Effect of the LARWQCB’s Prohibition and Questionable Approval.

Although the DEIR does not disclose or discuss it, the Project is not permitted to discharge wastewater at all during the interim period up to 2019. The LARWQCB’s November 2009 prohibition forbids any new discharges into the groundwater in the Malibu Civic Center area. The only express exception to this prohibition was for certain grandfathered “pipeline projects” that were | 03-59

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sufficiently through their entitlements process that they were to be treated as though they had already been constructed -- thereby allowing the wastewater discharges to continue temporarily until 2019. This "temporary" exemption was specifically limited only to the particular pipeline projects that were "read into the record" at the Board's November 9, 2009 public hearing. The Project was *not* specifically "read into the record," and, therefore, is not exempted from the prohibition.

03-59
cont'd

The Project's OWTS and seepage pits design presents a difficult approval problem for the LARWQCB and must be discussed and analyzed in the DEIR. The ultimate connections to the Malibu community sewer system are subject to a risky double contingency. Not only may the Phase One Malibu community sewage treatment facility for commercial properties never be built, but there is a reasonably strong chance that, if Phase One is built, it will not be extended by a 2/3 super-majority vote of the residents to include residential uses like the Project.

03-60

During the interim period before the connection, the proposed OWTS will be discharging treated effluent into seepage pits (onto Lot 7) which will adversely impact the groundwater with substantial pollutants. Due to the "double contingency" described above, this interim period could theoretically become a permanent situation.

03-61

The Project's reliance on an exemption from the Board's November 2009 prohibition has dubious legality.

5.) The DEIR Must Include Further Analysis of the Seepage Pits Intended for Lot 7.

There is no CEQA analysis of the seepage pits and no analysis of how the seepage pits may affect the adjacent public recreational uses. The DEIR must include discussion of and mitigation measures related to the public/private partnership as it relates to the maintenance of the seepage pits on Lot 7.

03-62

G. The Analysis of Impacts to Land Use and Planning is Inadequate (Section 5.9).

The Land Use and Planning section of the DEIR is incomplete and lacks details sufficient for meaningful public review and comment.

03-63

- The Project seeks to adopt development standards for the PD zone, as well as change the zoning and land use designation of the site to eliminate reference to visitor serving uses. This is the only site in Malibu zoned PD. It must be explained in the DEIR why the applicant is not pursuing a zone change to one of the existing residential zoning designations.

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- The proposed PD development standards do not conform with the City's residential development standards. In particular, the maximum allowed structure height is 28', or 10' higher than the allowed height in residential zones. If, however, the zone was changed to an R zone, the applicant would be required to seek a height variance for up to 28'. The DEIR must fully analyze the proposed 28' height and why the residences proposed for the PD zone deserve 10' more by right than all other residences in the City of Malibu.

03-64
- The DEIR must explain how the proposed 28' height would require a variance if the Project were located in an R zone and include an analysis of the variance findings that would need to be made.

03-65
- The DEIR must explain how the development standards for the PD zone differ from R development standards and the justification for the differences.

03-66
- The DEIR must explain how the proposed 28' height on a prominent blufftop is consistent with the applicable City and State rules and regulations. In fact, 28' high residences on a prominent bluff top are inconsistent with the General Plan, LCP, and Coastal Act and the DEIR is obligated to discuss mitigation measures to alleviate the significant impacts resulting from those inconsistencies.

03-67
- The DEIR must discuss and analyze how the Project results in the site changing from visitor serving to private residential and explain how that is consistent (or inconsistent) with applicable City and State rules, regulations, and policies.

03-68
- Leaving the zoning PD is misleading. The development standards proposed for the PD zone are inconsistent with all other residential zones in the City of Malibu. Now that no visitor serving uses are proposed for the site, it would appear that the PD zone is inapplicable to the current Project.

03-69
- The California Coastal Act prioritizes lower cost, visitor-serving and recreation facilities, including overnight accommodations, over residential uses. Malibu's own LUP states, "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred." The DEIR must address and analyze this issue.

03-70
- There is relevant historical background regarding visitor serving uses for the property, which the DEIR hardly acknowledges. The visitor serving uses originally intended for the site must be explained in detail in the Land Use and Planning section.

03-71
- The DEIR must provide a chart that compares the PD development standards to the development standards in existing R zones.

03-72

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- The DEIR must include more detail relating to the proposed deletion of LUP Policy 2.78 and explain why that is consistent (or inconsistent) with other LUP policies. | 03-73
- The DEIR must include a discussion of the proposed basements for Lots 1-5 and analysis of how the allowance of basement(s) and square footage is consistent (or inconsistent) with other regulations in existing R zones. | 03-74
- Proposed LCPA 12-001.2.C.3 states that an “onsite wastewater treatment system” is proposed for Lot 7. In other parts of the DEIR, it is explained that the OWTS is proposed for Lot 6 and that seepage pits are proposed for Lot 7. This inconsistency and/or error must be corrected or explained. | 03-75
- The DEIR must include a section explaining why or why not aspects of the Project might be considered “spot zoning.” | 03-76
- The DEIR must acknowledge and discuss how the Project results in changing land designated for public use to private use. | 03-77
- The DEIR must explain how the square footage is calculated for the homes and accessory structures proposed for Lots 1-5. | 03-78
- The DEIR must include an analysis of the incompatibility of the proposed private residential use with the immediate adjoining public / visitor serving / open space uses. | 03-79
- The DEIR must include an analysis of the incompatibility of the proposed private residential use with the current zoning and land use designation for the site. | 03-80

H. The Analysis of Impacts to Recreation is Inadequate (Section 5.12).

The Recreation section is a little over three pages in length and does not contain any meaningful information or analysis of the potential direct and indirect impacts that would result from expanding the adjacent Malibu Bluffs Park by adding and improving of 1.74 acres of the project site. The DEIR acknowledges on pages 5.12-2 and 3 that this additional recreational area has not been designed and, therefore, improvement and use of this area for active recreation areas and expanded parking are foreseeable future uses. However, the statement is made on Page 5.12-3 that “Throughout this | 03-81

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DEIR, both recreational options, the baseball field, or skate park, have been analyzed.” This statement is clearly not true, as evidenced in the comments on Section 5.3, Biological Resources, where potential impacts from night lighting of ballfields (or skate park), are not analyzed.² 03-81
cont'd

Even if these two alternative uses for this park expansion area were analyzed, as claimed, Section 5.12 also states this park expansion area may contain up to 94 parking spaces. The use of this parking and the indirect impacts from expanding the level of activity on the Malibu Bluffs Park is clearly foreseeable, but is not addressed in the DEIR. Section 5.12 provides a clearly conclusory analysis and states the expansion of the Bluffs Park would be a separate action by the City subject to the California Environmental Quality Act as justification for the inadequate analysis. 03-82

While the details of the use of this park expansion area are not available, the potential uses are defined and additional programmatic analysis of potential impacts can and must be provided to make the City’s EIR adequate under CEQA. As potentially significant impacts are likely to be identified, the City’s DEIR will need to be recirculated pursuant to CEQA Guidelines § 15088.5 for additional public review to allow for consultation with key trustee agencies, including the California Department of Fish and Wildlife and Santa Monica Mountains Conservancy, regarding appropriate mitigation for these potentially significant impacts. These potential impacts, including but not limited to, noise, light and glare, aesthetics, traffics, and pedestrian safety, were all identified in the responses to the Notice of Preparation from the Santa Monica Mountains and Gaines & Stacey, but are not analyzed, when clearly these potential impacts could be assessed. (Please see correspondence dated May 15, 2013 from Tony Locacciato of Meridian, attached hereto as Exhibit B.) 03-83

I. The Identification and Analysis of Project Alternatives is Inadequate (Section 7).

The requirement that an EIR identify and discuss alternatives to the project stems from the fundamental statutory policy that public agencies should require the implementation of feasible alternatives or feasible mitigation measures to reduce the project’s significant environmental impacts. Pub. Res. Code § 21002. The California Supreme Court has described the discussion of mitigation and alternatives as “the core of an EIR.” Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553, 564 (1990). 03-84

To implement the policy of reducing significant environmental impacts, CEQA requires that an EIR identify both feasible mitigation measures and feasible alternatives that could avoid or substantially lessen the project’s significant environmental effects. Pub. Res. Code §§ 21002, 21002.1(a), 21100(b)(4). According to the Guidelines, an EIR must describe a reasonable range of alternatives 03-85

² As noted herein, the problems with Lot 7 are pervasive. The inconsistencies and uncertainty throughout the DEIR render the DEIR wholly inadequate.
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to the proposed project, or to its location, that would feasibly attain most of the project's basic objectives while reducing or avoiding any of its significant effects. The DEIR must evaluate the comparative merits of those alternatives. See Guidelines, § 15126.6(a). 03-85
cont'd

- The DEIR is inadequate in its evaluation of alternatives. Labeling an "alternative" a design that is the same in all respects -- except the substitution of the skate park for a baseball field is misleading. The DEIR repeatedly says that the recreational use on Lot 7 is not part of the proposed Project. So, therefore, it is illogical that a slightly different recreational use (a skate park rather than a baseball field) can be considered an alternative to the Project when no recreational use is part of the Project. 03-86

- The entire alternatives analysis is fundamentally flawed. The primary two alternatives, DEIR Sections 7.3.1 and 7.3.2, incorporate specific uses (skate park and baseball field) that are speculative and rely on, presumably, the \$1 million payment from the proponent to the City. The alternatives proposed are for recreational uses that "are not part of the Project." Per CEQA, both of those alternatives are speculative and infeasible. See Guidelines § 15126.6(f)(1). Furthermore, it is incomprehensible and illogical to propose alleged alternatives for a component of the site that is not part of the Project. 03-87

- The project alternatives are infeasible and, therefore, inadequate per CEQA. In determining reasonable alternatives, one of the mandatory criteria is feasibility. See Guidelines § 15126.6. An alternative is infeasible if the site is not under the control or ownership of the proponent. See Guidelines § 15126.6(f)(1). In this case, Lot 7 will be under the ownership and control of the City of Malibu. Therefore, the alternatives that incorporate proposals for Lot 7 are inadequate under CEQA (*i.e.* two-story homes with skate park only alternative [7.3.1] and one-story homes with skate park or baseball field alternative [7.3.2]). The DEIR must be corrected to include feasible alternatives and incorporate additional alternatives that legitimately reduce the scope (not just change the design) of the Project. 03-88

- The Project must evaluate single story homes with less square footage. CEQA Guidelines § 15126.6(a) states that "the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project..." There are no reduced project alternatives in the DEIR. The single story alternative presented in the DEIR is very misleading. Instead, of a scaled down, smaller house with less square footage, it considers a one-story house with the same square footage. Of course this means that many of the impacts evaluated will have greater adverse effects for the one-story alternative because the grading and development build-out would be substantially wider. The alternative considered should have been smaller houses (in both height and bulk), not simply one-story houses. 03-89

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- The “no project” alternative purports to be based on the site plan from the prior development agreement, although the DEIR does not state this and it is unclear. The DEIR must be revised and clarified to conform with CEQA Guidelines § 15126.6(e)(3)(A)-(C). | 03-90
- Does the DEIR describe and evaluate as “foreseeable” all other features that were the subject of the prior development agreement? | 03-91
- Would the Coastal Commission likely have approved the alternative proposal considered? | 03-92
- Under the prior development agreement, the public would have obtained a 10-acre public park. What would the public receive under the “no project” alternative described in the DEIR? If the answer is something substantially less than under the prior development agreement, then it is not an accurate “no project” alternative. | 03-93
- The DEIR must evaluate an alternative for a visitor serving use associated with the Rancho Malibu Hotel. | 03-94
- The DEIR must evaluate an alternative for a full active and/or passive recreational use. | 03-95
- The DEIR must evaluate an alternative that addresses how zoning can limit the size of the residences. | 03-96
- The DEIR must evaluate an alternative that is an equestrian center. | 03-97
- The DEIR must include an alternative that lessens or avoids any of the significant effects of the Project. See Guidelines § 15126.6. | 03-98

CEQA is clear that an EIR must include a discussion of reasonable and realistic project alternatives so that decision-makers will be provided with adequate information about the range of options available to reduce or avoid environmental impacts. Laurel Heights Improvement Ass’s v. Regents of Univ. of Cal., 47 Cal.3d 376, 403 (1988). The subject DEIR does not meet that mandate and, therefore, must be revised and recirculated. | 03-99

J. The DEIR Does Not Include Issues Raised During the Scoping for the Project.

A number of issues raised during the scoping for the Project are not evaluated, nor hardly even mentioned, in the DEIR. Some of those issues are discussed above. Additional issues that were raised during the scoping and that must, therefore, be addressed in the DEIR include: | 03-100

- The Rancho Malibu Hotel site is the only remaining commercial visitor serving site in the City on which a hotel may be built under the City’s current zoning laws. In fact, a hotel and related facilities have already been approved for the site (CUP No. 2446 and CDP No. 5-85-

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| 418). Development of the Crummer site as proposed would dramatically limit the viability of the Rancho Malibu Hotel by impacting the environment in ways which may be unmitigatable. | 03-100
cont'd |
| • The proposed 28' height clearly is more than 10' higher than the maximum height allowed pursuant to the City's Residential Development Standards. If this project was not processed as a PD, the City would be required to process a zone change or make variance findings to permit a height above 18'. It is likely that the City would be unable to make those variance findings. This issue must be fully evaluated in the DEIR. | 03-101 |
| • The DEIR must analyze the impacts associated with OWTS seepage pits located on future public property designated for public passive and active recreational use. | 03-102 |
| • The DEIR must study the fact that the proposed Homeowners Association would be responsible for repair and maintenance of the seepage pits on Lot 7. | 03-103 |
| • A section in the DEIR must be dedicated to how the proposed Project will affect the ability of the City to provide required visitor serving uses as set forth in the Coastal Act and in all applicable Coastal Commission and City Planning documents. | 03-104 |
| • The DEIR must analyze the effect of the Project on access to the shore from planned visitor serving uses. | 03-105 |
| • The DEIR must discuss how the Project conflicts with various provisions of the General Plan, Malibu Municipal Code, and LCP goals and policies that were adopted for purposes of avoiding and mitigating environmental effects. The City of Malibu Zoning Map, LCP Land Use Map and General Plan Land Use Map designate the project site PD, Planned Development. The PD designation "is intended to provide for a mix of residential and recreational development of the Crummer Trust property [project site] located east of Malibu Bluffs State Park and south of Pacific Coast Highway." The proposed Project includes the dedication of land with recreational and parking lot uses to the City of Malibu for recreational purposes. A dedication of land to the City for purposes of fulfilling the recreation component of the PD is contrary to the "mixed use" intent of the PD. | 03-106 |

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III.

CONCLUSION.

In conclusion, a flawed and incomplete Project Description results in a wholly inadequate DEIR. In a number of areas, the DEIR does not properly disclose, describe and analyze impacts of implementation of the Project. Since impacts have not been adequately disclosed or analyzed, the Mitigation Measures proposed are inapplicable or insufficient to mitigate the significant environmental impacts of the Project. As a result of the lack of disclosure, analysis and mitigation, the City is required to further revise and recirculate the DEIR pursuant to CEQA.

03-107

On behalf of Green Acres, we respectfully submit these comments and look forward to responses and a more meaningful analysis of the Project in a revised and recirculated EIR. Please continue to include this law firm on the City's notification list for any future documents and public hearing notices regarding this matter. Thank you for your consideration.

Sincerely,

GAINES & STACEY LLP

By *Fred Gaines*
FRED GAINES *by TDE*

Enclosures

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Exhibit A

Henry Lenny comment letter dated May 13, 2103 and responses are provided as Letter R9, herein.

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Exhibit B

Meridian Consultants comment letter dated May 15, 2103 and responses are provided as Letter O5, herein.

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Exhibit C

**ESA comment letter dated May 16, 2103 and responses
are provided as Letter O2, herein.**

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Exhibit D

Geosoils Consultants, Inc. comment letter dated May 13, 2103 and responses are provided as Letter O10, herein.

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Exhibit E

**AEI Consultants comment letter dated May 10, 2103
and responses are provided as Letter O1, herein.**

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O3. Response to Comments from Gaines and Stacey, LLP, dated May 20, 2013.

Responses are based in part on the following technical report(s) prepared in response to comments:

- Arch Beach Consulting. 2013, September. Revised Traffic Impact Analysis Crummer Site Subdivision City Of Malibu, CA.
- Earth Forensics, Inc. 2013, May. Hydrogeological Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site,” 24108, 24120, 24134, 24150, 24174 Pacific Coast Highway, City of Malibu, California.
- ENSIU, Engineering Inc. 2013, July. Crummer Residential Project Located at 24120 (aka 24200) Pacific Coast Highway, Malibu, CA – Response to Comments to DEIR.
- Glenn Lukos Associates, Inc. (GLA). 2013, July. Biological Resources Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site”, 24108, 24120, 24134, 24150, 24174 Pacific Coast Highway, City of Malibu, California
- GLA. 2013, September. Responses to Comments
- Historical, Environmental, Archaeological, Research, Team (HEART). 2013, June. Updated Phase 1 Archaeological Study and Cultural Resource Sensitivity Testing for a portion of a 24-Acre parcel located at 24200 Pacific Coast Highway (APN No’s 4458-018-002, 4458-018-018 and, 4458-018-019) City of Malibu, Los Angeles County, California (CONFIDENTIAL).
- Lawrence Young, Registered Environmental Health Specialist. 2013, July. The Crummer Site Subdivision Project 24200 Pacific Coast Hwy., Malibu, CA 90265
- Leighton and Associates, Inc. 2013, July. Geotechnical Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site,” 24108, 24120, 24134, 24150 and 24174 Pacific Coast Highway, City of Malibu, California.
- Psomas Civil Engineering. 2013a, July. Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site”, Lots 1 through 5, 24108, 24120, 24134, 24150 and 24174 Pacific Coast Highway, City of Malibu, California.
- Psomas. 2013b, September. Civil Engineering Responses to Comment to City of Malibu Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site,” Lots 1 through 5, 24108, 24120, 24134, 24150 and 24174 Pacific Coast Highway, City of Malibu, California
- S.A. Johnson Architectural Simulation. 2013, September. Malibu Coast Estates: Visual Simulations Supplemental Report.

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- O3-1 This comment is a set of general introductory remarks. In paragraph 1, the commenter broadly asserts that the DEIR is fatally flawed and must be recirculated. The DEIR comprehensively assesses the significant environmental effects of the project, a reasonable range of alternatives to the proposed project, and feasible mitigation measures to reduce and avoid significant environmental impacts, and therefore the DEIR is not flawed and does not need to be recirculated (See remaining responses to comments).
- O3-2 These citations are noted and will be provided to the County decisionmakers for their consideration.
- O3-3 These comments are arguments with no facts or evidence to support the opinions stated. The commenter is referred to the General Responses in Chapter 2 of this FEIR.
- O3-4 The first paragraph of the comment cites various statutes, regulations, and cases relating to the adequacy of a project description under CEQA.

In the second full paragraph the commenter asserts the DEIR did not evaluate all the intended for Lot 7 so the “whole” of the action.

Section 3 of the DEIR, *Project Description*, clearly describes related project components. Page 3-10 states: “The proposed project entails the subdivision of the project site into seven individual lots. Lots 1 through 5 would be developed with single-family residences and various accessory structures. Lot 6 would be developed with a private gated street, a gatehouse, an onsite wastewater treatment system (OWTS), landscaping, and open space to be owned and maintained by the homeowners association (HOA). Lot 7 would be dedicated to the City of Malibu for active and passive recreational use.” The project description proceeds to list all relevant parts of a project, including reasonably foreseeable future expansion or other activities that are part of the project. *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.* (1988) 47 C3d 376, 253 CR 426. Page 3-19 discusses at length the dedication of Lot 7, and notes the possible uses of the property, and Page 3-1 notes that one of the Project’s objectives is to “Dedicate land sufficient for the City of Malibu to expand Bluffs park and design a recreational facility that meets the community’s needs for active recreation.” Please refer to General Response to Comment 2.2, *Project Description*.

- O3-05 This comment inquires about timing and payment of fees for future development of recreational uses on Lot 7. This comment does not raise a specific question about a significant environmental issue. The CEQA Guidelines broadly define the term “project” as meaning “the whole of an action, which has a potential for resulting in ... a direct physical change in the environment,” and that the project description must include “[a] statement briefly describing the intended uses of the EIR.” Guidelines, Sections 15378(a), 15124. Referencing the dedication of the land to the City provides adequate notice to interested persons of its relevance in the decision making process for the

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project. *Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892, 909-10. The timing and payment of the fees for future development of recreational uses on Lot 7 are not germane to an analysis of the project's potential environmental impacts. See *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 927, citing Guidelines, Section 15124 (project description should not supply extensive detail beyond that needed for evaluation and review of environmental impacts); Pub. Resources Code, Section 21083.1 (Guidelines are not to be interpreted to impose procedural or substantive requirements beyond those explicitly stated in the Guidelines).

Prior to recordation of the final map, the applicant/property owner shall remit a voluntary additional public benefit to the City in the amount of \$1 million dollars to fund the future infrastructure on Lot 7. The applicant initially agreed to fund the development of Lot 7; however, because the recreation area has yet to be designed, because development of Lot 7 does not share the same timeline as the proposed project, and because it is not included in the project scope of work, the applicant has agreed to a voluntary additional public benefit of \$1 million dollars to the City to fund the future infrastructure on Lot 7. Page 3-19 discusses at length the dedication of Lot 7, and notes the possible uses of the property, and Page 3-1 notes that one of the Project's objectives is to "Dedicate land sufficient for the City of Malibu to expand Bluffs park and design a recreational facility that meets the community's needs for active recreation."

- O3-6 The commenter mistakenly believes that the DEIR defers analysis of recreational uses until a later unspecified date. According to the CEQA Guidelines, "In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project." (CEQA Guidelines Section 15064(d), emphasis added). The CEQA Guidelines then further define the term "indirect physical change" as follows: "An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable." (CEQA Guidelines Section 15064(d)(3)).

A project description must include all relevant parts of a project, including reasonably foreseeable future expansion or other activities that are part of the project. *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.* (1988) 47 C3d 376, 253 CR 426.

The project includes the dedication Lot 7 to the City of Malibu to expand the portion of Malibu Bluffs Park by 1.74 acres to the east and northeast. Although no recreational improvements would be permitted as part of the applicant's current proposal the land dedication is intended to expand Malibu Bluffs Park. The 2012 Parks and Recreation Master Plan found that Malibu Bluffs Park is heavily used, and onsite parking lot does not adequately serve park patrons during peak times. Therefore, active recreation areas,

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passive recreation areas, and an expanded parking lot are all foreseeable future uses. A recreational area may be developed as a baseball field or a skate park in the future. As such, these recreational uses were evaluated, to the extent feasible, in the Draft EIR. The proposed site plans for both possible recreational uses were provided in Figures 3-8, Grading Plan with Baseball Field Option, and 3-9, Grading Plan with Skate Park Option.

- O3-7 Refer to Response to Comment O3-4
- O3-8 The commenter broadly asserts that the DEIR evaluates some of the proposed Lot 7 uses, but not all uses for Lot 7 and claims that the project scope is confusing and misleading. See Responses to Comments O3-4 to O3-06. All relevant parts of the project, including foreseeable uses for Lot 7, are included in the project description. O3-9 See Response to Comment O3-4. All relevant parts of the project, including foreseeable uses for Lot 7, are included in the project description.
- O3-10 The seepage pits will have no effect on the adjacent public recreational uses. The seepage pits will be constructed entirely below ground. At no point will the treated and disinfected effluent surface or make human contact. Therefore no mitigation measures will be necessary.
- O3-11 DEIR Section 4.2.3, *History of the Project Site and Surrounding Area* details why the LCP as adopted on September 13, 2002 contained an internal inconsistency with respect to the zoning designation of the project site. The project's consistency with LUP policies is further discussed in detail in DEIR Section 5.9, *Land Use*. A detailed analysis of the proposed project's consistency with the applicable goals and policies of the various elements of the General Plan is provided in Table 5.9-1, *General Plan Consistency Analysis*. The analysis concludes that the proposed project would be consistent with the applicable goals and policies of the General Plan. As shown in Table 5.9-3, *Local Coastal Program Consistency*, the analysis concludes that the proposed project would be consistent with the major applicable goals and policies of the LCP. The project's consistency with the SCAQMD's Air Quality Management Plan is discussed in Section 5.2, Air Quality. Section 5.8, Hydrology and Water Quality discusses that new discharges from onsite wastewater disposal systems are prohibited within the Malibu Civic Center area under Los Angeles RWQCB Resolution R4-2009-007, issued in November 2009. The prohibition was issued in response to impairment of several water bodies in the Malibu area with contaminants, including coliform bacteria and indicator bacteria. However, the section also explains that the proposed project is one of a few projects excepted from the prohibition because those projects had already progressed through the entitlement process. Therefore, the DEIRs environmental setting sections are adequate pursuant to CEQA Guidelines Section 15125.

See also General Response 2.1.

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O3-12 Refer to General Response 2.1.

The term "project" refers to the whole of an action and to the underlying activity being approved, not to each governmental approval. (CEQA Guidelines Section 15378(a), (c)-(d)). To ensure that the whole of the action is considered, project descriptions must give an accurate view of the project as a whole, revealing any indirect or ultimate environmental effects of the activity being approved. See, e.g., McQueen v Board of Directors, 202 CA3d 1136 (1988)(district improperly defined its proposed activity as acquisition of surplus federal lands for open space but did not describe steps that would have to be taken to clean up and dispose of environmental contaminants on site).

In *City of Redlands v County of San Bernardino*, 96 Cal.App.4th (2002) the County of San Bernardino failed to adequately consider future development in making its determination to adopt a negative declaration when it modified its general plan relating to land use regulation within its sphere of influence. By adopting the general plan amendments, the County made substantive changes to the County's policies and procedures in making land use and development decisions involving unincorporated territory within a city's sphere of influence. The County did not provide evidence to show how a shift in policy would have little or no effect on the environment. The Court found that by failing to accurately describe the agency action and by deferring full environmental assessment of the consequences (by failing to consider reasonably anticipated future development) the County failed to comply with CEQA's policy and requirements.

Here, the DEIR (in Section 4 and Section 5.9) explains the inconsistency between Policy 2.78 (which incorrectly presumes that the Crummer Trust site is designated CV-2) and the adopted LIP (in which the Commission designated the property Planned Development (PD) on all the LIP Land Use and Zoning Maps as well as in the actual definitions of Planned Development found in LUP 5.C.2). Next, the DEIR analyses the environmental impacts of all reasonably anticipated future development for Lots 1-6 and Lot 7. As stated on page 3-9 of DEIR, although no recreational improvements would be permitted as part of the applicant's current proposal, the dedication of Lot 7 is intended to expand Malibu Bluffs Park. The LCPA and corollary zoning text amendment are being requested—including language that specifies the type, density and intensity of development permitted in the PD zoning designation for Lots 1-7. The LCPA (LCPA No. 12-001) and zoning text amendment (ZTA No. 12-001) propose to omit LUP Policy 2.78, amend LUP Chapter 6 Land Use Designations, and incorporate the Planned Development Ordinance in the Local Coastal Program and the M.M.C.. Therefore, active recreation areas, passive recreation areas, and an expanded parking lot are all foreseeable future uses. The City believes that the recreational area may be used as a baseball field or a skate park. As such, these recreational uses were evaluated in the Draft EIR.

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- O3-13 The applicant intends to convey ownership of the land beneath ground level where the proposed seepage pits will be located to the homeowners association (HOA). The land above the top (cap) of the seepage pits and the other land applicant intends to include in the land donation would be owned in fee by the City of Malibu, subject to an easement for the benefit of the HOA reserved across the land donated to the City of Malibu for access to the seepage pits for the purposes of repair and maintenance of the seepage pits. The seepage pits would have metal caps located below grade. This would enable the City to cover the seepage pit area with lawn or other material, provided whatever material is used can be removed and replaced at the expense of the HOA, in the event access is needed by the HOA to the seepage pits. In the event the seepage pits are no longer required for the support of the OWTS, the seepage pits can be de-commissioned by the HOA and the easement and title to the land where the seepage pits are located quitclaimed to the City. The project will be required to tie into the City's Civic Center treatment plant so that, in the future, the seepage pits will no longer be needed and the land will be quitclaimed back to the City.

CEQA does not require an analysis in the EIR of each and every activity carried out in conjunction with a project. *Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892, 909-10. The EIR references the public/private ownerships of Lot 7, which provides adequate notice to interested persons of its relevance in the decision making process for the project. The commenter's concerns regarding on-going maintenance and liability requirements for the OWTS are not germane to an analysis of the project's potential environmental impacts, and no further response is required.

- O3-14 **Page 3-1, Section 3.3.1, *Project Background*, of the DEIR is hereby modified as follows:**

In July 2009, a zoning map amendment and general plan map amendment were processed to correct the land use designation from RR2 to PD in order to be consistent with the LCP Land Use Maps.

Page 3-9, Section 3.3.2, *Existing Land Use and Zoning*, of the DEIR is hereby modified as follows:

The City of Malibu General Plan was amended on July 13, ~~2008~~ 2009, to designate the project site as PD. The project site is also under the purview of the City of Malibu LCP. The Malibu Municipal Code (M.M.C.) Zoning Map and the LCP Land Use Zoning Map designate the project site as PD.

- O3-15 Refer to Response to Comment O3-4. The project description is clear and adequate because it identifies the specific project covered by the DEIR. Under the heading "Dedication of Parkland" on page 3-19, of Section 3, *Project Description*, the potential parking lot is clearly described. Likewise, on page 3-10 under the heading "Onsite Wastewater Treatment System" the DEIR describes the location of the seepage pits

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“Clean effluent from the OWTS Package Plant would be discharged to seepage pits in the southernmost portion of Lot 7 along Winter Mesa Drive.” Please refer to General Response to Comment 2.2.

- O3-16 Refer to Response to Comment O3-4. Under the heading “Onsite Wastewater Treatment System” the Project Description clearly states that the HOA would own and be responsible for the operation and maintenance of the OWTS and the seepage pits. The comment expresses the commenter’s opinion that information about the seepage pits should be provided every time Lot 7 is mentioned in the document.
- O3-17 In comment O3-6 the commenter argues that “the absence of fully evaluating future recreational uses of Lot 7 is unacceptable and constitutes project splitting” while in this comment the commenter states that “Page 3-19 "Dedication of Parkland" insufficiently describes a dedication of land for which the proposed use is speculative.” Refer to Response to Comment O3-16.
- O3-18 Refer to General Response 2.1, *Project Description* and Responses to Comments O3-06 and O3-12.
- O3-19 Refer to Response to Comment O3-12.
- O3-20 The requested information has been added to Section 4.2.3 *History of the Project Site and Surrounding Area* (which is cross referenced in Section 3.31, Project Background).

Page4-4, 4.2.3 *History of the Project Site and Surrounding Area* of the DEIR is hereby modified as follows:

In 2010, LCPA 08-006 went to the CCC to omit LUP Policy 2.78; however, the City of Malibu did not accept the changes made by the CCC. On December 8, 2008, the City Council adopted Resolution No. 08-68 and Ordinance No. 333 adopting an amendment to the LCP to remove LUP Policy 2.78 and to make two corollary changes in the LCP to correct inconsistencies between the LUP and LIP related to this policy.

On February 11, 2010, the CCC held a public hearing and discussed suggested modifications to the City’s proposed amendment. On April 16, 2010, the CCC conditionally certified the amendment with modifications; however, formal adoption of the modifications to the amendment required action by the Malibu City Council. The City had to take action on the CCC’s suggested modifications six months from the date of the CCC’s action or the suggested modifications expire. The expiration date for the suggested modifications was August 11, 2010. On July 26, 2010, Council decided to allow LCPA to expire and not accept CCC changes; therefore, LCPA 08-006 is considered expired and the proposed project includes a new LCPA (LCPA 12-001) and corollary ZTA (ZTA 12-001).

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- O3-21 The proposed project would increase the overall housing stock in the City of Malibu, thereby achieving this objective.
- O3-22 The objective is to *dedicate land sufficient for the City of Malibu to expand Malibu Bluffs Park* and design a recreational facility that meets the community's needs for active recreation. These comments are arguments with no facts or evidence to support the opinions stated.
- O3-23 The commenter is expressing his opinion that the height is excessive. The City's maximum height limit is not 18 feet. As stated on page 5.1-4 of the DEIR, per M.M.C. Section 17.62.060, a site plan review (SPR) is required for all non-beachfront construction in excess of 18 feet up to a maximum height of 28 feet with a pitched roof.
- O3-24 The commenter broadly asserts that the project is inconsistent “with a number of City and State land use regulations” as follows:

Building Height. The commenter falsely claims that “this is the only area in Malibu that a 28’ building would be allowed by right if the PD standards are approved.” Code Section 17.40.040 “Residential development standards”, subsection A(5)b states that for “new construction on a beachfront lot, no residence or structure, including satellite dish antenna, shall exceed twenty-four (24) feet for flat roof and twenty-eight (28) feet for pitched roof, as measured from the lowest recommended finish floor elevation on the ocean side...”

Public Access to Shore. The project site provides no public access to the shore and development of the project site would not impact access to the shore.

Visitor Serving Uses. Chapter 1 of the General Plan, (1.5.4 Commercial Visitor Serving (CV)) and Municipal Code Section 17.28.010 define the CV designation as providing for visitor serving uses which serve visitors and residents such as hotels and restaurants which respect the rural character and natural environmental setting.

As discussed in the Response to Comment O3-12 and O3-14, LCP policy 2.87 incorrectly presumes that the project site is designated CV-2. When the Coastal Commission adopted the LIP, the Commission designated the property Planned Development (PD) on all the LIP Land Use and Zoning Maps as well as in the actual definitions of Planned Development found in LUP 5.C.2 – New Development, Land Use Policies, Land Use Designations and in LIP 3.3(Q)(1) - Zoning Designations and Permitted Uses. PD makes sense for this parcel because it is immediately surrounded by residential and recreational uses and the PD designation allows development with a mix of residential and recreational development.

LUP Policies. The project's consistency with LUP policies is discussed in detail in DEIR Section 5.9, *Land Use*. A detailed analysis of the proposed project's consistency

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with the applicable goals and policies of the various elements of the General Plan is provided in Table 5.9-1, *General Plan Consistency Analysis*. The analysis concludes that the proposed project would be consistent with the applicable goals and policies of the general plan. As shown in Table 5.9-3, *Local Coastal Program Consistency*, the analysis concludes that the proposed project would be consistent with the major applicable goals and policies of the LCP.

- O3-25 The commenter expresses the opinion that bluewater views are not preserved by the project and that smaller homes limited to an 18-foot height would better meet the project's objectives. See General Response 2.3, Aesthetics and Response to Comment R-9.
- O3-26 Responses to the Henry Lenny Design Studios comment letter are provided in Response to Comments R-9.
- O3-27 The commenter requests that the DEIR be revised to include additional graphics and information explain how the project obstructs public and private ocean views.

Section 5.1, *Aesthetics*, DEIR concludes that the potential for the proposed project to alter scenic resources is less than significant and the potential for the proposed project to alter the visual appearance of the project site is also less than significant. While the DEIR acknowledges that "the proposed project would alter the skyline of the bluff and would create buildings prominent from this vantage in an area where no buildings currently exist" the DEIR nevertheless concludes that the proposed project "would not affect the primary visual resources of PCH, namely the views of the ocean to the south and mountains to the north."

On May 6, 2013, City of Malibu's Planning Commission held a hearing to provide the general public and the Planning Commissioners an opportunity to comment on the DEIR. In addition, the City received written comments to the DEIR during the public comment period. A number of comments were received requesting that the City provide visual simulations from additional public viewpoints. In addition, a number of comments requested that the EIR analyze another alternative, which would include a mixture of reducing the height, density (square footage) and massing of some of the residences in the proposed project to address concerns about visual impacts. Based on the comments to the DEIR, the Planning Department requested visual simulations to be provided from twelve (12) additional locations as shown on Appendix A attached hereto, seven (7) of which are from public viewpoints, and five locations are on the campus of Pepperdine University (the "Additional Locations"). The five locations on the Pepperdine University campus were selected by the University, which provided consultant with GPS coordinates for each of these locations. Although Pepperdine University is private property, the locations were selected based on a combination of their use (foot and vehicular traffic etc.) and their location for important University

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related or sponsored events. Photographs were taken from the Additional Location on June 17, 2013.

- O3-28 The commenter asserts that the “DEIR must acknowledge rights and impacts to public views of the Pacific Ocean under applicable State and City laws.”

The commenter is referred to General Response 2.3.2. The DEIR’s findings are supported by substantial evidence by the Revised View Simulation Report discussed in General Response 2.3.

The DEIR is an informational document that will be considered by the City as lead agency prior to its approval or disapproval of the proposed project. The authority to make a determination regarding the project’s aesthetic and land use impacts rests with the lead agency, as discussed in the DEIR’s executive summary. These comments are noted and will be provided to the City decisionmakers for their consideration.

- O3-29 The proposed project site does not impact public rights of way; see General Response 2.3.

- O3-30 The DEIR’s view simulations included mature landscaping. As stated on DEIR page 5.1-24, the simulated views in Figures 5.1-4 through 5.1-18 include simulations of the proposed landscaping at maturity from 5 to 20 years for slower growing species. As shown in the view simulations, the project would not block any significant scenic resources from public viewsheds or from protected private view corridors. Please refer to General Response 2.3 which includes a Revised View Simulation Report and view simulations.

- O3-31 The commenter asserts that the DEIR “must include an analysis that shows the balancing of the goal of preserving public views of the Pacific Ocean with providing five mansion-sized private residences.” As set forth in Section 15124 of the CEQA Guidelines, project objectives must be included within an EIR’s project description, and should include the underlying purpose of the project. Such objectives are typically set forth as a list of goals and aspirations that reflect the project’s purpose. Guidelines Section 15124(b) states that a “clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives”, not how to balance the project with its goal as asserted by the commenter.

- O3-32 The DEIR’s analysis in Section 5.1, *Aesthetics*, concluded that after implementation of regulatory requirements and standard conditions of approval, all impacts related to aesthetics would be less than significant. Mitigation measures are not required for impacts that are less than significant (CEQA Guidelines Section 15126.4). In response to comments, an additional Reduced Project Size Alternative has been added to Chapter 7. Please see General Response 2.3 and revised Chapter 7, *Alternatives to the Proposed Project*, in FEIR Appendix E.

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- O3-33 Relevant view protection policies and ordinances are provided in Section 5.1, Aesthetics and are summarized in subsection 5.1.5 Existing Regulations and Standard Conditions.
- O3-34 The DEIR's analysis in Section 5.1, *Aesthetics*, concluded that after implementation of regulatory requirements and standard conditions of approval, all impacts related to aesthetics would be less than significant. Mitigation measures are not required for impacts that are less than significant (CEQA Guidelines Section 15126.4). The list of "standard mitigation measures" enumerated by the commenter consists of existing regulations in LIP and Municipal Code, as well as standard conditions that the project is subject to with, or without, CEQA. No new mitigation measures are necessary.
- O3-35 See Response to Comment O3-28 and O3-34.
- O3-36 CITY: The DEIR must review the history, research, and staff reports behind these new City ordinances and study whether any aspects of the Crummer site Subdivision conflict with the City's view related findings and new legal requirements
- O3-37 The Santa Monica Mountains Conservancy (SMMC) addressed a number of concerns regarding potential biological impacts that could be associated with the project. These are summarized as follows with the summary also including the Response wherein each of these concerns is addressed in the Responses to Comments:
- Maintenance of wildlife connectivity between the Malibu Bluffs and open space areas northeast of Pepperdine University (see Response 03-39)
 - Whether portions of the project site should be considered ESHA (see Response 03-40)
 - Need for and status of Conservation Easement (see Responses R4-39)
 - Discussion of Potential Fuel Modification Zone impacts (see Section 5.3.1 of DEIR that includes a complete analysis of potential FMZ impacts as well as Responses A1-9 and A1-11).
 - Potential impacts to raptor foraging (see Response 03-43 that shows no significant impacts to raptor foraging)
 - Potential edge effects on Malibu Bluffs Park associated with project fencing and domestic cats (see Responses A1-19 and 03-41) that show no significant impacts would occur from the project).
 - Potential impacts associated with introduction of non-native invasive plant species (see Response A1-6 and A1-7, which includes standard conditions from the City of Malibu restricting the use of non-native invasive species.)

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- Potential indirect impacts to biological resources on the Malibu Bluffs Conservancy property associated with night lighting (see Response 03-42)
- O3-38 The Santa Monica Mountains Conservancy (SMMC) comments that responded to the Notice of Preparation for the project addressed a number of issues including:

The role of the site in providing wildlife movement between the Malibu Bluffs and open space north of Pepperdine University. This comment is addressed in detail in Responses O3-39 and R4-23.

- Whether the site (or portions thereof) should be designated ESHA, which is addressed in Responses O3-40 and A1-9.
- Conservation Easements, which is addressed in Response O5-2.
- Fuel Modification Impacts, which is fully addressed for the Single Story Alternative and the proposed project in GLA's March 12, 2013 "Revised Update".
- Raptor Foraging, which is addressed in Response O3-43.
- Domestic cats and their potential for affect wildlife, which is addressed in Response O3-41.
- Weeds/Invasive Species, which is addressed by the project landscaping plan that prohibits use of non-native invasive species.
- Night lighting and potential indirect impacts to wildlife, which is address in Response O3-42.

As such, all of the issues raised by the SMMC have been addressed and significant impacts to biological resources have not been identified with any of the issues raised.

- O3-39 In considering the importance of the project site as a potential area that provides for wildlife movement between areas of open space to the north of Pepperdine University and the Malibu Bluffs, it is necessary to consider each group of species separately.

Avifauna

Avifauna (birds) observed on the site consists of both resident species and migratory species. The majority of resident species observed on the site (e.g., northern mockingbird, scrub jay, American crow, common raven, black phoebe, mourning dove, American robin, bushtit, Anna's hummingbird, Allen's hummingbird, California towhee, spotted towhee, etc.) are urban adapted and are able to move through a variety of landscapes, both natural and developed. The proposed development would have no

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effect on the ability of resident avifauna to disperse to and from the site. Migratory species, such as the violet green swallow, northern rough-winged swallow, western kingbird, etc.,) have the ability to migrate hundreds of miles, and the proposed development would have no impact of dispersal of these species, to the extent that they utilize the site. The proposed project would not result in significant impacts to avian movement.

Large Mammals

The only large mammals common to the Santa Monica Mountains and with potential to use the site are the coyote and the bobcat. The coyote is highly urban adapted and will have no problem moving between the Malibu Bluffs open space and areas to the north either through the Puerco Canyon environs to the west of the project site, across Pepperdine University (including the large turf area mostly at night) or through the project site at build-out. At build-out, the project site will retain an approximately 200-foot wide area of undeveloped land, mostly consisting of native vegetation, along the southern and eastern boundaries of the site, providing a “corridor”, portions of which would be subject to a conservation easement (See Response to Comment R4-39) and associated long-term protection and management, that would allow movement of both coyotes and bobcats. Therefore, the project would not result in significant impacts to large mammal movement.

Small Mammals

Impact Sciences identified a number of common small mammals that occur, or have potential to occur on the site, which are also expected to occur in the adjacent Malibu Bluffs open space, including Virginia opossum, common raccoon, striped skunk, long-tailed weasel, ornate shrew, broad-footed mole, western harvest mouse, deer mouse, California mouse, brush mouse, and California vole. Movement of these species across Pacific Coast Highway is already restricted by the four-lane highway and the project would not measurably affect such movement. As noted for large mammals, small mammals would still have the ability (to the extent that they do so now, which is very limited) to move from the Malibu Bluffs in the Puerco Canyon environs as well as from the eastern portion of the property, which will remain in open space, portions of which would be subject to a conservation easement and associated long-term protection and management. The project would not result in significant impacts to small mammal movement.

Reptiles

Impact Sciences identified a number of common reptiles that occur on the site or have potential to occur, which are also expected to occur in the adjacent Malibu Bluffs open space, include side-blotched lizard, and western fence lizard, southern alligator lizard, gopher snake, common kingsnake, and southern Pacific rattlesnake. Movement of these

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species across Pacific Coast Highway is already restricted by the four-lane highway and the project would not measurably affect such movement. As noted for small mammals, reptiles would still have the ability (to the extent that they do now, which is very limited) to move from the Malibu Bluffs in the Puerco Canyon environs as well as from the eastern portion of the property, which will remain in open space. The project would not result in significant impacts to reptile movement.

Therefore, the proposed project will not create impacts to wildlife movement. However, in deference to concerns about biological connectivity between the project site and the adjacent portion of Bluffs Park owned by the Santa Monica Mountains Conservancy (SMMC), the prior owner of the site had voluntarily agreed to provide a conservation easement over approximately 6.23 acres of the project site, consisting of the southern and eastern bluffs (including the western and central swale/gully feature and a portion of the project site. See further description of proposed conservation easement in response to Comment R4-39. The current owner has agreed to offer to dedicate the conservation easement over the same area pursuant to the same terms and conditions.

O3-40

As previously noted, the project site does not support any biological resources that can be considered to be rare, especially valuable, and easily disturbed or degraded by human activities or the proposed development of the site. As observed by Impact Sciences and confirmed by GLA, the southern, southwestern, eastern and northern boundaries of the project site contain native plant communities; however, no special-status species covered by the Malibu LIP were observed on the site. The Catalina mariposa lilies located near the eastern boundary are CNPS List 4, as is the Southern California black walnut, both of which are located in areas that will not be affected by project grading. Section 4.3 B of Malibu's LUP contains six habitats that are considered ESHA. None of those habitats exist on the project site and therefore designating the site as ESHA is not warranted, based on the biological conditions on the site. Furthermore, as noted in the DEIR discussion on pages 5.3-27 and -28 that the project site is not designated ESHA by the City, which based its determination on the following criteria listed in Section 4.3 of the City of Malibu Local Implementation Program (LIP), Adopted by the California Coastal Commission on September 13, 2002.

1. *Any habitat area that is rare or especially valuable from a local, regional, or statewide basis*
2. *Any habitat area that contributes to the viability of plant or animal species that are designated or are candidates for listing as rare, threatened, or endangered under State or Federal law*
3. *Any habitat area that contributes to the viability of species that are designated "fully protected" or "species of special concern" under State law or regulations.*
4. *Any habitat area that contributes to the viability of species for which there is other compelling evidence of rarity, for example plant species eligible for state listing as demonstrated by their designation as "1b" (Rare or endangered in California and*

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elsewhere) or designation as “2” (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society,

5. *Any designated Area of Special Biological Significance, or Marine Protected Area.*
6. *Streams.*

As noted by all of the biological surveys conducted for the site, none of the above LIP criteria are met for the site and the City’s determination that the site does not include ESHA is confirmed.

- 03-41 While potential presence of domestic cats does exhibit potential for impacts to native avifauna, small mammals and reptiles, such impacts would not be considered significant given the limited number of residences (five) associated with the project for a variety of reasons. First, because portions of the project site occur on the interface with open space, potential residents will be discouraged from having “outdoor” cats due to the potential threat from predation by coyotes. To the extent that residents allow cats to stay out-of-doors, there is a high likelihood that such cats would be eliminated by coyotes, reducing the potential threats to native wildlife. Nevertheless, the project will include provisions that restrict residents from allowing cats to go out-of-doors. This is best accomplished through the project’s CC&Rs, which will include a provision that residents will not allow domestic cats to go out-of-doors without (for example) a leash or a bell on the collar, to ensure maximum protection of avifauna, small mammals and reptiles.
- 03-42 The project has been designed to limit potential indirect impact associated with night lighting through the location and type of lighting used as well as shielding wherever appropriate, including removal of street lights. An illustrative lighting plan has been submitted to the City for review that will reduce lighting impacts to the maximum extent practicable while still allowing for public safety. The sports field will not have night lighting and exhibits no potential for lighting impacts to areas of adjacent habitat. Because of the restriction on night lighting, the project exhibits no potential for significant light impacts to the Malibu Bluffs area, including significant impacts on wildlife.
- 03-43 The Malibu environs and the larger Santa Monica Mountains contain vast areas of open space that is highly suitable for foraging raptors. As noted by Impact Sciences and GLA, there are no nesting raptors on the site and no special-status raptors have been observed on the site during a number of surveys during nesting seasons. In addition, approximately 6.23 acres will be subject to a conservation easement and will continue to provide habitat and opportunities for the movement of small mammals and therefore raptor foraging. As such, the project does not exhibit the potential for significant direct or cumulative impacts on foraging raptors.
- 03-44 Surveys efforts conducted by Impact Sciences in February 2008, following the 2007 wildfire which severely burned the northern, eastern, southern and southwestern

3. Response to Comments

portions of the project site show that Braunton's milkvetch does not occur on the site, and an important point of clarification is necessary to explain why this is the case. It is well documented that Braunton's milkvetch is a fire-follower as this species requires fire to scarify (break down) the seed coat, allowing germination. In the absence of fire (or other mechanical scarification), this species remains undetected as it is present only in the seed bank. Its establishment on a site following a fire is not due to dispersal from offsite, but specifically because it was present and the occurrence of a fire is what allows the species to germinate and become detectable. Once this species germinates on a site, it is a short-lived perennial (living three to four years) during which time it reaches heights of over four feet and is very distinctive and easily detected and identified. The fact that Braunton's milkvetch was not detected on the site in 2008 and 2012 is very strong evidence that this species does not occur on the project site, which is consistent with GLA's observation that the site does exhibit soils typically associated with this species. The mitigation measure requiring surveys is being implemented in an abundance of caution and it is GLA's opinion, based on extensive experience with this species, that there is very low potential for it to occur on the site. Also, as noted in Response A1-4, to the extent that this species exhibits any potential to occur on the site, the most likely locations would be in the existing coastal sage chaparral scrub, which is in large measure subject to preservation, with only limited impacts associated with thinning of undesirable plants in Zone C of the Fuel Modification areas. Nevertheless, while it can be shown that the conditions do not exist for the Braunton's milk-vetch to occur on the developed portions of the site, and the species has a very low potential to occur in areas that will be subject to conservation, a mitigation measure has been included to reduce any potential impact to insignificance and the pre-construction survey, performed in an abundance of caution, should not be considered deferred mitigation under CEQA.

O3-45 Comment noted.

O3-46 An Updated Phase 1 Archaeological Study and Cultural Resource Sensitivity Testing for a portion of a 24-Acre parcel located at 24200 Pacific Coast Highway (APN No's 4458-018-002, 4458-018-018 and, 4458-018-019) City of Malibu, Los Angeles County, California, HEART, was completed in June 2013.

An updated records search was performed by RPA certified archaeologist, Wayne Bonner on June 10, 2013 at the SCCIC which indicated that no previously recorded prehistoric or historic archaeological sites lie within the project site. In addition, nine prehistoric archaeological sites are recorded within a 1/2-mile radius of the project site: CA-LAn-264 (The village of Humaliwu lies to the east of the project site at the Adamson House and Malibu Lagoon State Historic Park), CA-LAn-266, CA-LAn-267, CA-LAn-386, CA-LAn-404, CA-LAn-1417, CA-LAn-1715, CA-LAn-1991, CA-LAn-2247.

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Additional physical testing at the project area was conducted to ensure that buried cultural resource remains were not inadvertently missed during the field surveys. Although disked for many years, there was still a slight potential for buried resources to exist just under the plow zone (15 cm – 20 cm). Between June 16, 2013 to June 19, 2013, 76 soil augers were excavated, representing 76-person hours of field labor. The augers were excavated within a pre-placed grid to completely cover the area of proposed project area (nine acres of the proposed 24-acre parcel). All soil was mechanically excavated and screened through 1/8" wire-screened mesh. Notes, photographs and GPS points were taken in the field to confirm coverage. Each auger was excavated to a minimum depth of 40 cm or until a noticeable soil change occurred, so as to identify the disked soil from the subsoil. The completion of this testing phase revealed no evidence of surface or buried cultural resource remains inclusive of artifacts, shellfish, fauna, features or human remains. Based on the results of this test phase, no additional archaeological work was recommended within the boundaries of the proposed project. As stated in Section 5.4 of the DEIR, with mitigation, potential impacts associated with cultural resources would be reduced to a level that is less than significant. No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

- O3-47 The Native American Heritage Commission (NAHC) was contacted by letter in July 2007 and October 2008 regarding any concerns over potential heritage resources noted in their sacred lands files for the project site. In letters dated July 17, 2007 and October 20, 2008 the NAHC indicated that they had conducted Sacred Lands File (SLF) searches of the project area and did not identify any cultural resources within 1/2 mile radius of the project site/area of potential effect (APE). CEQA Guidelines § 15064.5(d) requires the lead agency to work with the Native Americans identified by NAHC if the Initial Study identifies the presence or likely presence of Native American human remains within the APE. The Initial Study and DEIR did not identify the likely presence of human remains or cultural resources. In addition, as discussed in Response to Comment Letter O2-2, O9-3, response A4-2, and O3-46 above, additional physical testing at the project area was conducted with the assistance of a Native American Representative of the Ventureño Chumash to ensure that buried cultural resource remains were not inadvertently missed during the field surveys. Impacts remain less than significant. The comment letters are included as Appendix C of this FEIR.
- O3-48 See Response to Comment O3-46 and Response to comment letter O2 (ESA).
- O3-49 The Geotech Consultants Letter is addressed in Letter O10.
- O3-50 The AEG Consultants letter is addressed in Letter O1.
- O3-51 The commenter asks what happens as to the water quality discharge project features in 2019 if no community sewer system connection is then available.

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Other than anticipating the connection to a municipal wastewater treatment plant, the plant's operational status has no effect on the OWTS proposed for this project. As discussed in the "Response to Environmental Health Questions" prepared by Ensitu Engineering dated March 7, 2012, the long term acceptance rate for each of the proposed seepage pits is expected to be sufficient to serve the development project for its full economic life. The functional life of the active seepage pits as proposed is anticipated to be approximately 40 to 50 years or longer. Additionally, the functional life of the future pits (to be installed simultaneously with the active pits), if or when brought into service, is also anticipated to be approximately 40 to 50 years or longer. Collectively, the functional life of all proposed pits is anticipated to be 80 to 100 years or longer. Therefore the OWTS will remain functional if no community sewer system connection is available by 2019.

On November 5, 2009 the Los Angeles Regional Water Quality Control Board's ("LARWQCB") approved Resolution R4-2009-007 amending the Water Quality Control Plan for the Watersheds of Ventura and Los Angeles Counties ("Basin Plan Amendment"). The Basin Plan Amendment was subsequently approved by the State Regional Water Quality Control Board and contains a moratorium on any new or expansion of existing groundwater discharges for commercial and residential properties in and adjacent to the Malibu Civic Center as outlined on Exhibit 1 attached to the Basin Plan Amendment. It also includes a complete prohibition of all ground discharges effective November 2015 for commercial properties and effective November 2019 for residential properties contained in Exhibit 1, in effect requiring the residential properties on Exhibit 1 to be connected to a municipal wastewater treatment plant November, 2019. The Basin Plan Amendment included a list of properties that were exempt from the moratorium because they were processing their entitlements, including the project site. These properties exempt from the moratorium are on Table 4-zz attached to the Basin Plan Amendment.

On August 23, 2011 the City and the LARWQCB entered into a Memorandum of Understanding, which established time frames and milestones to achieve compliance with the Basin Plan Amendment. In order to fund the expenses associated with the design and approval of the City's Municipal Wastewater Treatment Plant ("Municipal Plant") an election was held on November 20, 2012 among the commercial property owners in the Civic Center area of the City. Pursuant to the election, the property owners approved the formation of Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One) ("CFD"). On January 29, 2013 the CFD issued \$6,500,000 of bonds. \$1,000,000 of the proceeds from the bond sale went to the City of Malibu to reimburse the City for a portion of the funds it had spent to date from its General Fund in connection with the design of the Municipal Plant. The balance of \$5,500,000 will be used to complete the design of the Treatment Plant, associated studies including the formation of the Phase 1

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Assessment district, the Environmental Impact Report and entitlements for the Municipal Plant. The Phase I Assessment District will be formed which will consist of all of the commercial property owners in the Phase I and the three residential parcels included in the CFD. Once formed additional bonds will be issued for the construction of the Treatment Plant. At this time there is strong support amongst the commercial property owners included in Phase I and it appears at this time that the Phase I assessment district will be approved and the bonds will be issued in order to construct the Treatment Plant.

The CFD formed for Phase I of the Municipal Plant includes all of the commercial properties in the Civic Center area, including properties owned by both the City of Malibu and the County of Los Angeles. Therefore, the project site will be eligible to connect to the City's Municipal Plant as developed for the Phase I properties and the project site's connection will not be dependent on the approval and completion of Phase II of the Municipal Plant.

Although it is not possible to predict when the Municipal Plant will be operational, there are readily available funds from the proceeds of the sale of the CFD bonds to enable the City to complete the design, EIR and other necessary entitlements required for the Municipal Plant. In addition, the Municipal Plant has strong support from the property owners included in Phase I. The City provides quarterly progress reports to the LARWQCB on the status of the Municipal Plant, and the most recent status report dated June 25, 2013 is attached hereto.

It impossible to predict what will happen in the event the Municipal Plant is not in operation by November 2019. As a technical matter, the Basin Plan Amendment would prohibit all of the residential properties subject to the Amendment from discharging effluent through existing septic systems. The residences would not be habitable unless the residents made other arrangements for disposing of the untreated wastewater, which would likely entail significant costs, inconvenience and public health considerations. However, if at that time the City is proceeding in good faith with the completion of the Municipal Plant for such residential properties, it is reasonable to assume that the LARWQCB would grant an extension of the prohibition date and that all of the property owners subject to the Basin Plan Amendment would be allowed to continue to discharge until they are connected to the Municipal Plant. It should be noted again that the proposed Crummer project has the ability and plans to connect to the Municipal Plant upon the completion of the Phase I Municipal Plant, which is in the planning and design phase. Accordingly, it is highly likely that the project site will not be subject to any consequences that may occur if the Phase II residential properties are not connected to the Municipal Plant by November 2019.

There are two significant additional benefits of including the project site in Phase I. Both the project site as well as Lot 7 will be able to use the clean effluent from the

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Municipal Plant for irrigation. During the construction of the project's infrastructure "purple pipe" will be installed. Purple pipe is to convey reclaimed Title 22 water and is used to distinguish it from other water lines carrying potable water. Siting locations for the disposal of treated effluent is one of the hardest issues to resolve in connection with the design of the Municipal Wastewater Plant. Connecting the project site to the Treatment System as part of Phase I helps the City address this critical issue.

The impact from constructing the sewage line from the property to the municipal system will be fully addressed in the City's EIR for the treatment plant. However, according to Steve Clary of RMC Water and Environmental, the City of Malibu consultant designing the Malibu Civic Center Wastewater Treatment Plant, the project site will connect to the sewer line beneath Winter Mesa Drive (a City right of way) inside Bluffs Park immediately south of Pacific Coast Highway. The sewer line will cross Pacific Coast Highway and run north up Malibu Canyon Road to a connection at Civic Center Way. The sewer line will be located alongside (but in a separate trench) as the new water line servicing the project site.

- O3-52 The comment asks "what happens as to the proposed residences and the on-site OWTS/seepage pits in the event that the Malibu plant is not built and/or that Malibu Civic Center residents vote not to connect to the community plant in Phase Two."

The proposed residences will continue to be habitable, and the OWTS will continue to be functional. As discussed above in the response to Comment O3-51, the functional life of all proposed pits is anticipated to be 80 to 100 years or longer. Therefore the OWTS will remain functional if no community sewer system connection is available by 2019. Please see Response to Comment O3-51 for further analysis.

- O3-53 The comment asks "According to the LARWQCB's November 2009 prohibition, like all existing residences in the Civic Center area, the new residential units can no longer make any wastewater discharges after 2019. What will happen to the project residences at that point?"

Other than anticipating the connection to a municipal wastewater treatment plant, the plant's operational status has no effect on the OWTS proposed for this project. The proposed residences will continue to be habitable, and the OWTS will continue to be functional. As discussed above, the functional life of all proposed pits is anticipated to be 80 to 100 years or longer. Therefore the OWTS will remain functional if no community sewer system connection is available by 2019. As stated in the Draft EIR, this project is exempt from the prohibition of new discharges imposed by the LARWQCB Resolution R4-2009-007 and is listed on Table 4-zz, issued in November 2009. See Response to Comment O3-51 for further analysis.

- O3-54 This comment asks if the anticipated "interim" water quality impacts are expected to be any worse or aggravated because the interim system may become permanent.

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As discussed in the Design Intent letter prepared by this office on April 16, 2012, the design of the proposed wastewater treatment system is intended to comply with anticipated effluent limits and permitting conditions generally mandated by the LARWQCB on projects of similar scale within proximity to the Pacific Ocean. The treated effluent produced by the treatment and disinfection components of the proposed system is intended to meet similar WDR requirements, General WDR Order No. 01-031, and California Ocean Plan water quality objectives. Therefore the anticipated water quality impacts are not expected to be any worse or aggravated if the OWTS is not replaced by connection to the municipal wastewater treatment plant.

O3-55 The commenter asks: “Will the buildings be abandoned? Will treated effluent be trucked off-site?”

Other than anticipating the connection to a municipal wastewater treatment plant, the plant’s operational status has no effect on the OWTS proposed for this project. The proposed residences will continue to be habitable, and the OWTS will continue to be functional. Treated effluent will not be trucked off-site. As discussed above, the functional life of all proposed pits is anticipated to be 80 to 100 years or longer. Therefore the OWTS will remain functional if no community sewer system connection is available by 2019. As stated in the Draft EIR, this project is exempt from the prohibition of new discharges imposed by the LARWQCB Resolution R4-2009-007 issued in November 2009. See Response to Comment O3-51 for further analysis.

O3-56 The commenter asks “What are the expected impacts of any of these eventualities?”

Other than anticipating the connection to a municipal wastewater treatment plant, the plant’s operational status has no effect on the OWTS proposed for this project. The proposed residences will continue to be habitable, and the OWTS will continue to be functional. Treated effluent will not be trucked off-site. The anticipated water quality impacts are not expected to be any worse or aggravated if the interim system becomes permanent. As discussed above, the functional life of all proposed pits is anticipated to be 80 to 100 years or longer. Therefore the OWTS will remain functional if no community sewer system connection is available by 2019. As stated in the Draft EIR, this project is exempt from the prohibition of new discharges imposed by the LARWQCB Resolution R4-2009-007 issued in November 2009. See Response to Comment O3-51 for further analysis.

O3-57 The commenter gives his option that “Connection to the community sewer system is speculative” and asks what the polluting discharges from the project’s OWTS into the groundwater would be.

Complete information about the project’s discharge is provided in the Design Intent letter prepared by this office on April 16, 2012. Effluent characteristics, both before and after treatment, are quantified. Included is a description of the estimated wastewater

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flow and characteristics, a description of the treatment process, and a statement of the water quality objectives.

- Anticipated limits and permitting conditions assumed for this project are based on the following guiding documents:
- California Regional Water Quality Control Board, Los Angeles Region: General Waste Discharge Requirements Order No. 01-031;
- Water Quality Control Plan Ocean Waters of California: California Ocean Plan (SWRCB 2005);
- Waste Discharge Requirements (WDRs) for proposed development projects of similar scale within similar proximity to the Pacific Ocean;
- Malibu Building/Plumbing Code; and
- Malibu Local Coastal Program/Local Implementation Plan
- The treated effluent produced by the treatment and disinfection components of the proposed system is intended to meet similar WDR requirements, General WDR Order No. 01-031, and California Ocean Plan water quality objectives at end of pipe (treated effluent) for the following constituents as indicated in the table below:

End of Pipe (Treated Effluent):

Constituent	Units	Maximum Limit
BOD*	mg/L	20 (monthly 30-day average)
Suspended Solids*	mg/L	20 (monthly 30-day average)
Fecal Coliform*	MPN/100mL	<200 (monthly 30-day average)
Enterococcus*	MPN/100mL	<104 (daily)
pH		Within limit of 6.0 to 9.0 at all times
Ammonia – N	mg/L	2.4 (daily)
Nitrate - Nitrogen**	mg/L	10.0 (daily)
Total Nitrogen	mg/L	10.0 (daily)

*Also City of Malibu Plumbing Code

See Response to Comment O3-51 for further analysis.

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O3-58 The comment asserts that the “DEIR leaps to the conclusion that these water quality degradation impacts would not be “significant.” (DEIR at page 5.8-2.) and requests more explanation regarding how this conclusion is reached must be included in the DEIR..

Complete information about the project’s discharge is provided in the Design Intent letter prepared by this office on April 16, 2012. Effluent characteristics, both before and after treatment, are quantified. Included is a description of the estimated wastewater flow and characteristics, a description of the treatment process, and a statement of the water quality objectives.

Anticipated limits and permitting conditions assumed for this project are based on the following guiding documents:

- California Regional Water Quality Control Board, Los Angeles Region: General Waste Discharge Requirements Order No. 01-031;
- Water Quality Control Plan Ocean Waters of California: California Ocean Plan (SWRCB 2005);
- Waste Discharge Requirements (WDRs) for proposed development projects of similar scale within similar proximity to the Pacific Ocean;
- Malibu Building/Plumbing Code; and
- Malibu Local Coastal Program/Local Implementation Plan

The treated effluent produced by the treatment and disinfection components of the proposed system is intended to meet similar WDR requirements, General WDR Order No. 01-031, and California Ocean Plan water quality objectives at end of pipe (treated effluent) for the following constituents as indicated in the table below:

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End of Pipe (Treated Effluent):

Constituent	Units	Maximum Limit
BOD*	mg/L	20 (monthly 30-day average)
Suspended Solids*	mg/L	20 (monthly 30-day average)
Fecal Coliform*	MPN/100mL	<200 (monthly 30-day average)
Enterococcus*	MPN/100mL	<104 (daily)
pH		Within limit of 6.0 to 9.0 at all times
Ammonia – N	mg/L	2.4 (daily)
Nitrate - Nitrogen**	mg/L	10.0 (daily)
Total Nitrogen	mg/L	10.0 (daily)

*Also City of Malibu Plumbing Code

As stated in the Draft EIR, the OWTS will not violate any water quality standards or waste discharge requirements, and the impact to local groundwater will be less than significant.

The comment takes out of context the statement in the Draft EIR at page 5.8-27 that “Seepage from the OWTS could result in increased levels of nitrogen and pathogens (fecal coliform) found in area groundwater. Groundwater quality degradation may contribute to surface-water quality issues.” This is the impact statement used in the Draft EIR to frame the significance threshold. The Draft EIR then goes on to analyze the impact to water quality from the project based on the OWTS and the location of groundwater under the seepage pits and concludes that “the construction and operation of the onsite treatment system and seepage disposal pits would not cause a significant rise in groundwater levels beneath the site and would not have significant impact on groundwater quality.” (Draft EIR page 5.8-28.)

O3-59 This comment presents the opinion that “DEIR must acknowledge and analyze the effect of the LARWQCB’s prohibition and questionable approval. The project’s reliance on an exemption from the Board’s November 2009 prohibition has dubious legality.”

On November 9, 2009 Tracy J. Egoscue, Executive Officer, Los Angeles Regional Water Quality Control Board, confirmed in an email to Robert Gold that the properties will be included in the list of temporary exemptions subject to the prohibition date of 2019. The properties are identified on Table 4-zz of the Basin Plan Amendment, Resolution No. R4-2009-007 of the LARWQCB. The Egoscue email and Table 4-zz are attached as exhibits to this letter.

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- O3-60 This comment asserts that the project's OWTS and seepage pits design presents a difficult approval problem for the LARWQCB and must be discussed and analyzed in the DEIR.

The OWTS does not present a "difficult approval problem" for the LARWQCB. An Application/Report of Wastewater Discharge General Information Form (Form 200) was filed with the RWQCB on October 26, 2009. As noted above, the properties are included in the list of exemptions from LARWQCB Resolution R4-2009-007.

- O3-61 The commenter asserts that "during the interim period before the connection, the proposed OWTS will be discharging treated effluent into seepage pits (onto Lot 7) which will adversely impact the groundwater with substantial pollutants. Due to the "double contingency" described above, this interim period could theoretically become a permanent situation. The project's reliance on an exemption from the Board's November 2009 prohibition has dubious legality."

As discussed above, the design of the proposed wastewater treatment system is intended to comply with anticipated effluent limits and permitting conditions generally mandated by the LARWQCB on projects of similar scale within proximity to the Pacific Ocean. The treated effluent produced by the treatment and disinfection components of the proposed system is intended to meet similar WDR requirements, General WDR Order No. 01-031, and California Ocean Plan water quality objectives. The anticipated water quality impacts are not expected to be any worse or aggravated if the interim system becomes permanent. As noted above, the properties are included in the list of temporary exemptions subject to the prohibition date of 2019 (see Table 4-zz of the Basin Plan Amendment). Also see responses to Comments 03-53, 03-54, 03-55, 03-56, 03-59, 03-60 and 03-61 above.

- O3-62 The commenter asserts that there is no CEQA analysis of the seepage pits and no analysis of how the seepage pits may affect the adjacent public recreational uses. The seepage pits will have no effect on the adjacent public recreational uses. The seepage pits will be constructed entirely below ground. At no point will the treated and disinfected effluent surface or make human contact. Therefore no mitigation measures will be necessary.

- O3-63 The commenter asserts that the DEIR is deficient because it does not explain the applicant's decision not pursue a zone change to another residential zoning designation other than PD. The project site is zoned PD but no development standards exist for the PD zoning designation. All the LIP Land Use and Zoning Maps, as well as definitions, designate the property PD.

As discussed in Section 3, 4 and 5.9 of the DEIR, the LCP has a land use plan (LUP) and a LIP. The LUP includes goals, objectives, and policies intended to guide future development in the City of Malibu. The LIP contains specific regulations intended to

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carry out the policies of the LUP. The property is zoned PD, but the PD designation currently has no design standards. The LIP provides that “the uses and structures permitted and conditionally permitted in the PD District shall be as indicated in the associated approved Planned Development.” The definition of the PD District further provides that “in addition to the regulations contained in this Chapter, all uses in the PD District shall be subject to the applicable standards located in the Malibu LIP, unless indicated otherwise in the approved Planned Development.” The LCP contemplated that the PD District could deviate from the Malibu Development Standards. Pursuant to Section 1.3.1 of the LCP LIP, if there is a conflict between the LCP and the General Plan or any other City-adopted plan, resolution, or ordinance not included in the LCP, the LCP takes precedence.

Currently, no development standards exist for the PD zoning designation. The proposed project includes ZTA 12-001 and LCPA 12-001 to incorporate language that specifies the type, density, intensity and development standards permitted in the PD zoning designation. Procurement of all required land use approvals will mitigate any potential land use impacts to a less than significant level. Specific development standards that are not included in the M.M.C. and LCP or deviate from the code have been addressed in the proposed ZTA and LCPA language and are discussed in more detail below. This includes regulations regarding TDSF, height, grading and basements.

The DEIR analyzed the impacts of developing the project site pursuant to its existing PD zoning. The applicant is not seeking a different zoning designation.

The project’s consistency with LUP policies is discussed in detail in DEIR Section 5.9, *Land Use*. A detailed analysis of the proposed project’s consistency with the applicable goals and policies of the various elements of the General Plan is provided in Table 5.9-1, *General Plan Consistency Analysis*. The analysis concludes that the proposed project would be consistent with the applicable goals and policies of the general plan. As shown in Table 5.9-3, *Local Coastal Program Consistency*, the analysis concludes that the proposed project would be consistent with the major applicable goals and policies of the LCP.

O3-64 The commenter falsely claims that proposed PD standards do not conform to the City’s residential development standards. Other residences in the City are allowed 28-foot building heights. Code Section 17.40.040 “Residential development standards”, subsection A(5)b states that for “new construction on a beachfront lot, no residence or structure, including satellite dish antenna, shall exceed twenty-four (24) feet for flat roof and twenty-eight (28) feet for pitched roof, as measured from the lowest recommended finish floor elevation on the ocean side...”

The applicant is not seeking an R zone designation and the DEIR is not required to address the project’s conformity or lack of conformity with the R zone, nor to provide an analysis of what variance findings would need to be made for the R zone.

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The One-Story Homes and Recreational Facilities Alternative in Chapter 7 of the DEIR provides and analysis of one-story homes with an 18-foot height limit.

- O3-65 The applicant is not seeking an R zone designation and the DEIR is not required to address the project's conformity or lack of conformity with the development standards of the R zone. Refer to Response to Comment O3-64.
- O3-66 Please refer to Response to Comment O3-65. For informational purposes, a comparison table is provided in FEIR Appendix F.
- O3-67 Please refer to Response to Comment O3-11 regarding the project's consistency with the General Plan, LCP and Coastal Act. See Responses to Comments O3-23 and O3-24 regarding the 28-foot height. Aesthetic and Land Use impacts were determined to be less than significant by the DEIR and this FEIR; no additional mitigation is necessary.
- O3-68 The LCP zoning and land use maps designate the project site as PD, not visitor serving as the commenter asserts. The PD designation is specific to the project site. The LUP, as amended November 18, 2008, states that "The PD designation provides for a mix of residential and recreational development on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway." The General Plan land use designation, as amended July 13, 2009, and zoning designation, as amended July 27, 2009, for the site are also PD. The issues raised by the commenter relating to the policy questions relating to the historical background regarding the visitor serving uses for the property are matters for the lead agency to consider and do not relate to the impacts of the project on the physical environment. See also Response to Comment O3-96.
- O3-69 As addressed on page 5.9-2 of the Land Use Section, the LCP PD zoning designation "is intended to provide for a mix of residential and recreational development of the Crummer Trust property [proposed project site] located east of Malibu Bluffs State Park and south of Pacific Coast Highway....Any planned development in such commercial areas would require an amendment to the Malibu LCP in order to specify the permitted type, density, and intensity of development." Contrary to the commenter's assertion, removing visitor serving land use designation would not render the PD inapplicable. The land uses proposed by project include five single-family homes (residential) and dedication of Lot 7 to the City for the future expansion of Malibu Bluffs Park (recreational). These are precisely the uses envisioned by the LCP zoning designation.
- O3-70 The proposed project includes the dedication of land (Lot 7) to the City of Malibu to expand the portion of Malibu Bluffs Park owned by the City by 1.74 acres to the east and northeast. The City owned portion of Malibu Bluffs Park currently has two baseball fields, a multipurpose field, the Michael Landon Center, picnic benches, viewing areas and an 81-space parking lot. The proposed project will dedicate Lot 7 to the City. The recreational area has yet to be designed and would not be developed as part of this project. Although no recreational improvements would be permitted as part of the

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applicant's current proposal, the land dedication is intended to expand Malibu Bluffs Park. As the commenter point out are precisely the type of lower cost visitor and recreational facilities LUP seeks to protect, encourage, and, where feasible, provide. As the commenter pointed out, "Developments providing public recreational opportunities are preferred." The DEIR analyzed the potential impacts of two reasonable foreseeable future uses for Malibu Bluffs Park, active recreation areas, passive recreation areas, and an expanded parking lot are all foreseeable future uses. At this time the City believes that the recreational area may be developed as a baseball field or a skate park in the future.

O3-71 The issues raised by the commenter relating to the policy questions relating to the historical background regarding the visitor serving uses for the property are matters for the lead agency to consider and do not relate to the impacts of the project on the physical environment.

O3-72 Please refer to Response to Comment O3-65.

O3-73 Please refer to Response to Comment O3-12 and O3-63.

O3-74 As discussed on page 5.9-10 of the DEIR, pursuant to LIP Section 2.1 and M.M.C. Section 17.02.060, the definition of a basement requires the vertical distance from finished grade to the bottom of the finished floor above is no more than three vertical feet at all points around the perimeter of all exterior walls. The proposed project include basement walls that daylight more than three vertical feet; however, the basement walls will not be visible from any location outside of the project site. The proposed ZTA 12-001 and LCPA 12-001 will set the applicable standards. With approval of the proposed ZTA 12-001 and LCPA 12-001, land use impacts related to basement limitations would be brought into conformance and would thus be less than significant. Refer to Section 5.1, *Aesthetics* for a detailed discussion of the visual resources impacts associated with the proposed project.

The DEIR is not required to analyze the project's consistency with a zoning designation that is not being requested. See Response to Comment O3-64.

O3-75 The seepage pits proposed on Lot 7 are part of the OWTS on Lot 6. The DEIR is revised to explain that the OWTS is proposed for Lot 6 and that seepage pits are proposed for Lot 7.

O3-76 The project does not constitute spot zoning. The project site is the only property designated PD in the Malibu General Plan and the Malibu LCP. On September 12, 2002, the CCC adopted the LCP which included the LIP. Due to the ongoing negotiations between the City of Malibu, Crummer Trust and SMMC, language in LUP Policy 2.78 stated that the project site shall remain CV-2 (Commercial Visitor Serving), while on all the LIP Land Use and Zoning Maps, as well as in the definitions designated the property PD; therefore, creating an inconsistency between the policy and the zoning designation.

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The LCP PD zoning designation “is intended to provide for a mix of residential and recreational development of the Crummer Trust property [proposed project site] located east of Malibu Bluffs State Park and south of Pacific Coast Highway, and other commercial areas in order to encourage innovation in development concepts, land use mixes, and site design. Any planned development in such commercial areas would require an amendment to the Malibu LCP in order to specify the permitted type, density, and intensity of development.” Since it is not the City’s intent to relocate the existing athletic fields from Bluffs Park, LUP Policy 2.78 is now obsolete. Therefore, a local coastal program amendment (LCPA) and corollary zoning text amendment are being requested—including language that specifies the type, density and intensity of development permitted in the PD zoning designation. The LCPA (LCPA No. 12-001) and zoning text amendment (ZTA No. 12-001) propose to omit LUP Policy 2.78, amend LUP Chapter 6 Land Use Designations, and incorporate the Planned Development Ordinance in the Local Coastal Program and the M.M.C..

The proposed Local Coastal Program Amendment and Zoning Text Amendment for the subject property does not result in spot zoning. Since California land use law was modified in the early 1970s to require mandatory comprehensive planning, spot zoning has largely become an anachronistic concept. Cities and counties are required to adopt comprehensive general plans and all zoning regulations are required to be consistent with the adopted general plan. (Government Code §§ 65359, 65454 and 65860). These plans are dynamic and subject to amendment, annual review and updates. (Government Code §§ 65358 and 65400). Even under the old California precedents, the proposed local coastal program amendment (LCPA) and corollary zoning text amendment would not be considered to be spot zoning, which focuses on discriminatory regulations imposing greater restrictions on some parcels. The seminal case is *Wilkins v. San Bernardino*, (1946) 29 Cal. 2d 332. The principles enunciated in this case are as follows:

- The existence of an “island” of property with more uses than its surrounding district does not constitute impermissible “spot zoning.”
- The fact that adjacent property is similar in character to the “island” does not require expansion of the island’s boundaries.
- The mere existence of some adjacent property devoted to other uses does not destroy the character of restricted property for residential purposes or render the restriction arbitrary.

None of these principles would be violated in this circumstance.

O3-77 The commenter erroneously asserts that the project “results in changing land designated for public use to private use.” As addressed on page 5.9-2 of the Land Use Section, the LCP PD zoning designation “is intended to provide for a mix of residential and

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recreational development of the Crummer Trust property [proposed project site] located east of Malibu Bluffs State Park and south of Pacific Coast Highway....Any planned development in such commercial areas would require an amendment to the Malibu LCP in order to specify the permitted type, density, and intensity of development.” The project site is privately owned is not designated for public use. Refer to Response to Comment O3-69 and O3-76.

O3-78 The commenter is referred to DEIR pages 5.9-9 and 5.9-10, Section 5.9, *Land Use* for a detailed discussion of the total development square footage formula. Table 5.9-2, *Total Development Square Footage Permitted* show the maximum TDSF permitted per lot based on the TDSF formula and the proposed TDSF per lot.

O3-79 The proposed residential use is compatible with the immediate adjoining public visitor serving open space uses. As discussed throughout the DEIR, the proposed residential uses are compatible with the immediately adjoining land uses. See DEIR Sections: 5.1 *Aesthetics*; 5.2 *Air Quality*; 5.7 *Hazards and Hazardous Materials*; 5.8 *Hydrology and Water Quality*; 5.9 *Land Use and Planning*; 5.10 *Noise*; 5.11 *Transportation and Traffic*; and 5.12 *Recreation*. All of the project’s potentially significant impacts can be mitigated to a less than significant level. Therefore, the project is compatible with the immediate adjoining land uses.

O3-80 Refer to Response to Comment O3-12, O3-69, and O3-76.

O3-81 The DEIR comprehensively assesses the significant environmental effects of the project, a reasonable range of alternatives to the proposed project, and feasible mitigation measures to reduce and avoid significant environmental impacts.

As addressed in DEIR Section 5.12, the 2012 Parks and Recreation Master Plan found that Malibu Bluffs Park is heavily used, and onsite parking lot does not adequately serve park patrons during peak times. The park’s facilities were found to be in “excellent” and “good” condition, with the exception of fencing and backstops, which were in “fair” condition. The DEIR found that the residential project itself generates 15 additional people who would use the existing park facilities at Bluffs Park, but not to such an extent as to cause physical deterioration. Impacts were considered less than significant. Section 5.11 *Transportation and Traffic*, looked parking demand and trip generation of weekday and weekend trips associated with the proposed project. Additionally, the traffic study looked at cumulative impacts should a future park development occur (based on two games per day on weekdays, and ten games per day on Saturdays for the playfield and 30 people per day on weekdays, 60 people per day on weekends for the skate park). Impacts were less than significant with mitigation.

Finally, the expansion of the Bluffs Park would be processed as a separate action by the City of Malibu; would be subject to all of the requirement so of the General Plan,

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Municipal Code, and LCP; and would be a discretionary action subject to the California Environmental Quality Act (CEQA).

If a future sports field is developed on Lot 7, the field will not have night lighting and exhibits no potential for lighting impacts to areas of adjacent habitat. As discussed in Section 5.1 DEIR, *Aesthetics*, the project has been designed to limit potential indirect impact associated with night lighting through the location and type of lighting used as well as shielding wherever appropriate, including removal of street lights. An illustrative lighting plan has been developed and submitted to the City for review that will reduce lighting impacts to the maximum extent practicable while still allowing for public safety. Because of the restriction on night lighting, the project exhibits no potential for significant light impacts to the Malibu Bluffs area, including significant impacts on wildlife.

- O3-82 See Response to Comment O3-81
- O3-83 See Response to Comment O3-81
- O3-84 These citations are noted and will be provided to the County decisionmakers for their consideration.
- O3-85 These citations are noted and will be provided to the County decisionmakers for their consideration.
- O3-86 The commenter is referred to Response to Comment O3-4, -6, -10 and -70.

A project description must include all relevant parts of a project, including reasonably foreseeable future expansion or other activities that are part of the project. *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.* (1988) 47 C3d 376, 253 CR 426. In *Laurel Heights*, the court set forth the standards for determining whether reasonably foreseeable future activities must be included in an EIR project description and for determining whether the impacts of those activities must be analyzed in the EIR. An EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.

The CEQA Guidelines define cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." 14 Cal Code Regs §15355. The individual effects may be changes resulting from a single project or more than one project. 14 Cal Code Regs §15355(a).

In addition to development of the proposed project (Lots 1 through 6), the project dedicates Lot 7 to the City of Malibu to expand the portion of Malibu Bluffs Park by

3. Response to Comments

1.74 acres to the east and northeast. Although no recreational improvements would be permitted as part of the applicant's current proposal, the land dedication is intended to expand Malibu Bluffs Park. Furthermore, the LCPA and corollary zoning text amendment being requested—including language that specifies the type, density and intensity of development permitted in the PD zoning designation—apply to all seven lots. The LCPA (LCPA No. 12-001) and zoning text amendment (ZTA No. 12-001) propose to omit LUP Policy 2.78, amend LUP Chapter 6 Land Use Designations, and incorporate the Planned Development Ordinance in the Local Coastal Program and the M.M.C.

The 2012 Parks and Recreation Master Plan found that Malibu Bluffs Park is heavily used, and onsite parking lot does not adequately serve park patrons during peak times. Therefore, active recreation areas, passive recreation areas, and an expanded parking lot are all foreseeable future uses. The recreational area may be developed as a baseball field or a skate park in the future.

The proposed project is for the development of five single-family homes various accessory structures (a private gated street, a gatehouse, an onsite wastewater treatment system, landscaping, and open space). Development of five single-family homes and associated infrastructure on Lots 1-6 would not result in any significant environmental impacts. However, as discussed in the DEIR, Lot 7 will be dedicated to the City of Malibu and it is reasonably foreseeable that it will be developed with recreational uses in the future. Active recreational uses are “reasonably foreseeable consequences” of the initial project's dedication of land to the City adjacent to Malibu Bluffs Park and the future expansion of Malibu Bluffs Park will be significant in that it will generate traffic and likely change the scope or nature of the initial project's environmental effects. As shown in the DEIR, if Lot 7 was to be developed with active recreational facilities involving organized sports, such as a baseball field, it would result in a substantial increase in traffic in Opening Year 2017 and Future Year 2030 if the intersection of PCH and Malibu Canyon Road/Winter Mesa Road is not improved.

CEQA Guidelines Section 15126.6(a) states that "the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project ... "Although not unavoidable, future development of Lot 7 had the potential to cause cumulative impacts. As shown in the DEIR and FEIR Appendix G, if Lot 7 was to be developed with active recreational facilities involving organized sports, such as a baseball field, it would result in a substantial increase in traffic in Opening Year 2017 and Future Year 2030 if the intersection of PCH and Malibu Canyon Road/Winter Mesa Road is not improved. Therefore, to inform the public and the City's decisionmakers about potential future impacts, the DEIR's Alternatives evaluated the “Two-Story Homes with Skate Park Alternative” because it reduced traffic compared to the baseball field. All impacts remained less than significant level.

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- O3-87 The commenter is referred to Response to Comment O3-4, -6, -10, -70 and -86. The DEIR comprehensively assesses the significant environmental effects of the project, a reasonable range of alternatives to the proposed project, and feasible mitigation measures to reduce and avoid significant environmental impacts.
- O3-88 The range of alternatives considered in the DEIR were developed by City staff taking into consideration factors such as the allowed uses under the existing zoning and reasonably foreseeable cumulative impacts. See Response to Comment O3-86 and O3-87.
- O3-89 See Response to Comment O3-86, O3-87 and O3-88.
- O3-90 The development agreement is discussed in DEIR Section 4. This alternative will be revised and clarified.
- O3-91 The previous Development Agreement (DA) between Crummer Trust and the City was not approved by the City Council and therefore was not executed.

In May 2001 the City Council considered a proposed DA and Vesting Tentative Tract Map (VTTM). City Council action directed staff to accept an application for a DA and VTTM (Crummer- 1) and authorized staff to prepare an EIR. The DA and VTTM were a result of negotiations between an ad hoc committee of the City Council, the property owners and the State Department of Parks. Between May 2001 and May 2002 the applicant and the City spent considerable time and resources for the preparation of EIR and VTTM. While the EIR was in process, the Crummer Trust proposed an alternative DA and VTTM and requested that this alternative become the preferred alternative in the EIR.

Therefore, it is a reasonable, “No Project, Foreseeable Development Alternative” that a subsequent developer may apply for similar development which includes eight homes and recreational facilities. The DEIR adequately discusses the reasonable alternatives to the project.

- O3-92 This comment does not raise a specific question about a significant environmental issue. No response is necessary.
- O3-93 See Response to Comment O3-91.O3-94 See Response to Comment O3-86. The proposed project includes the dedication of land to expand Malibu Bluffs Park with future recreational uses. Such uses would be considered “lower cost visitor and recreational facilities” available for use by the Rancho Malibu Hotel. Likewise, the Two-Story Homes with Skate Park Alternative and the One-Story Homes with Skate Park Alternative and the new Reduced Project Alternative would expand the park which is available for use by both residents and visitors. The comment is not clear on how else the EIR can evaluate an alternative for a visitor serving use associated with the hotel site.

3. Response to Comments

O3-95 Here the commenter requests that the DEIR must evaluate an alternative for “a full and/or passive recreational use”.

CEQA Guidelines Section 15126.6(a) requires an EIR “describe a range of reasonable alternatives to the project, or the location of the project, which would feasibly attain most of the basic objectives to the project but would avoid or substantially lessen any of the significant effects of the project... An EIR need not consider every conceivable alternative to a project.”

The maximum active recreational uses anticipated for Lot 7 are discussed in Section 7, in the “One-Story Homes with Skate Park or Baseball Field Alternative.” This alternative discloses the impacts of developing 5 single-family homes and a baseball field, the most intense active recreational use anticipated for Lot 7. Discussion of the cumulative impacts related to development of Lot 7 with active recreational uses was also included the Air Quality, Noise, and Traffic sections of the DEIR. All impacts were found to be less than significant. Passive recreational uses would have fewer impacts than active recreational uses and a separate alternative is not necessary.

The DEIR’s statement of objectives identifies the dedication of “land sufficient for the City of Malibu to expand Bluff Park and design a recreational facility that meets the community’s needs for active recreation” (page 3-1); thus, the DEIR adequately discusses the reasonable alternatives to the project. O3-96 See Response to Comment O3-86. CEQA Guidelines Section 15126.6(b) states that “the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project...” There are no significant impacts related to the size of the homes. Therefore CEQA does not require this alternative. Although not required by CEQA, a Reduced Project Site Alternative has been added to Chapter 7 in response to public comments. As described in Section 4 of this FEIR, this alternative includes:

- 5 single-family residential units
- Dedication of Lot 7 for active recreational uses (either skate park or baseball field)
- Compared to the proposed Project:
 - Reduction of the square footage of each residence to comply with the maximum permitted under the City’s development regulations (overall reduction of approximately 11 percent)
 - Reduction of the height of the residence on Lot 2 to no more than 18 feet
 - Reduction of the size of the second floor on two of the residences
 - Modifications to the landscaping plan

3. Response to Comments

- O3-97 See Response to Comment O3-86 and -96.
- O3-98 See Responses to Comment O3-86 and -96.
- O3-99 See Response to Comment O3-86, O3-87 and O3-88.
- O3-100 These comments are arguments with no facts or evidence to support the opinions stated. The commenter is referred to Response to Comment O3-94.
- O3-101 Please refer to Responses to Comments O3-64 to O3-67
- O3-102 Please refer to Response to Comments O3-51.
- O3-103 Refer to Response to Comment O3-4. Under the heading “Onsite Wastewater Treatment System” the project Description clearly states that the HOA would own and be responsible for the operation and maintenance of the OWTS and the seepage pits.
- O3-104 Please refer to Response to Comments O3-24.
- O3-105 The project site currently provides no public access to the shore and development of the project site would not impact access to the shore. No further analysis is needed.
- O3-106 The land uses proposed by project include five single-family homes (residential) and dedication of Lot 7 to the City for the future expansion of Malibu Bluffs Park (recreational). These are precisely the uses envisioned by the LCP zoning designation. Please refer to Response to Comments O3-12 and O3-69.
- O3-107 This comment is generally a set of closing remarks. The commenter broadly asserts that the DEIR is fatally flawed and must be recirculated. The DEIR comprehensively assesses the significant environmental effects of the project, a reasonable range of alternatives to the proposed project, and feasible mitigation measures to reduce and avoid significant environmental impacts.

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3. Response to Comments

LETTER O4 - Malibu Colony Homeowners Association (1 page[s])

05/18/13 08:46PM Drs. S. Ward and M. Levine (310) 553-1612 p.01

Malibu Colony HOA
Malibu Colony Association Board of Directors

5-17-13

City of Malibu
23825 Stuart Ranch Road
Malibu, California 90265

Re: Comments to the proposed Crummer Site Subdivision Draft Environmental Impact Report No. 9002
Housing Development at Bluffs Park

Ladies and Gentlemen:

This letter is in reference to the above Draft EIR concerning the proposed Crummer Site Subdivision
Housing Development at Bluffs Park.

04-1

This subject was discussed at length at a recent meeting of the Malibu Colony Association Board of
Directors, and it was agreed that the Colony Board should take a position opposed to the referenced EIR
as it is now written.

Most specifically the Malibu Board is concerned about the developer's plan to construct five 11,000foot or
more, two story residences with a height of as much as 28 feet.

04-2

As it presently exists the Bluffs Park area and the mountains in the background represent a beautiful
unobstructed view to the West from the 100 or more homes in Malibu Colony. Any obstructive two story
development on the Crummer property would most certainly be contrary to the spirit of Malibu's View Shed
Ordinance.

04-3

We encourage the City to revise the proposed EIR to reduce the height of the residences and any other
proposed structures on the site to One story with a maximum height of 18 feet.

04-4

Thank you for your consideration.

Sincerely,



Sara Blake

President of the Malibu Colony Association Board of Directors

cc: Joyce Parker-Bozylinski, Planning Director (by email)
Ha Ly, Associate Planner (by email)

Fax: (310) 456-3356

3. Response to Comments

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3. Response to Comments

O4. Response to Comments from Malibu Colony Homeowners Association, dated May 17, 2013.

O4-1 On behalf of the Malibu Colony Board, the commenter objects to the DEIR as it is now written. The commenter is concerned with the height of the two-story 28-foot residences and with the loss of views from the homes in the Malibu Colony community. The commenter believes the development of two-story homes on the project site is contrary to the spirit of the View Shed Ordinance and encouraged development with a maximum height of 18-feet.

As described in DEIR Section 5.1, *Aesthetics*, the Zoning Code (M.M.C. Section 17.40.040(A)(17)) defines and protects “primary views.” It states:

Visually impressive scenes of the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines shall be protected. The planning manager/director shall assess the “primary view corridor” of any principal residence located within 1,000 feet of a proposed structure or addition.

The affected property owner shall be entitled to one primary view corridor; and once finally determined for a particular application, the main viewing area and primary view corridor may not be changed for any subsequent application.

The width of the primary view corridor shall extend the entire width of the protected primary view not to exceed a maximum of 180 degrees in width from the selected fixed location and direction. The primary view corridor shall exclude the first 18 feet of the proposed building height as measured from the existing natural grade or finish grade whichever results in a lower building height. No view obstruction within blue-water ocean, mountain or canyon-view elements per project shall be permitted. Existing foliage shall be considered to have no visual impact to the primary view corridor. New foliage shall not be placed in a manner that creates visual impacts to the primary view corridor and shall meet all landscaping requirements as outlined in this section.

DEIR Figure 5.1-11, View 7, is a view from the beach looking west towards the project site. This view was chosen from this location because the project was in this view, and it approximates the view one would have walking west along the beach.

A revised view simulation report with additional views is summarized in General Response 2.3

The comment is noted and the research will be forwarded to the City decisionmakers for their consideration.

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LETTER O5 – Meridian Consultants (3 page[s])



860 Hampshire Road, Suite P, Westlake Village, California 91631 805-367-5720

May 15, 2013

City of Malibu
23825 Stuart Ranch Road
Malibu, California 90265
Attn: Hy La, Associate Planner

Re: Crummer Site Subdivision Draft EIR

Dear Ms. Ly:

At the request of Gaines & Stacey, we reviewed Section 5.3, Biological Resources and Section 5.12, Recreation, of the Crummer Site Subdivision Draft EIR and offer the following comments on the information and analysis in these sections:

Section 5.3, Biological Resources

The Draft EIR does not include the information requested to address a number of specific comments by the Santa Monica Mountains Conservancy (SMMC) on the biological resources and overall ecological value of the Crummer site. The SMMC is an important Trustee Agency and the EIR needs to include the requested information to provide a complete and adequate analysis of potential impacts to biological resources.

O5-1

The Draft EIR Project Description does not discuss the conservation easement identified by the California Coastal Commission (CCC) and SMMC as necessary to mitigate the significant impacts of the proposed project on important biological resources. On page 5.9-7, the Draft EIR states the project “may” include a conservation easement in favor of the SMMC that includes the eastern and southern facing bluffs on the site and then bases the determination that the project is consistent with Policy 1.2 in the City’s General Plan Open Space Element based on this possibility. This easement is not discussed, however, in the Draft EIR Project Description section. Page 5.3-26 in the Land Use section of the Draft EIR states the applicant has reached an agreement with the SMMC to provide this conservation easement. The Draft EIR is inconsistent in its discussion of this easement and provides no description of the location and boundaries of this easement area or how it would mitigate the significant impacts of the project on biological resources identified.

O5-2

The Crummer site is identified by the SMMC as providing a critical portion of the important habitat linkage between the large block of natural habitat located immediately northeast of the Malibu Canyon entrance to Pepperdine University and the Malibu Bluffs Conservancy property. The Draft EIR addresses wildlife movement impacts based on a 2009 Biological Resources study, which does not identify or describe this important habitat linkage. The 2012 update of the 2009 biological resource survey, prepared by a different consultant, only quotes from the 2009 study and does not include any update of the information in the 2009 study or any independent analysis. The SMMC commented that the City’s Draft EIR would be deficient if it did not acknowledge the ecological context of the site and address how wildlife move in and out of the site. The Draft EIR does not address this important biological resource impact as requested by the SMMC.

O5-3

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Hy La
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Page 2

The SMMC also requests that the Draft EIR further evaluate the bluff habitat present on site as an “Environmentally Sensitive Area” or ESHA as required by Local Implementation Policy 4.3 in the City’s Local Coastal Plan, which states that any area not designated ESHA on the ESHA Overlay Map in the LCP may be considered as ESHA based on a site-specific biological resource study. As this bluff habitat is similar in quality to the ESHA designated property on the adjacent Malibu Bluffs Conservancy Property, this evaluation is required to determine the suitability of the bluff habitat on the site as ESHA.

05-4

Potential indirect impacts are also not adequately analyzed. The SMMC notes that domestic animals, specifically cats, can wreak havoc on native bird communities and recommends mitigation measures. Page 5.3-26 of the Draft EIR discusses that the project will include a fence specifically designed to allow the passage of small animals, but does not discuss the impacts from domestic animals passing through this fence into adjacent natural open space areas. The Draft EIR fails to address this potentially significant impact or appropriate mitigation for this and other indirect impacts of the project.

05-5

The SMMC also requested the Draft EIR contain a thorough analysis of night lighting impacts to the sensitive biological resources present in the adjacent Malibu Bluffs Conservancy property. Specifically, if the proposed ballfields will be lighted for night use and how this lighting could impact wildlife. The analysis of night lighting impacts in Section 5.1, Aesthetics, of the Draft EIR, does not even mention this adjacent resource area.

05-6

Hawks and other raptors have been identified as sensitive biological resources in other City EIRs. While page 5.3-5 of the Biological Resources section states not active or abandoned raptor nests were identified in the 5 blue gum trees on the site during the 2012 and earlier surveys, the value of the site as foraging habitat and the potential cumulative impacts from loss of the foraging habitat on the site is not addressed.

05-7

The Draft EIR improperly defers analysis and, therefore, identification of potential impacts to sensitive plant species. Specifically, Mitigation Measure 3-1(a) requires a subsequent survey for a sensitive plant species, Braunton’s milk-vetch. The Draft EIR notes the site has suitable habitat for this species. Another sensitive plant species, the Catalina mariposa lily was not found on the site in earlier surveys of the site but was found to be present in later surveys. This alone demonstrates the same could occur with Braunton’s milk-vetch. Despite these circumstances and basic CEQA standards, the Draft EIR requires as mitigation, a survey to determine if this sensitive plant species is present onsite. The Draft EIR does not, however, identify an impact to this species or appropriate mitigation.

05-8

Section 5.12 Recreation

The recreation section is a little over 3 pages in length and does not contain any meaningful information or analysis of the potential direct and indirect impacts that would result from expanding the adjacent Malibu Bluffs Park by adding and improving of 1.74 acres of the project site. The Draft EIR acknowledges on pages 5.12-2 and 3 that this additional recreational area has not been designed and, therefore, improvement and use of this area for active recreation areas and expanded parking are foreseeable future uses. While the statement is made on Page 5.12-3 that “Throughout this Draft EIR, both recreational options, the baseball field, or skate park, have been analyzed.” This statement is clearly not true, as evidenced in the comments on Section 5.3, Biological Resources, where potential impacts from night lighting of ballfields, are not analyzed.

05-9

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Even if these two alternative uses for this park expansion area were analyzed, as claimed, Section 5.12 also states this park expansion area may contain up to 94 parking spaces. The use of this parking and the indirect impacts from expanding the level of activity on the Malibu Bluffs Park is clearly foreseeable, but is not addressed in the Draft EIR. Section 5.12 provides a clearly conclusionary analysis and states the expansion of the Bluffs Park would be a separate action by the City subject to the California Environmental Quality Act as justification for the inadequate analysis.

05-10

While the details of the use of this park expansion area are not available, the potential uses are defined and additional programmatic analysis of potential impacts can be provided to make the City's EIR adequate under CEQA. As potentially significant impacts are likely to be identified, the City's Draft EIR will need to be recirculated for additional public review to allow for consultation with key trustee agencies, including the California Department of Fish and Wildlife and Santa Monica Mountains Conservancy, on appropriate mitigation for these potentially significant impacts. These potential impacts, including but not limited to, noise, light and glare, aesthetics, traffics, and pedestrian safety, were all identified in the responses to the Notice of Preparation from the Santa Monica Mountains and Gaines & Stacey, but are not analyzed, when clearly these potential impacts could be assessed.

05-11

Sincerely,



Tony Locacciato, AICP
Partner

3. Response to Comments

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3. Response to Comments

O5. Response to Comments from Meridian Consultants (Tony Locacciato), dated May 15, 2013.

O5-1 The commenter asserts that information requested to address specific comments by the Santa Monica Mountains Conservancy (SMMC) in response to the Notice of Preparation for the project is not addressed in the DEIR. The SMMC comments addressed a number of issues including:

- The role of the site in providing wildlife movement between the Malibu Bluffs and open space north of Pepperdine University. This comment is addressed in detail in Responses O3-39 and R4-23 above.
- Whether the Site (or portions thereof) should be designated ESHA, which is addressed in Responses O3-40 and A1-9.
- Conservation Easements, which is addressed in Response O5-2.
- Fuel Modification Impacts, which is fully addressed for the Single Story Alternative and the proposed Project in GLA's March 12, 2013 "Revised Update".
- Raptor Foraging, which is addressed in Response O3-43.
- Domestic cats and their potential for affect wildlife, which is addressed in Response O3-41.
- Weeds/Invasive Species, which is addressed by the Project landscaping plan that prohibits use of non-native invasive species.
- Night lighting and potential indirect impacts to wildlife, which is address in Response O3-42.

As such, all of the issues raised by the SMMC have been addressed and significant impacts to biological resources have not been identified with any of the issues raised.

O5-2 The conservation easement is not a mitigation measure. Impacts to biological resources are less than significant without the conservation easement. In 2009, applicant's predecessor in interest, AZ Winter Mesa, LLC voluntarily agreed to dedicate to the Mountains Recreation and Conservation Authority (MRCA) a conservation easement totaling approximately 6.23 acres along the southern portion of the project site and the eastern property line of the adjacent property. MRCA agreed to accept the dedication of the conservation easement. The conservation easement is a private agreement between the applicant and MRCA; its existence is provided for informational purposes only as it is not a mitigation measure and is not needed to mitigate project impacts.

O5-3 See Response to Comment O3-39.

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- O5-4 See Response to Comment 03-39.
- O5-5 See Response to Comment to 03-41.
- O5-6 See Response to Comment to 03-42
- O5-7 See Response to Comment to 03-43.
- O5-8 See Response to Comment to 03-44.
- O5-9 The sports field will not have night lighting and exhibits no potential for lighting impacts to areas of adjacent habitat. As discussed in Section 5.1 DEIR, *Aesthetics*, the project has been designed to limit potential indirect impact associated with night lighting through the location and type of lighting used as well as shielding wherever appropriate, including removal of street lights. An illustrative lighting plan has been developed that will reduce lighting impacts to the maximum extent practicable while still allowing for public safety pursuant to LIP Section 6.5(G). Because of the restriction on night lighting, the project exhibits no potential for significant light impacts to the Malibu Bluffs area, including significant impacts on wildlife.

Page 3-19, Section 3.3.4 Project Description, of the DEIR is hereby modified as follows:

Because certain recreational uses are foreseeable for Lot 7, this Draft EIR analyzes two additional different development options throughout the document to identify potential impacts associated with future recreational uses on Lot 7. The first development option is 5 single-family homes with Lot 7 as a baseball field. The second development option is 5 single-family homes with Lot 7 as a skate park. Any future recreational use on Lot 7 such as baseball field or skate park would not include nighttime lighting.

Page 5.12.32, Section 5.12.3, Environmental Impacts, of the DEIR is hereby modified as follows:

Therefore, active recreation areas and an expanded parking lot are all foreseeable future uses. As described in Chapter 3, *Project Description*, at this time the City believes that the recreational area may be used as a baseball field or a skate park. In addition, a portion of Lot 7 may be developed with a parking lot for Bluffs Park open to the general public, a City-owned maintenance shed, and passive recreational uses such as public sitting areas and picnic tables. The new parking lot could contain up to 94 parking spaces. Any future recreational use on Lot 7 such as baseball field or skate park would not include nighttime lighting. Throughout this DEIR, both potential recreational options for dedicated Lot 7, the baseball field or skate park, have been analyzed.

- O5-10 The physical condition of the park and the physical impacts of a potential expansion for either a playfield or skate park are and associated parking lot are directly addressed in the

3. Response to Comments

DEIR. As discussed on Page 5.12-2 of the DEIR, the proposed project is for the development of five single-family homes and the dedication of land (Lot 7) to the City of Malibu to expand Malibu Bluffs Park by 1.74 acres to the east and northeast. The proposed project will dedicate Lot 7 to the City. The recreational area has yet to be designed and would not be developed as part of this project. Although no recreational improvements would be permitted as part of the applicant's current proposal, the land dedication is intended to expand Bluffs Park. Therefore, active recreation areas and an expanded parking lot are all foreseeable future uses and were analyzed in the DEIR. As described in Chapter 3, *Project Description*, at this time the City believes that the recreational area may be used as a baseball field or a skate park. In addition, a portion of Lot 7 may be developed with a parking lot for Bluffs Park open to the general public, a City-owned maintenance shed, and passive recreational uses such as public sitting areas and picnic tables.

As addressed in DEIR Section 5.12, the 2012 Parks and Recreation Master Plan found that Malibu Bluffs Park is heavily used, and onsite parking lot does not adequately serve park patrons during peak times. The park's facilities were found to be in "excellent" and "good" condition, with the exception of fencing and backstops, which were in "fair" condition. The DEIR found that the residential project itself generates 15 additional people who would use the existing park facilities at Bluffs Park, but not to such an extent as to cause physical deterioration. Impacts were considered less than significant. Section 5.11 *Transportation and Traffic*, looked parking demand and trip generation of weekday and weekend trips associated with both potential park development options (based on two games per day on weekdays, and ten games per day on Saturdays for the playfield and 30 people per day on weekdays, 60 people per day on weekends for the skate park). Impacts were less than significant with mitigation.

Finally, the expansion of the Bluffs Park would be processed as a separate action by the City of Malibu; would be subject to all of the requirement of the General Plan, Municipal Code, and LCP; and would be a discretionary action subject to the California Environmental Quality Act (CEQA).

- O5-11 Please refer to Response to Comments O5-10 through O5-10. The comment is noted and will be forwarded to the City decision makers for their consideration.

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LETTER O6 – PCH Project Owner LLC (6 page[s])

PCH PROJECT OWNER LLC
c/o BRP MANAGEMENT LLC
315 S. Beverly Drive
Suite 211
Beverly Hills, CA 90212
310-734-2300

May 20, 2013

By Email-hly@malibucity.org
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
Attn: Ha Ly, Associate Planner

**In re: Crummer Site Subdivision Draft Environmental Impact Report
(SCH No. 2008091155)**

Dear Ms. Ly:

PCH Project Owner, I.L.C, the project applicant, has the following comments to the Crummer Site Subdivision Draft Environmental Impact Report ("DEIR"):

- 1. **Grading-** Psomas, the civil engineering firm that prepared the project's grading plan, reviewed Table 3-4 in the DEIR and found a number of errors that overstate the amount of grading. Please see copy of proposed corrections to Table 3-4 prepared by Psomas attached hereto and incorporate those changes wherever the DEIR refers to these grading quantities.
- 2. **Project Description**
 - a. **Conservation Easement-** The project applicant's predecessor in interest to the Crummer Site agreed to dedicate a conservation easement along the south facing bluff and common property line with the Towing Site immediately to the east of the Crummer Site to the Santa Monica Mountains Conservancy ("SMMC"). The project applicant has agreed in principal to offer to dedicate the same conservation easement to the SMMC. Therefore, the proposed conservation easement in favor of the

06-1

06-2

3. Response to Comments

Ms. Ha Ly
May 20, 2013
Page 2

SMMC should be included in project description. This reference to the conservation easement is also included on page 5.3-26.

- b. **Figures 3.8 and 3.9-** The blue line denoting the “daylight line/limit of work” on Figure 3.8 should be extended to include all of the improvements on Lot 6. For consistency, the blue line indicating the “daylight line/limit of work” on Figure 3.9 should also be shaded blue.

06-3
- 3. **Page 5.1-1-** Please remove the reference to Pepperdine University in the last line in the last paragraph on page 5.1-1 because Pepperdine is private property outside the City of Malibu and is not included in the City’s General Plan.

06-4
- 4. **Visual Simulations-**

 - a. **Existing vegetation-** A number of the visual simulations show a group of seven (7) large eucalyptus trees located on the project site, which range in height from 35 feet to over 40 feet with canopies between 20 feet and 60 feet and which appear to block portions of views of the ocean. These eucalyptus trees will be removed if the project is approved.

06-5
 - b. **Rancho Malibu-** The primary view corridors for the main hotel building and casitas in the Rancho Malibu Hotel project, based on plans currently filed with the City of Malibu, are oriented to the southeast, whereas the project site is directly south of Rancho Malibu. (Please see the primary view analysis prepared by the project applicant’s architect attached hereto). Therefore, the proposed project would not affect the primary view corridors of the Rancho Malibu Hotel as it is presently designed. The visual simulations from the Rancho Malibu Hotel site (Figures 5.1-5, 5.1.-6 and 5.1-7) represent the impact on only the secondary view corridors from a relatively small number of casitas on the Rancho Malibu Hotel site. Only if the Rancho Malibu Hotel project is redesigned to orient the primary view corridors from the main hotel and casitas directly south would the visual impacts contained Figures 5.1-5, 5.1.-6 and 5.1-7 be representative of the potential visual impacts to the Rancho Malibu Hotel project. However, the existing site plan for the Rancho Malibu Hotel shows that the primary view corridors are not adversely affected by the proposed project.

06-6
 - c. **Scenic Resources-** Page 5.1-47 first sentences states “The proposed project would develop the project site with several structures...” We believe the phrase “several structures” should be replaced with “five single family residences, including various accessory structures and gatehouse”.

06-7

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3. Response to Comments

Ms. Ha Ly
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Page 3

5. Land Use-

- a. On page 5.9-10 under Height Limitations, the DEIR states that "With approval of ZTA 12-001 and LCPA 12-001, land use impacts related to height limitations would be brought into conformance and would thus be less than significant." The DEIR should be clarified to reflect that exceeding the 18 foot height limit is permissible with a site plan review under the Malibu Municipal Code Section 17.40.040(c).

06-8

6. Transportation and Traffic-

- a. The DEIR should be clarified to state that the proposed project will not have a significant impact on traffic. The DEIR traffic analysis discloses a potential significant impact at the Malibu Canyon Road/Pacific Coast Highway intersection that would result if a ball field is developed by the City on Lot 7. Although Lot 7 is part of the proposed project to the extent of designating its use as park and public open space, including recreational facilities, the City has not determined how it will develop Lot 7 and at this time the ball field remains only a potential use that is analyzed in the DEIR for information purposes. The traffic impacts from the ball field can be mitigated by certain modifications to the lane configuration at the Malibu Canyon Road/Pacific Coast Highway intersection. However, this traffic mitigation measure will only be required if the City determines to build the ball field on Lot 7. For this reason, the proposed mitigation measure 11-1 should not be imposed on the project applicant. The DEIR should be revised to clearly reflect that the ball field and skate park options are not part of the proposed project and are being analyzed for informational purposes to illustrate, among other things, the traffic impacts from two possible uses of Lot 7 after it is dedicated to the City.

06-9

- b. The DEIR discusses the impact on Malibu Bluffs Park parking demand on page 5.11-87 and states that "The proposed project would result in a significant parking impact during these times of peak park usage [special events] because it would eliminate the use of the Crummer property for overflow parking and it would generate additional parking demand during baseball games." The proposed project will not cause any parking impacts on Lot 7 or Bluffs Park. The proposed project site has not been used for overflow parking for special events at Bluffs Park for many years. The DEIR statement is misleading because the property is not available for overflow parking and its development will not cause parking impacts at Bluffs Park. As with the traffic impacts analysis, because the specific recreation use of Lot 7 has not been determined by the City, it is speculation at this time that the use of Lot 7 could cause conflicts with parking for special events held at Bluffs Park. In fact, it appears that the

06-10

LEGAL_US_W # 75135658 3

3. Response to Comments

Ms. Ha Ly
May 20, 2013
Page 4

additional 54 parking spaces that could be created on Lot 7 could ameliorate parking constraints at special events because the configuration of Lot 7 could result in at least 54 additional parking spaces at Bluffs Park. Accordingly, mitigation measure 11-2 should not be imposed on the project applicant.

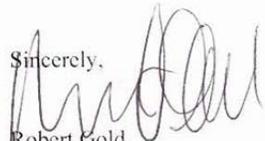
06-10
cont'd

- c. After the circulation of the DEIR, the City Public Works Department issued a comment stating that re-striping the existing southbound through plus left-turn lane on PCH to a through plus left- and right-turn lane does not require Caltrans approval because the restriping will occur on Malibu Canyon Road, and is within the City's public right-of-way. Furthermore, the City Public Works Department has determined that the preference is to keep the right turn overlap phase for the existing No. 2 Lane dedicated right-turn lane on PCH (status quo) because it will result in a higher level of service than modifying the existing traffic signal to remove the right-turn overlap phase to a standard right-turn-on-red permissive phase. Therefore, the mitigation measures do not require approval from Caltrans. The Final EIR should reflect this comment.

06-11

Please let me know if you have any questions concerning the enclosed.

Sincerely,


Robert Gold

Enclosures

CC: Joyce Parker-Bozylinski (By email jparkerbozylinski@malibucity.org)

LEGAL_US_W # 75135658.3

3. Response to Comments

3. Project Description

**Table 3-4
Grading Summary**

Lot No.	Exempt ¹					Remedial	Total Grading ^{131,419}	Import/ Export		
	Removal & Recompaction	Under Structure ^{13,380}	Safety ^{11,878}	Non-Exempt ² ^{9,072}				Total Export ^{5,429}	Total Import ³ ⁰	Net Export ⁴ ^{5,429}
1 through 6	96,700	15,790	8,769	11,859	389	133,507	19,902	10,974	8,928	
7 with Baseball Field Option	0	143	0	4,043	0	4,186	3,764	384	3,380	
7 with Skate Park Option	0	2,734	0	3,277	0	5,361	4,600	684	3,925	
Grand Total								Grand Total		
1 through 7 with Baseball Field Option	96,700	13,523 15,933	11,878 8,769	13,115 15,902	389	135,605 137,693	8,416 23,666	0 11,358	8,809 12,308	
1 through 7 with Skate Park Option	96,700	16,114 18,524	11,878 8,769	11,699 15,135	389	137,269 138,858	8,961 24,511	0 11,658	8,354 12,853	

Notes:
¹ Exempt grading is defined as excavation for foundations and other understructure excavation and incremental excavation for basements and safety purposes and includes removal and recompaction, safety grading and remedial grading.
² Non-exempt grading means any excavation or fill, or combination thereof, necessary and incidental to impending building construction that is not considered exempt.
³ To capture emissions associated with total earth movement onsite, the air quality analysis assumes offsite to onsite, and onsite to offsite haul trips for soil import and export, on a lot by lot basis for the 5 one-story homes on Lots 1 through 6 and Skate Park on Lot 7 development option. Therefore, this is the most conservative approach capturing the impacts of the worst case scenario. Because export quantities exceed import quantities, soil would actually be distributed among the lots onsite eliminating the need for offsite soil import.
⁴ Includes shrinkage.



Two development options are analyzed throughout this Draft EIR for Lot 7, a baseball field and a skate park. The baseball field option would require a total of 4,186 cubic yards of soil disturbance. The skate park option would require a total of 5,361 cubic yard of grading.

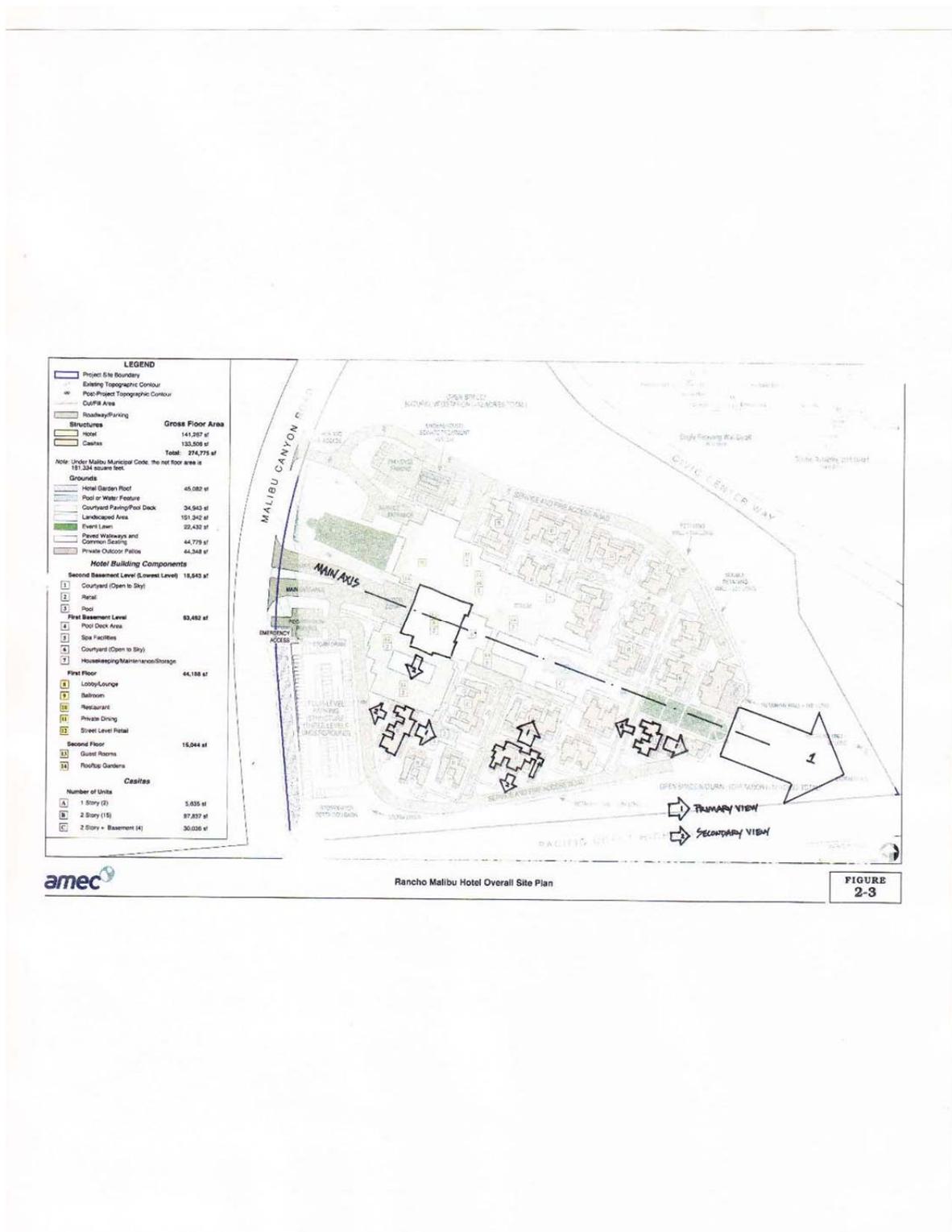
When combined with the grading volumes for Lots 1 through 6, the skate park development option results in the most amount of grading. The most conservative approach is used throughout this Draft EIR to assess the project's environmental impacts, utilizing the 5 single-family homes with skate park grading volumes. This results in total project movement of 138,868 cubic yards of soil. This total includes 96,700 cubic yards of removal and recompaction, 18,524 cubic yards of understructure grading, 11,859 cubic yards of safety grading, 389 cubic yards of remedial grading and 12,046 cubic yards of nonexempt grading. The project will include a net export of 12,852 cubic yards of earthen material, including shrinkage.

Construction

Construction activities would commence following environmental review and project approval. Construction activities are estimated to be completed in approximately 38 months and are preliminarily scheduled to commence in 2014 and conclude by 2017.

As shown in Table 3-4, construction of the project would result in approximately 19,902 cubic yards of soil export and 10,974 cubic yards of soil import in connection with Lots 1 through 6. This would result in a net of approximately 8,927 cubic yards of soil that would be exported off the site in connection with Lots 1 through 6.

3. Response to Comments



3. Response to Comments

O6. Response to Comments from PCH Project Owner LLC (Robert Gold), dated May 20, 2013.

O6-1 The commenter notes that the grading volumes provided in Table 3-4 if the DEIR overstate the amount of grading and requests that the grading volumes be revised the DEIR.

Comment noted. Table 3-4 is a summary of the grading volumes used to estimate the impacts in DEIR Section 5.3, *Air Quality* and Section 5.10, *Noise*, both of which were less than significant. The analyses based on the grading volumes in Table 3-4, therefore, represent a conservative approach. To ensure the DEIR is internally consistent, Table 3-4 will not be revised.

The comment will be forwarded to City decisionmakers for their consideration.

O6-2 The conservation easement has been added to General Response 2.2 and FEIR Chapter 4, *Revisions to the Draft EIR*.

O6-3 The DEIR figures revised Page 5.1-1, Section 5, *Aesthetics*, of the DEIR was modified

O6-4 Page 5.1-1, Section 5, *Aesthetics*, of the DEIR was modified Page 5.1-1, Section 5, *Aesthetics*, of the DEIR was modified.

O6-5 The comment will be forwarded to City decisionmakers for their consideration.

O6-6 The comment will be forwarded to City decisionmakers for their consideration.

O6-7 Page 5.1-47, Section 5, *Aesthetics*, of the DEIR was modified and included in FEIR Chapter 4, *Revisions to the Draft EIR*.

O6-8 Comment noted. DIER revised.

O6-9 Future development of the site with the proposed project (5 single-family homes) and Lot 7 with a baseball field would result in a substantial increase in traffic in Opening Year 2017 and Future Year 2030 if the intersection of PCH and Malibu Canyon Road/Winter Mesa Road, which is operated and maintained by Caltrans, is not improved. However, re-striping the existing southbound through plus left-turn lane on PCH to a through plus left- and right-turn lane does not require Caltrans approval because the restriping would occur on Malibu Canyon Road, and is within the City's public right-of-way. Furthermore, the City Public Works Department has determined that the preference is to keep the right turn overlap phase for the existing No. 2 Lane dedicated right-turn lane on PCH (status quo) because it will result in a higher level of service than modifying the existing traffic signal to remove the right turn overlap phase to a standard right-turn-on-red permissive phase. Therefore, the mitigation measures do not require approval from Caltrans. This comment is forwarded to the City decisionmakers for their consideration.

3. Response to Comments

Although no recreational improvements would be permitted as part of the applicant's current proposal, the land dedication is intended to expand Malibu Bluffs Park. Furthermore, the LCPA and corollary zoning text amendment being requested—including language that specifies the type, density and intensity of development permitted in the PD zoning designation—applies to all seven lots. Mitigation Measure 11-1 mitigates a significant cumulative impact related to foreseeable future uses of Lot 7. Mitigation Measure 11-1 has not been removed. The comment will be forwarded to City decisionmakers for their consideration.

- O6-10 The DEIR is updated to reflect that the five residential homes would not cause a parking impact and mention of overflow parking on the Crummer site has been removed. See revised Section 5.11, *Traffic and Transportation* in FEIR Appendix M.

Although no recreational improvements would be permitted as part of the applicant's current proposal, the land dedication is intended to expand Malibu Bluffs Park. Furthermore, the LCPA and corollary zoning text amendment being requested—including language that specifies the type, density and intensity of development permitted in the PD zoning designation—applies to all seven lots. Mitigation Measure 11-2 mitigates a significant cumulative impact related to foreseeable future uses of Lot 7. Mitigation Measure 11-2 has not been removed. The comment will be forwarded to City decisionmakers for their consideration.

- O6-11 Comment noted and DEIR revised accordingly.

3. Response to Comments

LETTER O7 – Pepperdine University (2 page[s])

PEPPERDINE UNIVERSITY
GOVERNMENTAL AND REGULATORY AFFAIRS

Ha Ly
Associate Planner, City of Malibu
Malibu City Hall
23825 Stuart Ranch Road
Malibu, CA 90265

Re: Pepperdine University Comments on the Draft Environmental Impact Report for the Crummer Site Subdivision

Dear Ms. Ly:

Pepperdine University appreciates the opportunity to comment on the Draft Environmental Impact Report (“EIR”) for the Crummer Site Subdivision project (“Project”). Pepperdine takes its role of being a good neighbor and steward of the land very seriously. We support progress and investment in Malibu, but also firmly believe that it is incumbent upon all of us to ensure sensitivity to the environment and preservation of the breathtaking natural surroundings and vistas that make Malibu unique. It is with that in mind that we provide the following EIR comments for the Project and encourage the City to carefully study all of the potential Project impacts.

I. Aesthetics

The Project applicant should undertake every possible effort to ensure that the Project, including all new construction, is in scale with the surrounding environment and unparalleled scenic vistas. At Pepperdine, we ensure that our campus design is seamless with the surrounding environment, which means moving campus development below any major ridgelines and concentrating structures wholly outside of scenic view corridors. This also includes protecting views from Pacific Coast Highway and Malibu Canyon Road (identified as important scenic highways).

In this context, existing views from Pepperdine towards the Project site potentially cause concern, particularly due to the size, height, and massing of the homes proposed as part of the Project. Responsible planning involves ensuring that existing views of one’s neighbors and others in the area are preserved to the greatest extent possible. Thus, Pepperdine urges the City to ensure that all relevant site line views are properly studied in the Draft EIR. We believe that additional view simulations and site line studies are necessary to adequately study potential aesthetic impacts to views. Moreover, the Project should be in appropriate scale with the environment and located outside of major view corridors.

II. Geology

The site proposed for the Project is located immediately adjacent to an area of Bluffs Park, which is the site of several monitoring wells owned and maintained by Pepperdine. The data from these wells is used, along with data from Pepperdine’s campus, to track the use and fate of irrigation and groundwater on and surrounding the campus through Pepperdine’s Hydrogeologic Monitoring Program (“HMP”). Since the inception of the program in the 1980s, the HMP has conclusively shown that Pepperdine’s irrigation practices do not contribute to existing slope instability on the Bluffs and at other areas south of the campus. The HMP is conducted in accordance with requirements mandated by the Los Angeles County Department of Public Works, the California Coastal Commission, and the Los Angeles Regional Water Quality Control Board.

07-1

07-2

07-3

3. Response to Comments

The HMP includes monitoring of groundwater levels in approximately 25 monitoring wells located on and around the Pepperdine campus. The University has monitored these wells on a monthly basis since the late 1980s. The historical monitoring at Bluffs Park, in particular, supports the HMP by providing a means to evaluate long-term trends, thus enabling appropriate operational measures to be taken if applicable. On February 7, 2013, Pepperdine received City Planning Commission approval for replacement and upgrades of the off-campus monitoring wells on Bluffs Park that will ensure the continued efficacy of this monitoring program, which protects the University, the City, and its neighbors.

07-3
cont'd

Pepperdine's ability to access and monitor geologic conditions at Bluffs Park is critical to support the HMP and to ensure that it is not contributing to unsafe geologic conditions at the Project site. Further, while the evidence conclusively shows that Pepperdine is not contributing to existing slope instability, it is our understanding from the Draft EIR and our historical knowledge of the area that the slopes where the Project is proposed are subject to geotechnical instability. Moreover, this geotechnical instability has been documented since the early 1900s. Thus, the EIR should study whether the Project will implement appropriate monitoring to ensure it does not contribute to groundwater infiltration and does not impact existing slope instability.

III. Cumulative Impact Analysis / Related Project List

The Traffic section of the EIR analyzes 16 related projects in the City of Malibu (e.g., Rancho Malibu Hotel, La Paz, and Whole Foods shopping centers, etc.) for purposes of cumulative impacts. Pepperdine's recently approved Campus Life Project ("CLP") is not included as a related project and is not studied in the EIR. While Pepperdine is not located within City limits and the CLP falls under the permitting authority of Los Angeles County Department of Regional Planning and the California Coastal Commission, Pepperdine's proximity to the Project site, study area intersections, and roadway segments studied in the EIR make future development on the campus a pertinent area for further study.

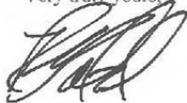
07-4

IV. Conclusion

Pepperdine values its role as a neighbor to the City of Malibu and appreciates the opportunity to comment on the Project. Please feel free to contact me directly if I can be of any assistance or provide any additional information.

07-5

Very truly yours,



Rhiannon Bailard
Associate Vice President

3. Response to Comments

O7. Response to Comments from Pepperdine University (Rhiannon Bailard), dated May 20, 2013.

Responses are based in part on the following technical report(s) prepared in response to comments:

- Glenn Lukos Associates, Inc. (GLA). 2013, July. Biological Resources Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, "Crummer Site", 24108, 24120, 24134, 24150, 24174 Pacific Coast Highway, City of Malibu, California
- GLA. 2013, September. Responses to Comments

Complete copies of these studies are included in Appendix B to this FEIR.

O7-1 The comments consists of general opening remarks and a summary of some of the site design considerations Pepperdine University undertakes to protect surrounding views. The comment is noted and will be forwarded to the City decision makers for their consideration.

O7-2 The commenter is expressing concern regarding the visual impacts from Pepperdine University towards the project site. The commenter is referred to General Comment 2.3.1 and the revised view simulation analysis is Appendix A of the FEIR. A number of comments were received requesting that the City provide visual simulations from additional public viewpoints. Based on the comments to the DEIR, the Planning Department requested visual simulations to be provided from twelve (12) additional locations, seven (7) of which are from public viewpoints, and five locations are on the campus of Pepperdine University selected by an University representative. They include:

- View 15: Pepperdine University - Brock House Lawn.
- View 16: Pepperdine University - Thornton Administrative Center.
- View 17: Pepperdine University - Campus Walk
- View 18: Pepperdine University - Lake Sidewalk
- View 19: Pepperdine University - Alumni Park.

As concluded by DEIR Section 5.1, Aesthetics, and as supported by Revised View Simulation Report performed by S.A. Johnson Architectural Simulation, the proposed project would have a less than significant impact on visual resources from Pepperdine University.

O7-3 This comment first describes Pepperdine's Hydrogeologic Monitoring Program (HMP). The HMP includes monitoring of groundwater levels in approximately 25 monitoring wells located on and around the Pepperdine campus. "Pepperdine's ability to access and monitor geologic conditions at Bluffs Park is critical to support the HMP and to ensure that it is not contributing to unsafe geologic conditions at the Project sit..... it is our understanding from the Draft EIR and our historical knowledge of the area that the slopes where the Project is proposed are subject to geotechnical instability. Moreover,

3. Response to Comments

this geotechnical instability has been documented since the early 1900s” The comment then states that “the EIR should study whether the Project will implement appropriate monitoring to ensure it does not contribute to groundwater infiltration and does not impact existing slope instability.”

The proposed project would not impact Pepperdine’s ability to access HMP groundwater monitoring wells. Earth Consultants International (2009, 2012) has developed a hypothetical/severe groundwater surface that incorporated maximum anticipated groundwater levels and contributions from treated effluent, irrigation and rainfall. (Please see Leighton’s response to O1-8 (AEI Consultants) for a summary of the hypothetical/severe groundwater condition.) Leighton has demonstrated by way of slope stability analyses along Geotechnical Cross-Sections D and F that a factor of safety of at least 1.5 would be maintained throughout the project site even given the

However, based on detailed slope stability analyses (Leighton, 2000; 2003; 2007; 2009a, b; 2012a), Leighton has provided recommendations for the proposed development to be set back from the slopes and to have appropriate foundations such that the development will have a factor of safety of at least 1.5. Also, Earth Consultants International (2009, 2012) has shown that groundwater levels within the offsite landslides will not be affected by, and will not increase as a result of, the proposed project. Also, our responses to comment letter O3-13 (Gaines & Stacey, LLP) demonstrate that the stability of the bounding slope to the east will also not be affected by the proposed project. Leighton’s work (Leighton, 2000; 2003; 2007; 2009a, b; 2012a) and Earth Consultants International’s work (Earth Consultants International, 2009, 2012) was approved by the City of Malibu (2012a, b). A HMP has not required to ensure that groundwater infiltration does not impact existing slope instability.

In addition to the preceding, upon installation of the proposed Onsite Wastewater Treatment System (OWTS), monitoring of groundwater levels across the site will be a requirement of the State Water Resources Control Board in its Waste Discharge Requirement permit to ensure that the levels are as predicted by the project design. Further, the site is currently part of a Sewer District within which the feasibility of constructing a sewer to connect with the City’s infrastructure is being assessed by the City. Should such a sewer be constructed, the proposed development will connect to that sewer and the treated effluent will not be discharged to the subsurface.

- O7-4 The traffic study has been revised to include the Campus Life Project (“CLP as a related project. As discussed in Section 5.5 of the DEIR, project impacts related to slope stability and groundwater levels are less than significant. Please see the revised traffic study included as Appendix G of this FEIR.
- O7-5 The comment consists of closing remarks. No response is necessary. This comments letter will forwarded to City decisionmakers for their consideration.

3. Response to Comments

LETTER O8 – Southern California Edison (1 page[s])



May 6, 2013
Attn: Ha Ly
Associate Planner
23825 Stuart Ranch Road
Malibu, CA 90265

RECEIVED
MAY 10 2013
PLANNING DEPT.

Re: Crummer Site Subdivision

Southern California Edison (SCE) appreciates the opportunity to provide comment on the above referenced project.

Southern California Edison Company's rights-of-ways and fee-owned properties are purchased for the exclusive use of SCE to operate and maintain its present and future facilities. Any proposed use will be reviewed on a case-by-case basis by SCE's Operating Department. Approvals or denials will be in writing based upon review of the maps provided by the developer and compatibility with SCE right-of-way constraints and rights. In the event the project proposes to impact SCE facilities or its land related rights, please forward five (5) sets of project plans, and a PDF copy of the same, depicting SCE's facilities and its associated land rights to the following location for review as noted above:

Real Properties Department
Southern California Edison Company
2131 Walnut Grove Avenue
G.O.3 – Second Floor
Rosemead, CA 91770

08-1

Please be advised if development plans result in the need to build new or relocate existing SCE electrical facilities that operate at or above 50 kV, the SCE construction may have environmental consequences subject to CEQA review as required by the California Public Utilities Commission (CPUC). If those environmental consequences are identified and addressed by the local agency in the CEQA process for the larger project, SCE may not be required to pursue a later, separate, mandatory CEQA review through the CPUC's General Order 131-D (GO 131-D) process. If the SCE facilities are not adequately addressed in the CEQA review for the larger project, and the new facilities could result in significant environmental impacts, the required additional CEQA review at the CPUC could delay approval of the SCE power line portion of the project for two years or longer.

Once again, we appreciate the opportunity to comment on the project. If you have any questions regarding this letter, do not hesitate to contact me at (310) 315-3201.

Sincerely,

Mark A. Olson
Local Public Affairs Region Manager
Southern California Edison Company

3. Response to Comments

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3. Response to Comments

O8. Response to Comments from Southern California Edison (Mark A. Olson), dated Date.

O8-1 The comment is noted and will be forwarded to the City decisionmakers for their consideration

3. Response to Comments

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3. Response to Comments

LETTER O9 – Wishtoyo Foundation (13 page[s])



May 17, 2013

City of Malibu
Attn: Ha Ly, Associate Planner
23825 Stuart Ranch Road
Malibu, CA 90265

VIA EMAIL: hly@malibcity.org

Re: Wishtoyo’s Comments on Crummer Site Subdivision DEIR; Environmental Impact Report No. 09-001, Coastal Development Permit Nos. 07-144 to 07-149, Tentative Tract Map No. 07-003, Local Coastal Program Amendment (LCPA) 12-001 and Zoning Text Amendment (ZTA) No. 12-001.

To Whom It May Concern with the City of Malibu:

Wishtoyo Foundation is submitting these comments on the Draft Environmental Impact Report for the Crummer Site Subdivision Project on the Malibu Bluffs (“DEIR”) and the: Environmental Impact Report No. 09-001, Coastal Development Permit Nos. 07-144 to 07-149, Tentative Tract Map No. 07-003, Local Coastal Program Amendment (LCPA) 12-001 and Zoning Text Amendment (ZTA) No. 12-001 (“Project”).

09-1

Wishtoyo opposes the Project and its DEIR due to the environmental and cultural impacts the Project would impose on the Malibu residents, Chumash Native Americans, Malibu visitors, wildlife, and natural resources. This comment letter raises specific concerns regarding the inadequate analysis of impacts to Chumash Native American cultural resources in the DEIR.

Founded in 1997, Wishtoyo is a California nonprofit public interest organization with over 700 members composed of Chumash Native Americans, and Santa Barbara, Ventura, and Los Angeles County residents. Wishtoyo Foundation’s mission is to preserve, protect, and restore Chumash culture, the culture of all of three counties’ diverse communities, and the environment. The Wishtoyo Foundation shares traditional Chumash beliefs, cultural practices, songs, dances, stories, and values with the public to instill environmental awareness and responsibility for sustaining the health of our land, air, and water for the benefit of future generations.

09-2

The Chumash People, including members of Wishtoyo and their ancestors, have a long history of interaction with and usage of the Malibu coast and its bluffs for a variety of purposes, including religious, residential, ceremonial, and cultural uses.

Our first concern is that, contrary to CEQA’s requirements, there has been no meaningful consultation, and legally inadequate consultation, with the Chumash People and the Native American Heritage Commission (“NAHC”) for this Project. The DEIS does not contain reference to, or records of consultation or correspondence with local Chumash Native Americans, the NAHC, the NAHC contacts,

09-3

3875-A Telegraph Rd., #423 • Ventura, CA 93003 • Phone 805.658.1120 • Fax 805.258.5107
www.wishtoyo.org

3. Response to Comments

or Most Likely Descendants regarding the Project’s impacts to Chumash burials, Chumash cultural resources, Chumash ceremonies, Chumash sites of significance, or current or historical Chumash utilization of the Project area. | 09-3
cont'd

Secondly, the DEIR does not discuss the impact to the Chumash culture, Chumash People, and Chumash religious and ceremonial practices from the Project’s impacts to the natural undisturbed Chumash cultural landscape overlooking Malibu, and the view of the Channel Islands (the origin of the Chumash People), the Pacific Ocean, and marine life. | 09-4

Third, the DEIR’s analysis of the project setting and baseline for cultural resources in the Project Area and within the Project site is insufficient to identify the impacts to Chumash cultural resources, Chumash burials and artifacts, and the Chumash cultural landscape on the Project site. For instance, no mention of the Chumash Villages in Malibu and their historical footprint are provided, so as to provide the public with information about the potential impacts to the Chumash cultural resources (burial sites, village sites, artifacts, sacred sites, ceremonial sites) within the Project site and area. Without such an analysis, the DEIR deprives the public of an understanding of the site’s function for the Chumash People and the general public, and thus deprives the public of an understanding of the potential significant impacts of the project. During the DEIR public hearing, Mati Waiya, Wishtoyo’s Executive Director and Chumash Ceremonial Elder, and Luhui Isha Waiya, a Chumash and Wishtoyo’s Cultural Resources and Education Director, requested more time (an extension of the DEIR comment period) to provide the City with a detailed account of the Chumash cultural resources known to likely be present within the Project boundaries. Mr. Waiya and Mrs. Isha Waiya feel that the analysis in the DEIR of impacts to cultural resources was inadequate and incomplete, thus requested the extra time to provide the City with information from qualified professionals, previously conducted reports not analyzed as part of the historical records review, and from the oral history passed down from Chumash family from generation to generation. The DEIR comment period extension needed to help fill some, but not all of the gaps in the cultural resources section of the DEIR created by inadequate consultation with the Chumash, was not granted by the City. However, Wishtoyo places the City on notice that Mr. Waiya and Mrs. Isha, will be submitting additional comments after the close of the DEIR comment period. | 09-5

Fourth, Wishtoyo requests a copy of the Phase I archaeological study (“Study”) and that a copy of the Study is provided to Mr. Waiya, Mrs. Isha Waiya, the NAHC, the MLD, and the NAHC Native American Contacts for their review. In addition, Wishtoyo requests that the non confidential portions of the Phase I Archeological study be made available for public review. Since no Chumash cultural resources were identified in the Study, there is apparently no confidential information in the Study that should be withheld from the public, the NAHC, or Chumash, and Wishtoyo and the public need and are entitled to analyze the Study to determine its adequacy in identifying and analyzing impacts to Chumash cultural resources. | 09-6

Fifth, as the DEIR acknowledges, there were multiple Chumash Villages in the Project Area, as the Project area was historically inhabited by Chumash. An area like the Project site - the scenic Malibu Bluffs high above the ocean overlooking the Pacific Ocean, Malibu, and the Channel Islands (the origin of the Chumash) - is a likely place for historic Chumash Villages, Chumash burials, and Chumash religious/ceremonial usage. Thus, Wishtoyo requests that the best available methodologies are explored and utilized by the City to determine the presence of Chumash cultural resources (including burials) | 09-7

3. Response to Comments

within the Project site. Mere surface pedestrian foot surveys are insufficient, as Chumash cultural resources, including burials, are often buried underground. Wishtoyo requests that specially trained forensic canines, in combination with ground penetrating radar, are utilized (just like they were in Santa Cruz to identify Ohlone Native American burials for the KB Home development¹), to identify the location of Chumash burials and cultural resources within the project envelope. The use of specially trained canine forensics, in combination with ground penetrating radar, represents the best available technology and most reliable means for the identification of Chumash Native American burials and cultural resources, and thus should be used to identify potential impacts to significant Chumash cultural / historic resources and to mitigate those impacts to a less than significant effect. By utilizing highly trained forensic canines alone or in combination with ground penetrating radar to identify with more reasonable certainty all or almost all of the Chumash burials within the Project site, mitigation measures can be developed in coordination with the local Chumash to achieve preservation in place for those impacted burials and cultural historic resources. It is evident to Wishtoyo that the on the ground surveys were not sufficiently extensive, as not only were forensic canines and ground penetrating radar not used, but in addition, it does not appear that event the most basic, but limitedly effective identification practices were used to determine the presence of subsurface Chumash remains, such as the digging of properly spaced test pits throughout the Project site.

09-7
cont'd

Phase III data recovery or salvage excavation (excavation, removal, and sometimes re-entry for unanticipated discovery of Native American remains) as set forth as mitigation measures in the DEIR for the discovery of Chumash burials and cultural resources during ground disturbing activities, grading, and construction (“construction”) is not CEQA’s preferred method of mitigation, and is not adequate mitigation for Chumash burials and other Chumash cultural resources, as unanticipated contact with Chumash cultural resources with heavy machinery and tools can destroy, crumble, and unearth Chumash burials and artifacts upon contact. Even if the DEIR’s salvage operation for unanticipated discovery of Chumash remains includes re-burial or re-location, re-burial or re-location do not achieve preservation in place of the Chumash Peoples’ burial sites, sacred sites, village sites, and cultural artifacts and remains as required by CEQA. This is because the context, relationship, and significance between the remains and their original location are destroyed by re-location and re-burial, or destroyed or crumbled during unanticipated discovery before re-buried or re-located. It is thus imperative that the DEIR sufficiently analyzes the presence of Chumash Native American cultural resources, including burials within the Project site with the best available technology and with proper input from the Chumash community and NAHC, so that so that Chumash cultural resources on the Project site can be preserved in place and protected from significant impacts associated with the Project. The DEIR’s plan to dig first, find, and then excavate/destroy Chumash cultural resources via Phase III data recovery or shipping remains off to a museum are unacceptable, insufficient, and harmful mitigation measures adversely impacting the Chumash and the general public (see Playa Vista Attachment for an example of what happens to Native American burials when sufficient studies and analysis of Native American cultural resources are not conducted before project excavation/commencement).

09-8

Wishtoyo respectfully requests that the City adheres to CEQA’s procedural mandates by correcting the CEQA deficiencies identified above. Wishtoyo also requests that the City satisfies its legal

09-9

¹ Please see Canine Forensics Attachment to this letter for more details about the use of forensic canines and ground penetrating radar to reliably identify the location of Native American Burials for the KB Homes Development in Santa Cruz and for other development projects.

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responsibilities to identify and adequately analyze the presence of Chumash cultural resources and burials within the Project site and area, and to adequately analyze the impacts of the Project on Chumash cultural resources and burials.

09-9
cont'd

Sincerely,



Jason Weiner
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Wishtoyo Foundation
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Articles Discussing How Forensic Dogs can be and have been successfully used to identify and locate Native American human remains

1.) <http://www.ohlonenation.org/?p=264> Last Visited: May 16, 2013

By charlene on September 20th, 2011

[Forensic Dogs Successful in Identifying Ancient Human Remains for Ohlone](#)

Category: [Uncategorized](#), Tags: [burial site](#), [forensic dog](#), [kb homes](#), [ohlone](#), [santa cruz](#)

Native Americans are always concerned when their exists the potential of unearthing human remains during construction projects. During a time when regular protocol would dictate the use of drills and tedious ground penetrating strategies that might harm or destroy findings, two alternatives have been incorporated during a recent project.

This fall the remains of an Ohlone boy were discovered during a KB home building project in Santa Cruz, CA. During negotiation meetings between the home builder, the City of Santa Cruz, CA and the Ohlone all parties agreed to respect and accept the results from two alternative proven methods of ground investigation. The two methods include ground penetrating radar or (GPR) and specially trained forensic dogs.



In this case, Ohlone descendant Chuck Strickland recommended [the GPR](#) method. A trained GPR technician came to the building site and scanned surface of the earth to see if additional buried remains could be detected. Unfortunately, due to layers of sediment and rock would not allow proper functioning of this method. While this did meet the Ohlone requirement of a non-invasive method for predicting the likelihood of findings, it would not be a good match for this project.

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Next, Gregg Castro, also an Ohlone descendant recommended the use of specially trained dogs from the [Institute for Canine Forensics](#).



The institute has its headquarters in California, but has provided services nationally and internationally. The institute trains for nine distinct types of area scanings. The match for the Ohlone project would be a team of dogs who could detect historical human remains. Dogs are taught not to disturb a scene by digging or retrieving evidence. Further, the dog can discriminate between human remains and all other non-human items. In this case, the dogs were able to detect the spot of the original finding as well as additional findings that would require great care if the construction project were to continue.

In this project, the Ohlone, the city and the home builder came together to agree upon these alternative scientific methods for land surveying. It is the hope of the Ohlone Elders Circle that these non-invasive methods become part of the regular process to be implemented in order to preserve former village sites.

2.) http://www.santacruzsentinel.com/localnews/ci_18929918

Santa Cruz, developer reach agreement not to build on Ohlone site

[By J.M. BROWN](#)

Posted: 09/19/2011 03:37:31 PM PDT



Archeologist and helpers sift through burial site on land where KB Homes is... (DAN COYRO/SENTINEL)

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SANTA CRUZ - After weeks of negotiations with the city and Native American elders, the developers of a 32-unit housing complex on the Eastside agreed Monday not to build over an Ohlone burial site.

KB Home will set aside a premier, 13,000-square-foot parcel at the top of a knoll, where several remains were discovered this summer, to preserve in perpetuity for Ohlone elders to access for ceremonies. Elders, who believe the spirits of buried people wander if their resting place is disturbed, will be able to use the site for ceremonies in coordination with the site's homeowners association.

"I am ecstatic," said Ann-Marie Sayers, a state-designated Ohlone descendant who negotiated with the city and company to preserve the knoll. "Just the fact that KB Home honored the request of the original people whose land they are building on, it is so long overdue for developers to honor sacred sites. I truly believe they did the right thing."

Sayers, who lives in a Native American community outside Hollister, will join Ohlone elders from other parts of the state in walking the site with company representatives later this week. The elders, who had recommended KB Home fully set aside the parcel containing the knoll, will finalize details of the accord reached after numerous meetings since early August, when the remains of an Ohlone child were discovered.

During an archeological evaluation triggered by the discovery, researchers later recovered remains believed to be teeth and a skull fragment unrelated to the child or each other, officials said. Forensic dogs identified another area on the knoll believed to contain remains, but all sides agreed not to disturb it.

KB Home will establish a permanent cultural easement on land that would have contained a 2,200-square-foot house and driveway, a unit that would have been among the largest and most expensive planned for the community at Market Street and Isbel Drive. The preserved area, where all remains will be buried again, is attached to three acres already set aside to preserve the endangered spineflower.

"We essentially decided to do this out of respect for the elders and folks from the Native American community," said Ray Panek, senior vice president for forward planning at KB Home, who took part in the talks. "It will be just allowed to go to a more natural state. It seems like a good solution."

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Panek said he did not have immediate estimates on lost revenue for setting aside the land or the total cost to the company for archeological research. The company agreed to bring in subsurface sonar equipment and forensic dogs at the request of Native American representatives, and two sets of archeologists worked on the site.

The city ordered the company to stop construction work around the knoll after the remains were recovered. Panek said he expected work would resume soon after the elders walk the preservation area.

"KB was generous in what they were willing to do and elders were flexible in understanding what was possible and meaningful," said Vice Mayor Don Lane, who participated in the talks.

Lane said the outcome was "a really nice conclusion," especially amid all of the demonstrations at the site and at City Hall since the first remains were found. "Everyone was a little pessimistic that goodwill wouldn't manifest."

For the past month, demonstrators have been calling for an end to building plans around the knoll. Protesters resumed their demonstrating Monday until they heard from officials outside City Hall that an agreement had been reached.

3.) <http://www.k9forensic.org/historical.html> (the site has links to many articles about canine forensics detecting Native American Burials)

Historical Grave Detection Group

Group has been formed by several Forensic Evidence and Historical Human Remains Detection (HHRD) dog teams under the umbrella of Institute for Canine Forensics

In archaeology, an HHRD trained canine with impeccable manners, slow and methodical search style, properly trained and certified, may be the Remote Sensing Tool of the future. ICF canine trainers are "writing the book" in this field. Certification standards are high insuring that the ICF certified canines are reliable, non-invasive tools to be used in modern archaeology.

4.) <http://www.pressdemocrat.com/article/20091121/ARTICLES/911219966?p=1&tc=pg>

Reclaiming Santa Rosa's century-old graves

By [MARY CALLAHAN](#)
THE PRESS DEMOCRAT

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Published: Saturday, November 21, 2009 at 5:33 p.m.

Last Modified: Saturday, November 21, 2009 at 5:33 p.m.

The graves are thought to be well over 100 years old, forgotten over time, unclaimed and uncelebrated.

Photo Galleries



- [Dogs Search Cemetery](#)

Tiny yellow and red flags newly planted Saturday in several overgrown areas of the Santa Rosa Rural Cemetery began to acknowledge the loved ones who rest there and the history they represent.

But Rhea, Eros, Alice and Osara, four dogs trained to sniff out old bones, were focused firmly on the present as they criss-crossed designated areas of the 17-acre cemetery in search of human remains.

The canine foursome - as well as several others still in training - were brought to Santa Rosa by the Woodside-based Institute for Canine Forensics, which trains and deploys Human Remain Detection Dog teams.

Though some also work in search-and-rescue contexts and seek out human remains from recent tragedies, the Institute is the only such agency in the world focused on detection of historic remains, whether in law enforcement or archaeological contexts, representatives said.

Dogs associated with the Institute have been used, for example, to search for human remains at the home of a Hayward couple charged with kidnapping of Jaycee Dugard, who was snatched off a Lake Tahoe road at age 11 and kept for 18 years.

They've also identified Native American burial sites around the western United States, and served at New York City's Ground Zero and along the trail of the Space Shuttle Columbia, which exploded over Texas.

They came to Santa Rosa at the invitation of the Rural Cemetery's volunteer Preservation Committee. The organization hoped to determine whether human remains were buried in more than 100 plots recently discovered on maps long tucked away from human eyes and

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never marked by gravestones at the cemetery, said Sandy Frary, who, with her husband Jim, is a key organizer for the committee.

Committee members thought it possible the plots had been mapped and never used, and wanted to find out, part of their effort to restore the cemetery fully and document its history in as precise a manner as possible.

The scent of cadavers lingers in the soil and can be sifted and distinguished with a dog's sensitive nose, though it's sometimes hard to pinpoint precisely from where the odor comes, handlers said.

Dogs can even detect remains in ancient sites after centuries of burial.

The gravesites sought Saturday were probably closer to 130 or 140 years old, though there was plenty of doubt they were there in the first place - especially on a rough, sloping area along Franklin Road where 12 flags were left Saturday, indicating multiple burial plots.

Nobody had thought there were burials in those sections of the cemetery, Sandy Frary said, adding, "I'm totally amazed."

Another 10 or so flags were scattered about a meadow and adjacent hillside at the north side of the cemetery, while half a dozen others remained planted along a back road near the top of the acreage.

Volunteers still hope to rake the areas, pull up weed cover and probe around to see what more can be determined, Frary said.

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[http://articles.latimes.com/2004/mar/21/local/me-playa21;](http://articles.latimes.com/2004/mar/21/local/me-playa21)
<http://www.nathpo.org/News/NAGPRA/News-NAGPRA46.html>

State Decries Removal of Remains: Playa Vista officials refuse to comply with the heritage panel's request that excavation be halted at site of an Indian cemetery.

By Sara Lin
Los Angeles Times Staff Writer
March 21, 2004

The state's Native American Heritage Commission is asking developers at Playa Vista to stop excavating land near Centinela Creek, where workers uncovered a 200-year-old Indian cemetery containing the remains of at least 160 people.

Playa Vista officials have refused to stop work, saying an agreement with tribal representatives allows the removal of the bodies and provides guidelines on handling of the remains.

Workers discovered the burial ground of the Gabrieliño-Tongva tribe in October while removing dirt to create a waterway - Playa Vista calls it a "stream," critics call it a "drainage ditch" - to catch water runoff from Playa Vista and neighboring housing developments near Marina del Rey.

The state commission, responsible for identifying Native American cultural resources, has sent Playa Vista officials six letters since December, asking them to stop removing the remains, which workers continue to find almost every day.

In a Feb. 19 letter, Larry Myers, the board's executive secretary, wrote: "It is vexing that these activities can continue in what can be interpreted as an ethnocentric disregard of Native American cultural concerns."

Playa Vista officials say that they had expected to find Indian remains, and that excavations were permitted under an agreement crafted by state and local regulators 13 years ago and signed by Playa Vista and three representatives of the Gabrieliño-Tongva. The pact included detailed procedures for handling cultural artifacts or bodies found during construction. The agreement was extended in 2001 for 10 years.

"We are doing a comprehensive and respectful job here in accordance with a long-standing agreement with Native American stakeholders," said Steve Soboroff, president of Playa Vista, the giant residential and commercial complex near Marina del Rey. The agreement was "signed by Native American parties and they included instructions for dealing with issues exactly like this. Nothing new has come up," he said.

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But the Native American Heritage Commission says the agreement needs revision, given the significant number of remains uncovered.

"We didn't know they would find a cemetery," said Rob Wood, the board's Southern California program manager. "Neither the agreement, nor the environmental documents, anticipated such a big find. They should consult with the Native American community and look at alternatives."

Playa Vista officials say the documents still apply, regardless of the number of remains found.

The state board has no law enforcement powers. It can ask, but not compel, Playa Vista to stop work. It is looking at possible legal action, Wood said. A commission representative visited the site for the first time March 4.

"We'll keep writing letters, trying to get the developer to stop and look at preservation," Wood said.

Among those opposing the excavation is Robert Dorame, a Bellflower resident who has been designated by the Native American Heritage Commission as the "most likely descendant" of the Indians buried at the site. That designation gives Dorame authority to recommend how the remains should be handled. Though his comments carry weight, they are just recommendations and may be ignored by the developer.

Dorame has asked that the remains be left where they were found. On a visit to the construction site, he clutched a stack of more than 100 letters from the Indian community expressing concerns about the treatment of human remains at Playa Vista.

One major concern is that moving the remains will damage them.

"There's human remains in buckets that they're going to shake through sifters," said Jordan David, who works on the site as a Native American monitor. "Even using a brush breaks the bone. There's no way to remove these burials without causing destruction."

Archeologists overseeing the excavation say all of the work is done by hand. Bones and burial objects, such as beads and baskets, are drawn and mapped so they can be reinterred as they were found. Dorame himself approved these detailed procedures for handling remains and identifying funerary objects.

"He requested maps; we created maps," said Donn Grenda, director of Statistical Research Inc.'s California office, which was hired to remove the remains. "The human remains, the funerary objects, the soil - all that goes back into the ground. We're trying to comply and put people back with the right stuff; that's the goal of doing this."

But Dorame says those procedures were not meant to apply to a large burial ground.

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"If there's two or three remains . yes, you may follow those recommendations," he said. "But we're talking about a cemetery. Every Indian knows it's a cemetery. The protocols can change."

Archeologists have known the site contained Native American remains since the mid-1940s, when artifacts were unearthed for the Southwest Museum .

So far, the remains are confined to an area approximately 100 feet by 65 feet. To excavate and catalog all of the remains, Playa Vista has hired more than 45 archeologists from Statistical Research, a well-known firm that has done work throughout the western United States .

California law requires that the remains be reinterred somewhere on the property, and Dorame will recommend a new burial site.

Groups protesting the development say Playa Vista should look at alternative plans, such as redesigning the waterway to avoid the cemetery.

Playa Vista also plans to build a cultural center near the stream that will celebrate the history and traditions of Native Americans - in particular the Gabrieliño-Tongva. Developers have been working alongside the Gabrieliño-Tongva to develop those exhibits.

Environmentalists have long tried to block construction of the Playa Vista project. In 2001, the U.S. Supreme Court refused to take up a legal dispute over a federal permit for creating the waterway, letting stand a lower court ruling favoring the development.

"The people who are making the ruckus here are long-standing opponents of Playa Vista who have always done the same thing: to say and do anything to hurt the project," Soboroff said.

Among the Gabrieliño-Tongva, divisions have emerged, with some supporting Playa Vista and others denouncing it. Each side has gone out of its way to criticize the other.

Dorame said he represents the viewpoints of most tribe members.

Not so, said Martin Alcala, a member of the Santa Monica branch of Gabrieliño-Tongva, who has been monitoring the excavation. He believes the remains are being treated with respect.

"In a perfect world, I would love for my ancestors to just stay there," Alcala said. "But it's not a perfect world; they have to move in this case."

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O9. Response to Comments from Wishtoyo Foundation (Jason Weiner), dated May 17, 2013.

O9-1 This comment letter raises specific concerns regarding the inadequate analysis of impacts to Chumash Native American cultural resources in the DEIR. This comment is generally a set of introductory remarks stating that the commenter opposes the project and the DEIR due to the environmental and cultural impacts on the Malibu residents, Chumash Native Americans, Malibu visitors, wildlife, and natural resources.

DEIR Section 5.4, Cultural Resources, determined that impacts to Cultural Resources would be less than significant. See Response to Comments O9-03 to O9-09. These comments will be forwarded to the decisionmakers for their consideration.

O9-02 This comment is generally a set of introductory remarks. Comment noted.

O9-03 The Native American Heritage Commission (NAHC) was contacted by letter in July 2007 and October 2008 regarding any concerns over potential heritage resources noted in there sacred lands files for the project site. In letters dated July 17, 2007 and October 20, 2008 the NAHC indicated that they had conducted Sacred Lands File (SLF) searches of the project area and did not identify any cultural resources within 1/2 mile radius of the project site/area of potential effect (APE). CEQA Guidelines § 15064.5(d) requires the lead agency to work with the Native Americans identified by NAHC if the Initial Study identifies the presence or likely presence of Native American human remains within the APE. The Initial Study and DEIR did not identify the likely presence of human remains or cultural resources. In addition, as indicated above, additional physical testing at the project area was conducted with the assistance of a Native American Representative of the Ventureneno Chumash to ensure that buried cultural resource remains were not inadvertently missed during the field surveys. Impacts remain less than significant. The comment letters are included as Appendix C of the FEIR.

An Updated Phase 1 Archaeological Study and Cultural Resource Sensitivity Testing for a portion of a 24-Acre parcel located at 24200 Pacific Coast Highway (APN No's 4458-018-002, 4458-018-018 and, 4458-018-019) City of Malibu, Los Angeles County, California, HEART, was completed in June 2013. In order to protect sites from unauthorized excavation, looting, or vandalism, the City of Malibu does not publicize the location of known cultural resources beyond what is necessary. The Updated Phase 1 is confidential and not a public document.

An updated records search was performed by RPA certified archaeologist, Wayne Bonner on June 10, 2013 at the SCCIC which indicated that no previously recorded prehistoric or historic archaeological sites lie within the project site. In addition, nine prehistoric archaeological sites are recorded within a 1/2-mile radius of the project site: CA-LAn-264 (The village of Humaliwu lies to the east of the project site at the Adamson House and Malibu Lagoon State Historic Park), CA-LAn-266, CA-LAn-267,

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CA-LAn-386, CA-LAn-404, CA-LAn-1417, CA-LAn-1715, CA-LAn-1991, CA-LAn-2247.

Additional physical testing at the project area was conducted to ensure that buried cultural resource remains were not inadvertently missed during the field surveys. Although disked for many years, there was still a slight potential for buried resources to exist just under the plow zone (15 cm – 20 cm). Between June 16, 2013 to June 19, 2013, 76 soil augers were excavated, representing 76-person hours of field labor. Susie Ruiz (Native American Representative of the Ventureño Chumash) assisted in the excavation.

The augers were excavated within a pre-placed grid to completely cover the area of proposed project area (nine acres of the proposed 24-acre parcel). All soil was mechanically excavated and screened through 1/8" wire-screened mesh. Notes, photographs and GPS points were taken in the field to confirm coverage. Each auger was excavated to a minimum depth of 40 cm or until a noticeable soil change occurred, so as to identify the disked soil from the subsoil. The completion of this testing phase revealed no evidence of surface or buried cultural resource remains inclusive of artifacts, shellfish, fauna, features or human remains. Based on the results of this test phase, no additional archaeological work was recommended within the boundaries of the proposed project. As stated in Section 5.4 of the DEIR, with mitigation, potential impacts associated with cultural resources would be reduced to a level that is less than significant. No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

- O9-4 The Updated Phase 1 Archaeological Study and Cultural Resource Sensitivity Testing report (HEART 2013) provides a cultural overview of the Chumash culture including prehistoric, protohistoric and ethnographic information. The DEIR has been revised to include a cultural overview of the Chumash culture and history.

Page 5.4.5, Section 5.4.1, Environmental Setting of the DEIR is hereby modified as follows:

Cultural Setting

Prehistory/Protohistory

At Spanish contact, the region was occupied by the Hoka-speaking, Ventureño Chumash who derived their name from their association with Mission San Buenaventura. Radiocarbon dates from archaeological sites in the region, indicate that the ancestors of the Chumash arrived in Ventura County by 7000 B.C. The Chumash were credited with an extensive and elaborate material culture, extensive trade networks, and complex social and religious systems. To date, general chronology developed by Wallace (1955), Warren (1968) have focused on research in the South Coast region. Warren later revised Wallace's scheme to include regional variants and local traditions.

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Chester King (1982) proposed a multi-phased chronological sequence based on changes or shifts in ornaments, beads and other artifacts. Additional information on the Chumash comes from: Carrico and Wlodarski (1983), Dillon & Boxt (1989), Grant (1978), Hudson et al. (1977), Hudson & Underhay (1978), Hudson (1979), Hudson & Blackburn (1979-87), C. King (1994a, 2000), Kroeber (1925), Landberg (1965), Leonard (1971), Miller (1988), Gibson (1991), and Santa Barbara Museum of Natural History (1986, 1991).

Ethnographic Information

According to C. King (1994), Spanish explorers observed that the Chumash differed from surrounding tribes, and admired them for their craftsmanship, knowledge of the sea, canoe building capabilities, ritual and ceremonial organization. The Chumash were also lauded for their interest in acquiring and displaying possessions, willingness to work, and extensive trade network which was facilitated by a bead money economy (the protohistoric Chumash maintained the most complex bead money system documented anywhere in the world). Because of the large number of men who could be organized for warfare, the Spanish feared the Chumash more than any other California group encountered during Spanish rule. Ethnographic and archaeological data obtained since the late 1800s, suggests that the Chumash were divided into large political areas called provinces. Each province contained a capital which are now archaeological sites. One such important Chumash capital was that of Humaliwo (Malibu) located along the coast. Additionally, these provinces were united under a larger religious federation whose leader, the Kwaiyin resided at the major village of Simomo, located near Point Mugu (Muwu). This federation served the ultimate function of unifying the various political provinces for special ceremonies which were held every five years. Humaliwo was the name of the Chumash political province encompassing the many villages which existed in the Santa Monica mountains. This province extended west into the San Fernando Valley and included the villages of (Huwan) in Canoga Park, and (Talepop) at Century Ranch.

According to C. King (1994), Protohistoric Chumash society was one of the most complex non-agricultural societies documented. Therefore, the study of the evolution of Chumash society is relevant to the development of anthropological theory concerning the evolution of complex societies. The area inhabited by the Chumash measured approximately 200 miles by 70 miles, comparable to the smallest states of the eastern United States. The total Chumash population included between 15,000-20,000 people. The Chumash of the Santa Monica Mountains occupied approximately 3% of the area, and included around 1,300 people or 6.5% of the Chumash population. The Chumash did not have standing armies or full time police. However, despite its small size, Chumash society developed many discriminate subsystems, which included institutions that maintained regional, political, and administrative organizations; a market economic system; and a complex belief system. Chumash society was similar in scale to

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other societies that occupied the more densely populated areas of western North America before European colonization. Based on Van Valkenburgh/Farmer (1934), C. King (1969, 1975, 1994), Applegate (1974, 1975), and Horne (1981), the following Chumash placenames exist in the general area:

Alqilko'wi "white of the eye" A village in Little Sycamore Canyon.

Humaliwo "[The surf] sounds loudly"? - Village at what is now Malibu

Kats'ikinhin "pine tree" - a village on Las Virgenes Creek, inland from Malibu.

Kasaqtikat "the obstacle" - Undiscovered location near Mugu.

Kay'iwish "the Head" - village on what is now Calleguas Creek, southwest of Simi.

Lalimanuh A village on Calleguas Creek, northeast of Pt. Mugu.

Lisiqishi Village at Arroyo Sequit, west of Point Dume.

Lohostohni Village at Trancas Canyon, west of Point Dume.

Luulapin The name for Point Mugu.

Luna An undiscovered location along Calleguas Creek.

Muwu "beach" - A village at the mouth of Mugu Lagoon.

Niko "water?" - in Malibu, east of Point Dume

Sa' aqtik'oy "place sheltered from the wind" - village at Saticoy.

S'ap tuhuy "house of the rain" - village on Potrero Creek, inland from Malibu.

S'apwi "house of the deer" - village on Conejo Creek, near Thousand Oaks.

Satwiwa "bluff"? - village on Rancho Guadaluca, north of Mugu.

Seq'is "beachworm" - now Arroyo Sequit.

Shalikuwewech "it is piled up" - a place north of Point Mugu.

Shishlomo Estuary or lagoon near Surfside Drive.

Shisholop "in the mud" a coastal village just south of Ventura.

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Shuwalahsho "sycamore" - a village in Big Sycamore Canyon.

Simo'mo "the saltbush patch" - a village inland from Point Mugu.

Sumo "abundance" - village at mouth of what is now Zuma Canyon

Ta'lopop A village on Las Virgenes Creek.

Prehistoric Chumash culture underwent dramatic changes following colonization in the late 18th century. The introduction of diseases quickly weakened and destroyed Native American cultures, with epidemics killing large numbers of people. Most Chumash towns and villages were abandoned by 1810. However, large segments of the population survived and worked to build the Spanish Missions, as well as the Mexican and American ranches which followed. Much of the Chumash culture managed to survive by "going underground" and effectively blending into the cultural landscape. Several thousand Chumash live today in Los Angeles, Ventura, Santa Barbara, and San Luis Obispo counties. In general, they place high value on objects and places associated with their past, namely archaeological sites, and artifacts from sites. Present-day Chumash are organized into dozens of social, cultural, and political groups, some of which take part in local affairs. Nearly all Chumash are concerned with preserving their cultural heritage and are therefore interested in the preservation of the prehistoric and ethnographic archaeological records. Because the Chumash have a longstanding interest in identifying cultural resources and preserving their cultural heritage, a significant amount of research focusing on the location of villages, cemeteries and other archeological sites has been conducted, including numerous studies pertaining to the archaeological resources in the vicinity of the project site. This research has led to the discovery of nine archeological sites in vicinity of the project site. With respect to the project site, nothing in this large body of research indicates that the Project site is an archeological site, which is consistent with the results of the sensitivity testing described in this report.

- O9-5 In response to comments received by the City of Malibu to the DEIR for the proposed development, it was considered appropriate to conduct additional physical testing at the project area to ensure that buried cultural resource remains were not inadvertently missed during the field surveys. As stated in Response to Comment O9-3, although disked for many years, there was still a slight potential for buried resources to exist just under the plow zone. In consultation with the applicant sensitivity testing was initiated at the project site. The project team, including Susie Ruiz (Native American Representative of the Venturoño Chumash), excavated 76 soil augers from June 16, 2013 to June 19, 2013, representing 76-person hours of field labor. The completion of this testing phase revealed no evidence of surface or buried cultural resource remains inclusive of artifacts, shellfish, fauna, features or human remains. Based on the results of this test phase, no

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additional archaeological work is recommended within the boundaries of the project area.

See Response to Comment O9-03.

The DEIR comment period was not extended.

O9-6 Refer to Response to Comment O9-5. In order to protect sites from unauthorized excavation, looting, or vandalism, the City of Malibu does not publicize the location of known cultural resources beyond what is necessary. Government Code Section 6254 authorized public agencies to withhold information from the public relating to "Native American graves, cemeteries, and sacred places maintained by the Native Heritage Commission." This policy applies even if a report finds that no known cultural resources exist on the subject property because the City's cultural resource preservation policies and regulations themselves have the potential to reveal information on where previously recorded and/or unrecorded sites exist on subject properties and the surrounding properties.

O9-7 See Response to Comments O9-03 and O9-05

O9-8 The DEIR on Page 5.4-9, Section 5.4.7, *Mitigation Measures*, provides two mitigation measures for the identification and evaluation of accidentally discovered archeological resources. Mitigation 4-1 requires a qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards (48 Federal Register 44738-39) be retained by the applicant to monitor all ground-disturbing activities, including but not limited to all grading, excavation, and site preparation. The project archaeologist shall have the authority to halt any activities adversely impacting potentially significant resources. Any significant archaeological resources found shall be preserved as determined necessary by the project archaeologist and offered to the South Central Coastal Information Center at California State University, Fullerton, the designated repository for Los Angeles, Ventura and Orange Counties. Any resulting reports shall also be forwarded to the South Central Coastal Information Center at California State University, Fullerton.

Mitigation 4-2 requires that a Native American Monitor of Chumash descent shall be retained to monitor all ground-disturbing activities, including but not limited to all grading, excavation, and site preparation. Any artifacts recovered shall be curated at the South Central Coastal Information Center at California State University, Fullerton, the designated repository for Los Angeles, Ventura, and Orange Counties. The extent and duration of the archaeological monitoring program shall be determined in accordance with the proposed grading or demolition plans. If human remains are uncovered, the Los Angeles Coroner, Native American Heritage Commission, local Native American representatives, and archaeological monitor shall determine the nature of further studies, as warranted and in accordance with Public Resources Code 5097.98 and the City's

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standard conditions of approval. This mitigation measure shall also apply to trenching for utilities, geological testing, and any other ground-disturbing activities associated with the proposed project.

Existing regulations (Health and Safety Code §7050.5, CEQA §15064.5(e), and Public Resources Code §5097.98) already mandate the process to be followed in the event of an accidental discovery of any remains in a location other than a dedicated cemetery. Therefore, additional mitigation is not needed.

- O9-9 The comment is noted and will be provided to the City decision-makers for their consideration.

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LETTER O10 – Geosoils (10 page[s])



May 13, 2013
W.O. 6489-1

CITY OF MALIBU
23825 Stuart Ranch Road
Malibu, California 90265

Attention: Mrs. Ha Ly, Associate Planner

Subject: **Geologic Review of Section 5.5 of DIER, Crummer Site,
24200 Pacific Coast Highway, Malibu, California**

Dear Mrs. Ly:

As requested by Green Acres, LLC, GeoSoils Consultants, Inc. (GSC) has completed a review of Section 5.5 (Geology and Soils) of the DIER for the subject property. The purpose of this review is to provide an opinion regarding the geologic aspects of the proposed development. The DIER was prepared by The Planning Center/DC&E, dated April 2012. The geologic section of the DIER includes references to reports by Leighton and Associates and Earth Consultants International, Inc.

SCOPE OF SERVICES

Our scope of services included a site reconnaissance, review of the Geology and Soils section of the DIER (Section 5.5), and review of the referenced reports. Subsurface exploration, laboratory testing, and engineering analyses were not included in our scope of work. Therefore, the opinions provided below are based on review of previous consultant reports and our experience working in the subject area.

O10-1

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6634 Valjean Avenue Van Nuys, California 91406 Phone: (818) 785-2158 Fax: (818) 785-1548

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PROJECT DESCRIPTION

The subject property consists of approximately 24 acres located 24120 Pacific Coast Highway (PCH), in the City of Malibu, County of Los Angeles. The Assessor's Parcel Numbers (APN) for the project includes 4458-018-019, 4458-018-018, and 4458-018-002. The project site is located along the top of a coastal bluff with slopes descending to the south, east, and north. Malibu Bluffs Park borders the project site to the west, PCH borders the project site to the north, and privately owned parcels border the site to the east and south. The site is acceptable from Winter Mesa, a small road connecting PCH to Malibu Bluffs Park.

O10-1
cont'd

PROPOSED DEVELOPMENT

Proposed development of the subject property will consist of a cut/fill grading operation to create seven lots. Lots 1 through 5 will be developed for single-family residential construction. Lot 6 will be developed for use as a private street, gatehouse, onsite wastewater treatment system (OWTS), landscaping, and open space to be owned and maintained by the homeowners association (HOA). Lot 7 would be dedicated to the City of Malibu for active and passive recreational use.

Residential construction will consist of two-story structures on Lots 1 through 5, serviced by OWTS within Lot 6. Each residential lot will be provided with a wastewater septic tank, which would route wastewater to the OWTS in Lot 6. An OWTS Package Plant is proposed for the northwestern corner of Lot 6. The proposed OWTS Package Plant would treat wastewater generated from each of the residences and the gatehouse. It would be installed in the northwest corner of the site near the intersection of Winter Mesa Drive and PCH. Clean effluent from the OWTS Package Plant would then be discharged to seepage pits in the southernmost portion of Lot 7 along Winter Mesa Drive. The OWTS will be owned and operated by the HOA. As stated in the DIER, the OWTS would be designed with a stub-out box and purple pipe to allow for connection to a municipal wastewater treatment in the Civic Center area in the future to process wastewater produced on the project site.

O10-2

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Treated effluent from the OWTS will be dispersed into a series of 10 seepage pits. The pits are proposed at 6 feet in diameter to depths of 61 to 67 feet and will disperse effluent into the un-oxidized zone of Monterey Formation bedrock.

O10-2
cont'd

GEOLOGIC CONDITIONS

Based on review of the referenced reports, regional geologic maps, aerial photographs, and Section 5.5 of the DIER, the site is underlain by minor amounts of artificial fill, alluvium, colluvium, marine and non-marine terrace deposits, and bedrock of the Miocene Monterey Formation. The adjacent property to the south of the site is underlain by landslides. Review of the State Seismic Hazard Zone maps indicates south and east-facing slopes on the property are located within zones of potential seismic slope instability. The areas of proposed development are not located within a Fault Hazard Zone or Liquefaction Zone.

O10-3

Site specific geologic conditions were determined by Leighton and Associates, Inc. (and other consultants) through a program of subsurface exploration, including bucket auger and hollow stem auger borings on the site. The geologic conditions on the site were presented in the referenced reports, which were reviewed and approved by the City of Malibu.

O10-4

Terrace deposits underlie most of the subject site (Leighton and Associates, Inc.). Terrace deposits consist of interbedded silts, clays and sands with variable amounts of gravel. Terrace deposits are generally dense and are suitable for support of structural fills. These deposits are in turn underlain at depth by bedrock of the Miocene Monterey Formation. Terrace deposits range in thickness from a few feet to approximately 25 feet thick across the site.

O10-5

Groundwater exists below the site at depths of approximately 65 to 143 feet below the ground surface. Leighton and Associates, Inc. conclude that the proposed OWTS will not adversely affect the groundwater conditions below the site or on adjacent properties.

O10-6

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A large landslide complex is located on the descending slopes south of the subject property; however, Leighton and Associates, Inc. conclude that there are no landslides on the property. The Amarillo Beach Landslide is located south of the subject property. Leighton and Associates conclude that significant movement of the Amarillo Beach Landslide would most likely adversely affect offsite properties, however, structural setbacks along the southern part of the subject property have been established based on the potential for head ward movement.

010-7

Due to low factors-of-safety, a structural setback was recommended along the east-facing slopes on the property. Leighton and Associates conclude that habitable structures shall not be allowed within the setback zones. Bluff retreat was estimated by Leighton and Associates to be approximately 0.12 feet per year, but recommend using a more conservative rate of 0.2 feet per year.

010-8

ENVIRONMENTAL IMPACTS

The DIER identifies four site conditions that have a potential impact on environmental conditions. Each of these impacts is discussed below along with the proposed mitigation.

Slopes along the southern and eastern boundaries of the project do not meet the City's requirement for the minimum factors of safety (Threshold G-1 (iv):

Since slope stability may adversely affect proposed structures along the tops of descending slopes, this impact was assigned a Threshold of Significance of G-1 (iv). The potential for slope instability may expose people or structures to substantial adverse effects, including loss of life or property. This threshold is being reduced by the use of structural setback zones. As stated above, Leighton and Associates have recommended slope setback zones along the southern and eastern portions of the site. In addition, they conclude that the proposed OWTS will not adversely affect slope stability, as the potential for groundwater mounding and daylighting through natural slopes is low.

010-9

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Project development could result in substantial soil erosion or the loss of topsoil (Threshold G-2):

Development of the subject site may result in loss of soil, erosion, decomposition, and removal and transportation. To reduce these potential impacts, site grading and development shall conform to all applicable codes and regulations, including South Coast Air Quality Management District Rules 402 and 403, NPDES, and SWPPP.

010-10

The proposed project would place structures on potentially unstable soils (Thresholds G-3 and G-4):

Potentially unstable soils on the site will be mitigated through over-excavation and recompaction below proposed structures. Since the site is not subject to liquefaction, deep removals or other soil stabilization measures are not required. Conventional grading techniques shall be used to mitigate unstable soils.

010-11

Site conditions are adequate to support the onsite wastewater treatment system (Threshold G-5):

As discussed above and within the referenced reports, Lots 1 through 5 will be serviced by an OWTS, with treated effluent being dispersed in a series of 10 seepage pits located on Lot 6. The referenced documents indicate that the OWTS is feasible and this system was reviewed and approved by the City of Malibu. The proposed systems shall be kept outside of the previously established slope setback zones. As discussed by the project consultants, groundwater mounding and/or migration will not adversely affect the proposed development or adjacent properties.

010-12

CONCLUSIONS

The primary geologic constraints that may adversely affect proposed development on the subject site consist of ground rupture, strong ground shaking, soil settlement, and slope instability. These potential impacts may be exasperated by the introduction of water into the

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subsurface soils, either through the proposed OWTS or natural runoff and/or irrigation. The potential for ground rupture on the site is low; however, strong ground shaking as a result of nearby faults is possible during the life of the proposed development and should be taken into consideration during design. Soil settlement will be mitigated through standard grading techniques. Removal and recompaction will result in firm soils below proposed structures, thus mitigating the potential for settlement.

010-13
cont'd

Structural setback zones were established along the south and east sides of the property to mitigate potential slope instability from impacting proposed structures. According to the DIER, no structures shall be permitted within the previously established setback zone. In addition, the proposed OWTS on Lot 6 should not be located within a setback zone.

010-14

The setback zone along the southern portion of the property was based on stability analyses prepared by the project geotechnical consultant (References). As indicated on Geologic Cross-Sections D-D' and F-F' (Leighton and Associates 2009b), the consultant has forced a failure surface along the toe of the descending natural slope. The structural setback was then determined by calculating the 1.5 factor-of-safety failure surface for the subject slope. The point at which the 1.5 factor-of-safety failure surface meets the ground surface defines the southern setback line and structures shall not be built south of the setback. The lower portion of the critical failure surface presented in the analyses toes out at the bottom of the existing slope. In addition, this location corresponds to the top of the Amarillo Beach Landslide. Although portions of the Amarillo Beach Landslide are identified as being historically active, the DIER states that headward migration of the Amarillo Beach Landslide will not encroach onto or adversely affect the proposed development. In addition, the DIER states that the proposed OWTS will not adversely affect the existing historically active landslides along the southern boundary of the project.

010-15

Cross-Sections D-D' and F-F' by Leighton and Associates (2009b) shows existing groundwater levels that slope to the south, toward the Amarillo Beach Landslide. The DIER

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states that migration of effluent from the proposed OWTS will not adversely affect the existing historically active landslides south of the subject site due to the presence of faults within the bedrock. However, the faults are buried by terrace deposits and the ability of the faults to impede the flow of groundwater is poorly defined. In addition, review of logs of borings excavated above the existing historically active landslide indicates highly fractured bedrock with numerous shears and joints. Some of the shears and joints actually dip to the south, toward the Amarillo Beach Landslide. In addition, the slide plane geometry and current groundwater conditions within the offsite landslide are poorly constrained. Therefore, the conclusions presented in the DIER pertaining to the offsite landslides do not appear to be supported by existing data.

O10-16
cont'd

A raise in groundwater within the Amarillo Beach Landslide due to the proposed OWTS may have an adverse effect of the stability of the property to the south. Portions of the offsite landslide are occupied by existing residential structures and additional movement would adversely affect those structures.

O10-17

The DIER states that headward migration of the Amarillo Beach Landslide will not encroach onto the subject property; however, any movement of the existing landslide may affect the overall stability of the southern slope area and, in turn, have an effect on the proposed setback zone on the subject site. Movement of the landslide may result in different slope conditions than considered in the current analyses. As shown on the geologic cross-sections and stability analyses (Leighton 2009b), the current setback zone is based on the critical failure surface daylighting at the toe of the existing slope, which is at the head of the Amarillo Beach Landslide. If the slide were to move, then the slope configuration used in the analyses would change, possibly resulting in a higher slope or change in soil parameters due to extension of the head-scarp area. As a result, a larger setback zone may be required and the zone may extend below the proposed structures on the subject site.

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The proposed OWTS will consist of 10, 6-foot diameter pits located within the limits of Lot 6. The referenced reports indicate that treated effluent will be discharged within the un-oxidized Monterey Formation bedrock at depths of approximately 61 to 67 feet below ground surface. Un-oxidized bedrock is generally less weathered and, potentially, less permeable than oxidized (or weathered) bedrock. Therefore, it is recommended that the project consultants confirm that the un-oxidized bedrock is suitable to handle the potential effluent from Lots 1 through 5.

010-19

In summary, it is the undersigned opinion that the DIER and referenced reports do not adequately address stability along the southern slope area of the site. Statements regarding migration of effluent toward the existing historically active landslide are poorly supported by existing data and the highly fractured nature of the bedrock may result in additional groundwater flow toward the offsite landslide. Reactivation of the offsite landslide may result in damage to existing residential structures and may result in a less stable slope condition and larger setback zones on the subject site. Additionally, uncontrollable factors may also adversely affect the overall stability of the offsite landslide, such as an increase in groundwater due to other sources, as well as potential seismic activity.

010-20

LIMITATIONS

The findings and recommendations of this report were prepared in accordance with generally accepted professional geotechnical engineering principles and practice for the City of Malibu at this time. We make no other warranty, either express or implied. The conclusions and recommendations contained in this report are based on site conditions presented in referenced reports. However, soil/rock conditions can vary significantly between borings, trenches, and natural outcrops.

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Since our scope of services was based on review of reports by others, the conclusions and recommendations contained herein are professional opinions. Further, these opinions have been derived in accordance with standard engineering practices, and no warranty is expressed or implied.

CLOSURE

We appreciate this opportunity to be of continued service to you. If you have any questions regarding the content of this report or any other aspects of the project, please do not hesitate to contact us.

Very truly yours,

GEOISOILS CONSULTANTS, INC.


RUDY F. RUBERTI
CEG 1708



RFR.W:Geol Review (rev 5-16-13)

Encl: References

cc: (2) Addressee

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cont'd

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REFERENCES

1. Yerkes, R.F. et al, 1980, "Geologic Map of East-Central Santa Monica Mountains, Los Angeles County"
2. Leighton and Associates, Inc. dated December 2007", Feasibility-Level Grading Plan Review, Proposed Malibu Bluffs Development: 5-Lot Subdivision, The Crummer Site, APN 4458-018-019, 24200 Pacific Coast Highway, City of Malibu, California
3. Leighton and Associates, Inc. dated October 29, 2008, "Revised Addendum No. 1, Feasibility-Level Grading Plan Review Proposed Malibu Bluffs Development: 5-Lot Subdivision, The Crummer Site, APN 4458-018-019, 24200 Pacific Coast Highway, City of Malibu, California
4. Leighton and Associates, Inc. dated September 21, 2009a, "Responses to the City of Malibu Geotechnical Review Sheet dated March 20, 2008, Proposed Residential Development, Crummer Site, APN 4458-018-019, 24200 Pacific Coast Highway, City of Malibu, California
5. Leighton and Associates, Inc. dated September 21, 2009b, "Geotechnical Evaluation of Proposed Onsite Wastewater Treatment System, Proposed Residential Development, Crummer Site, APN 4458-018-019, 24200 Pacific Coast Highway, City of Malibu, California
6. Earth Consultants International, Inc. dated March 7, 2012, "Response to City of Malibu Environmental Health Review Sheet dated December 21, 2009"
7. Leighton and Associates, Inc. dated May 16, 2012, "Responses to City of Malibu Geotechnical Review dated May 7, 2012, Proposed Residential Development, Crummer Site, APN 4458-018-019, 24200 (aka 24210) Pacific Coast Highway, City of Malibu, California

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GeoSoils Consultants Inc.

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O10. Response to Comments from Geosoils (Rudy F. Ruberti), dated May 13, 2013.

Responses are based in part of the following technical report(s) prepared in response to comments:

- Leighton and Associates, Inc. 2013, July. Geotechnical Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site,” 24108, 24120, 24134, 24150 and 24174 Pacific Coast Highway, City of Malibu, California.
- Earth Forensics, Inc. 2013, May. Hydrogeological Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site,” 24108, 24120, 24134, 24150, 24174 Pacific Coast Highway, City of Malibu, California.

Complete copies of these studies are included in the appendices to this FEIR.

- O10-1 This comment is generally a set of introductory remarks. In paragraph 1 the commenter broadly asserts that the DEIR is fatally flawed and must be recirculated. The DEIR comprehensively assesses the significant environmental effects of the project, a reasonable range of alternatives to the proposed project, and feasible mitigation measures to reduce and avoid significant environmental impacts; and therefore, is not fatally flawed and does not need to be recirculated. (See remaining responses to comments).
- O10-2 These comments are arguments with no facts or evidence to support the opinions stated. The commenter is referred to the General Responses in Chapter 2 of this FEIR.
- O10-3 Comment is summarizing geologic conditions. No response necessary.
- O10-4 See Response to Comment O10-3
- O10-5 See Response to Comment O10-3
- O10-6 See Response to Comment O10-3
- O10-7 See Response to Comment O10-3
- O10-8 See Response to Comment O10-3
- O10-9 GeoSoils Consultants, Inc. (GeoSoils), excerpts a California Environmental Quality Act (CEQA) -required statement from the DEIR on the stability of the bounding slopes to the east and south of the project site (“Slopes along the southern and eastern boundaries of the project do not meet the City's requirement for the minimum factors of safety (Threshold G-1 (iv).”) and then summarizes recommendations made by Leighton in various reports. Leighton concurs with the summary made by GeoSoils. The locations of the slope setback zones shown by Leighton (2012a; Plate 1) are appropriate.

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- O10-10 The commenter believes that project development could result in substantial soil erosion or the loss of topsoil.

While project development could result in soil erosion or the loss of topsoil, erosion projection measures will reduce this effect to less than significant. Per City of Malibu requirements for a Grading Permit, an Erosion Control Plan and Stormwater Pollution Prevention Plan (SWPPP) will be developed to stabilize the Site during construction. Best Management Practices (BMPs) such as stabilized construction entrance, silt fences, and desilting basins will be incorporated into the plan. Implementation of these plans is required by the Regional Water Quality Control Board, committed to by the owner, monitored by a Qualified SWPPP Practitioner, and inspected by the City. Long term surface erosion will be reduced through the construction of hardscape surfaces which are not susceptible to erosion and landscaped areas which will stabilize the surface. Long term BMPs consisting of the subsurface installation of bio-retention facilities and stormwater detention tanks will also reduce the process of erosion with implementation of the project to less than significant. See also Psomas response to comment 03-20, 01-11, 01-15, and Leighton and Associate's Geotechnical Responses, 2013.

GeoSoils excerpts a CEQA -required statement from the DEIR on the potential for soil erosion or loss of topsoil at the project site ("Project development could result in substantial soil erosion or the loss of topsoil (Threshold G-2):"), and then summarizes recommendations made by Leighton in various reports to mitigate such a condition. Leighton concurs with the summary made by GeoSoils. Further, implementation of the applicable codes and regulations, including those by the Air Quality Management District (AQMD, Rules 402, 403) and the National Pollutant Discharge Elimination System (NPDES), and also the SWPPP for the project, will reduce soil erosion to a level that is less than significant.

- O10-11 GeoSoils excerpts a CEQA -required statement from the DEIR on the potential for structures to be located on unstable soils at the site ("The proposed project would place structures on potentially unstable soils (Thresholds G-3 and G-4):") and then summarizes recommendations made by Leighton in various reports to mitigate such a condition. Leighton concurs with the summary made by GeoSoils. The grading recommendations provided by Leighton will stabilize the soil and there will be no significant impact due to soil instability

- O10-12 GeoSoils excerpts a CEQA -required statement from the DEIR on the ability of site to support the proposed onsite wastewater treatment system ("Site conditions are adequate to support the onsite wastewater treatment system (Threshold G-5):") and then summarizes recommendations made by Leighton in various reports to mitigate these conditions. Leighton concurs with the summary made by GeoSoils.

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O10-13 The commenter states that the primary geologic constraints that may adversely affect proposed development on the subject site consist of ground rupture, strong ground shaking, soil settlement, and slope instability. These potential impacts may be exasperated (sic) by the introduction of water into the subsurface soils, either through the proposed OWTS or natural runoff and/or irrigation. The potential for ground rupture on the site is low; however, strong ground shaking as a result of nearby faults is possible during the life of the proposed development and should be taken into consideration during design. Soil settlement will be mitigated through standard grading techniques. Removal and recompaction will result in firm soils below proposed structures, thus mitigating the potential for settlement.

The geologic constraint of ground rupture will not be affected by the introduction of water into the subsurface soils. Faulting is induced by movement within deep-seated crustal bedrock as a result of regional plate tectonics. The introduction of surface waters into the shallow subsurface will have no bearing on this issue, as further discussed by Earth Forensics (2013). Regardless, Earth Consultants International (2000; 2001a, b; 2002a-c) has demonstrated that active faulting does not exist at the site and that the potential for onsite ground rupture due to the presence of active faulting is low. As a result of the work performed by Earth Consultants International (2000; 2001a, b; 2002a-c), the State of California (2007a, b) removed their designation of an Alquist-Priolo Earthquake Fault Zone from the area which included the Crummer site. (The Alquist-Priolo Earthquake Fault Zoning Act was created in 1972 and requires site-specific exploration for areas that are impacted by active faulting.) As a result, Earth Consultants International has concluded that the potential for onsite ground rupture due to the presence of active faulting is low.

The potential for strong ground shaking was assessed by Leighton (2007) and recommendations were provided for seismic design. As is customary, additional recommendations will be provided during the forthcoming Building Plan Check submittal process.

With respect to soil settlement through the introduction of water into the subsurface, we have demonstrated in our response to letter O1, comment 15 (AEI Consultants Comment) herein that Psomas (2012a-3; 2013) have incorporated a surface drainage system on each lot that is designed to intercept the majority of the surface drainage and direct it to storm drains at the toes of slopes via non-erodible devices.

With respect to slope stability and subsurface water, an assessment of the hypothetical/severe groundwater condition across the site and the adjacent bounding slopes was made by Earth Consultants International (2009, 2012). (Please see Leighton's response to O1-8 (AEI Consultants) herein for a summary of the hypothetical/severe groundwater condition). Earth Consultants International (2012) demonstrated that, as a result of the proposed project, there was no measurable effect on the groundwater levels

3. Response to Comments

south of the site, and that an increase in groundwater levels ranging from approximately 0.06 feet (approximately $\frac{3}{4}$ inch) to 0.26 feet (approximately 3 inches) was predicted in the bounding slopes to the east.

Given that groundwater levels south of the site are not predicted to be affected by the project, we conclude that reactivation of the landslides south of the site will not be influenced by the project. As a consequence, the slope stability analyses of Leighton (Leighton 2000; 2003; 2007; 2009a, b; 2012a) remain valid.

Landslides have not been mapped on the bounding slopes to the east of the project; also, the maximum predicted increase of the groundwater levels of approximately 3 inches is negligible and does not increase groundwater levels above the toe of the slope or above what is termed the “critical failure surface” in the slope stability analyses performed by Leighton (2007). The critical failure surface was defined by the slope stability analyses of Leighton (2007) during the assessment of the geotechnical setback line near the top of the south and east bounding slopes. It is a three-dimensional surface, which, in cross-sectional view, is defined as an arc. Below the critical failure surface, the factor of safety is greater than 1.5; above the critical failure surface, the factor of safety is less than 1.5. The factor of safety is a measure of the forces that would cause a slope to fail versus the forces that resist such failure. A factor of safety of 1.5 means that the resisting forces are 1.5 times as great as the forces that would cause a slope to fail.

Given the preceding discussion and definition of terms, groundwater levels in the vicinity of the eastern bounding slope remain well below the critical surface, do not promote slope instability, and do not influence the results of the slope stability analyses. Therefore, we conclude that the stability of the eastern bounding slope is also not affected by the proposed project and that the slope stability analyses of Leighton (2007) remain valid.

Leighton concurs with the DEIR statement made regarding settlement and its mitigation through the use of conventional grading techniques. Preliminary recommendations for the removal and recompaction of loose soils within the proposed structural areas of the shallow foundations proposed for the project have been previously recommended by Leighton (2007); these will be reiterated during the forthcoming Building Plan Check stage for on-lot construction.

- O10-14 The comment states that structural setback zones were established along the south and east sides of the property to mitigate potential slope instability from impacting proposed structures. According to the DEIR (sic), no structures shall be permitted within the previously established setback zone. In addition, the proposed OWTS on Lot 6 should not be located within a setback zone.

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All structures at the site intended for human occupancy will have a factor of safety of at least 1.5 in accordance with the requirements of the City of Malibu (2002a). The majority of these structures are located landward of Leighton's geotechnical setback line (for example, see Plate 1 in each report by Leighton, 2012d-h) and have a factor of safety of at least 1.5.

However, on Lot 1, the eastern margin of the proposed pool is within an area that has a factor of safety less than 1.5. In order to provide a factor of safety of at least 1.5 for this portion of the pool, Leighton (2012d) suggested several options. One of the options was to provide piles. This option of piles requires an understanding of the definition of the geotechnical setback line at depth, as opposed to the manner in which it is depicted on the ground surface. At the lot surface, the setback is defined as a line, on the pad side of which the factor of safety is greater than 1.5. In cross-sectional view, the setback is defined by an arc, the "critical failure surface", below which the factor of safety is greater than 1.5. Therefore, and in order to provide a factor of safety of at least 1.5 for all of the proposed pool area, piles would need to extend below the setback line in cross-sectional view and be founded in bedrock. (The terms "critical failure surface" and "safety factor" are defined in Leighton's response to O10 – Gaines & Stacey, LLP, Comment 13, herein.)

Other options for improvement of this portion of the pool to a factor of safety of at least 1.5 were noted by Leighton (2012d) to include retention structures such as soldier piles, or ground improvement such as grouting.

Whether piles, retention structures or ground improvement methods are used, they would all result in improving this portion of Lot 1 to a factor of safety of at least 1.5. It was noted by Leighton (2012d) that specific design recommendations will be provided during the Grading Plan Check stage of the project.

Similarly, on Lot 2, a portion of the proposed residence is in an area that has a factor of safety of less than 1.5 (Leighton, 2012e). However, as for Lot 1, the conceptual design recommendations of piles, retention structures or ground improvement can be used to improve the factor of safety to at least 1.5. Also, as is customary, specific design recommendations will be provided during the Grading Plan Check stage of the project.

- O10-15 The commenter states that the setback zone along the southern portion of the property was based on stability analyses prepared by the project geotechnical consultant (References). As indicated on Geologic Cross-Sections D-D' and F-F' (Leighton and Associates, 2009b), the consultant has forced a failure surface along the toe of the descending natural slope. The structural setback was then determined by calculating the 1.5 factor-of-safety failure surface for the subject slope. The point at which the 1.5 factor-of-safety failure surface meets the ground surface defines the southern setback line and structures shall not be built south of the setback. The lower portion of the

3. Response to Comments

critical failure surface presented in the analyses toes out at the bottom of the existing slope. In addition, this location corresponds to the top of the Amarillo Beach Landslide. Although portions of the Amarillo Beach Landslide are identified as being historically active, the DIER (sic) states that headward migration of the Amarillo Beach Landslide will not encroach onto or adversely affect the proposed development. In addition, the DIER (sic) states that the proposed OWTS will not adversely affect the existing historically active landslides along the southern boundary of the project.

Leighton concurs with the above statements. Some structures are proposed south of the proposed setback, but mitigation has been recommended such that these structures will have a geotechnical factor of safety at least 1.5. For additional discussion on this issue, refer to Leighton's response to DEIR comment O10 - Gaines & Stacey, LLP 14 herein.

- O10-16 The commenter believes the Cross-Sections D-D' and F-F' by Leighton and Associates (2009b) shows existing groundwater levels that slope to the south, toward the Amarillo Beach Landslide. The DIER (sic) states that migration of effluent from the proposed OWTS will not adversely affect the existing historically active landslides south of the subject site due to the presence of faults within the bedrock. However, the faults are buried by terrace deposits and the ability of the faults to impede the flow of groundwater is poorly defined. In addition, review of logs of borings excavated above the existing historically active landslide indicates highly fractured bedrock with numerous shears and joints. Some of the shears and joints actually dip to the south, toward the Amarillo Beach Landslide. In addition, the slide plane geometry and current groundwater conditions within the offsite landslide are poorly constrained. Therefore, the conclusions presented in the DIER (sic) pertaining to the offsite landslides do not appear to be supported by existing data.

It is true that some of the faults at the site are buried by terrace deposits, do not extend through the terrace deposits and are not recognizable at the ground surface. However, such burial does not necessarily interfere with the identification of such faults or how they interrupt the flow of groundwater and that, to a great extent, they act as barriers to groundwater flow. For example, groundwater data presented in Table 1 on pages 5 and 6 of Leighton (2012b) from January 20, 2012 shows that there is an approximately 87-foot southerly decrease in groundwater elevations between Monitoring Well LMW-5 approximately in the center of Lot 5 and Monitoring Well CCB-22 at the southern margin of Lot 5; this is over a distance of approximately 350 feet. Similarly, there is an approximately 96-foot southerly decrease between Monitoring Well LMW-4 in the center of Lot 1 and Monitoring Well CCB-23 at the southern margin of Lot 1; this is over a distance of approximately 370 feet. The dramatic decrease in groundwater elevations towards the bluff over such short distance is clearly related to a fault barrier. This is discussed further by Earth Forensics (2013).

3. Response to Comments

We agree that the borings excavated at the site above (i.e. north of) the Amarillo Beach Landslide are fractured and contain shears and joints. However, while some of the shears and joints dip to the south, the overwhelming majority of the shears and joints dip to the north, which, subjectively, suggests more stable conditions than if the overwhelming majority of the shears and joints dipped to the south towards the open bluff face. If the overwhelming majority of the shears and joints dipped to the south towards the open bluff face, then, subjectively and absent slope stability analyses, there would be a greater likelihood of slope failure. The comment does not mention bedding, but this, too, has a northerly dip component, not southerly. Please refer to the logs of Borings B-8 (southern margin of Lot 1) and B-9 (southern margin of Lot 5) on Plates B-8 and B-9, respectively, in Geolabs (2000); these borings are closest to the landslide and would be most representative of the subsurface conditions adjacent to the landslide. The prevailing northerly geologic attitudes are summarized on Geotechnical Cross-Sections D and F on Plate 3 of Leighton (2009a).

Given the great prevalence of northerly-dipping geologic structure (whether bedding, joints or shears), failure of this portion of the slope would have to occur across the northerly-dipping structural grain, which, subjectively, is more difficult than if the prevailing geologic structure were to dip to the south towards the landslides. This characterization of the geologic structure was incorporated into Leighton's slope stability analyses (Leighton 2000; 2003; 2007; 2009a, b; 2012a), which derived a factor of safety of at least 1.5 for the bluff.

We also disagree that the slide plane geometry of the Amarillo Beach Landslide is poorly constrained. The headscarp is clearly visible and we do not need further definition of the offsite landslide to be able to assess the stability of the portion of the bluff that does not form part of the landslide. In fact, and as mentioned previously, the stability of the bluff was assessed assuming that the landslide had been entirely removed.

Given that construction is not planned within the offsite landslides, that an appropriate geotechnical setback from the landslides has been defined, and that the slope stability analyses were performed assuming that the landslides had been removed, additional definition if the offsite landslides is not warranted, therefore, we disagree with the statement that the conclusions presented in the DEIR pertaining to the offsite landslides do not appear to be supported by existing data. The conclusions are supported to the extent that they are required by the analyses.

- O10-17 A raise in groundwater within the Amarillo Beach Landslide due to the proposed OWTS may have an adverse effect of the stability of the property to the south. Portions of the offsite landslide are occupied by existing residential structures and additional movement would adversely affect those structures.

3. Response to Comments

Earth Consultants International (2009; 2012) and Leighton (2009a, b; 2012a, b) assessed a hypothetical / severe groundwater level condition across the site and within the Amarillo Beach Landslide. (Please see Leighton's response to O1 – AEI Consultants, Comment 8 herein for a summary of the hypothetical / severe groundwater condition.) That work shows that, within the landslide, there was no discernible difference in the groundwater elevations with and without contributions from the OWTS effluent. The OWTS is not forecast to induce a rise in groundwater elevations in the area. As such, an adverse effect on stability of the property to the south is not anticipated.

- O10-18 The DEIR (sic) states that headward migration of the Amarillo Beach Landslide will not encroach onto the subject property; however, any movement of the existing landslide may affect the overall stability of the southern slope area and, in turn, have an effect on the proposed setback zone on the subject site. Movement of the landslide may result in different slope conditions than considered in the current analyses. As shown on the geologic cross-sections and stability analyses (Leighton 2009b), the current setback zone is based on the critical failure surface daylighting at the toe of the existing slope, which is at the head of the Amarillo Beach Landslide. If the slide were to move, then the slope configuration used in the analyses would change, possibly resulting in a higher slope or change in soil parameters due to extension of the head-scarp area. As a result, a larger setback zone may be required and the zone may extend below the proposed structures on the subject site.

Leighton (2008b) has assessed the Amarillo Landslide based on a review of historic aerial photographs and topographic maps covering the period from 1903 to 2007. While small, localized, surficial failures were noted within the landslide mass, larger slope failures were lacking. Also, the Amarillo Landslide appears to be buttressed by alluvium and beach deposits; it is expected to remain stable because it is unlikely that the buttressing materials will be removed or be allowed to erode during the design life of the proposed development or the offsite adjacent developments to the south.

Leighton's approach and assessment of the Amarillo Landslide with respect to the proposed development was performed in accordance with City requirements and discussions with the City Geologist, and was ultimately approved by the City (2012b). Reconsideration of the landslide interpretation or the method of analyses is not warranted.

- O10-19 This comment relates to the same issue raised by the City during its review of prior Leighton reports (Leighton, 2009a, b), although the City also requested a discussion of bedrock percolation characteristics across the entire site, not just at the location of the seepage pits. The issue is discussed at length by Leighton (2012a; please refer to Comment 1.2 on page 4, and its associated response).

3. Response to Comments

In short, Aquifer Science and Technology (2008) defined the boundaries between unoxidized and oxidized bedrock that underlies the Terrace Deposits which mantle the site by performing an electrical resistivity study. It was confirmed by Leighton (2012a) that effluent from the seepage pits would first percolate into oxidized bedrock, not unoxidized bedrock, and would then percolate deeper into unoxidized bedrock. Earth Consultants International (2012, pages 6 through 8) demonstrated the hydraulic conductivities of the oxidized and unoxidized bedrock, and concluded that these parameters were sufficient to provide transport of the treated effluent away from the seepage pits. It was also noted by Leighton (2012a) that the presence of open fractures and joints, the presence of diatomaceous beds, and the dissolution of calcium carbonate and gypsum linings of joints and fractures upon contact with the treated effluent would further serve to increase percolation characteristics of the bedrock and efficient transport of the treated effluent.

- O10- 20 The commenter believes the DEIR and reports do not adequately address stability along the southern slope area of the site. “Statements regarding migration of effluent toward the existing historically active landslide are poorly supported by existing data and the highly fractured nature of the bedrock may result in additional groundwater flow toward the offsite landslide. Reactivation of the offsite landslide may result in damage to existing residential structures and may result is a less stable slope condition and larger setback zones on the subject site. Additionally, uncontrollable factors may also adversely affect the overall stability of the offsite landslide, such as an increase in groundwater due to other sources, as well as potential seismic activity.”

In the Site’s present condition, there currently is no control over how storm water leaves the Site and descends down the southern slopes. The proposed project will include design features and storm water control measures that will provide for control of the storm water leaving the Site and therefore provides an opportunity to reduce future erosion along the southern slope. Specifically, as shown on the Erosion Control Plan, during construction storm water that flows from the graded areas will be captured with desilting basins where the storm water will be detained and cleaned and then rerouted through storm drain pipes to drainage channels and then to existing storm drains. After construction, as shown on the Grading and Drainage Plan, storm water that flows from the developed portions of the Site will be captured, detained and rerouted through storm drain pipes to minor drainage channels and then to existing storm drains. In each case there will be a reduction in both the volume of and rate at which the storm water flows over the southern slope by diverting it at the surface through minor drainage channels and other drainage devices thus reducing the erosion of the slope due to storm water runoff, which will improve slope stability. See also Leighton and Associate’s Geotechnical Responses, 2013.

Our responses to DEIR comments herein clearly show that the characteristics of the bedrock have been properly assessed by Aquifer Science & Technology (2008), Earth

3. Response to Comments

Consultants International (2012a) and by Leighton (2009a, b; 2012a-c), and that they have been incorporated in Earth Consultants International’s hypothetical / severe groundwater model studies (Earth Consultants International, 2009; 2012). This model included the effects of the treated effluent, irrigation and rainfall which has adequately modeled the, “..... uncontrollable factors”, which, “..... may adversely affect the overall stability of the offsite landslide, such as an increase in groundwater due to other sources", as stated by the DEIR comment. Therefore, the physical characteristics of the site’s subsurface have been properly characterized such that the migration of effluent can also be properly characterized. As such, the introduction of effluent into the subsurface will not result in additional groundwater flow towards the offsite landslide.

With respect to potential seismic activity that could affect the stability of the offsite landslides, the slope stability analyses of Leighton (2000; 2003; 2007; 2009a, b; 2012a) were performed per the requirements of the City, which includes ground motions that could be induced as a result of regional earthquakes.

Given the preceding, Leighton (2012a) has demonstrated, and the City has approved (City of Malibu, 2012b), that, even given the hypothetical / severe groundwater model, reactivation of the landslide complex on the south bluff is remote.

O10-21 Statement of limitations. No response necessary.

3. Response to Comments

LETTER R1 – Astrid and Hope Berk (1 page [s])

Good evening Commissioners,

We are here to express our opposition to the five monstrous mansions a developer wants to build next to Bluffs Park and in doing so would invade one of the most beautiful and unique locations in Malibu along with blocking the ocean views of many homes in the Malibu Country Estates. For almost 37 years, when we moved to Malibu we have been grateful to the State of California for having the foresight to save and protect this precious public park for the people of California. Now a developer wants to building 5 mansions next to the park blocking the views of homes above and the views of the people when they come to enjoy strolling in the park. Rather than enjoy the landscape as Mother nature left it for us we would be confronted with roof tops where there should be open blue sky and unobstructed views of the coastline. We urge you to stop this project and suggest to the developers this is an inappropriate place to build 5, two-story, 11,000 square foot mansions.

R1-1

Thank you.

Aristid and Hope Berk

3. Response to Comments

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3. Response to Comments

R1. Response to Comments from Astrid and Hope Berk, no date.

R1-1 The commenters express opposition to the proposed project on the basis of aesthetic impacts. Please refer to General Comment 2.1 The comment is noted and will be forwarded to decision makers for their consideration.

3. Response to Comments

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3. Response to Comments

LETTER R2 – Ron and Roberta Bogie (4 page[s])

Ha Ly

From: ron bogie <ronniebogie@yahoo.com>
Sent: Thursday, April 25, 2013 10:48 AM
To: Ha Ly
Cc: dick@garygroup.com
Subject: Fw: interfere view
Attachments: 239.JPG; 244.JPG; 244.JPG

Hi Ha Ly

We are concerned that the new development will impact our view of the ocean negatively. We have two issues,
1. The orange tapes take a huge portion of our view from the blue ocean, especially the 2 story planned development is of particular concern . R2-1
2. Any home development will typically allow for planting of trees, and they will definetly grow large as time goes on. We did not notice any restrictions on the height of any landscaping. We feel that the height of any tree permitted to grow should be limited 1/2 the height of 1 story. R2-2
(please note that a one story home will still take away part of our ocean view)

Ron &Roberta Bogie
3727 malibu country drive
310 968 7800

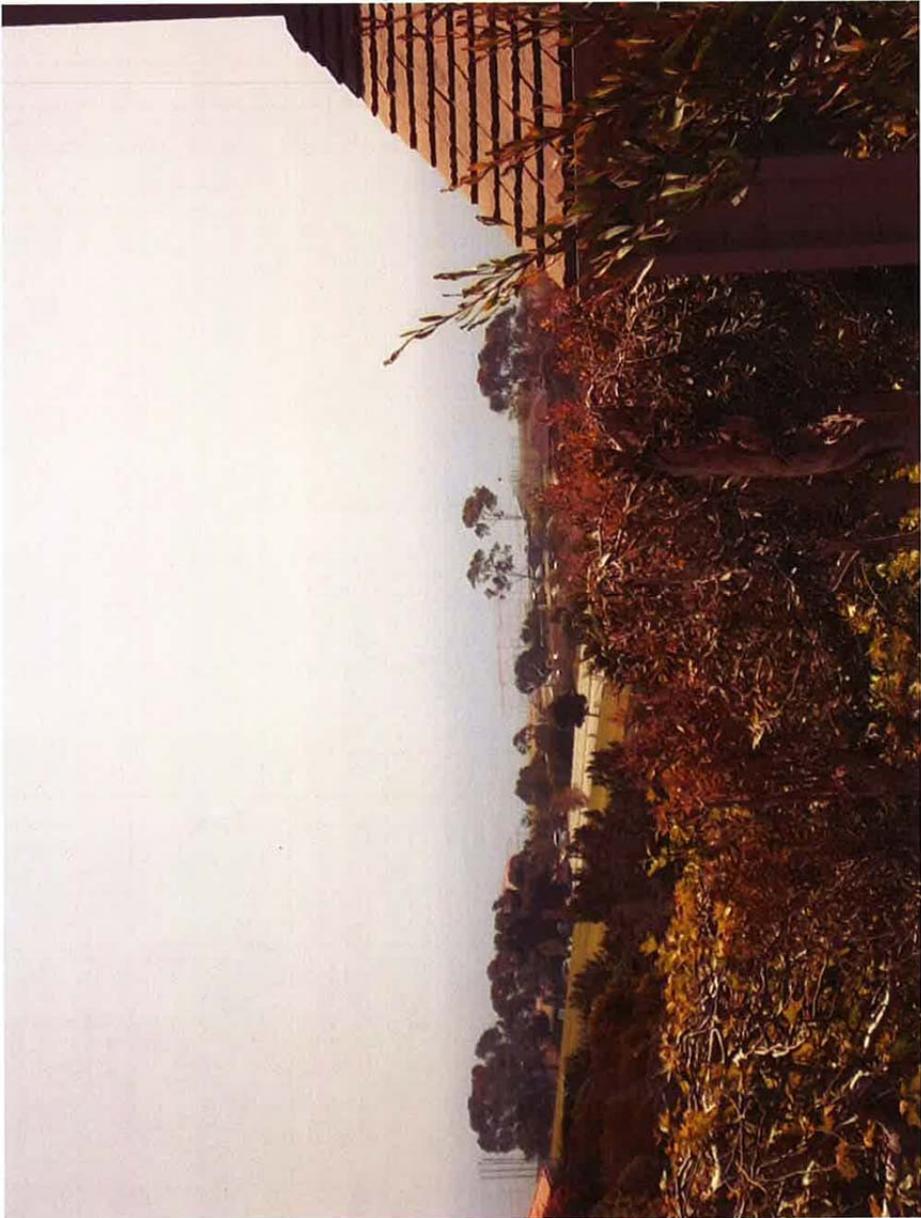
3. Response to Comments

Ron & Roberta Bogie
3727 Malibu Country Drive



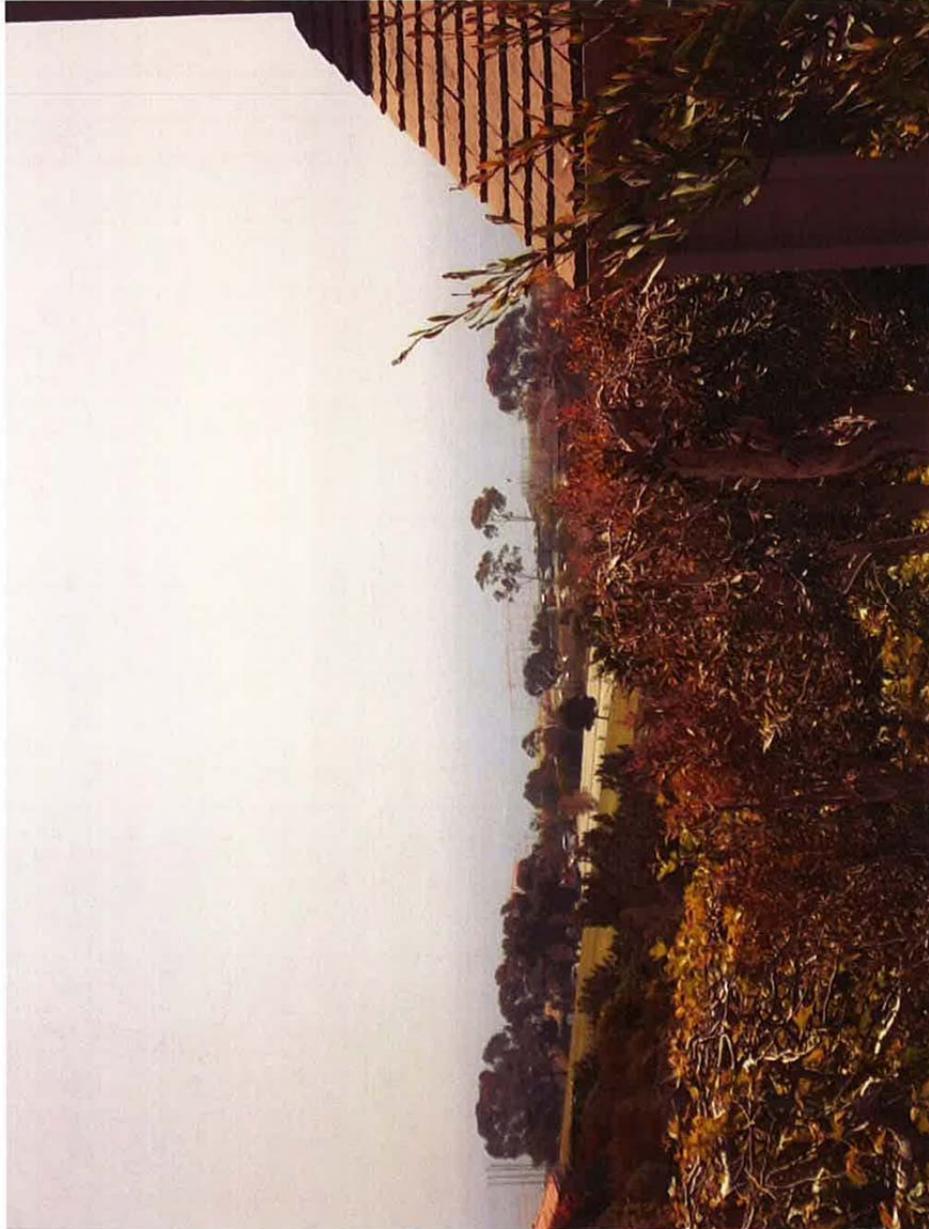
3. Response to Comments

Ron & Roberta Bogie
3727 Malibu Country Drive



3. Response to Comments

Ron & Roberta Bogie
3727 Malibu Country Drive



3. Response to Comments

R2. Response to Comments from Ron and Roberta Bogie, dated April 25, 2013.

- R2-1 The commenters express opposition to the proposed project on the basis of aesthetic impacts. The comment is noted and will be forwarded to decision-makers for their consideration.
- R2-2 This comment expresses concern over the height of landscaping and suggests that tree height be limited to ½ the height of one story. The comment is noted and will be forwarded to decision-makers for their consideration.

The commenter is referred to General Response 2.3, *Aesthetics*, which includes discussion of a Visual Simulations Supplemental Report (September 30, 2013). The supplemental view simulation report provides 26 different views for the proposed project, the One-Story Alternative, as well as simulations of an alternative project design “Reduced Project Alternative” for a total of 78 views. The supplemental Visual Simulations Report (September 30, 2013) includes reduced landscaping for all 78 views.

Please see FEIR Appendix A for a complete copy of the supplemental view simulations report. See also FEIR Appendix E, Revised Chapter 7, *Alternatives to the Proposed Project*.

3. Response to Comments

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3. Response to Comments

LETTER R3 – Tim Elkins; Joan and Paul Almond (5page[s])

Ha Ly

From: Tim Elkins <time1224@charter.net>
Sent: Monday, May 20, 2013 5:43 PM
To: Ha Ly
Cc: Joan & Paul Almond; 'Paul Almond'; dnawill@gmail.com; hnagin13@gmail.com
Subject: FW: Crummer Site Subdivision/EIR Rpt No. 09-001/CDP No. 07-144 - FINAL
Attachments: Bluff Blight Malibu Cyn Entry View 6 2012.jpg; West View From Malibu Colony.jpg; West View from Malibu Colony - Close Up 6 2012 (2).jpg; West View from Malibu Civic Ctr.jpg; East view from Bluffs Park.jpg

Dear Ms. Ly, please accept this version as the final version. Per the notice posted on the City of Malibu website, I note that there is no 5:00 p.m. deadline. Hence, we will assume that our submission will be considered timely. Thank you! Tim Elkins, Joan & Paul Almond

May 20, 2013

City of Malibu
23825 Stuart Ranch Rd.
Malibu, CA 90265

Re: Comments to the Proposed Crummer Site Subdivision DEIR No. 9-002

Dear Ladies and Gentlemen:

The reason for this letter is to protest the placement of the Crummer site for this subdivision entirely.

Arguments:

- 1. The chosen location for the five homes proposed to be built would create a blight on an extremely prominent ridgeline which is viewable from so many important perspectives within the heart of Malibu.

Please see the attached photos which highlight a few of these, namely, from the entrance to Malibu via Malibu Canyon Road, from the Civic Center, from the Bluffs Park ball fields and from Malibu Colony. For Malibu Colony residents and for those south of us, the development will permanently mar the otherwise perfectly natural mountain profile from the tip of Point Dume to the top of the furthest mountain ridge to the right. The development would also be in the immediate vicinity of the sunset as viewed by Colony residents during the winter and spring months.

R3-1

The EIR is able to reference various publications as not naming this site as a sensitive view shed area only because during the time that these publications were assembled, nobody ever thought this location, and ridge, was subject to development.

- 2. The review process which now forms the basis for consideration of these homes, was inadequate given the potential impact. And, at that time the city accepted a donation from the developer of \$750,000 and so it is now biased toward supporting this development.

In 2008, the public was noticed about this change of zoning, including the approximate 31 residences (only) within 500' of the property. To these specific residences, the development is behind them - away from the ocean - and so was not considered a threat to their view. Were the homeowners, whose view would be impacted, shown a picture or given a description of the disruption to the ridgeline from the key viewpoints? The answer is no! And as far as noticing the general public, there were only notices published over a four week period from 10/23 - 11/27/2008 advising of the

R3-2

3. Response to Comments

availability of the proposed amendment to the zoning as well as advising of hearings. Consequently no written or oral arguments were even received. R3-2 cont'd

The City of Malibu admits that while considering the application, it determined the proposed amendment was found not to be in conformance with several Coastal Act and LCP policies regarding promoting visitor serving uses. And, view was NOT one of the main criteria considered by them at that time. Instead it was whether “adequate provision of visitor-serving commercial development and public recreational opportunities” were being considered. As an offset to the negative impact that five homes would have on “visitor-serving commercial development”, the City of Malibu staff required only that the owners of the parcel pay a mere \$750,000 for the marring of this very prominent mountain profile. Additionally, more recently I believe the owners have offered to donate a portion of their land for use as a skate park. R3-3

The fact is neither the residents nor anyone else have had a proper chance to protest. This is a unique property in that it has its own special zoning – it is in a category all to itself. Anyone interested in learning about this property prior to 2008, would have been told it could never be developed since “passive” and “for public use” were the key words limiting its use. R3-4

How was the public to know that they should have proactively argued to make this ridge a part of the ridgeline ordinance until they were woken up by these huge story poles? R3-5

3. In 2002, the CCC adopted LUP Policy 2.78 which presumed only that if the ball fields at Bluffs Park would be moved, then a proposed residential development might be considered, pending too that any such development “shall not be exempt from compliance with all other provisions of the LCP.” It added specifically too “If no agreement is reached to relocate the existing fields the permitted use on the Crummer Trust parcel shall remain CV-2 (Commercial Visitor Serving). The City now says that because it decided no to move the ball fields, that this policy should be irrelevant. R3-6

Per section 5.9.3, the EIR now argues, “since it is not the City’s intent to relocate the existing ball fields from Bluffs Park, LUP 2.78 is now obsolete.” We disagree and so should the CCC. R3-7

Per 5.1.1 Environmental Setting: Malibu is all about scenery and this is why view shed is so prominent in the LCP for Malibu. Per the LCP, “scenic areas are “places on, along, within, or visible from scenic public roads, trails beaches and parklands that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features or areas.” R3-8

One only needs to view the attached photos to see that this project is in violation to this whole section. Only if one entirely relies on the written descriptions within the EIR could they possibly believe this project does not significantly violate so many edicts governing view shed. R3-9

Per section 5.9.2, LU-2, this project would have a significant effect on the environment since it does conflict with the view shed criteria as admitted by the City of Malibu while considering the application. It determined the proposed amendment was found not to be in conformance with several Coastal Act and LCP policies regarding promoting visitor serving uses. R3-10

Finally, we are in disagreement entirely that there is no significant impact as attested to in the EIR in sections 6.15 and 6.24. R3-11

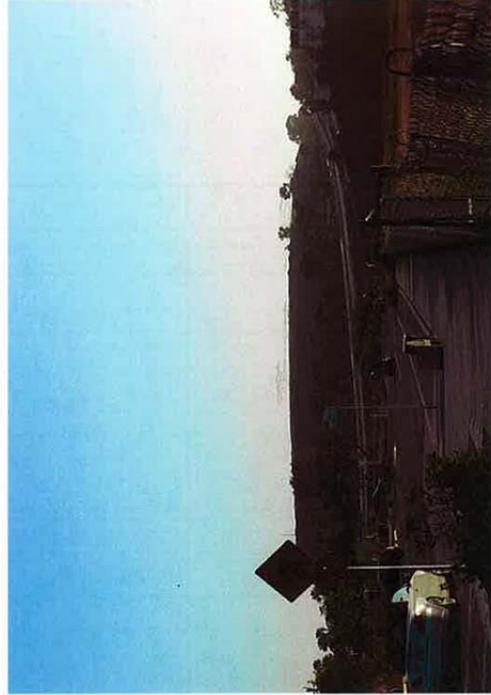
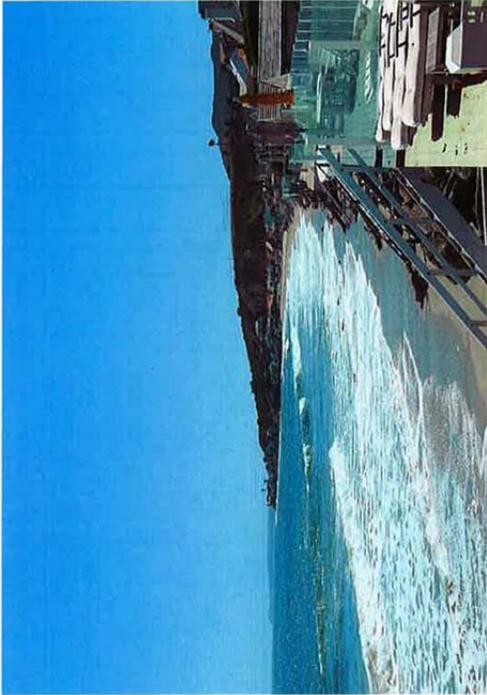
Very Sincerely,

Joan & Paul Almond
Tim Elkins
54 Malibu Colony

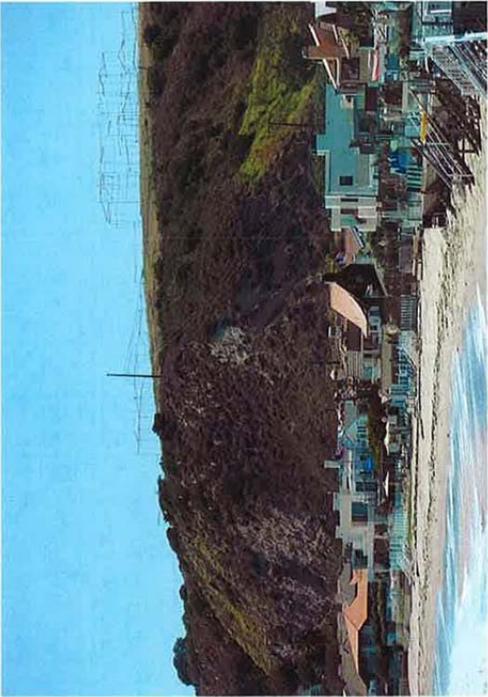
3. Response to Comments

Malibu, CA 90265

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3. Response to Comments



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3. Response to Comments

R3. Response to Comments from Tim Elkins; Joan and Paul Almond, dated May 20, 2013.

R3-1 The commenters express opposition to the proposed project on the basis of aesthetic impacts and believe that the five homes would create blight on a prominent ridgeline.

LIP Section 2.1 defines ridgelines as follows:

Ridgeline, Primary - a hill, ridge or promontory which drops on either side of the top of this landform feature, and includes at least one of the following conditions: 1) forms a distinct part of the skyline when viewed from a public street or highway; or, 2) is seen as a distinct and prominent edge against a backdrop of land at least 500 feet behind it when viewed from a public street and contains an average slope of at least 3:1.

Ridgeline, Secondary - a hill, ridge, or promontory other than a primary ridgeline, but on which the elevation drops more than 10 feet in 100 feet horizontally on either side of the top of this landform feature.

Based on a topographic survey, aerial photographs and site visits, the project site is not a ridgeline because it does not have a discernible ridge. The project site is characterized by a relatively large, flat area surrounded by a coastal bluff facing Pacific Ocean to the south, an downhill slope to the east towards the Tow Site, a cut slope to the north created when PCH was constructed and Malibu Bluffs Park to the west. The project's flat area appears to have been connected to a larger mass of land across PCH (also known as the Malibu Ranch Hotel site). However, the construction of PCH split the two properties and created a manufactured cut slope facing PCH and is not a natural feature of the Santa Monica Mountains. The comment is noted and will be forwarded, along with the submitted pictures, to decision makers for their consideration.

The commenters are referred to General Response 2.3, *Aesthetics*, which includes discussion of a Visual Simulations Supplemental Report (September 30, 2013). The supplemental view simulation report provides 26 different views for the proposed project, the One-Story Alternative, as well as simulations of an alternative project design "Reduced Project Alternative" for a total of 78 views. The supplemental Visual Simulations Report (September 30, 2013) includes reduced landscaping for all 78 views.

Please see FEIR Appendix A for a complete copy of the supplemental view simulations report. See also FEIR Appendix E, Revised Chapter 7, *Alternatives to the Proposed Project*.

R3-2 This comment does not raise a specific question about a significant environmental issue or the adequacy of the DEIR. The comment is noted and will be forwarded, along with the submitted pictures, to decision makers for their consideration.

R3-3 Please refer to Response to Comment R3-2.

R3-4 Please refer to Response to Comment R3-2.

3. Response to Comments

- R3-5 Please refer to Response to Comment R3-2.
- R3-6 The commenters disagree that Policy 2.78 is outdated. The DEIR (in Section 4 and Section 5.9) explains the inconsistency between Policy 2.78 (which incorrectly presumes that the Crummer Trust site is designated CV-2) and the adopted LIP (in which the Coastal Commission designated the property Planned Development (PD) on all the LIP Land Use and Zoning Maps as well as in the actual definitions of Planned Development found in LUP 5.C.2).
- The commenters are referred to General Response 2.1, *Land Use* and Response to Comment O3-76. The comments will be forwarded to decision-makers for their consideration.
- R3-7 Please refer to Response to Comment R3-6.
- R3-8 This comment does not raise a specific question about a significant environmental issue or the adequacy of the DEIR. The comment will be submitted to decision makers for their consideration.
- R3-9 The commenters express opposition to the proposed project on the basis of aesthetic impacts and that the DEIR's conclusions are flawed.
- The commenter is referred to General Response 2.3, Aesthetics. The DEIR's analysis in Section 5.1, Aesthetics, concluded that after implementation of regulatory requirements and standard conditions of approval, all impacts related to aesthetics would be less than significant. The commenter is referred to General Response 2.3 for an overview of relevant view protection ordinances and their applicability to the proposed project. See also Response to Comment O3-35. Please see FEIR Appendix A for a complete copy of the revised view simulations report.
- R3-10 The project's consistency with LUP policies is discussed in detail in DEIR Section 5.9, Land Use. A detailed analysis of the proposed project's consistency with the applicable goals and policies of the various elements of the General Plan is provided in Table 5.9-1, General Plan Consistency Analysis. The analysis concludes that the proposed project would be consistent with the applicable goals and policies of the general plan. As shown in Table 5.9-3, Local Coastal Program Consistency, the analysis concludes that the proposed project would be consistent with the major applicable goals and policies of the LCP.
- R3-11 The commenters express their opinion and disagree with the DEIR's conclusion that there are no significant impacts for "Sections 6.15 and 6.24"; however, those sections and/or page numbers do not exist. The comments will be submitted to decision makers for their consideration.

3. Response to Comments

LETTER R4 – Patt Healy (5page[s])

Ha Ly

From: healypatt@aol.com
Sent: Sunday, May 19, 2013 3:48 PM
To: Ha Ly
Cc: Joyce Parker-Bozylinski
Subject: comments on Crummer draft EIR

To: Ha Ly
From: Patt Healy
Date: 5-19-13
Re: Crummer Draft EIR Comments
Hi Ha, Hee are my comments on the draft EIR.

General Comment

An EIR should be easily understood by both the public and the decision makers. Non experts are not expected to be able to fully understand technical reports. This draft puts the burden on non experts to constantly refer back to the appendices instead of in the EIR clearly stating in understandable language what the technical reports are saying. This is not the intention of CEQA.

R4-1

This is a deficiency in the draft and needs to be corrected in the final EIR. It has been noted by many that the draft selectively chooses to mention items and code sections that appear to favor the project as designed and doesn't mention those that are unfavorable. The EIR draft doesn't appear to give a non biased analysis of the project which needs to be corrected.

The EIR must analyze the project to see if it conforms to the LCP. The analysis has not been made.

R4-2

Aesthetics

To find that there is no impact to Aesthetics is incomprehensible. According to CEQA guidelines a project would have a significant effect on the environment if it would:

- AE-1 Have a substantial adverse effect on a scenic vista.
- AE-2 Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway.
- AE-3 Substantially degrade the existing visual character or quality of the site and its surroundings. Create a new source of substantial light which would effect nighttime views of the area.

R4-3

Views

Please tell us the number of feet each structure is set back from a bluff /hillside in all directions.

R4-4

The negative visual impact of this project is enormous. There is both a substantial adverse effect on scenic vistas and a substantial degradation of existing vistas which require a finding of overriding consideration. Also, without specific mitigation measures nighttime lighting could have a substantial effect on the environment.

R4-5

3. Response to Comments

<p>This project is located in the Santa Monica Mountains National Recreation Area where there is an urban wildland interface which needs to be harmonized. Residence are to blend in with the natural environment. Creating residences of this huge, scale, mass and bulk so close to the bluff/hillsides is visually overwhelming and clearly incompatible with how residences should be developed in the SMMNRA.</p>	R4-6
<p>Please analyze the visual impact of the project from all public land, public trails, viewing areas and scenic view points to the north, east south and west of the property, including but not limited to the city owned portion of Bluffs Park, Malibu Pier, Malibu Lagoon and Surfrider Beach.</p>	R4-7
<p>There is no analysis of the view impacts from Alumni Park and they need to be analyzed. To simply say that homeowner private views are not protected by the city doesn't under CEQA mean that their will be no significant impact for the homeowners effected. In essence, the draft admits the view impact to existing homes is significant.</p>	R4-8 R4-9
<p>To state that landscaping mitigation will hide the adverse effect of the proposed residences is not realistic for the simple reason that the owners of the new homes will not want their private views of the mountains and ocean blocked by landscaping. Furthermore, there is nothing to ensure that that the Owners will not cut down the landscaping to restore their views.</p>	R4-10
<p>As currently designed project view impacts not mitigated Under the LCP the appropriate mitigation measure is redesign and/or relocation of structures. Landscaping is not an acceptable mitigation measure.</p>	R4-11
<p>One of the primary objectives of the Coastal Act is the protection of scenic and visual resources, particularly as viewed from public places. Section 30251 requires that development be sited and designed to be visually compatible with the character of surrounding areas and to protect scenic views.</p>	R4-12
<p>The Land Use Plan provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas.</p>	R4-13
<p>LUP policies require that new development not be visible from scenic roads or public viewing areas.</p>	R4-14
<p>LUP policies require that new structures be sited and designed to minimize impacts to scenic resources by incorporating design measures to limit the appearance of bulk ensuring visible compatibility with character of the surrounding area.</p>	R4-15
<p>LUP p. 111 LUP 6.6 Avoidance of impact to visual resources through site selection and design alternatives is the preferred method over landscape screening as mitigation of visual impacts. Landscape screening as a mitigation of visual impacts shall not substitute for project alternatives including resiting or reducing the height or bulk of structures.</p>	R4-16
<p>LUP 6.7 The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height ,except for beachfront lots, shall be 18 ft above existing and finished grade whichever is lower.</p>	R4-17
<p>See also LIP 6.4 B, 6.A.1 , 6.4.A.3, 6.B1 Clearly this project has to go back to the drawing board to conform with the Coastal Act and the LCP.</p>	R4-18
<p>Please analyze the following to determine the appropriate mitigation and include the results as alternatives to this project.</p>	R4-19

3. Response to Comments

1. Setting all structures further back from the bluffs / hillsides.	R4-19 cont'd
2. One story structures set back without expanding the proposed footprint of each structure.	R4-20
3. Structures 18 ft and 15 ft high setback from the bluff/hillsides that are clustered with a reduced footprint of 4000 sq ft	R4-21
Lighting With respect to lighting of this dark area, visual resources would be negatively impacted making the EIR deficient. LIP 4.6.2 Lighting standards 1,2,4,5 and 6 must be a mitigation measure to protect visual resources. In addition add the following mitigation measures: Lighting of private roads is prohibited. All lighting will be fully shielded and cast downward.	R4-22
Biology Objective 1.2 of the Conservation Element of the General Plan states: "Wildlife and biota resources preserved, protected, and reclaimed."	R4-23
The required biological studies required under LIP 4.4.2 are incomplete.	
1. Migration corridors of nocturnal wildlife were not studied. (LIP 4.4.2C)	
2. An analysis of any unauthorized development, including vegetation removal that may have contributed to the degradation and elimination of habitat area or species that would otherwise be present on the site in a healthy condition. (LIP 4.4.2H)	R4-24
3. Project alternatives designed to avoid and minimize impacts to sensitive resources. See those mentioned above under aesthetics. (LIP 4.4.2.I)	R4-25
4. Mitigation measures that would minimize or mitigate residual impacts that can not be avoided through project alternatives LIP 4.4.2.J.	R4-26
LIP 4.6.2 Lighting standards 1,2,4,5 and 6 must be added mitigation measures to protect biological resources. In addition, add the following mitigation measures: Lighting of private roads is prohibited. All lighting will be fully shielded and cast downward.	R4-27
Non Native Grasses The non native grasses on this site could serve an important environmental purpose . I have personally seen huge flocks of red winged black birds using this site when the site was not cleared. White tale kites could utilize this site since I have observed them hovering over other non native grasslands. Please analyze all birds (native and migrating) that could use non native vegetation site if it was not cleared for hunting , foraging and nesting and indicate if any of them could have a special status designation. Prior to site brush clearance was there an investigation to determine whether there was any Coastal Sage Habitat or any of special status species on the site ? Since there were no homes in the vicinity to protect, please indicate whether the fire dept actually required brush clearance of this site during the current ownership of this site and if so please provide evidence of this fact. Please tell us the following: Was this site ever cleared by the owner with a permit from any one of the required agencies including but not limited to fish and game, the city or	R4-28
	R4-29
	R4-30
	R4-31
	R4-32

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<p>Coastal Commission? If so, please provide copies of permits in response to comments and in final EIR. Did this clearance comply with Fish and Game requirements, the LCP and the Coastal Act? If so how did it comply?</p>	<p>R4-32 cont'd</p>
<p>If there are not current owner permits and the fire department did not require clearance the final EIR must require that the site not be cleared for a 2 year period or longer if construction is not close to commencement to study and document the plant life , birds and other mammals that utilize this site when it is not cleared. A supplemental EIR needs be required to set forth and analyze the results and put appropriate mitigation measures in place. LIP 4.1.6.E requires a buffer that no required fuel modification is required in ESHA.</p>	<p>R4-33</p>
<p>ESHA is still ESHA if it meets the definition of ESHA even though it is not mapped. Coastal Sage Community is ESHA and this project as currently designed doesn't meet this requirement since zone B and C consist of coastal sage communities. Again set backs and redesign of a less impactful project is required.</p>	
<p>Catalina Mariposa Lilies are part of the coastal sage community and exist in zone A. They are required to be protected by setting the project back from them to ensure that they are not harmed by brush clearance.</p>	<p>R4-34</p>
<p>Mammals and Wildlife Movement Corridors</p>	
<p>Wildlife is abundant in the area north of PCH and may very well be using use this site. Mammals could easily be using this sight at night. No night site surveys were done, between 1:30 am and 4:am to confirm the draft's assumption that deer, coyote , raccoons, mountain lion, skunks and and other small mammals don't cross the highway to use this site. Late at night, wildlife can easily successfully cross PCH.</p>	<p>R4-35</p>
<p>Please provide a thorough study of wildlife use of this site between 1:30 and 4:30 am over several nights. Include mammals, reptiles and bird species document their movement patterns on site and how wildlife move in and out of the site including where they are crossing on PCH and also from what other areas on the east,west and south these animals enter and exit the site, The results results described in final EIR.</p>	
<p>Appropriate mitigation measures should then be imposed to protect the wildlife and their use if the site.</p>	<p>R4-36</p>
<p>Birds</p>	<p>R4-32</p>
<p>This site is used by migratory birds and therefore by definition may be of special concern. See discussion under non native grasses above Drainages 5-3-12</p>	<p>R4-37</p>
<p>This so called offsite drainage ditch is a mapped ESHA and will be impacted by this project when construction is preformed. Despite what the city biologist says under the LCP until the Coastal Commission declares it is not ESHA it is to be treated as ESHA Please analyze it as such.</p>	
<p>Wetlands</p>	
<p>You provided the Army Corp definition of wetland. Please tell us the state definition of a wetland and analyze on site and off site impacts using the state definition.</p>	<p>R4-38</p>
<p>Conservation Easement</p>	
<p>The draft mentions that there is a conservation easement agreement . Please provide the terms of this easement in the response to comments and in final EIR with an</p>	<p>R4-39</p>

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illustration of the boundaries of this easement and make the owners and their successors obligations under this agreement a required mitigation measure.

R4-39
cont'd

Clustering

Since clustering structures is required for subdivisions, residences that are clustered further away from the hillsides/bluffs where sage habitat exists with a smaller first floor footprint would reduce the negative impact to biological resources from required fire department brush clearance. This is required as a mitigation under LIP 4.8

R4-40

Please respond to these comments and in addition say whether the final EIR will require the recommended analysis and include the required mitigation measures.

Thank you.

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R4. Response to Comments from Patt Healy, dated May 19, 2013.

R4-1 In paragraph 1 the commenter broadly asserts that the DEIR puts the burden on non-experts to constantly refer back to the appendices instead of in the EIR and selectively chooses to mention items and code sections that appear to favor the project as designed and doesn't mention those that are unfavorable. The DEIR was prepared under contract to the City of Malibu and reflects the City's independent judgment on its contents as required by CEQA. The DEIR comprehensively assesses the significant environmental effects of the project, a reasonable range of alternatives to the proposed project, and feasible mitigation measures to reduce and avoid significant environmental impacts. (See remaining responses to comments R4-1 through R4-40).

To achieve a balance between the technical accuracy of an EIR and its public information function, the CEQA Guidelines provide that placement of highly technical analysis and data in the body of an EIR should be avoided by putting supporting information and analyses in appendixes to the EIR (Guidelines Section 15147). Technical information placed in appendixes should be summarized in the body of the EIR. According to the CEQA Guidelines Section 15141, the text of a draft EIR should ordinarily be less than 150 pages and, for projects of "unusual scope or complexity," should normally not exceed 300 pages.

Key data to the analysis of an issue placed in the appendices has been summarized in the body of the DEIR to ensure that the information is presented in a manner that will adequately inform the public and decisionmakers. The DEIR's analysis in Section 5 is consistent with the information in the DEIR appendices. The information contained throughout the DEIR includes summarized technical data, maps, plot plans, diagrams, and similar information sufficient to permit the public and reviewing agencies to make a full assessment of significant environmental effects of the project.

Please refer to the General Responses in Section 2 of this FEIR and Section 4.2, *DEIR Revisions in Response to Written Comments*.

These comments represent the commenter's opinion; however no facts or evidence are presented to support the opinions stated. These comments will be forwarded to the City's decisionmakers for their consideration.

R4-2 The commenter asserts that the DEIR did not analyze conformity with the LCP.

The project's conformity with the Local Coastal Program (LCP) was provided in Chapter 5.9, *Land Use and Planning*, Table 5.9-3, Pages 5.9-11 to 5.9-19. As shown in Table 5.9-3, *Local Coastal Program Consistency*, the City's analysis concludes that the proposed project would be consistent with the major applicable goals and policies of the LCP. This comment will be forwarded to the City's decisionmakers for their consideration.

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R4-3 Here the commenter summarizes the CEQA thresholds for visual impacts and states that “To find that there is no impact to Aesthetics is incomprehensible.”

The commenter is referred to General Response 2.3, *Aesthetics*. The comments in this paragraph represent the commenter’s opinions but no facts or evidence to support the opinions are provided.

Please refer to the General Responses in Section 2 of this FEIR and Section 4.2, *DEIR Revisions in Response to Written Comments*. These comments will be forwarded to the City’s decisionmakers for their consideration.

R4-4 Here the commenter requests the number of feet each structure is set back from the bluff. The bluff setbacks for structures on each lot are as follows: Lot 1 – 100 feet min; Lot 2 – 95 feet min; Lot 3 – 55 feet min; Lot 4 – 115 feet min; Lot 5- 85 feet min.

R4-5 Here the commenter states the opinion that the “negative visual impact of this project is enormous” and is concerned about the proposed project’s nighttime lighting effects.

Section 5.1, *Aesthetics* of the DEIR determined that the proposed project would comply with light and glare requirements set forth in the M.M.C. and the LIP. Outdoor lighting would incorporate low-level lighting fixtures and would be designed and installed with directional shields so that the light source would not be seen from adjacent land uses and roadways. In accordance with the LIP, a deed restriction reflecting the lighting restrictions of the LIP would be executed and recorded. Lighting associated with the proposed project would be typical of single-family residences and similar to that of the residential uses immediately south of the project site. Any future recreational use on Lot 7 such as baseball field or skate park would not include nighttime lighting. The parking lot would include the minimum required security lighting. Due to the near proximity similar sources of light and glare, compliance with the M.M.C. and LIP would ensure that light and glare associated with the proposed project would not cause a significant impact. Nighttime lighting impacts would be less than significant.

Please see Response to Comment R4-6 below.

R4-6 Lighting standards in the LIP and in the Municipal Code are considered existing regulations that automatically apply to the proposed project. LIP Section 6.5G(6)(a) requires that “Lighting shall be minimized, directed downward, and shielded using the best available visor technology and pole height and design that minimizes light spill, sky glow, and glare impacts to public views and wildlife to the maximum extent feasible.” Furthermore impacts were considered less than significant in the DEIR. See DEIR Section 5.1, *Aesthetics*, for a summary of applicable standards and a discussion of the project’s light and glare impacts, which are considered less than significant (DEIR Page 5.1-48 and 5.1-49). Therefore, existing regulations ensure that lighting shall be

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minimized, directed downward, and shielded and no new mitigation measures are necessary.

The remainder of this comment represents the commenter's opinion; however no facts or evidence are presented to support the opinions stated. These comments will be forwarded to the City's decisionmakers for their consideration.

- R4-7 A supplemental Visual Simulations Report (September 30, 2013) has been prepared (See FEIR Appendix A). The supplemental view simulation report provides 26 different views for the three different scenarios: the Proposed Project; the One-Story Alternative; and a new "Reduced Project Alternative"; for a total of 78 views. Please refer to General Response 2.3, *Aesthetics* and the Revised View Simulation Report. Each of the 78 views and view simulations is described in detail and measured against CEQA thresholds assessed within the context of the extensive and diverse surrounding residential and commercial uses when analyzing the potential impacts from the proposed project to visual resources. The project's impacts remain less than significant.

Please see FEIR Appendix A for a complete copy of the supplemental view simulations report. See also FEIR Appendix E, Revised Chapter 7, *Alternatives to the Proposed Project*.

- R4-8 See Response to Comment R4-7. View impacts from five different viewpoints within Pepperdine are provided as part of the supplemental view simulations report. Impacts to Alumni Park are analyzed as follows.

View 19: Pepperdine University - Alumni Park. Panorama view looking south and east from the western portion of Alumni Park. This view is located on private property that is available to Pepperdine University students, faculty and staff and visitors to the Pepperdine University campus. This location is approximately three-tenths of a mile from the project site at an elevation approximately 50 feet above the Project Site. This image shows that the project is only slightly visible from this location and does obstruct any of the blue water view because of the significant distance between the project site, the ocean and this location. The existing landscaping in Alumni Park blocks a small portion of the Project and the ocean views from this location. The proposed project would have a less than significant impact on visual resources from this location.

Please see FEIR Appendix A for a complete copy of the revised view simulations report.

- R4-9 The DEIR's analysis in Section 5.1, *Aesthetics*, concluded that after implementation of regulatory requirements and standard conditions of approval, all impacts related to aesthetics would be less than significant. Comment noted and will be forwarded to decision makers for their consideration.

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- R4-10 Please see Response to Comment R4-7. The supplemental Visual Simulations Report (September 30, 2013) includes reduced landscaping for all 78 views.
- R4-11 The DEIR's analysis in Section 5.1, *Aesthetics*, concluded that after implementation of regulatory requirements and standard conditions of approval, all impacts related to aesthetics would be less than significant. Mitigation measures are not required for impacts that are less than significant (CEQA Guidelines Section 15126.4). The list of "standard mitigation measures" enumerated by the commenter consists of existing regulations in LUP and Municipal Code, as well as standard conditions that the project is subject to with, or without, CEQA. Landscaping is not provided as a mitigation measure, although introduced landscaping contributes to the aesthetic environment.
- Revised view simulations have been provided in Appendix A of this FEIR.
- R4-12 This comment cites an objective of the Coastal Act without making a comment on the DEIR. No response is required.
- R4-13 This comment cites a LUP policy related to protection of scenic resources without making a comment on the DEIR. The comment will be forwarded to decision makers for their consideration. No response is required.
- R4-14 This comment cites a LUP policy related to protection of scenic roads without making a comment on the DEIR. No response is required. The comment will be forwarded to decision makers for their consideration. No response is required.
- R4-15 This comment cites a LUP policy related to siting of structures without making a comment on the DEIR. The comment will be forwarded to decision makers for their consideration. No response is required.
- R4-16 This comment cites LUP Policy 6.6 related to landscape screening without making a comment on the DEIR. The comment will be forwarded to decision makers for their consideration. No response is required.
- R4-17 The commenter summarizes LUP Policy 6.7 regarding the maximum height of structures for non-beachfront lots without making a comment on the DEIR. The comment will be forwarded to decision makers for their consideration. No further response is required.
- R4-18 The commenter is referred to Response to Comment O3-63. The project's consistency with LUP policies is discussed in detail in DEIR Section 5.9, *Land Use*. A detailed analysis of the proposed project's consistency with the applicable goals and policies of the various elements of the General Plan is provided in Table 5.9-1, *General Plan Consistency Analysis*. The analysis concludes that the proposed project would be consistent with the applicable goals and policies of the general plan. As shown in Table 5.9-3, *Local Coastal Program Consistency*, the analysis concludes that the proposed project

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would be consistent with the major applicable goals and policies of the LCP. Impacts are less than significant and no mitigation is required.

R4-19 The commenter is referred to Response to Comment R4-19. See Response to Comment O3-86 to O3-88. CEQA Guidelines Section 15126.6(a) states that "the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project ... " The DEIR found that the project's only significant and potentially unavoidable cumulative impact would result if Lot 7 was developed with baseball field (or other similar organized sport) in the future. Therefore, the DEIR looked at alternative future uses for Lot 7 that reduced cumulative traffic as a way to inform the public and decision makers about the future cumulative impacts associated with development of Lot 7. The proposed project is for the dedication of Lot 7 and does not propose any development. There are no significant impacts associated with setbacks, building height, or building square footage.

Although not required by CEQA, a Reduced Project Site Alternative has been added to Chapter 7 in response to public comments. As described in Section 4 of this FEIR, this alternative includes:

- 5 single-family residential units
- Dedication of Lot 7 for active recreational uses (either skate park or baseball field)
- Compared to the Proposed Project:
 - Reduction of the square footage of each residence to comply with the maximum permitted under the City's development regulations (overall reduction of approximately 11 percent)
 - Reduction of the height of the residence on Lot 2 to no more than 18 feet
 - Reduction of the size of the second floor on two of the residences
 - Modifications to the landscaping plan

R4-20 Although not required by CEQA, a Reduced Project Site Alternative has been added to Chapter 7 in response to public comments. As described in Section xx of this FEIR.

R4-21 The project has been designed to cluster the residences and to minimize site grading and land transformation in a manner consistent with the site's topography and the LCP. The project, as proposed, does not result in a significant impact to the coastal sage habitat or sensitive biological resources. Modifying the project to move the residences further from the bluffs and reducing the first floor footprint as suggested by the Commenter would not significantly reduce brush clearance or other impacts to biological resources to less than significant, since that has already been achieved by the design of the project. Therefore, pursuant to CEQA, evaluation of additional alternatives is not required.

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R4-22 Relevant view protection policies and ordinances are provided in Section 5.1, *Aesthetics* and are summarized in subsection 5.1.5 Existing Regulations and Standard Conditions.

R4- 23 The first sentence of this comment cites General Plan Objective 1.2 contained in the Conservation Element without making a comment on the DEIR. No response is required.

The second sentence asserts that the project's biological studies are incomplete as required by LIP because migration corridors of nocturnal wildlife were not studied, citing LIP 4.4.2C. Section 4.4.2C requires a "discussion of the physical characteristics of the site, including, but not limited to, topography, soil types, microclimate, and migration corridors." Wildlife movement corridors are discussed in DEIR Section 5.3, *Biological Resources*, Impact 5.3-4 and the numerous Biological Resource Studies contained in DEIR Appendix H. The 2009 Biology Resource Study and subsequent 2012 update determined that migration or movement of mammalian species to and from large open space areas in the project region is not expected to occur through the site and no sign of the site being used as a corridor was observed at the time of either the 2006, 2007, or 2012 surveys.

For a detailed response of wildlife movement, see Response 03-39. See also Glenn Lukos Associates (GLA) Biological Resources Responses to Comments in Appendix B of this FEIR. Specific to nocturnal movement, it is expected that medium-sized mammal (raccoons and possums), along with large mammals including bobcat and coyote often disperse and forage at night. As described in Response 03-39, the project does not exhibit potential for significant impacts to movement of the groups of animals evaluated, including those species that migrate or forage at night and there is no need for additional studies. The DEIR properly concluded that the proposed project would not restrict wildlife movement, and no impacts related to wildlife movement corridors would occur. Therefore, the biological studies and DEIR analyses meet the requirements of LIP section 4.4.2 and are not deficient.

R4-24 As stated in DEIR Section 5.3, *Biological Resources*, page 5.3-1, the site has been surveyed numerous times since 1999. In 2009 Impact Sciences, Inc. prepared a biological resources study for the project site. The report describes the methods and findings of focused surveys that were conducted As part of their study of the project site, Impact Sciences reviewed previous studies that had been performed onsite, including a 1999 report by Bonterra Consulting, special-status plants and wildlife, raptors, and trees between March 2006 and June 2007, and a general biological resource assessment and focused plant survey conducted in May 2006. GLA updated Impact Science's 2009 biological study in May 2012. A senior biologist reviewed the 2009 study, followed by a site survey on April 16, 2012. The entire site was walked and visually inspected. GLA determined that conditions on the site have not changed, and the description and analysis of the biological resources provided by Impact Sciences remains accurate.

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The commenter has not presented any evidence of unauthorized development on the project site including grading or vegetation removal that may have contributed to the degradation or elimination of habitat area or species that would otherwise be present on the site.

- R4-25 The commenter cites LIP Section 4.4.2 which requires new development to include an analysis of “project alternatives designed to avoid and minimize impacts to sensitive resources.” As stated in DEIR Section 5.2, *Biological Resources*, the project does not impact sensitive biological resources. Therefore no alternative designs are required.

DEIR Table 5.3-1 contains six Special Status Plant Species with Potential to Occur on the project site. However, for each species listed the “Potential for Occurrence and Survey Results” indicate that they are “Not Expected” to occur due to lack of suitable habitat (including suitable soils) or because the project site is below known elevations. As such, there is not suitable habitat or other necessary conditions for five of these species, including Plummer’s mariposa lily, San Fernando Valley spineflower, Parry’s spineflower, Dune larkspur, and Chaparral nolina.

The DEIR stated that the sixth species, Braunton’s milk-vetch, had the potential to occur on the project site since it is “known to occur within suitable habitat following burns” i.e. wildfires. As noted in Response to Comment A1-14, the biological survey was conducted in February 2008 by Impact Sciences following a fire in 2007 that created optimal conditions for the plant species to occur. However, as documented in the 2008 Impact Science report, the Braunton’s milk vetch species was not observed. Furthermore, based on the history of the site, the only areas of suitable habitat for the Braunton’s milk vetch occur within areas of scrub habitat associated with the two ravine areas and the slope at the eastern boundary of the site, which areas will not be affected by the proposed project. Ongoing disturbance of the grassland areas where the project development will occur have rendered these development areas as unsuitable for the Braunton’s milk vetch. Nevertheless, because the 2009 Impact Science’s Report proposed pre-construction surveys to ensure that the species was not present, a mitigation measure (DEIR Mitigation Measure 3-1(a)) was retained “in an abundance of caution”. It is also important to note that since the areas of suitable habitat for the Braunton’s milk-vetch occur within areas of scrub habitat that will be retained because they are beyond the limits of the project’s development and which are intended to be subject to a conservation easement (See Response to Comment R4-39), even if the species were discovered, it would not be in areas subject to development impacts.

Table 5.3-2 identifies seven Special Status Wildlife Species with Potential to Occur on the project site. Of the seven, one has No Potential to occur, two have Low to No Potential to occur, three have Low Potential to occur and one has Moderate Potential to occur. However, when each of these wildlife species is examined, it is highly unlikely that any of these species will be impacted as a result of the project because either (i)

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limited suitable habitat occurs on the project site (ii) limited suitable habitat occurs surrounding the project site (iii) any suitable habitat that may exist is outside of the proposed project limits of development or (iv) the species are sufficiently common that the minimal impacts potentially associated with the project, would not be significant.

Each of the six species with at least some potential to occur is addressed in more detail below:

California Mountain Kingsnake and Coast Patchnosed Snake were noted as having low potential to occur because of limited habitat on the site and limited offsite areas that could serve as source populations for either species. It is also important to note, these species occupy areas of coastal sage shrub and chaparral. The coastal sage scrub on the site is limited to the slope overlooking Pacific Coast Highway and would not serve as potential habitat for these species due to proximity to a major roadway and associated edge effects. The areas of coast sage chaparral scrub are the only areas where these species could occur and are largely unaffected by project's grading and as such, potential impacts would be very limited. Given that these species have low potential to occur and that impacts to the areas where they could occur are limited, it must be concluded that the project does not have the potential for significant impacts to these species.

San Diego Horned Lizard was noted by Impact Sciences as having low potential for occurring on the project site; however, further assessment by GLA found lack of suitable soils on the project site and as such no potential for occurrence. As such, there are no potential for significant impacts to this species.

Southern California Rufous-crowned Sparrow was noted by impact sciences as having low potential for occurring on the project site. The only areas of suitable habitat are the areas of coastal sage scrub and the sage scrub chaparral scrub. This species has been removed from the list of Species of Concern by CDFW (this should have been corrected in Table 5.3-2 of the DEIR), and is now a CDFW "Watch List" species. Impacts to such "watch list" species are not considered significant under CEQA. Therefore, while the species is not expected to occur, and to the extent that it could occur on the project site it would be in areas of preserved scrub, any impacts to this species would not rise to the level of significant due to its current conservation status.

Bell's Sage Sparrow requires large areas of unbroken scrub habitat, which the project site does not support and there is no potential for this species to occur on the project site and no potential for significant impacts.

San Diego Desert Woodrat is noted as having potential for occurrence within the onsite ravines; although it was never observed during site surveys (the nest and associated middens are easily detected as they can grow to several feet in height and width). Given the lack of detection of this highly visible species and given that the ravines will be

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avoided by grading and are beyond the project's limit of development, the project has no potential for significant impacts on this species.

Accordingly, the mitigation measures included in the DEIR with respect to wildlife are also included in an abundance of caution. Therefore, because less than significant impacts would occur, project alternatives are not necessary to protect potentially sensitive wildlife species. Finally, in the unlikely event there are residual impacts to sensitive resource as a result of the project, the mitigation measures contained in the DEIR would minimize or mitigate such residual impacts.

- R4- 26 Refer to Response to Comment R4-26. The mitigation measures in Section 5.3.7 of the DEIR are included in an abundance of caution and are sufficient to mitigate impacts to a less than significant level, as well as residual impacts, if any.
- R4-27 As discussed in DEIR Section 5.3, *Biological Resources*, page 5.3-28, the City of Malibu LCP ESHA and Marine Resources Map 3 depicts an ESHA immediately to the southwest of the project site in state park land. As previously indicated in the DEIR, a 100-foot buffer consistent with Section 4.6.1 of the LIP would occur between the development zone and the native plant communities at the southern boundary of the site. No lighting is proposed within the 100-foot buffer. Lighting standards in Section 4.6.2 of the LIP and in the Municipal Code are considered existing regulations that automatically apply to portions of the site subject to LIP Chapter 4. In addition, Section 6.5G(6)a requires that "Lighting shall be minimized, directed downward, and shielded using the best available visor technology and pole height and design that minimizes light spill, sky glow, and glare impacts to public views and wildlife to the maximum extent feasible." Furthermore impacts were considered less than significant in the DEIR. See DEIR Section 5.1, *Aesthetics*, for a summary of applicable standards and a discussion of the project's light and glare impacts, which are considered less than significant (DEIR Page 5.1-48 and 5.1-49). Therefore, existing regulations ensure that lighting shall be minimized, directed downward, and shielded and no new mitigation measures are necessary.
- R4-28 The DEIR and Biological Resource Studies by both Impact Sciences and GLA determined that there were no special-status species associated with the non-native grassland as none have been documented on the site. Red-winged blackbirds are widespread and common and their use of the site is not biologically important (e.g., they occur in parking lots and other urban areas). The potential use of the site by a white-tailed kite, based on observations (including by the commenter), suggest that such use would be occasional and the loss of portions of the grassland would not be considered significant. Please refer also to Response to Comment R4-29 below.
- R4- 29 As addressed in DEIR Section 5.3, *Biological Resources*, compliance with Mitigation Measures 3-3(a) and 3-3(b) would ensure that impacts to bird species would be less than

3. Response to Comments

significant. The non-native grasslands exhibit potential for supporting only a limited suite of avifauna with no potential nesting for special-status species and only limited foraging opportunities. As requested by the commenter, potential avifauna are addressed by group as follows:

Waterfowl (e.g., ducks and geese): No potential habitat exists on the project site for breeding or foraging and no potential for significant impacts.

Shorebirds (sandpipers and plovers): No potential habitat exists on the project site for breeding or foraging with the exception of the killdeer, which is very common and highly urban adapted. No potential for significant impacts.

Hérons and Egrets: The site could be visited by species such a great egret and great blue heron, as these species occasionally forage in upland areas. While such species may occasionally visit the Site, these species are widespread and common and development of the Site would not result in significant impacts.

Owls and Raptors: The Malibu environs and the larger Santa Monica Mountains contain vast areas of open space that is highly suitable for foraging raptors. As noted in DEIR and the project's Biological Resources Studies by Impact Sciences and GLA, there are no nesting owls or raptors on the site and no special-status raptors have been observed on the site during a number of surveys during nesting seasons. In addition, approximately 9 acres will be subject to a conservation easement and will continue to provide habitat and opportunities for the movement of small mammals and therefore raptor foraging. As such, the project does not exhibit the potential for significant direct or cumulative impacts on foraging raptors.

Crows and Jays: These species are expected to visit the site; however, these species are common and widespread and highly adapted to the urban environment. There is no potential for significant impacts to this group of species.

Hummingbirds and Swifts: Two hummingbirds, Anna's and Allen's have been documented on the Site. These species are not associated with non-native grasslands; nevertheless, they are very common in coastal southern California and highly urban adapted and the Project exhibits no potential for impacts to these species. Swifts have limited potential for foraging over the site; however, they are incapable of "perching" and roost in caves or artificial structures such as chimneys and as such the project has no potential for impacts to these species.

Flycatchers: One flycatcher, Say's phoebe, is typically associated with grasslands and potentially occurs on the site. Say's phoebe is common and has no special-status and potential impacts of the project would not be considered significant. Other flycatchers that exhibit potential for using the site include the western kingbird, ash-throated

3. Response to Comments

flycatcher, and the black phoebe. All of these are common, none have special status and potential impacts of the project would not be considered significant.

Songbirds (e.g., vireos, warblers, wrens, sparrows, swallows, finches, blackbirds, orioles, thrushes, etc.): There are no special-status songbirds that exhibit potential for breeding within the grasslands, with occasional or intermittent foraging by such species as blackbirds, white crowned sparrows, savannah sparrows, house finches, yellow-rumped warblers, and robins. All of these are common, none have special status and potential impacts of the project would not be considered significant.

R4-30 The Los Angeles County Department of Agricultural Commissioner/Weights and Measures administers the Hazard Abatement Program conducted pursuant to the California Health and Safety Code sections 13879 and 14875-14922. Maintaining annual brush clearance on vacant land is a long standing requirement of the County of Los Angeles and the Los Angeles County Fire Code. As indicated on the County's website, the weed abatement program is primarily for vacant and unimproved land. Malibu is listed as a participating City.

See: <http://acwm.lacounty.gov/Template/Temp9/weedAbout.html>

Ongoing activities, such as annual weed abatement, occurring at the project site at the time CEQA review begins are treated as a component of the existing conditions baseline.

Please refer to Response to Comment R4-24 and R4-28. See also Responses to Comments A1-9 and A1-10. The site has been resurveyed several times since 2008; GLA determined that conditions on the site have not changed, and the description and analysis of the biological resources provided by Impact Sciences remains accurate. No substantial evidence has been provided to support the assertion that prior site brush clearance has impacted Coastal Sage Habitat or any of special status species on the site.

R4-31 Please refer to Response to Comment R4-24 and R4-30. A copy of a weed abatement notice for 2013 is provided in Appendix L of this FEIR

R4- 32 Please refer to Response to Comment R4-24, R4-30 and R4-31.

R4-33 The first sentence of this comment requests that the "final EIR must require that the site not be cleared for a 2 year period or longer if construction is not close to commencement to study and document the plant life, birds and other mammals that utilize this site when it is not cleared. A supplemental EIR needs be required to set forth and analyze the results and put appropriate mitigation measures in place."

Under CEQA and the CEQA Guidelines, the legal trigger for environmental review of a project is the need for discretionary approvals by public agencies (Public Resources

3. Response to Comments

Code Section 21002). Once all discretionary approvals for a project have been obtained, no agency has jurisdiction to require a further EIR (Guidelines Section 15162(c)).

Under CEQA, when an EIR has been "prepared" for a project, a further EIR may not be required unless one or more of the three events that trigger a subsequent or supplemental EIR occurs (Public Resources Code Section 21166). The CEQA Guidelines specify that these standards for further environmental review apply after an EIR has been certified or a negative declaration has been approved for the project. Guidelines Section 15162(a). Once EIR has been completed for project, lead agency may not require preparation of subsequent or supplemental EIR unless one of three triggering conditions exists: Substantial changes are proposed in project that will require major revisions of EIR; Substantial changes occur in circumstances under which project is being undertaken that will require major revisions in EIR; or New information of substantial importance to project that was not known and could not have been known when EIR was certified as complete becomes available. Once a project has received all necessary discretionary approvals, the CEQA process ends and no further environmental review can be required.

Please refer to Response to Comment R4-24. The site has been surveyed numerous times since 1999 and GLA determined that the description and analysis of the biological resources provided by previous studies remains accurate. The commenter has not presented any evidence of unauthorized development on the project site, including illegal grading or vegetation removal that may have contributed to the degradation or elimination of habitat area or species that would otherwise be present on the site.

As to ESHA, refer to Response O3-40. As noted in the DEIR discussion on pages 5.3-27 and -27 that the project site is not designated ESHA by the City, which based its determination on criteria listed in Section 4.3 of the City of Malibu LIP, adopted by the California Coastal Commission on September 13, 2002. The site does not meet the definition of an ESHA.

As discussed in Response to Comment R4-24, a 100-foot buffer consistent with Chapter 4 of the LIP would occur between the development zone and the native plant communities at the southern boundary of the site. As shown in DEIR Figure 5.3-1, *Biology of the Project Site*, no fuel modification thinning is proposed offsite or within the offsite ESHA

- R4-34 The Catalina mariposa lily is a California Native Plant Society List 4 taxon. List 4 is a watch list and List 4 species are not considered rare or endangered and impacts. List 4 species do not typically result in a finding of significant impacts. Based on the mapping of this species by Impact Sciences, the majority of the area occupied by this species, occurs in preserved open space and would not be impacted by project grading. (See GLA Response to Comments, FEIR Appendix B) As stated on page 5.3-24 of the

3. Response to Comments

DEIR: “A portion of the area occupied by the Catalina mariposa lily occurs within Fuel Modification Zone B and would therefore be impacted by the proposed project. A few Catalina mariposa lily may be impacted by Zone C; however, this is a List 4 taxon and such impacts are not significant and do not require mitigation.” No new mitigation is necessary and impacts remain less than significant.

R4- 35 Please refer to Response to Comment O3-39 and R4-23.

Specific to nocturnal movement, it is expected that medium-sized mammal (raccoons and possums), along with large mammals including bobcat and coyote often disperse and forage at night. As described in Response O3-39, the project does not exhibit potential for significant impacts to movement of the groups of animals evaluated, including those species that migrate or forage at night and there is no need for additional studies.

R4-36 Please refer to Response to Comment O3-39 and R4-23. There will be no significant impacts to wildlife movement. As such, no mitigation measures are required pursuant to CEQA.

R4-37 Relative to migratory birds, see Response R4-29 above. Relative to the non-jurisdictional drainages within the ravines, the project avoids grading impacts to the ravines including the westerly ravine, where limited amounts of drainage originate offsite. As to ESHA, refer to Response O3-40. As noted in the DEIR discussion on pages 5.3-27 and -28, the project site is not designated ESHA by the City, which based its determination on criteria listed in Section 4.3 of the City of Malibu LIP, Adopted by the California Coastal Commission on September 13, 2002. The site does not meet the definition of an ESHA.

R4- 38 The U.S. Army Corps of Engineers requires that all three criteria (a predominance of wetland vegetation, hydric soils and wetland hydrology) be present for an area to meet the Corps’ wetland definition. Typically the State of California only requires one of the criteria be present to make a wetland determination; however, it is important to note, that for an area to be a wetland, even under the single criteria test, it must exhibit true wetland conditions. For any area to be a wetland under the State definition, it must exhibit anaerobic conditions during at least every other year. Sites that fail to meet this test are not wetlands since vegetation is often not a reliable indicator of wetlands. The GLA jurisdictional delineation was based on the methodology set forth in the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual¹ (Wetland Manual) and the 2006 Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual:

¹ Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, U.S. Army Engineer Waterways Experimental Station, Vicksburg, Mississippi.

3. Response to Comments

Arid West Supplement (Arid West Supplement)² and did not detect any of the three criteria necessary for making a determination that wetlands are present, which include 1) a predominance of wetland plants, hydric soils, or wetland hydrology. As such, there are no wetlands on the project site or that would be affected by the project using either the federal definition or the State definition.

R4-39 The conservation easement is not a mitigation measure. Impacts to biological resources are less than significant without the conservation easement. In 2009, applicant's predecessor in interest, AZ Winter Mesa, LLC voluntarily agreed to dedicate to the Mountains Recreation and Conservation Authority (MRCA) a conservation easement totaling approximately 6.23 acres along the southern portion of the project site and the eastern property line of the adjacent property. MRCA agreed to accept the dedication of the conservation easement. The conservation easement is a private agreement between the applicant and MRCA; its existence is provided for informational purposes only as it is not a mitigation measure and is not needed to mitigate project impacts.

R4-40 The project has been designed to cluster the residences and to minimize site grading and land transformation in a manner consistent with the site's topography and the LCP. The project, as proposed, does not result in a significant impact to the coastal sage habitat or sensitive biological resources. Modifying the project to move the residences further from the bluffs and reducing the first floor footprint as suggested by the Commenter would not significantly reduce brush clearance or other impacts to biological resources to less than significant, since that has already been achieved by the design of the project. Therefore, pursuant to CEQA, evaluation of additional alternatives is not required.

² U.S. Army Corps of Engineers. 2006. Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Supplement. Ed. J.S. Wakeley, R.W. Lichevar, and C.V. Noble. ERDC/EL TR-06-16. Vicksburg, MS: U.S. Army Engineer Research and Development Center. Note since the delineation was completed, this has been superseded by: U.S. Army Corps of Engineers. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region. Ed. J.S. Wakeley, R.W. Lichevar, and C.V. Noble. ERDC/EL TR-08-28. Vicksburg, MS: U.S. Army Engineer Research and Development Center. The finalization of the manual resulted in no changes to the criteria that would affect this delineation, and thus no change to the conclusion that there are no criteria for wetlands on this site.

3. Response to Comments

LETTER R5 – Patt Healy (5 page[s])

Ha Ly

From: healypatt@aol.com
Sent: Monday, May 20, 2013 3:40 PM
To: Ha Ly
Subject: CRUMMER DRAFT EIR COMMENTS
Attachments: slosson-geological_report_Crummer-property.pdf

Hi Ha,

Attached is a four-page geological report of an investigation within the Malibu Fault Zone on the Crummer property provided to Dave Brown by James Slossen , the former head of the California Department of Mines and Geology under Governors Brown and Reagan.

R5-1

This report should be made part of the record and analyzed by the EIR preparer and the City Geologist.

Sincerely,

Patt Healy

3. Response to Comments

FROM :

PHONE NO. :

Sep. 19 1999 10:57PM F

TO - THE BOARD AND ADVISORY COMMITTEE

14

FROM - DAVE BROWN

RE - AGENDA ITEM # 14

DEVELOPMENT OF THIS SITE - AND REDESIGN OF ANY PROJECT TO PROTECT SENSITIVE VEGETATION AND HABITAT LINKAGES IS COMPLICATED BY GEOLOGIC CONSTRAINTS ABOUT WHICH THE APPLICANT AND THE CITY OF MALIBU MAY NOT BE FULLY AWARE.

IN 1986 GENERAL MOTORS WAS IN THE PROCESS OF APPLYING FOR A COASTAL PERMIT TO BUILD A RESEARCH FACILITY ON THIS SITE WHEN TRENCHING ON THE SITE UNCOVERED A TRACE OF THE MALIBU COAST FAULT THAT HAD MOVED ABOUT 18" WITHIN THE PAST 4000 YEARS, QUALIFYING IT AS AN ACTIVE FAULT. THE TRENCHING WAS WITNESSED AND DOCUMENTED BY SEVERAL GEOLOGISTS, INCLUDING DR. JAMES SLOSSON, FORMER DIRECTOR OF THE DIVISION OF MINES AND GEOLOGY. HOWEVER, BECAUSE GENERAL MOTORS ABANDONED THE PROJECT, THE GEOLOGICAL DATA WAS NOT TURNED IN TO BECOME PART OF THE PUBLIC RECORD.

R5-2

I'M ENCLOSING A MAP AND A LOG OF THE ACTIVE FAULT TRACE GIVEN TO ME BY DR. SLOSSON TO VERIFY THE EXISTENCE OF THE FAULT.

HOPEFULLY, THE CITY OF MALIBU WILL REQUIRE SETBACKS FROM THE ACTIVE TRACE OF THE FAULT. HOPEFULLY, THESE SETBACKS COULD BECOME PART OF THE HABITAT LINKAGE WE ARE SEEKING.

3. Response to Comments

FROM : PHONE NO. : Sep. 19 1999 18:56PM P07

RE: AGENDA ITEM #14

NEHRP INFORMATION SUMMARY

Project Title: Geological Investigation of Active Faults within the Malibu Coast Fault Zone, Los Angeles County, California.

Applicant: James E. Slosson, Ph.D. Slosson and Associates
Consulting Geologists
14046 Oxnard Street
Van Nuys, California 91401

Program Objective: I-3

Amount Requested for Year 1: \$56,095.50

Proposed Duration: 6 months

Requested Starting Date: August 1, 1987

Principal Investigator(s): James E. Slosson, Ph.D.
(818) 785-0835
Jeffrey A. Johnson, Ph.D.
(805) 373-5145
Robert L. Hill
(213) 391-5980
Glenn Borchardt, Ph.D.
(415) 871-4920

Authorized Institutional Representative: James E. Slosson
(818) 785-0835

Proposed Project is Renewal of Award Number: N/A

Previous award number(s), titles, and level of support: N/A

Relevance of proposal to Program Element and Objective number stated above:

Evidence of Holocene surface rupture, including soil tongues and other features, was exposed recently in trenches across previously unmapped strands of the Malibu Coast Fault Zone. This is the first evidence of Holocene surface rupture along the segment of the southern frontal fault system of the Transverse Ranges that extends from the Channel Islands eastward to the Pasadena area. Portions of this segment are known or inferred to be seismically active, however.

The trenching was part of a geotechnical investigation for a proposed private facility. The investigation was limited in scope, and resultant data are confidential and are not likely to be made public.

3. Response to Comments

FROM : PHONE NO. : Sep. 19 1999 10:53PM P88

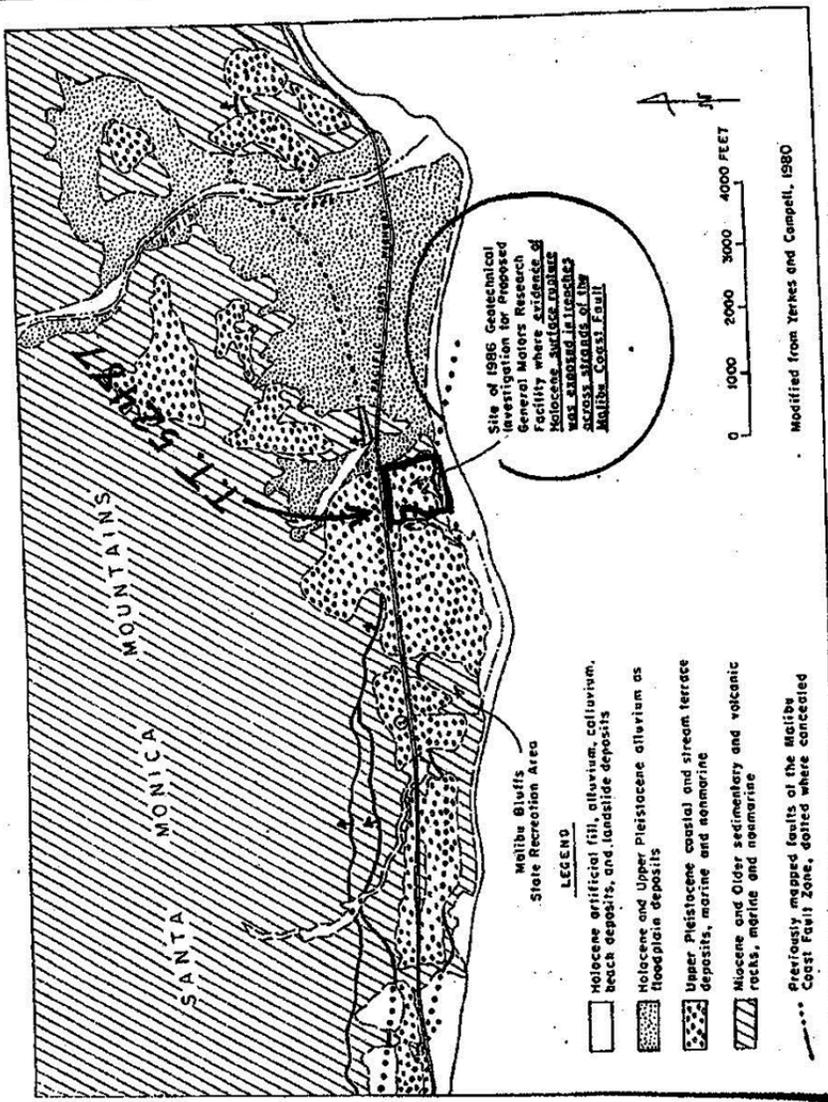


FIGURE 2 - Geologic map of proposed study area and vicinity.

Modified from Yerkes and Campell, 1980

3. Response to Comments

FROM :

PHONE NO. :

Sep. 19 1999 11:02PM P0

LOG OF 1986 TRENCH ON SITE OF TRACT 52487. FAULT OFFSET SHOWN IS ABOUT 18"

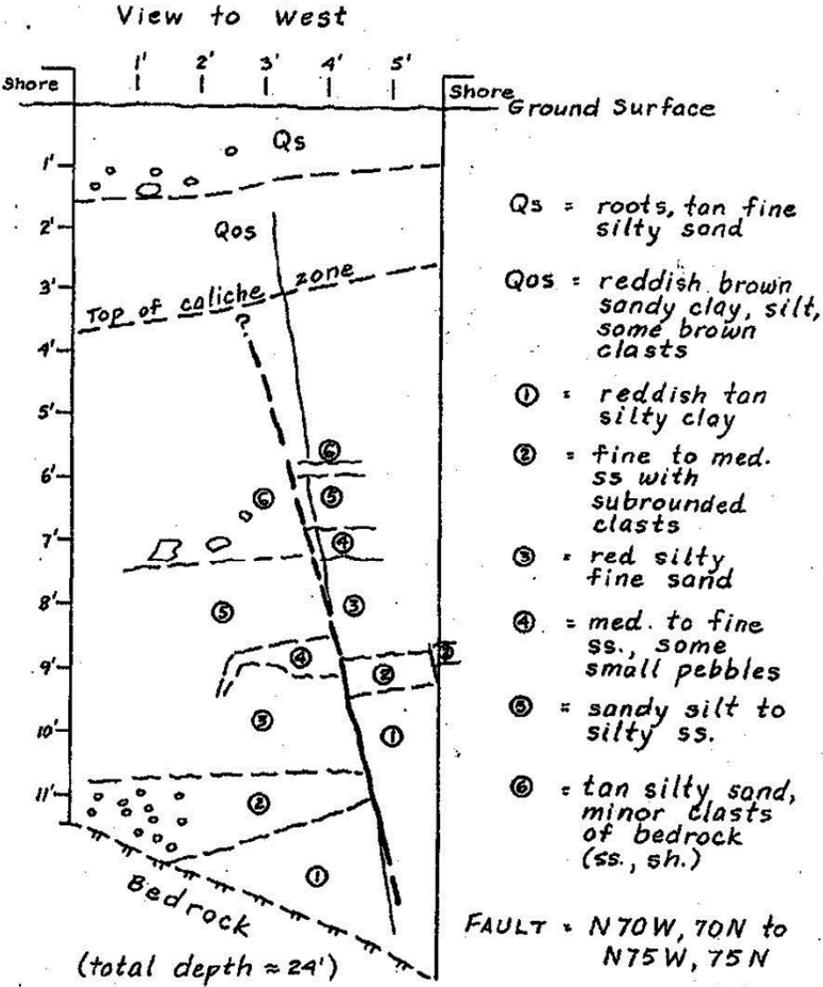


FIGURE 3 - Preliminary log of the easternmost trench at General Motors Site, Malibu, California. Logged Nov. 23, 1986 by J.A. Johnson.

3. Response to Comments

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3. Response to Comments

R5. Response to Comments from Patt Healy, dated May 20, 2013.

R5-1 The commenter is submitting a geological report within the Malibu Fault Zone to be made part of the record. The report will be forwarded to decisionmakers for their consideration.

R5-2 The commenter states that “ In 1986 General Motors was in the process of applying for a coastal permit to build a research facility on this site when trenching on the site uncovered a trace of the Malibu Coast Fault that had moved about 18” within the past 4000 years, qualifying it as an active fault. The trenching was witnessed and documented by several geologists, including Dr. James Slosson, former director of the Division of Mines and Geology. However, because General Motors abandoned the project, the geological data was not turned in to become part of the public record”.

In the 1980's three traces of the Malibu Coastal Fault (these faults are referred to as "F-1", "F-2" and "F-3") were investigated on the site. Using geological dating techniques available at that time it was concluded that there had been movement in the three trace faults within the last 4,000 years. Under California law, the Alquist-Priolo Act (the "A-P Act") defines a fault as active if there has been displacement (i.e. movement in the trace fault) within the last 10,000 years. Therefore, as a result of this investigation the three trace faults on the Site were designated active on A-P Special Study Maps. Since that designation techniques, such as carbon dating, have been developed, which provide a much more precise and accurate determination of the age of the geological materials. The location of where the displacement occurs is referred to as the "offset". In 1999, Earth Consultants International (ECI) excavated trenches on the Site and located the three traces of the Malibu Coastal fault and used carbon dating techniques, to determine the age of the displacement and compared that determination with the previous interpretation of the age of the displacement of the three fault zones, i.e., whether based on newer and significantly more precise dating techniques the trace faults should be considered active or inactive under the Alquist-Priolo Act. ECI's study revealed that the most recent offset on fault F-1 occurred more than 14.3 ka, (14,300 years ago) and the most recent offsets on faults F-2 and F-3 occurred more than 40 ka. (40,000 years ago). Therefore, ECI's analysis concluded that none of the trace faults on the Site meet the definition of active under the A-P Act. Both the City of Malibu and the California Geological Survey ("CGS"), a branch of the State of California Department of Conversation, agreed with ECI's conclusions that the faults were not active. As a result of the investigation, in 2007, after publication by the CGS of a revised preliminary fault map removing the faults as active from the site and a statutory public review period of the revised preliminary map, the State of California removed these faults from the Alquist-Priolo Special Study Zone maps and these faults are no long considered active by the State of California.

3. Response to Comments

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3. Response to Comments

LETTER R6 – Russell Kern (2 page[s])

Ha Ly

From: Jessica Blair
Sent: Tuesday, April 23, 2013 7:54 AM
To: Ha Ly
Subject: FW: Crummer EIR

~~~~~  
Jessica Blair, Administrative Analyst  
City of Malibu - Planning Department  
23825 Stuart Ranch Road  
Malibu, CA 90265  
[www.malibucity.org](http://www.malibucity.org)

Connect with the City of Malibu!



-----  
**From:** Russell M Kern [<mailto:russell@kernagency.com>]  
**Sent:** Saturday, April 20, 2013 11:19 AM  
**To:** Jessica Blair  
**Cc:** Farima Damavandi  
**Subject:** Crummer EIR

Jessica,  
I am the homeowner at 24001 Malibu Road. My property is directly under the East south hill of the site. Farima Damavandi is my neighbor who also lives underneath the subject property.

I want to register a formal concern about water absorption and water shed controls on the subject property (Crummer).

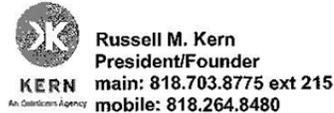
R6-1

In the last heavy rains a few years ago, our houses were subject to a significant mudslide as a result of the southern hillside giving way due to the flat plain absorbing water and pushing open the southern hill.

I am not able to fully understand the plans for landscaping, or the proposed slope changes above our houses, but I want to express our concern regarding the need to mitigation of the prior problems as well as not having the new homes being built exasperating the situation from their septic systems, irrigation of landscape, or locations of buildings or pools.

R6-2

Thank you,  
Russell Kern  
24001 Malibu Road  
Malibu California



### 3. Response to Comments

**Please note my new email at KERN: [russell@kernagency.com](mailto:russell@kernagency.com)  
Also check out our new site at [www.kernagency.com](http://www.kernagency.com)**

This email is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential or otherwise protected from disclosure. Dissemination, distribution or copying of this e-mail or the information herein by anyone other than the intended recipient, or an employee or agent responsible for delivering the message to the intended recipient, is prohibited. If you have received this e-mail in error, please immediately notify us by calling our North American Help Desk at (855) 237-8324.

### 3. Response to Comments

**R6. Response to Comments Russell Kern, dated April 20, 2013.**

R6-1 The commenter is a downhill neighbor who has concerns over water absorption and water shed controls.

Please refer to Response to Comment Letter O1-10 for responses to watershed and slope stability comments. Please also refer to General Response 2.4, Slope Stability and Subsurface Water. See also Response to Comment Letter O1 and FEIR Appendix J regarding the results of a three day percolations test.

R6-2 The commenter is not able to fully understand the plans for landscaping, or the proposed slope changes above their houses, but wants to express concern regarding the need to mitigate the prior problems, as well as not having the new homes being built exasperating the situation from their septic systems, irrigation of landscape, or locations of buildings or pools.

Please refer to Response to Comment R6-1. Please note that in response to comments, an additional “Reduced Project Size Alternative” has been added to Chapter 7, which includes are reduced landscaping plan. Please see General Response 2.3 and revised Chapter 7, *Alternatives to the Proposed Project*, in FEIR Appendix E.

Comments are noted and will be forwarded to decions makers.

### 3. Response to Comments

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3. Response to Comments

LETTER R7 – Kari Kramer (33page[s])

May 20, 2013

Joyce Parker Bozylinski, Planning Director  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265

**RECEIVED**  
**MAY 20 2013**  
**PLANNING DEPT.**

RE: Crummer Site Subdivision – Draft Environmental Impact Report (DEIR), Sch No. 2008091155.

Dear Ms. Bozylinski,

Pursuant to documents previously submitted (and attached hereto for your ready reference), and subsequent to my documented verbal presentation to the Planning Commission on May 6, 2013, the following provides the detailed DEIR objection information summarized in our May 6, 2013 document. This information is presented on behalf of the concerned Malibu Road residents and property owners adjacent and southerly to the Crummer Site.

R7-1

As stated on May 6 at the Planning Commission hearing, **the DEIR has failed in substantively addressing our documented concerns and issues as required under CEQA.** Please note as follows:

**I. DEIR IMPACT 5.1: AESTHETICS (VISUAL IMPACT):**

The visual impact from the structures on lot 5 were not addressed. Instead all visual concerns were dismissed as “less than significant” therefore not requiring mitigation and not addressing our specific Malibu Road concerns. In fact, the DEIR simulation photographs only underscore and magnify those concerns.

R7-2

It was surprising to see the EIR Consultants dismissal of scenic resources given that City directives are to protect scenic resources to the maximum extent feasible. The General Plan and LCP clearly identify this as one of the most critical aspects of Malibu’s identity and priorities. It is incredulous that these impacts were dismissed and not mitigated in the slightest bit by being glossed over as not important to the citizens of Malibu.

R7-3

1) The EIR consultant and DEIR failed to address the General Plan (Malibu’s guiding document), which states the following in regard to view protection community character:

*Vision Statement—Malibu is a unique land and marine environment and residential community whose citizens have historically evidenced a commitment to sacrifice urban and suburban conveniences in order to protect that environment and lifestyle, and to preserve unaltered natural resources and rural characteristics. The people of Malibu are a responsible custodian of the area’s natural resources for present and future generations.*

R7-4

Clearly, there was no sacrifice in the design of this project that could even remotely be consistent with Malibu’s vision statement.

### 3. Response to Comments

Joyce Parker Bozylinski  
Page Two, 5/20/13

**Mission Statement**—*Malibu is committed to ensure the physical and biological integrity of its environment through the development of land use programs and decisions, to protect the public and private health, safety and general welfare. Malibu will plan to preserve its natural and cultural resources, which include the ocean, marine life, tide pools, beaches, creeks, canyons, hills, mountains, ridges, views, wildlife and plant life, open spaces, archaeological, paleontological and historic sites, as well as other resources that contribute to Malibu's special natural and rural setting.*

R7-5

Consideration for protection of natural resources and views was not made as further evidenced by the fact that no alternative site plan was proposed or displayed. Maximum height two-story homes, spread throughout the property ruin views from both public view areas including Pacific Coast Highway as well as impose themselves on the properties below on Malibu Road. Likewise, the design of the homes while appropriate for high end gated urban mansion estate developments, are certainly not consistent with Malibu's special natural and rural setting.

**LU OBJECTIVE 1.1: DEVELOPMENT THAT DOES NOT DEGRADE THE ENVIRONMENT:**

**LU Policy 1.1.1:** *The City shall protect the natural environment by regulating design and permitting only land uses compatible with the natural environment.*

**LU Policy 1.1.5:** *The City shall require careful site planning which blends development with the natural topography.*

R7-6

The above policies should have been considered with alternative site plans and 18' foot height considerations. It is irrefutable that these policies were not respected or addressed in either 1) compatibility with the natural environment or, 2) by pushing development to the bluff edges (instead of considering clustering) in order to accommodate mansion estate layouts with pools and cabanas.... this is certainly not consistent with blending development with the natural topography. Instead, it is imposing development upon the natural topography to meet the developers' goals rather than working within the city's required policies.

**LU Implementation Measure 9:** *Require that development not interfere with public and private views and view corridors to the greatest extent feasible.*

**LU Policy 1.4.1:** *The City shall preserve significant ridge lines and other significant topographic features (such as canyons, knolls, hills and promontories).*

R7-7

There was no serious effort to protect any views, whether from Pacific Coast Highway, Bluffs Park, or Malibu Road.

**LU Implementation Measure 26:** *Protects significant ridge lines, hilltops and promontories by requiring appropriate setbacks;*

R7-8

3. Response to Comments

Joyce Parker Bozylinski  
Page Three, 5/20/13

This policy requires further setbacks from the ridge than what is proposed for lot 5 (as well as other lots). A further setback would not impose a great burden on the developer, but would eliminate the view impact (especially) from Malibu Road.

R7-8  
cont'd

*LU Implementation Measure 27: Locate development as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources and surrounding RPAs. However, protection of ridge lines and public ocean and ridge line views shall have priority over any increase in grading required by this policy.*

R7-9

Again, if this policy had been considered, the structures would have been set further back from the Bluff and (and ESHA where applicable) by clustering within the site or locating closer to Pacific Coast Highway.

2) The proposed development also has some significant conflicts with the LUP:

**Section 30251.**

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

R7-10

There was no consideration of the clearly significant impact this project would have on views. A properly designed project would have considered the many spectacular views, whether of the ocean from Pacific Coast Highway, or the bluffs from Malibu Road and would have designed a site plan to take these impacts into consideration. The EIR, in its failure to consider an alternative site plan, is inadequate in its analysis of a superior alternative.

**Scenic and Visual Resource Identification**

6.5 New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.

R7-11

### 3. Response to Comments

Joyce Parker Bozylinski  
Page Four, 5/20/13

The LUP has suggestions as noted above to minimize the visual impact of the project. Not one of these suggestions was considered by the EIR. | R7-11  
cont'd

*6.6 Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including re-siting, or reducing the height or bulk of structures.* | R7-12

Again, the EIR did not consider alternative designs (which would include alternative site plans and reduction of height and bulk) to that proposed by the project applicant as required in the LUP. Once again, the EIR has failed in its requirements under CEQA to address the city's directives and policies.

*6.7 The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower.* | R7-13

Based on this policy, why does the EIR not consider 18' as a preferred alternative? Why are heights up to 28' even being considered? Assuming an automatic justification for increased height allowed by the Site Plan Review is not only presumptive, but another example of the failure of the EIR under CEQA to properly provide feasible alternatives which could be considered superior in their consistency with the city's policies.

*6.11 The length of on-site roads or driveways shall be minimized, except where a longer road or driveway would allow for an alternative building site location that would be more protective of visual resources or ESHA. Driveway slopes shall be designed to follow the natural topography. Driveways that are visible from a scenic road, a beach, a public viewing area, or public hiking trail shall be a neutral color that blends with the surrounding landforms and vegetation.* | R7-14

The roads and driveways proposed are maximized on the site. They span the distance of the property and in fact bring lot 5 closer to the ESHA than a house sited away from the bluff with a shorter access road. An alternative should have considered a site plan that reduced the road length. Again another failure by the EIR, consultant and developer to meet CEQA requirements.

*6.16 Bluff-top development shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The bluff-top setback necessary to protect visual resources may be in excess of the setback necessary to ensure that risk from geologic hazards are minimized for the life of the structure, as detailed in Policy 4.27.* | R7-15

A larger setback from lot 5 would have resulted in little to no visual impact from below.

3. Response to Comments

Joyce Parker Bozylinski  
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**6.24 Land Divisions** Land divisions, including lot line adjustments, shall be designed to minimize impacts to visual resources by:

- a. Clustering the building sites to minimize site disturbance and maximize open space.
- b. Prohibiting building sites on ridge lines.
- c. Minimizing the length of access roads and driveways.
- d. Using shared driveways to access development on adjacent lots, where feasible.

The project is a proposed subdivision and “shall” adhere to the above 6.24 important design requirements. Clearly, these were ignored by the developer and not addressed in the EIR or consultant as required under CEQA.

R7-16

It is clear from the City policies that protection of views is a priority. While not taking away property rights, it is important that a project consider significant views and site the project so as to limit the visual impacts it is creating. The EIR itself states that the project “would alter the horizon of the bluff” and “would appear very prominent when viewed from the low-lying portions of the City” yet it states there is no significant impact. This is a failure of the EIR and its consultant and has an appearance of impropriety in pandering to the developer desires. The project significantly affects views and must be sited in a way that takes into consideration the many regulations and policies of the City of Malibu. An alternative site plan consistent with the City’s policies must be required under CEQA.

**II. DEIR IMPACT 5.5: GEOLOGY AND SOILS (SETBACKS , WASTEWATER & LANDSCAPE IRRIGATION):**

The setbacks from the bluff edge are questionable.

Pursuant to the Engineering Geologic Memorandum, Land Phases, Inc., 5/14/13 prepared for Mr. Lyn Konheim, Malibu Road property owner adjacent (south) to the Crummer Site, **the setbacks of structures are not in conformance with the LCP.** Please see the referenced Geologic Memorandum attached hereto. This technical oversight by the developer affects a number of lots and must be addressed.

R7-17

Many of the technical issues have been “mitigated” by stating that they will be addressed in subsequent CC&R’s thereby ensuring that potential future off-site hazards will not occur. This of course is an easy way to “kick the can down the road”. The city should not rely on unknown future CC & R’s but rather impose very strict conditions regarding these issues now, not later. It is imprudent to place the city in potential liability that could otherwise be avoided.

In addition to the above setback issue, **the DEIR and its consultant have failed to specifically address our previously documented concerns in regard to the potential impact of wastewater on the adjacent landslides to the south of the Crummer site.** The only special mitigation is to require restrictions to be determined in the project’s future Covenants, Conditions and Restrictions

R7-18

### 3. Response to Comments

Joyce Parker Bozylinski  
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(CC&R's). This approach of "kicking the can down the road" holds future problems and liability for both the city and the developer. R7-18  
cont d

In accordance with responsible CEQA compliance of a potentially significant impact, specific mitigation should be required now, not later. Such mitigation should, at a minimum, include specific subsurface monitoring with both mechanical and computerized fail-safe technology to ensure that the adjacent landslides are not subject to lubrication and failure caused by the Crummer Site Planned Development. Additionally, similar monitoring for land movement and historical record keeping should be required. All of these monitoring systems should be of public record for computerized, real time online viewing by both the city and the public at large. R7-19

#### **III. DEIR IMPACT 5.8: HYDROLOGY AND WATER QUALITY (DRAINAGE):**

The mitigation for the potentially significant impact of downstream flooding and erosion needs to go further in its requirements. The DEIR's only mitigation is for detention tanks beneath the lots and streets. Due to the adjacent landslide properties to the south of the Crummer Site and in regard to the proposed grading on slopes of the project, similar monitoring systems (as described in our discussion section directly above...i.e. under Geology and Soils) should be specified and required as mitigation in the EIR. Additionally, such monitoring should include safeguards and fail safe measures and technology regarding the potential leakage and future replacement and/or repair of the proposed detention tanks. R7-20

#### **IV. PROJECT ALTERNATIVES**

The alternatives to the project are weak and inadequate. The reasoning for not considering an alternative site plan that would re-arrange footprints to set back further from the bluff edge (especially Lot 5) and for eighteen foot heights is based on assumption with no substantive study or supportive factual data. The weak alternatives have an appearance of impropriety in meeting CEQA requirements and in catering to the developer's wishes and desires instead of the intent and letter of the regulations for both the State of California and the City of Malibu.

The major justification by the EIR consultant regarding the limited and inadequate alternatives are based on grading quantities and on reduction of open space that would result from the spreading of footprints in one story structures. These "justifications" not only lack any real substantive data but are so inadequate that they almost require no discussion. There are numerous arguments that can disqualify their entire logic. For example, two stories can certainly be achieved in an 18' height and geometrically compact foot print thereby helping to resolve the issues of open space, visual height impact, grading and footprint... all in "one fell swoop"...and, all in an environmentally superior alternative. R7-21

Suffice to say, site and building design can offer multiple approaches to address consistency between governmental regulatory requirements and site characteristics. This is especially true

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Joyce Parker Bozylinski  
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since the Crummer Site does not display site characteristics and topography that would restrict, limit and dictate the sole development of the proposed design or to only the EIR alternatives presented.

R7-21  
cont'd

In summation, the DEIR and its consultants have failed to properly address the issues discussed herein under CEQA requirements. The final EIR, prior to its issuance for approval, needs to seriously address, repair and add the proper mitigation. This should include not only mitigation but additional, appropriate alternatives **and any site re-design that may be required due to technical errors regarding setbacks.** We shall look forward to our concerns being properly addressed for consistency between both the City and State requirements.

R7-22

Sincerely  
  
Kari Kraner

Encl.

- Cc: City Council Members
- Planning Commission Members
- Christi Hogin, City Attorney
- Ha Ly, Project Planner
- Bill Rhodes, President, Malibu Road Association

### 3. Response to Comments

May 6, 2013

Planning Commission  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265

RE: Crummer Site Subdivision – Public hearing regarding DEIR

Honorable Planning Commission Members:

I am speaking to you tonight on behalf of concerned Malibu Road residents and property owners adjacent and southerly to the Crummer site. Based on our previous documented submittals to the city and on discussions with Mr. Robert Gold, all voicing our serious visual and technical concerns, we have looked forward to the DEIR to see how they would be addressed and mitigated. Unfortunately, the DEIR has failed in substantively addressing our specific site location concerns and issues as required under CEQA. We will be submitting detailed information prior to the response deadline however, this evening I would like to read into the record a general summary of the concerns that have not been addressed:

R7-23

The visual impact from the structures on lot 5 were not addressed. Instead all visual concerns were dismissed as “less than significant” therefore not requiring mitigation and not addressing our specific Malibu Road concerns. In fact, the DEIR simulation photographs only underscore and magnify those concerns.

R7-24

The setbacks from the bluff edge are questionable.

R7-25

The alternatives to the project are weak and inadequate. The reasoning for not considering an alternative site plan that would re-arrange footprints to set back further from the bluff edge (especially Lot 5) and for eighteen foot heights is based on assumption with no substantive study or supportive factual data. The weak alternatives have an appearance of impropriety in meeting CEQA requirements and in catering to the developer’s wishes and desires instead of the intent and letter of the regulations for both the State of California and the City of Malibu.

R7-26

Many of the technical issues have been “mitigated” by stating that they will be addressed in subsequent CC&R’s thereby ensuring that potential future off-site hazards will not occur. This of course is an easy way to “kick the can down the road”. The city should not rely on unknown future CC & R’s but rather impose very strict conditions regarding these issues now, not later. It is imprudent to place the city in potential liability that could otherwise be avoided.

R7-27

Finally, it should be stated that the “elephant in the room” is the imposing visual impact of the project. Regardless of extensive subjective discussions by the EIR consultant, it is common sense that the city’s underlying spirit, intent and discretionary authority for maintaining Malibu’s rural visual character should guide the granting of the privilege to develop under a Planned Development and Development

R7-28

3. Response to Comments

Agreement. The developer has created his own hardships and controversy. The city's authority should not be usurped by subjective EIR conclusions. Most thoughtful architects would agree that there are numerous designs that could have been applied to this site whereby the "elephants" would have no or little visual impact on the bluff and slope edges. This is the guiding task for the developer and architect. The city has the responsibility to ensure that this task is honorably performed and rightfully achieved.

R7-29

Sincerely,



Kari Kramer

Cc: Joyce Parker-Bozylinski, Planning Director  
Christi Hogin, City Attorney  
Ha Ly, Project Planner

### 3. Response to Comments

June 5, 2012

Ha Ly  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265

RE: Crummer Site Subdivision – Notice of Preparation and Scoping Meeting for an Environmental Impact Report.

Dear Ms. Ly,

I am writing to you on behalf of concerned Malibu Road residents and property owners on Malibu Road beneath the southerly bluffs of the above referenced Crummer site. A number of the following issues have been presented (by Mr. Lyn Konheim, one of the adjacent property owners) to Mr. Robert Gold (of the Crummer property) and he has shown a willingness work toward resolving such issues and concerns.

We request that you address the following concerns and that they be added to the scope of work for completion under the EIR.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| 1) Wastewater needs to be addressed as a separate item. This should include the potential impact on lubrication of landslide properties to the south of the wastewater septic system.                                                                                                                                                                                                                                                                                                      | R7-30 |
| 2) Landscape irrigation needs to be addressed as a separate item. This should include the potential impact of lubrication of landslide properties to the south of the development site.                                                                                                                                                                                                                                                                                                    | R7-31 |
| 3) Site drainage and hydrology needs to be addressed as a separate item. This should include the potential impact of lubrication of landslide properties to the south of the development site.                                                                                                                                                                                                                                                                                             | R7-32 |
| 4) Geology, grading & site stability needs to be addressed as a separate item. This should include the potential impact on both landslide and non-landslide properties to the south of the development site.                                                                                                                                                                                                                                                                               | R7-33 |
| 5) Traffic noise associated with the development needs to be addressed as a separate item regarding impact to properties to the south of the development site.                                                                                                                                                                                                                                                                                                                             | R7-34 |
| 6) Lot 7 developed as a recreational park for the city needs to be addressed for noise impact to properties to the south of the development site. This park needs to be clearly delineated. The noise impact should be for both traffic and recreational uses. Since the city does not yet know what the recreational use might be, the impact studies must assume worse case scenario and also offer alternatives including quantitative impacts to properties south of the Crummer site. | R7-35 |
| 7) City and Coastal Commission setback requirements from the edge of the bluff must be met or exceeded without any discretionary approvals that would allow for less. Such requirements must be clearly shown in both plan and section exhibits and clearly explained as consistent within the letter of the laws in place regulating such setback requirements.                                                                                                                           | R7-36 |
| 8) The visual impact of the proposed most southerly residence at the bluff edge closest to Malibu Road should be addressed separately with "line of sight" cross section studies in order to result in no visual impact whatsoever from adjacent southerly properties.                                                                                                                                                                                                                     | R7-37 |

We appreciate your attention to the above and look forward to the EIR addressing our concerns.

Sincerely,



Kari Kramer

Cc: Joyce Parker-Bozylinski

3. Response to Comments

April 6, 2012

Joyce Parker Bozylinski  
The Director of Planning  
City of Malibu  
C 23825 Stuart Ranch Road  
Malibu CA, 90265

Re: The Planned Building Development - Former Crummer Property

We, the undersigned are homeowners and property owners on Malibu Road.

We are writing to voice our strong objection to one of the residences on the bluff that is visible from Malibu Road. The recent story poles that were erected clearly show this is an imposing structure along the ridgeline, a visual blight on Malibu Road. For decades we have been accustomed of the natural beauty of this bluff. Please understand that we believe that the placement of this particular structure could be located in such a way that it would not be visible and thereby not necessary its current location. There appears to be no need to place this particular structure in such close proximity to the edge of the bluff.

R7-38

We, the residents and property owners of Malibu Road, respectfully request that you exercise your discretionary review and authority to require the developer to relocate this structure so that the site lines along Malibu Road will not be impacted. Thereby, continuing to maintain the natural beauty of this bluff, which has always existed in its natural state and has been an asset to our homes.

R7-39

This property has never historically had any development before and we are understandably very sensitive to, and have serious concerns about the impact that such a structure will have.

R7-40

Respectfully yours,

Malibu Road Residents

cc:  
Ha Ly  
Associate Planner  
City of Malibu

### 3. Response to Comments

Patricia Quirk  
PRINT NAME

24604 Malibu Rd.  
ADDRESS

Patricia Quirk  
SIGNATURE

Malibu CA 90265

4-6-12  
DATE

Elliot Megdal  
PRINT NAME

24612 Malibu Rd  
ADDRESS

[Signature]  
SIGNATURE

Malibu CA 90265

4/7/12  
DATE

Alana Megdal  
PRINT NAME

24612 Malibu Rd.  
ADDRESS

Alana Megdal  
SIGNATURE

Malibu 90265

4/7/12  
DATE

MARY CORROS  
PRINT NAME

24632 MALIBU RD.  
ADDRESS

[Signature]  
SIGNATURE

MALIBU RD 90265

4-7-12  
DATE

3. Response to Comments

April 7, 2012

Joyce Parker Boyzlinkski  
Planning Director  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265

Re: Proposed Development - Old Crummer Property

We are writing to state our objection to the development that is proposed on the old Crummer property. The story poles that have recently gone up exhibit the heavy visual impact that the proposed homes will have when looking up from Malibu Colony and the eastern portion of Malibu Road.

R7-41

For decades this ridge line has been a significant view of natural enhancement to the rural character of our beloved community. The idea of now having a development with large mansion like structures capping this beautiful ridge line (that has always been a natural feature) is a very hard pill to swallow.

R7-42

Although we strongly feel that this visible ridge should remain undisturbed, if that is not possible, we would like to work with the planning department to impose conditions that will ensure that this unsightly development will be properly mitigated so that natural enhancements (such as landscape and landform alterations) will ensure that the rural character of our community is protected.

R7-43

Truly yours,

### 3. Response to Comments

Malibu Colony and Eastern Malibu Road Property Residents  
and Property Owners

Cc: City Council  
Planning Commission

JETH ROBERS 23661 MALIBU COLONY DR

Print Name & Address

Signature and Date

MARSHALL EZRALOW - 23654 Malibu Colony Dr

Signature and Date

R. FISHER 23614 MALIBU COLONY RD

Signature and Date

Print Name & Address

### 3. Response to Comments



**Land Phases, Inc.**

#### **ENGINEERING GEOLOGIC MEMORANDUM**

ENGINEERING GEOLOGIC COMMENTS AND CONCERNS REGARDING  
THE CURRENTLY PROPOSED RESIDENTIAL DEVELOPMENT  
OF "THE CRUMMER SITE"

24200 PACIFIC COAST HIGHWAY  
(ADJACENT AND NORTHEAST OF 24157 MALIBU ROAD)  
CITY OF MALIBU, CALIFORNIA

PREPARED FOR MR. LYN KONHEIM

MAY 14, 2013

Project No.: LP1083

R7-44

**CONSULTING ENGINEERING GEOLOGISTS**  
**"Exploration and Analysis for Design and Development"**  
5158 Cochran Street, Simi Valley, California 93063 Phone: (805) 522-5174

### 3. Response to Comments



Land Phases, Inc.

May 14, 2013

Project No.: LP1083

Mr. Lyn Konheim  
163 S. Rodeo Drive  
Beverly Hills, CA 90212

**SUBJECT: ENGINEERING GEOLOGIC MEMORANDUM, ENGINEERING GEOLOGIC COMMENTS AND CONCERNS REGARDING THE CURRENTLY PROPOSED RESIDENTIAL DEVELOPMENT OF "THE CRUMMER SITE", 24200 PACIFIC COAST HIGHWAY (ADJACENT AND NORTHEAST OF 24157 MALIBU ROAD), CITY OF MALIBU, CALIFORNIA**

**REFERENCE: CRUMMER SITE SUBDIVISION ENVIRONMENTAL IMPACT REPORT (DRAFT), SCH NO. 2008091155, APRIL 2013**

ADDITIONAL REFERENCES ARE LISTED AT THE END OF THIS MEMORANDUM.

Dear Mr. Konheim,

As requested, Land Phases, Inc. (LP) has prepared this *Engineering Geologic Memorandum* which presents our engineering geologic comments and concerns regarding the currently proposed residential development of "The Crummer Site" (hereafter referred to as the "subject property" or "site") as presented in the above referenced draft environmental impact report. To clarify, the subject property (initially identified as 24200 Pacific Coast Highway) consists of 7 vacant lots which are located adjacent and northeast of the Konheim property (24157 Malibu Road). Based on our review of the referenced documents, it is our understanding that 5 lots of the subject property are now identified as 24108 Pacific Coast Highway (Lot 1), 24120 Pacific Coast Highway (Lot 2), 24134 Pacific Coast Highway (Lot 3), 24150 Pacific Coast Highway (Lot 4), and 24174 Pacific Coast Highway (Lot 5).

R7-45

Preparation of this memorandum follows our review of the referenced geologic/geotechnical reports regarding the subject property which were prepared by Leighton and Associates, Inc. (1989-2012). The referenced reports present detailed geologic/geotechnical findings, conclusions, and recommendations regarding the proposed 5-lot residential development project. However, our review focused on the geologic conditions of the southern-most lots of the subject property (i.e. Lots 2, 3, and 5); the slope stability analysis of the south-facing descending slope (i.e. a coastal bluff) of these lots; the 100-year bluff retreat determination performed by Leighton; the resulting *Geotechnical Setback Line* established by Leighton for these lots; and the location of the currently proposed development (i.e. site grading and structures) in relation to the top of the coastal bluff. Based on our review of the referenced reports, it is LP's professional

**CONSULTING ENGINEERING GEOLOGISTS**  
**"Exploration and Analysis for Design and Development"**  
5158 Cochran Street, Simi Valley, California 93063 Phone: (805) 522-5174

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May 14, 2013  
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engineering geologic opinion that significant geologic/geotechnical concerns and code inconsistencies are currently associated with Lots 2, 3, and 5 which should be addressed and/or corrected by the project consultants and developer prior to any discretionary or technical review of the project. These concerns and code inconsistencies are as follows:

R7-45  
cont'd

**Current Geotechnical Setback Line Is Not In Conformance With LCP:**

Based on our review of the referenced reports by Leighton, the geotechnical setback line of subject property was not established in conformance with Chapter 10, Section 10.4.D.1 of the City of Malibu LCP. To clarify, this section of the LCP deals with development restrictions and required setbacks from the top of a coastal bluff and states:

R7-46

*If the bluff exhibits a factor of safety of less than 1.5 for either gross or surficial landsliding, then the location of the bluff top at which a 1.5 factor of safety exists shall be determined. Development shall be set back a minimum of distance equal to the distance from the bluff edge to the 1.5 factor-of-safety-line, plus the distance that the bluff might reasonably be expected to erode over 100 years. These determinations, to be made by a state-licensed Certified Engineering Geologist, Registered Civil Engineer, or Geotechnical Engineer, shall be based on a site-specific evaluation of the long-term bluff retreat rate at this site and shall include an allowance for possible acceleration of historic bluff retreat rates due to sea level rise.*

R7-47

Based on their detailed geologic and geotechnical analysis of the subject property, Leighton established a 1.5 factor of safety line (labeled by Leighton as *Geotechnical Setback Line*) within the southern portion of the site (i.e. a line which delineates a code-conforming slope stability to the north and a substandard slope stability to the south). While it is acknowledged that the undersigned Certified Engineering Geologist is not a State of California Civil Engineer or Geotechnical Engineer, the established geotechnical setback line appears to have been established in a manner consistent with the current geotechnical guidelines of the City of Malibu and the current industry standard of care. In addition, Leighton also performed the required 100-year bluff retreat analysis as part of their work. Based on this analysis, Leighton estimated that the maximum amount of bluff retreat at the subject property would be 20 feet over a 100 year period. Based on our review of Leighton's bluff retreat analysis, it too appears to have been performed in a manner consistent with the current geotechnical guidelines of the City of Malibu and the current industry standard of care. However, following the establishment of the geotechnical setback line, Leighton did not properly add their calculated 100-year bluff retreat setback distance of 20 feet to the geotechnical setback line as required by the aforementioned section of the LCP. Thus, a more restrictive geotechnical setback line (i.e. 20 feet further northward than what is presented in the referenced reports and current site development plans) is warranted. It follows that the proposed development (i.e. grading and structures) of Lots 2, 3, and 5 will need to be re-located further northward than currently planned in order to be in conformance with the aforementioned section of the LCP.

R7-48

### 3. Response to Comments

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#### ***Grading Planned to South of Established Geotechnical Setback Line:***

In addition to the aforementioned issues regarding the proper location of the established geotechnical setback line, the undersigned has significant concerns in regards to the grading currently planned for the southern portions of Lots 2, 3, and 5. Specifically, the site development/grading plans for these lots currently indicate that grading (i.e. the construction of engineered fill-slopes) is planned to the south of the established geotechnical setback line. This is not a code-conforming condition as those portions of the proposed grading which are located to the south of the geotechnical setback line will be located in an area that has been determined by Leighton to have a factor of safety which is not code-conforming. It follows that the graded fill-slopes will also possess a substandard slope stability factor of safety. This condition is not typically permitted and performed unless additional mitigation measures are implemented which provide the code-required factor of safety for the proposed grading. Moreover, the construction of the proposed fill-slopes to the south of the established geotechnical setback line would effectively be adding "weight" or driving force at the top of a slope which has experience large-scale instability (i.e. landsliding) in the past. Thus, the proposed grading of Lots 2, 3, and 5 will need to be re-located further northward or redesigned in a manner so that it does not extend south of the established geotechnical setback line.

R7-49

#### ***Summary:***

As discussed above, it is LP's professional engineering geologic opinion that significant geologic/geotechnical concerns and code inconsistencies are currently associated with the currently proposed residential development of Lots 2, 3, and 5. It is recommended that these issues be brought to the attention of the City of Malibu and the project consultants to insure that the final site development plans are revised to a code-conforming condition.

R7-50

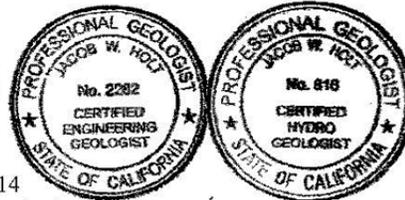
#### **CLOSE**

Please avoid misunderstandings or misinterpretation of this engineering geologic memorandum by calling LP with any questions you may have.

Respectfully Submitted,  
LAND PHASES, INC.



Jake W. Holt  
PG 7404, CEG 2282, CHG 816 exp. 11-30-14  
Principal Engineering Geologist and Hydrogeologist



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Distribution: (5) Addressee (plus 1 pdf copy on CD)

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#### REFERENCES

##### *Site-Specific References (24200 Pacific Coast Highway):*

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- Leighton and Associates, Inc. (2000), **Preliminary Geotechnical Evaluation, South Winter Mesa Property, Tentative Tract 52487, Malibu, California**, Project No. 930532-004, October 2, 2000.

### 3. Response to Comments

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#### **R7. Response to Comments from Insert Kari Kramer, dated May 6, 2013.**

R7-1 These introductory comments point out that a letter dated May 6, 2013 is also attached to this comment letter. The commenter also broadly asserts that the DIER has failed to substantively address documented concerns.

R7-2 Here the commenter claims that the visual impacts of Lot 5 were not addressed in the DEIR and also go on to disagree with the City's determination that impacts are less than significant.

Regarding the visual impacts of Lot 5, the commenter is referred to General Response 2.3.

While it is impossible to entirely remove subjectivity from a view impact analysis, the DEIR's analysis is based in part on professional view simulations created for the project by S.A. Johnson Architectural Simulation. On August 14, 2012, multiple photographs were taken from locations specified by the City of Malibu. Story poles had been erected on the project site showing the location and dimensions of the proposed single-family residential development. The story poles are placed on the project site in order to depict the precise outlines of the specific residences designed by the project architect. A professional land surveyor verified the accuracy of the location and height of the story poles and their conformance to the exhibit prepared by the architect and approved by the City. During the August 14, 2012 project site visit, multiple photographs were taken from 10 areas specified by the City's Planning Department. The location where each photograph was taken was established by a GPS data logger. Once the photographs and locations were reviewed, 14 were chosen to provide a broad sample of views from areas surrounding the project site, as follows:

- View 1: Rancho Malibu Site looking south to southeast across PCH to the project site
- View 2: Rancho Malibu Site (future casita placement, 2nd floor) looking south across PCH to the project site.
- View 3: Rancho Malibu Site (future casita placement, 2nd floor) looking southeast across PCH to the project site
- View 4: Blue Dane Lane (Malibu Country Estates) looking southeast toward the project site
- View 5: Vantage Point Terrace (Malibu Country Estates) looking southeast toward the project site
- View 6: PCH and Cross Creek Road looking west toward the project site

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- View 7: Malibu Colony Beach looking west toward the project site
- View 8: Malibu Legacy Park looking west toward the project site
- View 9: PCH & Webb Way looking west toward the project site
- View 10: Coast View Drive (Malibu Knolls) looking south toward the project site
- View 11: Malibu Canyon Road looking south toward the project site.
- View 12: Malibu Road looking northeast toward the project site
- View 13: Bluffs Park (Santa Monica Mountains Conservancy) looking east toward the project site
- View 14: Bluffs Park (baseball outfield) looking east toward the project site

City staff approved Views 12 and 13, which were specifically included in DEIR looking east and northeast toward Lot 5. The DEIR concluded that while the proposed project would alter the visual appearance of the project site, the project would not substantially degrade visual character of the site or introduce any aesthetic elements incompatible with the project area.

The commenter is referred to General Comment 2.3.1 and the supplemental view simulation analysis is Appendix A of the FEIR. In response to these comments, the following view simulations addressing the visual impacts of Lot 5 have been prepared for the proposed project:

View 12: Malibu Road looking northeast toward the project site. This is a public view from a public street. Only a small portion of one residence can be seen on top of the bluff with the sky as the background. However, there are no views of the ocean, the mountains, or striking views or significant trees or other vegetation, geologic features, or any valued aesthetic unique features from this location. Existing single-family development on Malibu Road is visible from this location. The visual impact to passing motorists would be of short duration. The proposed project would have a less than significant impact on visual resources from this location.

View 13: Bluffs Park (Santa Monica Mountains Conservancy) looking east toward the project site. This location is considered a public viewing area. Other residential development along the coast line and on the slopes of the Santa Monica Mountains is visible in the distance. The appearance of the Project is compatible with the other development in this area. A portion of the Project is visible from this location and obscures a very small portion of the view of a part of the Santa Monica Mountains.

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However, none of the ocean views are affected and the Project blends into the background. The Project's landscaping visible from this vantage point has the effect of softening the buildings, helping the proposed development blend in with its surroundings and reducing the perceived mass of the structures. The proposed project would have a less than significant impact on visual resources from this location.

The original view simulations prepared in support of the DEIR were prepared by a professional architect and were approved by the City. The revised view simulations prepared for this FEIR in response to comments validate the DEIR's view simulations and provide substantial evidence that impacts are less than significant for the proposed project.

R7-3 Please refer to General Response 2.3, *Aesthetics*.

R7-4 First, the commenter summarizes the Malibu General Plan's vision statement. The commenter goes on to give their opinion that the City's DEIR failed to address the General Plan and that the project is not consistent with the General Plan.

DEIR Section 5.1, *Aesthetics*, deals with the project's visual impacts and Section 5.9, *Land Use* addresses land use compatibility and compatibility with the City's General Plan and Local Coastal Program. A detailed analysis of the proposed project's consistency with the applicable goals and policies of the various elements of the General Plan is provided in Table 5.9-1, *General Plan Consistency Analysis*. The analysis concludes that the proposed project would be consistent with the applicable goals and policies of the general plan. Table 5.9-3, *Local Coastal Program Consistency*, the analysis concludes that the proposed project would be consistent with the major applicable goals and policies of the LCP.

R7-5 In this paragraph, the commenter provides Malibu's mission statement. The commenter then states the opinion that the project's design and height ruin views of natural resources and "the design of the homes, while appropriate for high end gated urban mansion estate developments, are certainly not consistent with Malibu's special natural and rural setting."

The commenter is referred to General Response 2.3., *Aesthetics*. The DEIR assessed impacts to visual resources within the context of the surrounding area. Although the project site is currently vacant, the immediate project area is characterized by a mix of uses, including residential, recreational, commercial, and institutional, and the proposed project would be compatible with the project site and its surroundings. The project site is located in an area that has seen substantial development. Development within approximately one-half of a mile from the project site include single family residential development on Malibu Road, the Malibu Knolls (229 homes) and the Malibu Country Estates (97 homes) subdivisions, two condominium developments totaling 152 units, office buildings, including the HRL Research complex (approximately 225,000 square feet), Malibu City Hall and Los Angeles County offices, two wastewater treatment plants,

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Pepperdine University and the Malibu Colony Plaza Shopping Center. The DEIR concluded that while the proposed project would alter the visual appearance of the project site, the project would not substantially degrade visual character of the site or introduce any aesthetic elements incompatible with the project area.

Next the commenter asserts that “no alternative site plan was proposed or displayed.” Regarding the reducing the size of homes, in response to public comments this public hearing, Chapter 7, Alternatives of the DEIR has been revised to include a Reduced Project Alternative with smaller homes. See revised Chapter 7 in FEIR Appendix E.

The Planning Department determined that the reduced project alternative should (i) reduce the square footage of each residence to comply with the maximum permitted under the City’s development regulations, (ii) reduce the height of the residence on Lot 2 not to exceed 18 feet, (iii) reduce the square footage of the second floor on two of the residences, and (iv) modify the landscaping plan to respond to concerns that the landscaping would affect visual resources. The applicant directed its architect, Landry Design Group to prepare a conceptual plan modifying the proposed project in response to the City’s direction. This modified plan reduced the proposed project’s floor area by approximately 11% and the height and massing of some of the residences, and is reflected on the Reduced Project Site Plan included in FEIR Appendix A (as appendix C of the supplemental View Simulation Report) and summarized as follows:

- Lot 1: Reduced the square footage on the second floor from 3,344 square feet to 1,619 square feet and the total square footage of the residence from 11,081 square feet to 10,052 square feet.
- Lot 2: Reduced the height of the entire residence not to exceed 18 feet and the square footage of the home from 11,068 square feet to 9,642 square feet.
- Lot 3: Reduced the square footage of the residence from 11,009 square feet to 8,999 square feet.
- Lot 4: Reduced the square footage on the second floor from 3,409 square feet to 3,152 square feet and the total square footage of the residence from 11,157 square feet to 9,536 square feet.
- Lot 5: Relocated the siting of the pool cabana from the western side of the pool to the eastern side, moved the location of the residence further north and approximately 6 1/2 feet to the east and reduced the height of approximately 26 linear feet the roof on the southwestern portion of the house by 4’ 4” by changing the roof from flat to pitched.

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In addition, the Project's landscape architect, James Hyatt Studio/Valleycrest was asked to modify the landscape plan designed for the proposed project (the "Original Landscape Plan") in order to reduce the planting in certain locations in response to comments that the landscaping would impact visual resources. The Original Landscape Plan is shown as Figure 3-7 of the DEIR. The modified landscape plan is referred to herein as the "Modified Landscape Plan" and is included in FEIR Appendix A (as Appendix D of the supplemental View Simulation Report) and the changes shown in the Modified Landscape Plan.

A supplemental View Simulation Report FEIR (Appendix A) provides view simulations of the Reduced Project Alternative and its comparative merits to the proposed project. The report found that from certain view points at elevations lower than the project site the project can be seen against the background of the sky. At these viewpoints the Reduced Project Alternative shows a slightly lower profile for the residences on Lot 1 and Lot 2. Similarly, the modified landscaping plan of the Reduced Project Alternative, when seen from these viewpoints, shields the residences somewhat more than the proposed project when viewed from the same locations. These changes result in a slightly reduced profile and somewhat less prominent appearance than the proposed project. However, the Reduced Project Alternative does not materially reduce the visual impact compared to the proposed project's less than significant impacts.

R7-6 Here the commenter claims that City did not require careful site planning pursuant to LUP Policy 1.1.1 and 1.1.5. The City and applicant went through multiple iterations of site plan designs.

The Malibu LCP consists of a LUP and the LIP. The LUP contains programs and policies to implement the Coastal Act in Malibu. The purpose of the LIP is to carry out the policies of the LUP. The LIP contains specific policies and regulations to which every project requiring a coastal development permit must adhere. This project has been reviewed and approved for LCP conformance review by the Planning Department, as well as the City Biologist, City Geologist, City Environmental Health Administrator, City Public Works Department and Los Angeles County Fire Department (LACFD).

The project was designed to minimize adverse impacts on scenic areas. Pursuant to the requirements of the LCP, the applicant's geologist and civil engineer established both a bluff set back and geological safety setbacks. The setbacks coupled with the property's unique physical characteristics limited the area on which structures would be permitted on the property to approximately nine of its twenty-four acres.

The applicant's design team worked to balance between maximizing open space, protecting the existing view sheds, and minimizing fuel modification. Pursuant to LUP Section 6.10 all five homes were situated in locations that were generally the flattest areas of the property, while the road and driveways were located along areas with greater

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grade changes, thereby minimizing grading while following the properties natural topography pursuant to LUP Section 6.11. This design also maximized open space.

The applicant and its design team determined that two-story homes achieved a greater consistency with the Malibu Development Standards when compared to one-story homes for the following reasons:

- two-story homes have a smaller foot print than a one-story home
- two-story homes allow for more separation between the homes which preserves existing view sheds and allows for more open space – single-story homes of a similar square footage would be wider, thus encroaching more on views from adjacent properties resulting in a development with greater sprawl, mass and density as a result of the reduction of space between the homes;
- two-story homes have smaller foot prints which reduces the need for retaining walls, grading and similar landform alteration. Even though the homes have been located on the flattest areas of the property, the property is not flat. Therefore, larger footprints would encompass areas with more natural grade changes, increasing the need for retaining walls;
- two-story homes minimize the amount of new impervious areas, which in turn reduces sheet flow runoff, while providing larger open space areas for infiltration and allowing for greater flexibility in treating runoff. As a result, reduced sheet flow runoff is easier to control, direct and detain, thereby reducing runoff from the property;
- two-story structures represent a more compact building zone which results in less building mass and allowing for more landscape/open area; and
- two-story homes of this size are consistent with other developments in the vicinity of the property and none of the proposed homes exceed the City's established limits on height allowed pursuant to Site Plan Review, bulk, impervious area and square footage.

The applicant also contemplated dividing the project square footage over more than five homes as contemplated in the Crummer Trust Development Agreement but decided against it due to concerns that additional home(s) would have diminished the rural character of the project as a consequence of the increased infrastructure, impermeable areas, and the greater sprawl, mass and density associated with each additional home.

Due to comments received during the 45-day public comment period, a reduced project alternative was analyzed in this FEIR. Please see General Response 2.3, the

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supplemental view simulations report provided as Appendix A, and the revised Chapter 7, *Alternatives to the Proposed Project*, included as Appendix L.

- R7-7 See Response to Comment R7-6. General Response 2.3, the supplemental view simulations report provided as Appendix A, and the revised Chapter 7, *Alternatives to the Proposed Project*, included as Appendix E.

The project site is not on a ridgeline, promontory, or hilltop. The City has determined that the project can meet Scenic, Visual and Hillside Findings (LIP Chapter 6). The Scenic, Visual and Hillside Resource Protection Chapter governs those CDP applications concerning any parcel of land that is located along, within, or provides views to or is visible from any scenic area, scenic road or public viewing area. PCH and Malibu Canyon Road are designated as scenic roadways per the LCP. In addition, other public scenic areas within the vicinity include Malibu Bluffs Park immediately adjacent, Malibu Lagoon, approximately one-half mile to the east. Amarillo Beach, approximately 300 feet south of the project site, and Legacy Park, approximately one-half mile east of the project site. As discussed in the DEIR, the applicant installed story poles on the property to depict the location, height and mass of the proposed project. A visual analysis of the project's visual impact from public viewing areas was conducted through site reconnaissance, a review of the story poles, architectural plans, visual simulations and an investigation of the character of the surrounding properties.

The project site is visible from certain areas of the beach, and from Malibu Canyon Road and PCH. While on the beach, views of the ocean are oriented to the south, away from the proposed project and therefore, the project does not result in scenic impacts to views from the beach. The proposed project and the reduced project alternative will both be visible from Malibu Canyon Road and PCH; however, extensive view simulations were prepared, including all proposed structures and mature landscaping as viewed from 26 different viewpoints, including Malibu Canyon Road looking south toward the project site, PCH and Cross Creek Road looking west toward the project site and on PCH, west of entrance to Bluffs Park. The visual simulations, included in Appendix A of the FEIR, show that the reduced project alternative and landscaping blend into the surrounding natural environment and do not obstruct visually impressive scenes of the Pacific Ocean or Santa Monica Mountains from a public scenic area. The changes in project bulk and siting in the reduced project alternative ensure the project, as modified, will have no significant adverse scenic or visual impacts due to the project design and location on the site.

- R7-8 The project site is not on a ridgeline, promontory, or hilltop. While not located along the shore, the subject property contains both coastal and inland bluff features. LIP Section 10.3 requires that shoreline and bluff development findings be made if the project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. All of the required findings can be

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made. The project is not anticipated to result in such impacts. The project is sited and designed to minimize risks and assure stability and structural integrity while neither creating nor contributing significantly to erosion or adverse impacts on public access. LUP Section 10.4(D) requires a 100 foot setback which may be reduced to no less than 50 feet with the approval of the City Geologist. The 100 foot setback is required to ensure all new development located on a bluff-top not be endangered by erosion for a projected 100 year economic life of the structure (100 year bluff retreat line) or threatened by slope instability for a projected 100 year economic life of the structure. This distance may be reduced to 50 feet if the City geotechnical staff determines that the proposed development will not be endangered by erosion or slope instability with a lesser setback.

R7-9 See Response to Comment R7-6, -7, and -8. The project has no impact on sensitive environmental resources as development is sited away from the ESHA.

R7-10 First, the commenter summarizes the Section 30251 of the LUP. The commenter goes on to give their opinion that the City's DEIR failed to protect visual resources or review and alternative site plan.

Please refer to Responses to Comments R7-1 through R7-9 and General Response 2.3.

DEIR Section 5.1, Aesthetics, deals with the project's visual impacts and Section 5.9, Land Use addresses land use compatibility and compatibility with the City's General Plan and Local Coastal Program. A detailed analysis of the proposed project's consistency with the applicable goals and policies of the various elements of the General Plan is provided in Table 5.9-1, General Plan Consistency Analysis. The analysis concludes that the proposed project would be consistent with the applicable goals and policies of the general plan. Table 5.9-3, Local Coastal Program Consistency, the analysis concludes that the proposed project would be consistent with the major applicable goals and policies of the LCP.

R7-11 Here, the commenter claims that alternative designs were not incorporated in the DEIR pursuant to the LUP Policy 6.5.

The commenter misunderstands the purpose of CEQA alternatives. CEQA Guidelines Section 15126.6(a) states that "the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project ... " With the exception of the mandatory No Project Alternative, the alternatives were selected due to their potential to attain basic project objectives and lessen or avoid potentially significant environmental effects resulting from implementation of the proposed project, even though the proposed project would not result in any significant and unavoidable environmental effects. Although no significant and unavoidable impacts were identified, and impacts to visual resources were considered less than significant, the DEIR included a one-story alternative with view

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simulations to inform the public and decision makers of the relative merits of building one-story homes along with recreational facilities.

In addition to the No Project, Foreseeable Development Alternative, two other alternatives were provided to inform the public and decision makers about the project's relative merits; the Two-Story Homes with Skate Park Only Alternative and the One-Story Homes with Recreational Facilities Alternative. The One-Story Homes with Recreational Facilities Alternative analyzes the impacts of one-story homes compared to the proposed project, while the No Project, Foreseeable Development Alternative analyzes rearranged footprints for eight homes.

The DEIR determined that impacts to visual resources were less than significant in Section 5.1. The One-Story Alternative did not reduce or eliminate the project's significant impacts and is therefore not the environmentally superior alternative. The project alternatives were prepared pursuant to the CEQA Guidelines and in response to the community's comments requesting a one-story alternative. They were developed in conjunction with City staff and approved by the City. The DEIR was independently reviewed by City staff, including the City Attorney. Therefore, the DEIR and project alternatives represent the lead agency's independent judgment pursuant to CEQA Section §15084.

Furthermore, according to the applicant and the project architect, the project was designed to minimize adverse impacts on scenic areas from the onset as described in Response to Comment R7-6.

R7-12 See Response to Comment R7-11.

R7-13 Here, the commenter asks why the DEIR did not consider the One-Story Alternative as the preferred alternative.

CEQA Guidelines Section 15126.6(a) states that "the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project ... " With the exception of the mandatory No Project Alternative, the alternatives were selected due to their potential to attain basic project objectives and lessen or avoid potentially significant environmental effects resulting from implementation of the proposed project, even though the proposed project would not result in any significant and unavoidable environmental effects. Although no significant and unavoidable impacts were identified, and impacts to visual resources were considered less than significant, the DEIR included a one-story alternative with view simulations to inform the public and decision makers of the relative merits of building one-story homes along with recreational facilities.

In addition to the No Project, Foreseeable Development Alternative, two other alternatives were provided to inform the public and decision makers about the project's

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relative merits; the Two-Story Homes with Skate Park Only Alternative and the One-Story Homes with Recreational Facilities Alternative. The One-Story Homes with Recreational Facilities Alternative analyzes the impacts of one-story homes compared to the proposed project, while the No Project, Foreseeable Development Alternative analyzes rearranged footprints for eight homes.

The DEIR determined that impacts to visual resources were less than significant in Section 5.1. The One-Story Alternative did not reduce or eliminate the project's significant impacts and is therefore not the environmentally superior alternative. The project alternatives were prepared pursuant to the CEQA Guidelines and in response to the community's comments requesting a one-story alternative. They were developed in conjunction with City staff and approved by the City. The DEIR was independently reviewed by City staff, including the City Attorney. Therefore, the DEIR and project alternatives represent the lead agency's independent judgment pursuant to CEQA Section §15084.

- R7-14 Please see Response to Comment R7-6, -7, and -8. The proposed project includes one private street. Driveways are minimized and designed to follow the natural topography. The proposed private street providing access to the single-family homes would include sufficient turnaround area in the event that vehicles intending to go to Malibu Bluffs Park inadvertently turn into the residential road. The street would be 34 feet wide and terminate in a cul-de-sac, which would also serve as a fire department turnaround and would be accessible from Winter Mesa Drive. The DEIR did not identify any significant impacts related to the length of the road; therefore, no alternative related to the project's one road are required by CEQA.
- R7-15 The commenter claims that road lengths push Lot 5 closer to the ESHA and that a site plan with a shorter access road should have been considered by the DEIR to meet CEQA requirements. This comment represents the commenter's opinion. As shown in DEIR Section of 5.1, *Aesthetics*, and in General Response 2.3, none of the roads within the project site would be visible from any public viewing areas in the City. The DEIR concluded that impacts to visual resources are less than significant without mitigation. As substantiated in Response to Comment letters, the proposed project would not impact the ESHA, therefore, there is no requirement under CEQA to alter the driveway lengths. See Response to Comment R7-5, -6, -7, -8 -13, and -14.
- R7-16 Based on substantial evidence, the DEIR determined that impacts to visual resources would be less than significant. Due to comments received during the 45-day public comment period, a reduced project alternative was analyzed in this FEIR. Please see General Response 2.3, the supplemental view simulations report provided as Appendix A, and the revised Chapter 7, *Alternatives to the Proposed Project*, included as Appendix E. Also see Response to Comment R7-5, -6, -7, -8 -13, and -14.

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R7-17 According to Leighton (2013), there is no requirement to define geotechnical setbacks based on the combined setback that would result by adding together the setback estimated through slope stability analyses and the setback estimated by the coastal retreat study. For an explanation, please response R7-21, -33 and -45. However, in short, the bluffs to the south of the project site are only considered to be a coastal bluff for the determination of setbacks if the bluff is subject to direct wave action (City of Malibu, 2002b; City of Malibu Planning Division, 2008). However, the bluff is not subject to direct wave action because other structures with associated coastal protection devices are located between the ocean and the bluff. Therefore, geotechnical setbacks for the project were based on an assessment of historic bluff retreat (Leighton, 2008b) and slope stability analyses (Leighton, 2000; 2003; 2007; 2009a, b; 2012a), and all reports referenced therein). The setbacks estimated through slope stability analyses resulted in the most conservative setbacks, were the ones that were recommended by Leighton, and are in conformance with the requirements of the LCP.

R7-18 The analysis in the characteristics of the bedrock have been properly assessed by Aquifer Science & Technology (2008), Earth Consultants International (2012a) and by Leighton (2009a, b; 2012a-c), and that they have been incorporated in Earth Consultants International's hypothetical / severe groundwater model studies (Earth Consultants International, 2009; 2012). This model included the effects of the treated effluent, irrigation and rainfall which has adequately modeled the, "..... uncontrollable factors", which, "..... may adversely affect the overall stability of the offsite landslide, such as an increase in groundwater due to other sources .....", as stated by the DEIR comment. Therefore, the physical characteristics of the site's subsurface have been properly characterized such that the migration of effluent can also be properly characterized. As such, the introduction of effluent into the subsurface will not result in additional groundwater flow towards the offsite landslide.

With respect to potential seismic activity that could affect the stability of the offsite landslides, the slope stability analyses of Leighton (2000; 2003; 2007; 2009a, b; 2012a) were performed per the requirements of the City, which includes ground motions that could be induced as a result of regional earthquakes.

Given the preceding, Leighton (2012a) has demonstrated, and the City has approved (City of Malibu, 2012b), that, even given the hypothetical / severe groundwater model, reactivation of the landslide complex on the south bluff is remote.

In short, (Leighton, 2009a, b; 2012a, b) has demonstrated that a factor of safety of at least 1.5 will be maintained at the project site even given the development of the hypothetical / severe groundwater surface. This groundwater surface includes the maximum anticipated groundwater, and also the contributions from the treated OWTS effluent, rainfall and irrigation. Specifically, Earth Consultants International (2009, 2012) has shown that groundwater levels in the adjacent offsite landslides will not be affected

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by, or increased as a result of, the proposed project. We conclude that the proposed project will not affect the stability of the landslides to the south of the site.

R7-19 For the sake of clarity, we assume that the term “lubrication”, as used in the DEIR comment, is intended to refer to an increase in the quantity of subsurface water along the landslide failure plane as a result of the proposed project. We also infer that the DEIR comment is questioning whether such “lubrication” could facilitate renewed movement of the landslide. (The landslide failure plane is the lower-most surface along which the landslide originally moved, and separates the landslide mass above the landslide shear plane from the intact bedrock below the landslide shear plane.) Given these assumptions, our response to the DEIR comment follows.

Hydrogeological studies performed by Earth Consultants International (2009; 2012) have defined the hypothetical / severe groundwater condition as the maximum groundwater level that could occur at the site given the highest anticipated groundwater levels, and also the contributions from the treated effluent, rainfall and irrigation. (Please see Leighton’s response to O1-8 for a summary of the hypothetical/severe groundwater condition.) The studies by Earth Consultants International show that groundwater levels in the adjacent landslide would not be affected by, or increased as a result of, the proposed project. As a result, increased “lubrication” and failure of the landslide to the south as a result of the proposed project is not likely.

While groundwater monitoring will be performed once the proposed development has been constructed, monitoring for land movement is not necessary or required by the City, and need not be performed.

R7-20 Monitoring of detention tanks is typically provided through a periodic, on-going operations and maintenance inspection program. Inspection by a professional is the most appropriate method to assess the condition and functionality of the tanks. The maintenance and monitoring of the detention tanks will be included in the responsibilities of the HOA so that periodic, independent professional review of the tanks can be ensured. See Psomas response to comment 01-12 for further discussion on contingency for potential tank failure. Additionally, Mitigation Measure 5.8-1 requires that Best Management Practices (BMPs) facilities are implemented to ensure that water quality standards are met. For this project, the BMPs will consist of bio-retention facilities and storm water detention tanks. As discussed in our response to Comment 01-13, maintenance of the BMPs, including the detention tanks, are subject to covenants, conditions and restrictions (CC&Rs) that will require the homeowners to properly maintain the drainage systems on their property. Therefore, storm water and drainage system design features, together with Mitigation Measure 5.8-1 and the required maintenance of the system, will reduce the impact to less than significant.

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- R7-21 The geotechnical portion of these statements relates to setbacks from the bluff edge. The setbacks at the site on the east-, south- and north-facing slopes were based on an extensive data set that included 53 onsite borings, 9 onsite borings that were converted into groundwater monitoring wells, 9 onsite test pits, and six offsite groundwater monitoring wells. Each of these exploration locations are depicted on Plate 1 of Leighton's most recent report (Leighton, 2012a). These explorations formed the basis for extensive laboratory testing and slope stability analyses (Leighton 2000; 2003; 2007; 2009a, b; 2012a), that resulted in the setbacks recommended by Leighton for the project.
- Given the preceding, Leighton's studies are, in fact, substantive, and the supporting factual data are extensive. On that basis, the City of Malibu (2012a-g) provided its Geotechnical Planning Review approval of single family residential development of the five lots (City of Malibu, 2012c-g) and subdivision of the site from a geotechnical perspective for the proposed project (City of Malibu, 2012b).
- Due to comments received during the 45-day public comment period, a reduced project alternative was analyzed in this FEIR. Please see General Response 2.3, the supplemental view simulations report provided as Appendix A, and the revised Chapter 7, *Alternatives to the Proposed Project*, included as Appendix L. Also see Response to Comment R7-5, -6, -7, -8 -13, and -14.
- R7-22 The comment broadly asserts that the DEIR made a technical error related to setbacks, failed to address issues required under CEQA, failed to include mitigation, and appropriate alternatives. The commenter also asserts that there are technical issues regarding setbacks that require the site to be re-designed.
- See Response to Comments R7-1 through R7-50, Response to Comment Letter O3, and all of the General Responses in Chapter 2 of the FEIR.
- R7-23 The first paragraph in this letter, dated May 6, 2013, is generally a set of introductory remarks voicing concerns over visual and technical issues. The commenter's introductory remarks state that the DEIR failed in addressing site location concerns based on the commenter's submittals to the City and conversations with the applicant.
- See Response to Comments R7-1 through R7-50, Response to Comment Letter O3, and all of the General Responses in Chapter 2 of the FEIR.
- R7-24 The commenter is concerned with visual impacts from structures on Lot 5 and questions the City's determination that the impacts are less than significant.
- Please refer to response to Comment R7-2 above.
- Regarding the setbacks from the bluff edge, the story poles were placed on the project site in order to depict the precise outlines of the specific residences designed by the project architect. A professional land surveyor verified the accuracy of the location and

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height of the story poles and their conformance to the exhibit prepared by the architect and approved by the City. Setbacks are as follows: Lot 1 – 100 feet min; Lot 2 – 95 feet min; Lot 3 – 55 feet min; Lot 4 – 115 feet min; Lot 5- 85 feet min.

R7-25 The commenter states that the setbacks from the bluff's edge are "questionable". Regarding the setbacks from the bluff edge, the story poles were placed on the project site in order to depict the precise outlines of the specific residences designed by the project architect. A professional land surveyor verified the accuracy of the location and height of the story poles and their conformance to the exhibit prepared by the architect and approved by the City. Setbacks are as follows: Lot 1 – 100 feet min; Lot 2 – 95 feet min; Lot 3 – 55 feet min; Lot 4 – 115 feet min; Lot 5- 85 feet min.

R7-26 Here, the commenter asserts that the project alternatives are weak because they did not rearrange building footprints, move the structures further from the bluff edge, and analyze eighteen-foot building heights. Without providing supporting evidence, the commenter also broadly claims that the alternatives do not meet CEQA requirements, City and state regulations, have an appearance of impropriety, and do not represent the independent judgment of the City of Malibu.

Regarding adequacy of project alternatives, CEQA Guidelines Section 15126.6(a) states that "the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project ... " With the exception of the mandatory No Project Alternative, the alternatives were selected due to their potential to attain basic project objectives and lessen or avoid potentially significant environmental effects resulting from implementation of the proposed project, even though the proposed project would not result in any significant and unavoidable environmental effects. Although no significant and unavoidable impacts were identified, and impacts to visual resources were considered less than significant, the DEIR included a one-story alternative with view simulations to inform the public and decision makers of the relative merits of building one-story homes along with recreational facilities.

In addition to the No Project, Foreseeable Development Alternative, two other alternatives were provided to inform the public and decision makers about the project's relative merits; the Two-Story Homes with Skate Park Only Alternative and the One-Story Homes with Recreational Facilities Alternative. The One-Story Homes with Recreational Facilities Alternative analyzes the impacts of one-story homes compared to the proposed project, while the No Project, Foreseeable Development Alternative analyzes rearranged footprints for eight homes.

The project alternatives were prepared pursuant to CEQA Guidelines and in response to the community's comments requesting a one-story alternative. They were developed in conjunction with City staff and approved by the City. The DEIR was independently

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reviewed by City staff, including the City Attorney. Therefore, the DEIR and project alternatives represent the lead agency's independent judgment pursuant to CEQA Section §15084.

Please also refer to Response to Comment O3-86. Due to comments received during the 45-day public comment period, a reduced project alternative was analyzed in this FEIR. Please see General Response 2.3, the supplemental view simulations report provided as Appendix A, and the revised Chapter 7, *Alternatives to the Proposed Project*, included as Appendix E.

- R7-27 The commenter claims that “many technical issues have been mitigated by stating that they’ll be addressed in subsequent CC&Rs thereby insuring that future off-site hazards will not occur.” Although not clear, it is assumed that the commenter is referring to the HOA maintenance of the OWTS system. The homeowner’s association, through use of CC&Rs, is responsible for maintaining the common infrastructure and landscaping. The HOA established for this residential project will be responsible, through CC&Rs for ensuring that the wastewater system is properly operated and maintained in perpetuity as required by the project’s standard conditions. Under the CC&Rs, each homeowner will be responsible for contributing a predetermined share of the operating and maintenance costs of the OWTS, typically on a monthly basis as a portion of the HOA fees and expenses payable under the CCRs. Under typical CC&Rs for a residential development of this kind, if a homeowner fails to make a required payment, the HOA will be entitled to a lien against the homeowner’s real property that is subject to the CC&Rs. The HOA can collect the defaulted payment by exercising its’ remedies with respect to the lien. This arrangement and the rights of the HOA are sufficient to protect against the possibility of a homeowner defaulting in its’ payments for OWTS maintenance as required by the CC&Rs.

The commenter is also referred to General Response 2.4, Slope Stability and Subsurface Water.

- R7-28 The comment asserts that the site development/grading plans for these lots currently indicate that grading (i.e. The construction of engineered fill-slopes) is planned to the south of the established geotechnical setback line.

Leighton’s establishment of the 1.5 factor of safety line (i.e. Geotechnical setback line) did consider the proposed grades, not the existing grades, and therefore grading beyond this setback line conforms to the City of Malibu’s geotechnical requirements. See also Leighton and Associate’s Geotechnical Responses, 2013.

- R7-29 This comment reiterates the commenter’s opinion that DEIR does not reflect the City’s independent judgment regarding visual impacts and setbacks. Please refer to Response to Comments R7-2, R7-8, R7-24 to R7-28, and 2.4, *Slope Stability and Subsurface Water*.

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R7-30 The commenter wants the landscape irrigation and lubrication for landslides to be addressed as a separate item. Hydrology and Water Quality were addressed separately in DEIR Section 5.8. Please refer to General Response 2.4, *Slope Stability and Subsurface Water*.

R7-31 Please refer to General Response 2.4, *Slope Stability Slope Stability and Subsurface Water*.

R7-32 Please refer to General Response 2.4, *Slope Stability Slope Stability and Subsurface Water*.

R7-33 DEIR Section 5.5, *Geology and Soils* addresses the project's impacts related to geology, grading and site stability, including impacts to surrounding properties. The DEIR determined upon substantial evidence that impacts are less than significant. As stated in Section 5.5 of the DEIR, page 5.5-9, based on the findings summarized in all referenced Leighton reports, the proposed development would be safe from hazards posed by landslides, settlement, or slippage provided that the recommendations in the reports are implemented. Moreover, Leighton determined that the proposed development would not adversely impact the geotechnical stability of property outside of the project site.

The building plans and geotechnical report for all five dwellings were reviewed by the City from a geotechnical perspective. The City determined that the project applicant has demonstrated geotechnical feasibility City geotechnical staff will review complete sets of building (for all structures) and grading plans for each residential lot during the Building Plan Check stage once the projects are submitted to the Building and Safety Department. City geotechnical staff, through the Building Plan Check process would ensure that the proposed project meets the requirements of the Building Code and that the stabilization recommendations for portions of any pools, buildings, or habitable structures within safety setback zone are implemented.

Please refer to General Response 2.4, *Slope Stability*.

R7-34 Here, the commenter wants traffic noise impacts to properties south of the project site to be addressed as a separate item. The DIER's noise analysis, contained in Chapter 5.10, *Noise*, addresses all impacts related to noise impacts that may be audible to nearby receptors. The proposed project includes construction and operation of five new residential units and dedication of Lot 7 for recreational uses. In addition to analyzing the construction and operational noise impacts of five new homes, the noise impact analysis includes a quantitative analysis for development of Lot 7 into a recreational facility (either a baseball field or a skateboard park). Project-generated noise during the operations phase of the project would be from project-generated traffic (mobile-source noise) and onsite operations (stationary-source noise).

Re mobile noise sources, as stated in DEIR Section 5.10, the highest predicted noise levels from traffic on PCH would yield exterior noise levels at the northern façade of the Lot 1 house (which is closest lot to PCH) between 55 and 60 dBA CNEL. The

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worst-case interior noise levels would meet the California Building Code standard of 45 dBA CNEL with standard building construction, and no architectural improvements would be required to achieve the state's interior noise standards.

The nearest offsite residence to the south is approximately 840 feet south of PCH. Therefore, traffic noise from PCH has no potential to impact residences to the south. Likewise, traffic generated by five single-family homes has no potential to impact offsite residences.

Re stationary noise impacts, as discussed in DEIR Section 5.10, if Lot 7 was developed with a baseball field, the nearest noise-sensitive receptors would be the homes planned for Crummer Lots 4 and 5. The distance from the property line of Lot 4 to the home plate of the optional Crummer field would be approximately 240 feet<sup>3</sup> and approximately 320 feet<sup>4</sup> from the home plate of the (existing) eastern Malibu Bluffs field. The (existing) eastern Malibu Bluffs home plate is approximately 160 feet west of the Lot 5 property line,<sup>5</sup> and the optional Crummer field home plate would be a comparable 180 feet to the Lot 5 property line.<sup>6</sup> Distances are referenced to the home plate of each field because the majority of noise would be concentrated in that area of the baseball field. DEIR Table 5.10-7 summarizes the noise levels from the baseball activities, as predicted at the nearest two Crummer development lots. All results assumed a worst-case combination of two Little League games, as well as a conservative barrier attenuation effect of only 5 dB for the "home run" wall at the perimeter of the optional Crummer ball field.

The results, both at the property line and at the nearest developed facilities on these lots, show that the projected noise levels from ball field activities are below the City's exterior noise level limit for nontransportation sources. Thus, baseball field noise would not result in a significant noise impact provided that a solid home run wall (nominally taken to be 6 feet high) is included in the design of the optional Crummer ball field.

Besides the third ball field option, the other reasonably foreseeable recreational facility on Lot 7 would be an optional skate park that would accommodate skateboarders, rollerbladers, and BMX bicyclists. Based on numerous measurements conducted at similar skate park venues for previous, comparable projects, a reasonable estimate for noise emissions would be 64 dBA Leq at a distance of 50 feet.<sup>7</sup> The DEIR concludes that while the intermittent and variable noise from the potential skate park may, at times, be audible to nearby residential receptors (Lots 1-5 on the Crummer site), the daytime noise environment would generally be dominated by traffic noise from the surrounding

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<sup>3</sup> and approximately 275 feet to the western portion of the Lot 4 pool house.

<sup>4</sup> and approximately 375 feet to the western portion of the Lot 4 pool house.

<sup>5</sup> and approximately 420 feet to the Lot 5 guest house.

<sup>6</sup> and approximately 400 feet to the Lot 5 guest house.

<sup>7</sup> It is estimated that noise from the play area would be considerably less than this value, so either the basketball courts or the skate park would be a worst-case source.

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roadways. No activities would take place at the optional skate park at night when traffic levels on PCH would be reduced. Consequently, noise from skate park activities would not have the potential to substantially elevate community noise levels. Also, skate park activities are conservatively projected to be well below City ordinance limits at the nearest habitable areas of the proposed residential development. Therefore, noise generated by the potential skate park facilities would be less than significant at the project site.

The nearest property to the south of the development site would be at least 600 feet away from the southern boundary of Lot 7 and any recreational use (either the baseball field or a skate park). The existing baseball fields are closer to the properties to the south than Lot 7. Properties within 240 feet of the recreational uses would have less than significant impacts. Therefore, assuming the proposed project and Lot 7 are both developed, under the worst case scenario, there would be less than significant noise impacts related to both mobile and stationary noise.

R7-35 See Response to Comment R7-2 and R7-24.

R7-36 Please refer to Response to Comments R7-25, R7-29, and R7-45 through R7-49.

R7-37 Please refer to Response to Comment R7-2 and R7-24, which addresses the visual impacts associated with the closest proposed residence to Malibu Road. See also General Responses 2.3. As discussed, the view simulations were developed in conjunction with the project architect, a professional land surveyor who verified the accuracy of the location and height of the story poles, and their conformance to the exhibit prepared by the architect and approved by the City.

The view simulation analyses are accurate and provide substantial evidence that the project's impacts to visual resources would be less than significant. Line of sight cross section studies would not provide any additional information to the public or decisionmakers.

R7-38 In a letter dated April 6, 2013, the commenters voice their strong objection to the proposed project because they consider the structures on the bluff visual blight. Please refer to Response to Comment R7-2, R7-24, and General Response 2.3. The comments will be delivered to the decisionmakers for their consideration.

R7-39 In a letter dated April 6, 2013, the commenters request the City to require the applicant to move the structures away from the bluff edge to that the site lines along Malibu Road are not impacted. Please refer to Response to Comment R7-2, R7-24, and General Response 2.3.

Segments of Malibu Road afford coastal and mountain views. This is a public view from a public street; however, in the near vicinity of the project, the public views on Malibu

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Road are obstructed by beachfront homes to the south and the natural features north of this street. Only a small portion of one proposed residence would be seen on top of the bluff with the sky as the background. However, there are no views of the ocean, the mountains, or striking views or significant trees or other vegetation, geologic features, or any valued aesthetic unique features from this location. It should be noted that an existing single-family development on Malibu Road is visible from this location. The visual impact to passing motorists would be of short duration. The proposed project would have a less than significant impact on visual resources from this location. The DEIR properly concluded that impacts to visual resources would be less than significant.

The comments will be delivered to the decisionmakers for their consideration.

- R7-40 See Response to Comment R7-38.
- R7-41 The commenters voice their strong objection to the proposed project regarding visual impacts. Please see Response to Comment R7-37 to R7-39.
- R7-42 The commenters voice their strong objection to the proposed project regarding visual impacts. Please see Response to Comment R7-37 to R7-39.
- R7-43 The commenters voice their strong objection to the proposed project regarding visual impacts. Please see Response to Comment R7-37 to R7-39.
- R7-44 This is the cover page of an “Engineering Geotechnical memorandum” submitted by Consulting Engineering Geologists on behalf of the commenter. A response was prepared by the project’s geotechnical consultant, Leighton and approved by the City of Malibu. The response is contained in FEIR Appendix K.
- R7-45 The City and Leighton (2013) do not agree that the geotechnical setback line needs to be moved further northward. While Chapter 10, Section 10.4.D.1 of the Malibu LCP states that the, “Development shall be set back a minimum distance equal to the distance from the bluff edge to the 1.5 factor-of-safety line, plus the distance that the bluff might reasonably be expected to erode over 100 years.”, the City’s Local Coastal Interpretation Number 9 dated March 28, 2005 (contained in City of Malibu Planning Division, 2008) defines a coastal bluff as, “Any cliff, sea cliff, bluff or bluff edge that is directly affected by wave action .....”. We note that the bluff is not directly affected by wave action. It goes on to say, “If there is a road or structures that require, or use, coastal protection, between the “bluff” and the “body of water” then it is not considered a coastal bluff because at that point it is no longer affected by coastal erosion processes related directly to wave action.”. The bluff on the project site is separated from the ocean and direct wave attack by either houses or Malibu Road, each of which incorporate some type of coastal protection devices.

### 3. Response to Comments

Given the preceding, the project's site's southern bluff is not considered a coastal bluff for the purposes of LCP interpretation. Use of the setback that was defined by geotechnical slope stability analyses (Leighton, 2000; 2003; 2007; 2009a, b; 2012a) because it was greater than the coastal erosion setback estimated by Leighton (2008b) is, therefore, appropriate. An addition of 20 feet to the setback assessed through slope stability analyses is not warranted and our geotechnical setback is valid.

R7-46 See Response R7-45

R7-47 See Response R7-45

R7-48 See Response R7-45

R7-49 With respect to grading beyond the setback line, habitable structures at the site will have a factor of safety of at least 1.5 whether that is by virtue of their location with respect to the geotechnical setback line, or whether by the use of piles to achieve sufficient embedment into an area of the subsurface that has a factor of safety of at least 1.5 (see Leighton's response to DEIR Comment O3 Gaines & Stacey, LLP 14, herein.). For the small portions of fill slopes that will extend beyond the setback lines (i.e. extend into areas that have a factor of safety less than 1.5), such areas will be considered non-structural and construction of habitable structures will not be allowed. These slopes are not within landslide areas and, at most, increase existing grades by approximately 5 feet. As such, they will have no bearing on the stability of the site or the south-facing bluff.

The proposed construction with respect to the geotechnical setback line on each lot (Leighton, 2012d-h) has been approved by the City (2012c-g) for the purposes of Coastal Development Permits. Reevaluation of the locations of the proposed slopes with respect to the geotechnical setback lines is not necessary and need not be performed.

R7-50 Given our responses to comments (and all responses contained in herein) we have demonstrated that there are no geologic or geotechnical concerns or code inconsistencies associated with any part of the proposed development. All Leighton's work has been code-conforming, such that the City of Malibu (2012a-g) has provided its approval of the project at the tentative tract stage (City of Malibu, 2012b) and for lot-specific Coastal Development Permits (City of Malibu, 2012c-g).

3. Response to Comments

LETTER R8 – Joan Lavine (14 page [s])

**Ha Ly**

---

**From:** Joan Lavine <23900mrd@gmail.com>  
**Sent:** Monday, May 20, 2013 9:04 AM  
**To:** Ha Ly  
**Cc:** cgeoge@malibucity.org  
**Subject:** Fwd: Crummer site subdivision EIR # 09-001, CDP # 07-144  
**Attachments:** CommentsCrummerSite6-7-12 (4) (3).pdf; WatBdSuppResponsestoJCL3rdRFA4-15-13-1110aRotated.pdf

May 20, 2013, 9:00a PDT  
Dear Ms. Ly:  
I previously sent you my comments regarding the Crummer site subdivision EIR # 09-001, CDP # 07-144. I consider the issue of slope stability, earthquake faults and Malibu Road ingress and egress to be issues of great concern to me for the safety of potential occupants and user of the Crummer site and those using Malibu Road. I am re-sending to you my June 7, 2012, comments to you along with discovery responses I received earlier this year, verifications executed December 18, 2012, and attorney executed on December 20, 2012, from the State of California's State Water Resources Control Board and California Regional Water Quality Control Board, Los Angeles Region/Region 4, with their responses denying there are any exemptions to the Malibu Civic Center on-site wastewater treatment systems. R8-1

Thank you for consideration of my positions and my concerns for the safety of those involved.  
Respectfully,  
Joan Lavine, property owner at 23900 Malibu Road, Malibu, Ca. 90265  
Phone: 213-627-3241  
Mailing address: 9000 Sunset Blvd., Suite 1001, Los Angeles, CA. 90069

----- Forwarded message -----  
**From:** <ADOVE@aol.com>  
**Date:** Thu, May 31, 2012 at 9:18 AM  
**Subject:** Re: Crummer site subdivision EIR # 09-001, CDP # 07-144  
**To:** [HLy@malibucity.org](mailto:HLy@malibucity.org)

Thank you for responding.  
I have to go into Los Angeles for business this morning. Can I phone you later today to coordinate with you? I'll bring a flash drive with me. That would be great.  
Regards,  
JOAN LAVINE in Los Angeles, California, U.S.A.  
Phone: 213-627-3241  
E-Mail: [JCLavine@aol.com](mailto:JCLavine@aol.com), [ADove@aol.com](mailto:ADove@aol.com), or [FoodieJoan@gmail.com](mailto:FoodieJoan@gmail.com)

In a message dated 5/31/2012 8:58:33 A.M. Pacific Daylight Time, [HLy@malibucity.org](mailto:HLy@malibucity.org) writes: R8-2

Hello Joan,

I apologize, I printed out your correspondence and placed it in the file without realizing that you had a specific request to review the files. I have the files at my desk, would you like to come in today? All the geotechnical reports are uploaded on Liberty Net. If you bring a flash drive today, I can upload all the reports so you can take your time in reviewing the reports. We can go over plans today if you like. I have an appointment at 11

1

### 3. Response to Comments

and at 4, lunch is 12:30 – 1:30. We close at 5:30. Any other time slots today will work. Again, I apologize for not responding to your request sooner.

Regards,

Ha

---

**Ha Ly** | Associate Planner | City of Malibu  
23825 Stuart Ranch Road, Malibu CA, 90265  
(310) 456-2489 ext. 250

Connect with the City of Malibu

R8-2  
cont'd

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**From:** [ADOVE@aol.com](mailto:ADOVE@aol.com) [mailto:[ADOVE@aol.com](mailto:ADOVE@aol.com)]  
**Sent:** Thursday, May 31, 2012 8:55 AM  
**To:** Ha Ly  
**Subject:** Fwd: Crummer site subdivision EIR # 09-001, CDP # 07-144

Please respond.

I would like to look at the files sufficiently in advance to be able to consider any responses that may be appropriate.

Thank you.

Regards,  
JOAN LAVINE in Los Angeles, California, U.S.A.  
Phone: 213-627-3241  
E-Mail: [JCLavine@aol.com](mailto:JCLavine@aol.com), [ADove@aol.com](mailto:ADove@aol.com), or [FoodieJoan@gmail.com](mailto:FoodieJoan@gmail.com)

---

**From:** [ADOVE@aol.com](mailto:ADOVE@aol.com)  
**To:** [hly@malibucity.org](mailto:hly@malibucity.org)  
**CC:** [cgeorge@malibucity.org](mailto:cgeorge@malibucity.org)  
**Sent:** 5/21/2012 11:19:07 A.M. Pacific Daylight Time  
**Subj:** Crummer site subdivision EIR # 09-001, CDP # 07-144

3. Response to Comments

5/21/12 11:10a PDT

Ms. Ly,

I own a residential property at 23900 Malibu Road.

I would like to look over the paperwork, applications, permits and plans that you have on file for the Crummer site subdivision EIR # 09-001, CDP # 07-144. I'd like to see any geological, geotechnical or engineering geological studies or reports you have on that property. Perhaps I could meet you or come by sometime next week.

R8-3

My understanding is that main delivery utility lines on Malibu Road are required to be above ground due to slope "creep" of the Malibu Bluffs. Is that correct? Is slope "creep" of the Malibu Bluffs still going on moving to the south, particularly to the south side of the Bluffs on M Rd?

I am concerned about the potential risks of the Crummer site area of the bluff being constructed on over what I understand to be a very shallow fault line.

R8-4

Does the Crummer Bluff area experience liquefaction as a result of earthquakes?

R8-5

I am concerned about whether construction and residential ground saturation with more than naturally occurring fluids could cause catastrophic slope failure onto Malibu Road either as a result of an earthquake or some other geological event or just due to the extra fluids.

R8-6

Thank you.

Regards,  
JOAN LAVINE in Los Angeles, California, U.S.A.  
Phone: 213-627-3241  
E-Mail: JCLavine@aol.com, ADove@aol.com, or FoodieJoan@gmail.com

### 3. Response to Comments

*From the Desk of Joan C. Lavine*

Attorney at Law  
9000 Sunset Blvd., Suite 1001  
Los Angeles, California 90069, U.S.A.  
Office Phones: (213)627-3241; (310)652-2532  
Fax Phone: (310)273-4924  
E-mail address: [JCLavine@aol.com](mailto:JCLavine@aol.com); [ADove@aol.com](mailto:ADove@aol.com)

June 7, 2012

Ms. Ha Ly, Assistant Planning Director, City of Malibu  
Members, City of Malibu Planning Commission  
City of Malibu City Hall  
23825 Stuart Ranch Road  
Malibu, Ca. 90265

Re: Property owner Joan Lavine's comments on Scoping and preparation of Environmental Impact Report on construction of five additional 8600 to 9000 square-foot homes on Malibu Bluffs at Crummer site, 24120/ 24134/ 24174 (and two other street numbers) Pacific Coast Highway, Malibu, Ca. 90265; EIR Report No. 09-001; Coastal Development Permit No. (CDP) 07-144; comment deadline June 11, 2012, 5:30 p.m.

Dear Ms. Ly and Members, City of Malibu Planning Commission:

These are my comments regarding the above described development proposal to the north of my residential property on Malibu Road.

I understand that developers propose to construct five additional 8600 to 9000 square-foot homes on Malibu Bluffs at Crummer site at street addresses starting with 24120 PCH, Malibu, Ca. 90265.

The architect group providing plans, the Landry Group, is the same one involved in a single-family residence remodel next door to my property on Malibu Road that which has been undergoing remodel construction in its third year and still is substantially incomplete.

Story poles are visible from Lavine property affecting the ridgeline view of the Malibu Bluffs. I can see the orange story pole netting from my north side of my property. Photos accompany the e-mailed version of this comment letter.

Geotechnical safety issues over slope stability: I have looked over the geotechnical report accompanying the developer's initial proposal. It shows three fault lines, F1, F2 and F3 running east-west at pages 23-24 of the Earth International

R8-7

R8-8

3. Response to Comments

To: Malibu City Planner Ha Ly      June 7, 2012  
To Members, City of Malibu Planning Com.

Page 2

Report, dated March 7, 2012 (complete report). I remember that a proposed GE or GM facility was cancelled due to these fault lines and potential for catastrophic failure in an earthquake. What I believe to be a continuation of those fault areas runs a few feet from the surface and travels eastward to and under the area at PCH and Las Flores Canyon about four miles to the east of the subject site. Between 10 and 15 years ago, catastrophic slope failure of a Las Flores bluff onto PCH resulted in the collapse of at least two homes on the east side of the La Flores Canyon, even though at least one home had deep caissons designed by a prominent structural engineer and installed down into what was considered solid, unfractured bedrock.

R8-8  
cont'd

Water utilities may not be available: I have read in a local Malibu newspaper that the Los Angeles County Waterworks, District 29, the Malibu area water utility, is turning down new residential water permits and lines due to lack of water supply. How will these proposed 8600-9000 square foot houses, with swimming pools, be supplied with water if none is available from the municipal water district?

R8-9

Traffic gridlock and inadequate ingress and egress on PCH: Traffic congestion appears to be an unresolved chronic crisis on PCH, particularly because Malibu is a one main ingress-egress highway community. Despite chronic traffic impairment on PCH, officials appear to have resisted conducting studies of PCH's traffic flow, volume, timing, and impact on the community. I request that these be required.

R8-10

Delays in construction in which Landry Group is architect: My experience with the Landry Group is that it has participated in a single-family remodel that has failed to be completed in between about four and five years of permit and construction activity. This has created a nuisance, endless construction noise, debris, dirt and dust for several years, with no end in sight. I believe this demonstrated lack of bringing a construction project to a finish demonstrates the need for imposing time limits, providing liquidated damages to cover lost rent and lost use payable to the surrounding residents and property owners for going over those time limits, and bonding or construction completion insurance to make sure the developers can afford what they propose and that the project will be completed timely.

R8-11

Residents and occupants on Malibu Road have experienced continuous major remodeling by numerous neighbors for several years. This endless construction activity adversely affects the ability of owners to rent out their beach front properties that would otherwise be easily rentable during the late spring, summer and early fall months. I request that the city planners take into consideration the likely impairment of use of surrounding residential property by this Crummer site project, along with the several others proposed to take place simultaneously in the Malibu Civic Center.

R8-12

I ask the City of Malibu's planners to consider the incredible over development being proposed with at least six major projects to be under construction

R8-13

6/7/2012 1:30 PM

### 3. Response to Comments

To: Malibu City Planner Ha Ly June 7, 2012  
To Members, City of Malibu Planning Com.

Page 3

simultaneously in the near future for the Malibu Civic Center. Will the Civic Center become a huge impassible, inaccessible, unusable construction zone for several years, and then be just another urban commercial center mired in too much paved-over construction, too little parking and too little attendance to sustain it? Does this comport with our coastal plan for Malibu?

R8-13  
cont'd

Specifically, I ask that the scoping and EIR consider the impact of up to 220 SMCC students and faculty being added to traffic in the Civic Center and on Civic Center Way, along with hundreds of shoppers daily at the proposed Gelson's Market on Civic Center Way, perhaps several hundred people a day added from a hotel at PCH, Pepperdine's construction of a game forum across from the Crummer Site, and proposed mansion-sized homes at PCH and Malibu Canyon. Gridlock on PCH most of the day appears to be a likely outcome. Gridlock is already an unsolved crisis on most of Malibu's 27-mile stretch of PCH. It is not only unpleasant. It may prevent safe evacuation from the coastal area in an emergency, and is responsible for more traffic accidents.

R8-14

Thank you.

Very truly yours,

Joan Lavine  
Property owner, 23900 Malibu Road  
California State Bar No. 048169  
Phone: 213-627-3241

6/7/2012 1:30 PM

3. Response to Comments

1 KAMALA D. HARRIS  
 2 Attorney General of California  
 3 CAROL A. SQUIRE  
 4 Supervising Deputy Attorney General  
 5 State Bar No. 125555  
 6 110 West A Street, Suite 1100  
 7 San Diego, CA 92101  
 8 P.O. Box 85266  
 9 San Diego, CA 92186-5266  
 10 Telephone: (619) 645-2219  
 11 Fax: (619) 645-2581  
 12 E-mail: carol.squire@doj.ca.gov  
 13 Attorneys for Defendants-Respondents  
 14 State Water Resources Control Board and Regional  
 15 Water Quality Control Board, Los Angeles Region

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 LOS ANGELES SUPERIOR COURT  
 11 CENTRAL DISTRICT

13 **JOAN C. LAVINE,**  
 14 Plaintiff and Petitioner,  
 15 v.  
 16 **STATE WATER RESOURCES CONTROL**  
 17 **BOARD, a State of California**  
 18 **Administrative Agency; Doe Defendants 1**  
 19 **through 2000, Inclusive,**  
 20 Defendants and  
 21 Respondents.

Case No. BS128989  
**SUPPLEMENTAL RESPONSES TO**  
**PLAINTIFF'S REQUESTS FOR**  
**ADMISSION, SET THREE,**  
**REGARDING REQUESTS 47, 48, 49 AND**  
**50**  
 Date:  
 Time:  
 Dept: 86  
 Judge: The Honorable Ann I. Jones  
 Trial Date:  
 Action Filed: June 1, 2011

R8-15

22 **PROPOUNDING PARTY: PLAINTIFF AND PETITIONER JOAN C. LAVINE**  
 23 **RESPONDING PARTY: DEFENDANTS AND RESPONDENTS STATE WATER**  
 24 **RESOURCES CONTROL BOARD and REGIONAL**  
 25 **WATER QUALITY CONTROL BOARD, LOS**  
 26 **ANGELES REGION**

26 **SET NUMBER: THREE**

27 ///

28 ///

### 3. Response to Comments

1 **PRELIMINARY STATEMENT**

2 Responding parties have not yet fully completed the investigation of the facts relating to  
3 this case and have not yet fully completed discovery in this action. All of the responses contained  
4 herein are based solely upon information and documents which are presently available to, and  
5 specifically known by Responding Parties, and disclose only those facts, contentions, information,  
6 etc., which presently occur to and/or are known by Responding Parties. It is anticipated that if  
7 further discovery, independent investigation, legal research and analysis are conducted, they may  
8 supply additional facts and lead to additions, changes, and variations from the responses herein.

9 The following responses are given without prejudice to the right to produce evidence or  
10 witnesses, if any, which Responding Parties may later discover. Accordingly, Responding Parties  
11 reserve the right to change any and all responses if and when additional facts are ascertained,  
12 witnesses identified and/or legal research is completed. The responses contained herein are made  
13 in good faith in an attempt to supply as much factual information and as much specification of  
14 legal contention as is presently known and should in no way prejudice Responding Parties in  
15 relation to further discovery and proceedings.

16 **GENERAL OBJECTIONS**

17 Responding parties object to each and every request for admission to the extent it seeks  
18 disclosure of information protected by the attorney-client privilege, the work product doctrine, the  
19 joint defense privilege, the common interest privilege, the official information and deliberative  
20 process privileges, and/or any other applicable privileges or exemptions.

21 Responding parties object to each and every "Definition" in the subject set of Requests for  
22 Admissions in that the specially defined terms are not typed with all letter capitalized whenever  
23 the term appears as required by Code of Civil Procedure section 2033.060, subdivision (e).  
24 Responding parties further object to the Definitions as vague, ambiguous, and unintelligible.  
25 Responding parties object to the Definitions to the extent the Definitions purport to require  
26 Responding Parties to refer to one or more other documents, or portions thereof, as in violation of  
27 Code of Civil Procedure section 2033.060, subdivision (d), which requires Requests for  
28 Admissions to be full and complete in and of themselves.

3. Response to Comments

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**SUPPLEMENTAL RESPONSES TO REQUESTS FOR ADMISSIONS**

**REQUEST FOR ADMISSION NO. 47:**

Do you admit that those properties listed in Attachment (7) hereof are exempted from the On-Site Wastewater Treatment System ban provisions of LARWQCB Resolution No. R4-2009-0007? (Attachment (7) is page 10 of the adopted R4-2009-0007, resolution.)

**SUPPLEMENTAL RESPONSE TO REQUEST FOR ADMISSION NO. 47:**

Objection. This Request for Admission is vague, ambiguous, and unintelligible so as to make a response impossible without speculation as to the meaning of the terms “exempted” and “ban provisions”, and the Request for Admission in its entirety. This Request for Admission is not relevant to the subject matter of this litigation or to the determination of any motion in this action and not reasonably calculated to lead to admissible evidence in that all issues relating to Propounding Party’s First Cause of Action for a writ of traditional mandamus have been adjudicated and a dismissal with prejudice of Propounding Party’s Second Cause of Action for Administrative Mandamus has been entered. Attachment Number 7 appended to the Third Set of Requests for Admissions purports to be is a one page of a multi-page document, is taken out of context, misleading, and is not the proper subject of a request for admission of facts. The document speaks for itself.

Without waiving the above objections, Water Boards respond as follows: deny.

**REQUEST FOR ADMISSION NO. 48:**

Do you admit that those properties listed in Attachment (7) hereof are exempted from the On-Site Wastewater Treatment System ban provisions of LARWQCB Resolution No. R4-2009-0007, because permits for on-site wastewater treatments have been issued? (Attachment (7) is page 10 of the adopted R4-2009-0007, resolution.)

**SUPPLEMENTAL RESPONSE TO REQUEST FOR ADMISSION NO. 48:**

Objection. This Request for Admission is vague, ambiguous, and unintelligible so as to make a response impossible without speculation as to the meaning of the terms “exempted” and “ban provisions”, “permits”, and the Request for Admission in its entirety. This Request for Admission is not relevant to the subject matter of this litigation or to the determination of any

### 3. Response to Comments

1 motion in this action and not reasonably calculated to lead to admissible evidence in that all  
2 issues relating to Propounding Party's First Cause of Action for a writ of traditional mandamus  
3 have been adjudicated and a dismissal with prejudice of Propounding Party's Second Cause of  
4 Action for Administrative Mandamus has been entered. Attachment Number 7 appended to the  
5 Third Set of Requests for Admissions purports to be is a one page of a multi-page document, is  
6 taken out of context, purports to require Responding Party to evaluate this single page against  
7 numerous unknown pages of documents that may or may not exist, is misleading, and is not the  
8 proper subject of a request for admission of facts. The document speaks for itself.

9 Without waiving the above objections, Water Boards respond as follows: deny.

10 **REQUEST FOR ADMISSION NO. 49:**

11 Do you admit that those properties listed in Attachment (7) hereof are exempted from the  
12 On-Site Wastewater Treatment System ban provisions of SWRCB Resolution No. 2010-0045?  
13 (Attachment (7) is page 10 of the adopted R4-2009-0007, resolution.)

14 **SUPPLEMENTAL RESPONSE TO REQUEST FOR ADMISSION NO. 49:**

15 Objection. This Request for Admission is vague, ambiguous, and unintelligible so as to  
16 make a response impossible without speculation as to the meaning of the terms "exempted" and  
17 "ban provisions", and the Request for Admission in its entirety. This Request for Admission is  
18 not relevant to the subject matter of this litigation or to the determination of any motion in this  
19 action and not reasonably calculated to lead to admissible evidence in that all issues relating to  
20 Propounding Party's First Cause of Action for a writ of traditional mandamus have been  
21 adjudicated and a dismissal with prejudice of Propounding Party's Second Cause of Action for  
22 Administrative Mandamus has been entered. Attachment Number 7 appended to the Third Set of  
23 Requests for Admissions purports to be is a one page of a multi-page document, is taken out of  
24 context, misleading, and is not the proper subject of a request for admission of facts.

25 Without waiving the above objections, Water Boards respond as follows: deny.

26 **REQUEST FOR ADMISSION NO. 50:**

27 Do you admit that those properties listed in Attachment (7) hereof are exempted from the  
28 On-Site Wastewater Treatment System ban provisions of SWRCB Resolution No. 2010-0045,

3. Response to Comments

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**VERIFICATION OF SAMUEL UNGER**

I, Samuel Unger, am the Executive Officer for the Regional Water Quality Control Board ("Regional Board"), a Defendant/Respondent in the above-entitled matter, and I am authorized to make this verification for and on behalf of the Regional Board.

I have read the Water Boards' Supplemental Responses to Plaintiff Joan Lavine's Requests for Admission, Set Three, Requests 47, 48, 49, and 50, and am familiar with the contents. The responses were gathered from various sources and are within the knowledge of the Regional Board. No single employee, officer, agent, or official of the Regional Board has personal knowledge of all such matters. Even though I may not have personal knowledge of all the responses, based on information provided to me and upon information and belief, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

This verification was executed this 18 of December, 2012, at Los Angeles, California.

*Samuel Unger*  
\_\_\_\_\_  
Samuel Unger  
Executive Officer  
Regional Water Quality Control Board,  
Los Angeles Region

LA2011600805  
80707530.doc

### 3. Response to Comments

1 because permits for on-site wastewater treatment systems have been issued? (Attachment (7) is  
2 page 10 of the adopted R4-2009-0007, resolution.)

3 **SUPPLEMENTAL RESPONSE TO REQUEST FOR ADMISSION NO. 50:**

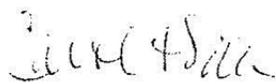
4           Objection. This Request for Admission is vague, ambiguous, and unintelligible so as to  
5 make a response impossible without speculation as to the meaning of the terms "exempted" and  
6 "ban provisions", "permits", and the Request for Admission in its entirety. This Request for  
7 Admission is not relevant to the subject matter of this litigation or to the determination of any  
8 motion in this action and not reasonably calculated to lead to admissible evidence in that all  
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12 Third Set of Requests for Admissions purports to be is a one page of a multi-page document. is  
13 taken out of context, purports to require Responding Party to evaluate this single page against  
14 numerous unknown pages of documents that may or may not exist, is misleading, and is not the  
15 proper subject of a request for admission of facts.

16           Without waiving the above objections, Water Boards respond as follows: deny.

17  
18 Dated: December 20, 2012

Respectfully Submitted,

KAMALA D. HARRIS  
Attorney General of California

21  
22   
23 CAROL A. SQUIRE  
24 Supervising Deputy Attorney General  
Attorneys for Defendants-Respondents  
State Water Resources Control Board and  
Regional Water Quality Control Board,  
Los Angeles Region

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3. Response to Comments

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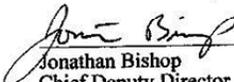
**VERIFICATION OF JONATHAN BISHOP**

I, Jonathan Bishop, am the Chief Deputy Director for the State Water Resources Control Board ("State Board"), a Defendant/Respondent in the above-entitled matter, and I am authorized to make this verification for and on behalf of the State Board.

I have read the Water Boards' Supplemental Responses to Plaintiff Joan Lavine's Requests for Admission, Set Three, Requests 47, 48, 49, and 50, and am familiar with the contents. The responses were gathered from various sources and are within the knowledge of the Regional Board. No single employee, officer, agent, or official of the State Board has personal knowledge of all such matters. Even though I may not have personal knowledge of all the responses, based on information provided to me and upon information and belief, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

This verification was executed this 17 of December, 2012, at Sacramento, California.

  
Jonathan Bishop  
Chief Deputy Director  
State Water Resources Control Board  
Los Angeles Region

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### 3. Response to Comments

**DECLARATION OF SERVICE BY OVERNIGHT COURIER**

Case Name: **JOAN C. LAVINE v. STATE WATER BOARD, et al.**

No.: **BS128989**

I declare:

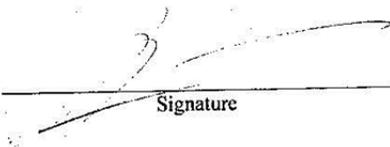
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On December 20, 2012, I served the attached **SUPPLEMENTAL RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION, SET THREE, REGARDING REQUESTS 47, 48, 49 AND 50** by placing a true copy thereof enclosed in a sealed envelope with **FEDEX**, addressed as follows:

Joan C. Lavine  
9000 Sunset Blvd., Suite 1001  
Los Angeles, CA 90069

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 20, 2012, at San Diego, California.

\_\_\_\_\_  
D. Daswani  
Declarant

  
\_\_\_\_\_  
Signature

LA2011606805  
80789802.doc

### 3. Response to Comments

#### **R8. Response to Comments from Joan Levine, dated May 13, 2013.**

R8-1 The commenter expresses concerns over geotechnical safety issues over slope stability

Since the General Motors project was cancelled, Earth Consultants International (2000; 2001a, b; 2002a-c) has assessed the site, including Faults F1, F2 and F3, and demonstrated that active faulting does not exist at the site. As a result of their work, the State of California removed their designation of an Alquist-Priolo Earthquake Fault Zone from the area which included the Crummer site. As a result, Earth Consultants International has concluded that the potential for onsite ground rupture due to the presence of active faulting is low. Impacts remain less than significant.

Please see General Response 2.4 and remaining responses to comments below.

R8-2 This comment is an email between the City and commenter regarding providing the commenter copies of geotechnical reports. No response necessary.

R8-3 The first part of this comment is an email between the City and commenter arranging a meeting to review geotechnical reports. No response necessary.

The second part of this comment asks about slope creep. As discussed in Section 5.5, Geology and Soils of the DEIR, page 5.5-5, the project site includes steep bluffs to the south and east. In their October 29, 2008, Addendum to the Feasibility-Level Grading Plan Review, Leighton determined that the average historic rate of bluff retreat is 0.12 feet per year. To account for future extreme conditions, such as future El Niño storm events, Leighton has assumed a long-term bluff retreat rate of 0.2 feet per year. As concluded in the DEIR, the Feasibility-Level Grading Plan Review and related documents concluded that the proposed project is feasible from a geotechnical standpoint, provided that the geotechnical recommendations of the report are followed and incorporated in the design and construction of the project. The mitigation measures identified above would reduce potential impacts associated with geology and soils to a level that is less than significant. Therefore, no significant unavoidable adverse impacts relating to geology and soils have been identified.

R8-4 Please see General Response 2.4 and Response to Comment Letter R5 and Comment Letter R7.

R8-5 As discussed in Section 5.5, Geology and Soils of the DEIR, page 5.5-1, in accordance with the recommendations of Leighton's geotechnical reports, the proposed project would overexcavate and replace the upper soils as compacted fill. This would ensure that no structures would be placed on soils that could be subject to lateral spreading, subsidence, liquefaction, collapse, or expansion. The DEIR determined that impacts would be less than significant. The Feasibility-Level Grading Plan Review and related documents concluded that the proposed project is feasible from a geotechnical

### 3. Response to Comments

standpoint, provided that the geotechnical recommendations of the report are followed and incorporated in the design and construction of the project. The mitigation measures identified above would reduce potential impacts associated with geology and soils to a level that is less than significant. Therefore, no significant unavoidable adverse impacts relating to geology and soils have been identified.

R8-6 Please see General Response 2.4 2 Slope Stability and Subsurface Water, Response to Comment Letter R5, Responses to Comment Letter R6,

As discussed in Section 5.5, Geology and Soils of the DEIR, impacts related to ground saturation and slope stability are considered less than significant. In summary, during field investigations and reconnaissance, no signs of deep-seated landslide features were observed onsite, only isolated erosion, rilling, and gullies were noted along the lower slopes. Immediately to the south of the site along Malibu Road is the historical Amarillo Beach landslide. This landslide is documented as a complex of rotational landslides affecting the south-facing coastal cliffs and the area underlying Malibu Road and the adjacent beachfront properties. Movement within the Malibu Coast Fault Zone, weathering, erosion, undercutting by wave action, and the presence of groundwater have been described as contributing factors for slope instability for this area. Significant movement of the Amarillo Beach landslide complex would most likely adversely affect the offsite residential structures along Malibu Road, and significant movement of the feature could cause headward movement of the headscarp region of the Amarillo Beach landslide complex, but not on the subject property because the subject property is located north of the landslide.

The State Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone, where “previous occurrence of landslide movement, or local topographic, geological, geotechnical, and subsurface water conditions indicate a potential for permanent ground displacements.” The eastern and southern portions of the project site contain steep downward slopes. The height and steepness of the slopes are such that they may be susceptible to seismically induced slope failure or landsliding.

The 2007 Leighton and Associates, Inc. reports established geotechnical setback zones for structures on the project site in order to avoid slope instability hazards. Similar to the proposed project, the reduced project alternative includes structures located within the structural setback zones. Structures that are planned southerly of the geotechnical setback line are required to use deepen foundations specified by the consulting Geologist recommendations. The City Geologist has conditionally approved the project with the specific recommendations. Based on the findings summarized in all referenced Leighton and Associates, Inc. reports, the proposed development would be safe from hazards posed by landslides, settlement, or slippage provided that the recommendations, including deepen foundations, in the reports are implemented. Moreover, Leighton and

### 3. Response to Comments

Associates, Inc. determined that the proposed development would not adversely impact the geotechnical stability of property outside of the project site. The project will incorporate all recommendations contained in the cited geotechnical reports and all foundation plans will be reviewed by the geotechnical consultant and approved by the City Geologist prior to permit issuance.

R8-7 The commenter is General Response 2.3, the supplemental view simulations report provided as Appendix A, and the revised Chapter 7, Alternatives to the Proposed Project, included as Appendix E.

R8-8 Please see Response to Comment R8-6 above, General Response 2.4, Response to Comment Letter R5, and Comment Letter R7.

R8-9 Adequate water is available. Page 22 of the County Of Los Angeles Department Of Public Works Waterworks District No. 29, Malibu and the Marina del Rey Water System 2010 Urban Water Management Plan states that through year 2035 "...there are no anticipated shortages under any of the multiple dry year scenarios and the District will be able to provide reliable water supplies."

See:

<http://www.water.ca.gov/urbanwatermanagement/2010uwmps/Los%20Angeles%20County%20Water%20District%20%2329/2010%20LACWWD%20UWMP.pdf>.

R8-10 The commenter is concerned with traffic gridlock and the adequacy of ingress and egress on PCH.

Regarding cumulative impacts, as discussed in revised DEIR Section 5.11, Transportation and Traffic, traffic from cumulative (approved and/or pending) developments in the study area was analyzed. These cumulative projects have not yet been constructed, but have been approved or are pending approval through a discretionary action or building permit issuance. Traffic study Tables 5.11-10 and 5.11-11 present the list of cumulative projects in the study area, as well as their estimated trip generation for the weekday and Saturday peak hours, respectively. Both tables show trip generation estimates for the Opening Year 2017 and Future Year 2030 (buildout) conditions, as some of the projects may not be active by 2017 (construction or fully operational), or may just be under construction in 2017. The Future Year 2030 trip generation estimates assume that all projects would be constructed and in operation.

The five single-family homes would not create any significant impacts to the study area intersections. With mitigation measures 11-1 and 11-2, traffic impacts associated with development of recreational uses on Lot 7 would be less than significant.

Regarding adequacy of ingress and egress, the proposed project would use the same access and circulation features that are already in place at the project site, which were

### 3. Response to Comments

designed in conformance with the City of Malibu, Los Angeles County, and Caltrans standards. The project would require a new intersection on Winter Mesa Road south of Pacific Coast Highway; this would be designed in conformance with the City of Malibu's standards. The project would not result in any sharp curves or dangerous intersections. The proposed residential units and recreation facilities are essentially an expansion or intensification of existing uses in the site vicinity, so the proposed uses would be compatible. The proposed project would not, therefore, substantially increase hazards due to a design feature or incompatible uses, and no impacts would occur as a result of the project.

Please see Revised DEIR Section 5.11 and revised traffic impact analysis (FEIR Appendix G and M, respectively)

R8-11 The commenter is concerned that the project's construction schedule could be extended due to delays caused by the project architect which could lead to a nuisance. Based on the reasonable construction schedule and best available data, the DEIR determined that construction impacts related to Air Quality and Noise would be less than significant. See DEIR Sections 5.2, Air Quality and 5.10 Noise. It is speculative and not possible to predict construction delays. It would be speculative to assume that the proposed project would not be completed on time because other construction sites have not been completed on time. No purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences.

The comments are noted and will be forwarded to City decision makers for their consideration.

R8-12 The commenter is concerned that project construction may adversely affect the ability of owners to rent their beachfront properties. The comment does not raise an environmental issue concerning the analysis in the DEIR. The comments are noted and will be forwarded to City decision makers for their consideration.

R8-13 Please see Response to Comment R8-14.

R8-14 Please see Response to Comment R8-14.

3. Response to Comments

LETTER R9 – Henri Lenny (33page [s])



May 13, 2013

Ha Ly  
Associate Planner  
City of Malibu – Planning Department  
23825 Stuart Ranch Road  
Malibu, CA 90265

Re: Crummer Site Project DEIR No. 09-001

Ms. Ly,

I did a peer review of the work done for the Crummer Property’s Proposed Development at the request of my client.

R9-1

I have reviewed the Draft EIR, and the included view simulations, in order to assess any potential view impacts from my client’s property and overall public and environmental aesthetic impacts pursuant to CEQA.

I have prepared view studies of the (3) views taken from the Rancho Malibu site, Fig. 5.1-5, Fig. 5.1-6 & Fig. 5.1-7, as well as included (3) additional views from the Rancho Malibu property.

In my included study of Draft EIR Fig. 5.1-5, we have determined the proposed Crummer project would block approximately 75% of the “blue water views”, within the approximate property lines. This is solely based on the submitted simulation, and doesn’t represent additional blockage as landscaping matures over time.

In my included study of Draft EIR Fig. 5.1-6, we have determined the proposed Crummer project would block approximately 90% of the “blue water views” in this simulation. This Fig. 5.1-6 also represents a narrow field of view, where a wider angle of this perspective, would reflect additional significant blockage to the West and East of this view. (See the included additional view study “New View B”). Fig. 5.1-6 also doesn’t represent additional incurred blockage, as landscaping matures over time.

R9-2

P.O Box 900 Carpinteria California 93014 Cell 805 252 1180

henry@henrylenny.com

### 3. Response to Comments



HENRY LENNY

In my included study of Draft EIR Fig. 5.1-7, we have determined the proposed Crummer project would block approximately 89% of the “blue water views” in this simulation. This Fig. 5.1-7 also represents a narrow field of view, where a wider angle of this perspective, would reflect additional significant blockage to the West and East of this view. (See the included additional view study “New View B”). Fig. 5.1-7 also doesn’t represent additional incurred blockage, as landscaping matures over time.

R9-3

I have included “New View A” as an additional view, which reflects a wider view of the Crummer project from the Rancho Malibu project, as a typical guest may experience the view of the ocean. Story pole silhouettes have been highlighted, but proposed landscaping is not reflected. By comparing the Draft EIR simulations to this view, it could be inferred that the “blue water views” would be significantly reduced.

R9-4

“New View B” is an additional view, which reflects a wider angle view, from a similar location to Draft EIR Fig. 5.1-7. We have copied the “proposed” portions of the EIR simulations and pasted them in the same relationships to the corresponding story poles, revealing an approximate 76% reduction to the “blue water views”, within the property lines.

R9-5

“New View C” is an additional view, which reflects a wider view of the Crummer project from the Rancho Malibu project, as a typical guest may experience the view of the ocean. Story pole silhouettes have been highlighted, but proposed landscaping is not reflected. By comparing the Draft EIR simulations to this view, it could be inferred that the “blue water views” would be significantly reduced.

R9-6

#### DEIR AESTHETICS SECTION

5. Environmental Analysis

5.1 Aesthetics

5.1.1 Environmental Setting

#### CONSERVATION ELEMENT

CON Policy 1.4.1

CON Policy 1.4.2

CON Policy 1.4.3

P.O Box 900 Carpinteria California 93014 Cell 805 252 1180

henry@henrylenny.com

3. Response to Comments



HENRY LENNY

Based on my review of the DIER Aesthetic Section and The City of Malibu General Plan, I find that the Crummer proposal is inconsistent and non-compliant with the policies and guidelines prescribed therein. | R9-7

A. The Panoramic “Blue water views” are interrupted and blocked from the surrounding properties to the north and east. | R9-8

B. The preservation and the integration of the proposed structures onto the existing landscape and topography of the Crummer site, are inconsistent with the DIER Aesthetic section. | R9-9

C. The proposed design of the structures, the Scale, Height and Massing are inconsistent with the natural landforms of the site and the preservation of view corridors from numerous adjacent sites surrounding the Crummer site. | R9-10

D. Viewsheds of the ocean from adjacent properties to the north, south and east are inconsistent with The City of Malibu General Plan. | R9-11

I find that the “MASSING” of the two story portion of the proposed residences, are the principle cause of the adverse impacts stated above. | R9-12

My client is proposing an Ocean view Resort Hotel. These impacts and blockage of the “blue water views”, will significantly compromise the eventual success of my client’s project. The Crummer project is also inconsistent with City and State rules and regulations associated with aesthetic impacts to the environment. | R9-13

Henry Lenny Architect

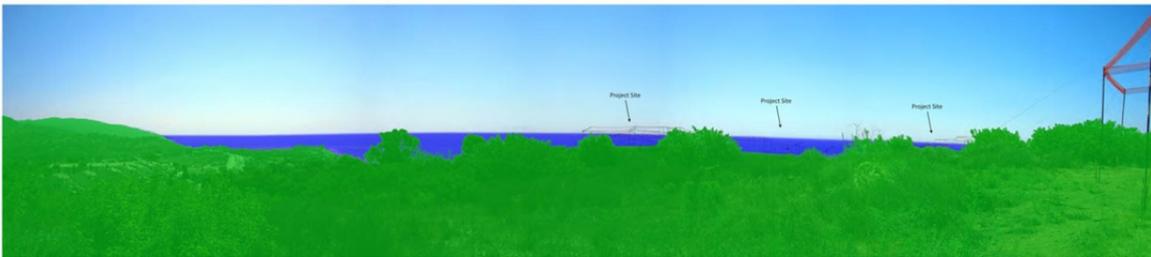
P.O Box 900 Carpinteria California 93014 Cell 805 252 1180

henry@henrylenny.com

### 3. Response to Comments



Draft EIR Fig. 5.1-5 Existing

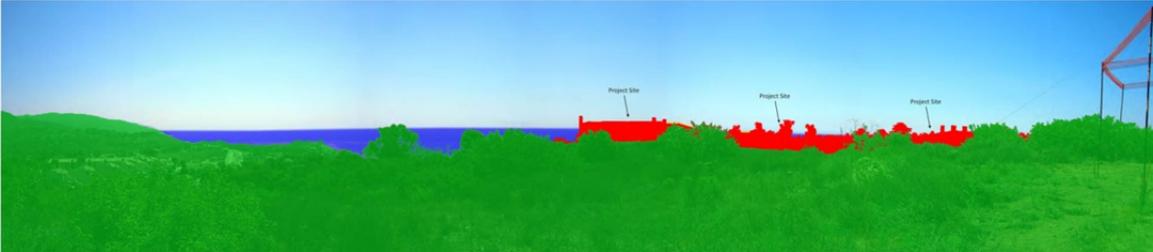


Draft EIR Fig. 5.1-5 Water Highlighted

3. Response to Comments



Draft EIR Fig. 5.1-5 Story Poles Highlighted

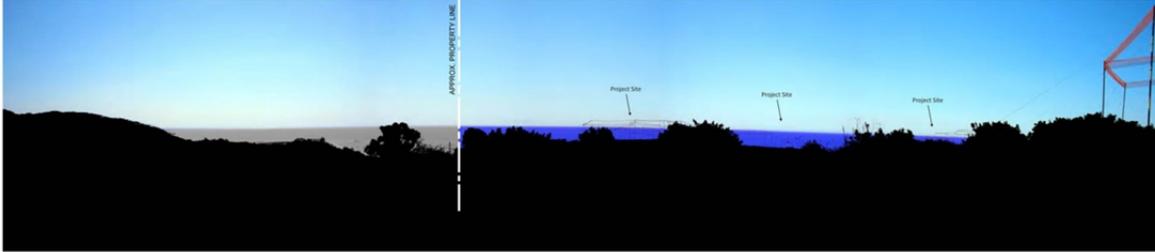


Draft EIR Fig. 5.1-5 Proposed Highlighted

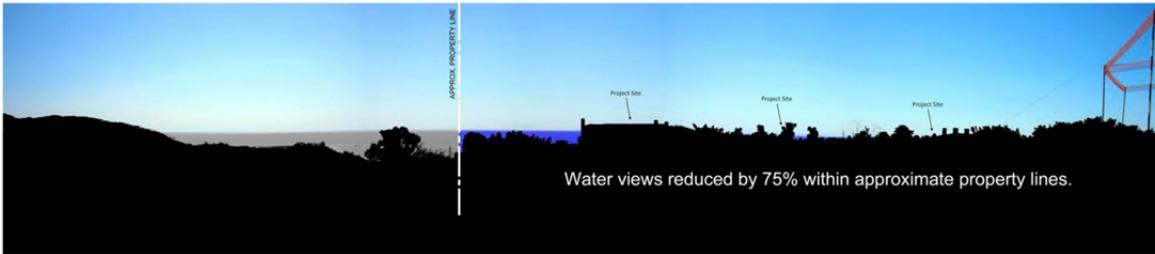


Draft EIR Fig. 5.1-5

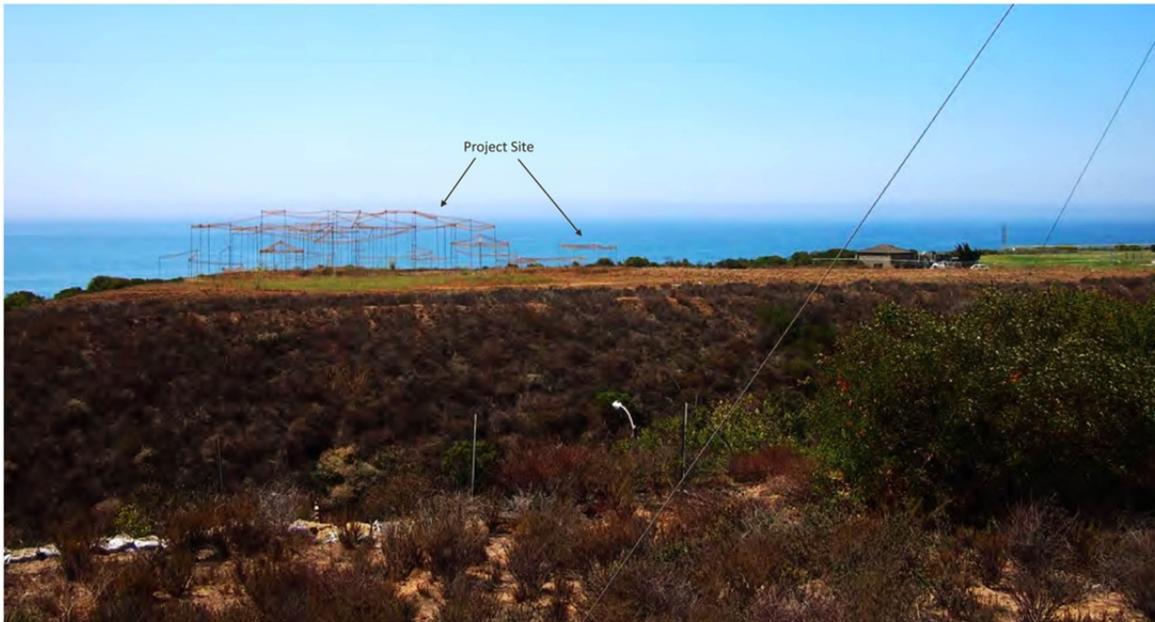
### 3. Response to Comments



Draft EIR Fig. 5.1-5 Water Existing

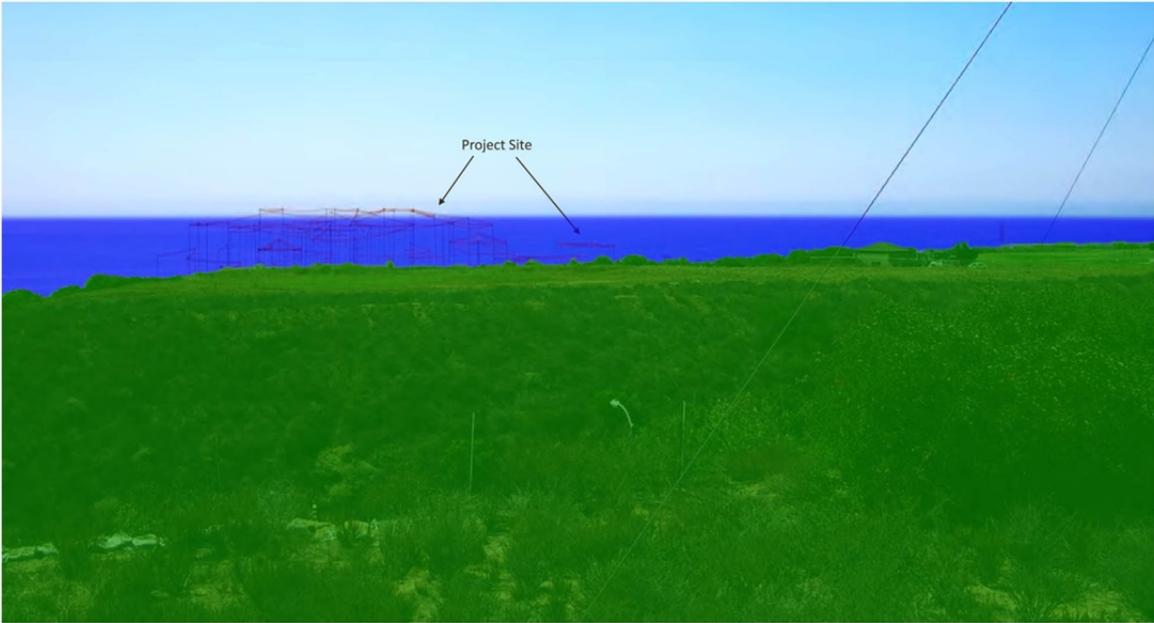


Draft EIR Fig. 5.1-5 Water Proposed

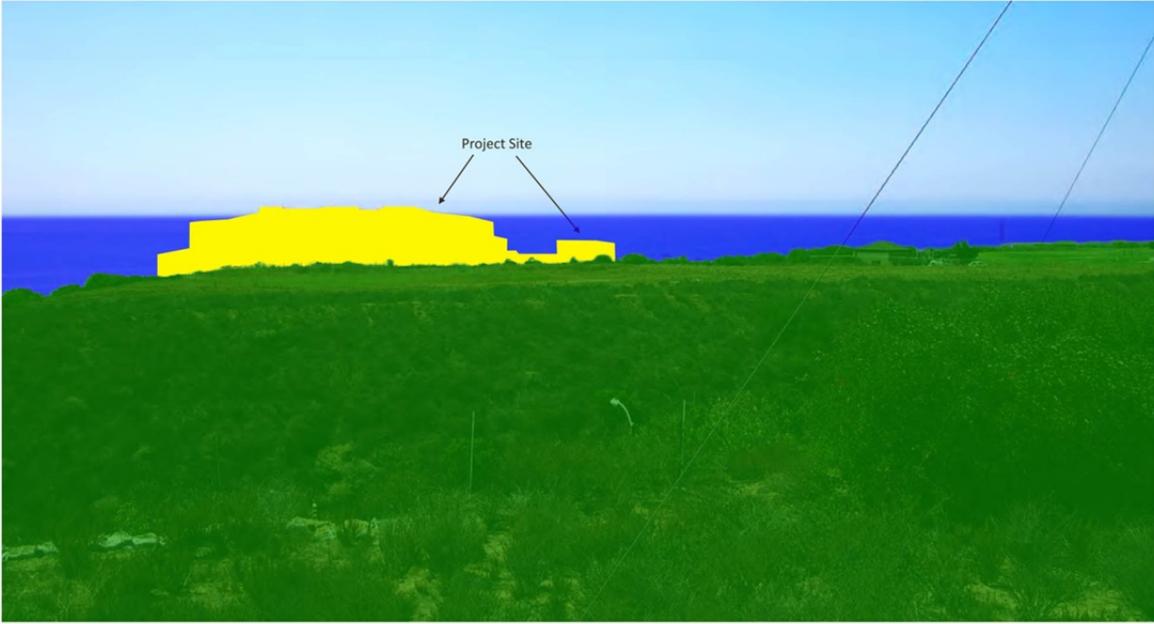


Draft EIR Fig. 5.1-6 Existing

### 3. Response to Comments

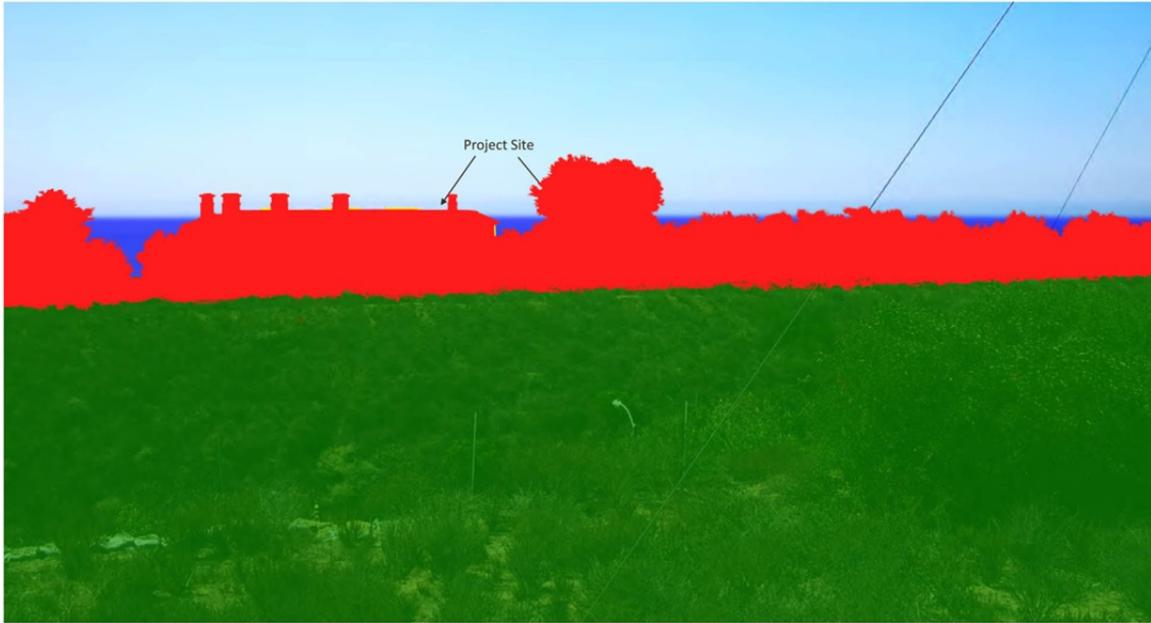


Draft EIR Fig. 5.1-6 Water Highlighted



Draft EIR Fig. 5.1-6 Story Poles Highlighted

### 3. Response to Comments



Draft EIR Fig. 5.1-6 Proposed Highlighted



Draft EIR Fig. 5.1-6

3. Response to Comments

**DECLARATION OF SERVICE BY OVERNIGHT COURIER**

Case Name: **JOAN C. LAVINE v. STATE WATER BOARD, et al.**

No.: **BS128989**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On December 20, 2012, I served the attached **SUPPLEMENTAL RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION, SET THREE, REGARDING REQUESTS 47, 48, 49 AND 50** by placing a true copy thereof enclosed in a sealed envelope with **FEDEX**, addressed as follows:

Joan C. Lavine  
9000 Sunset Blvd., Suite 1001  
Los Angeles, CA 90069

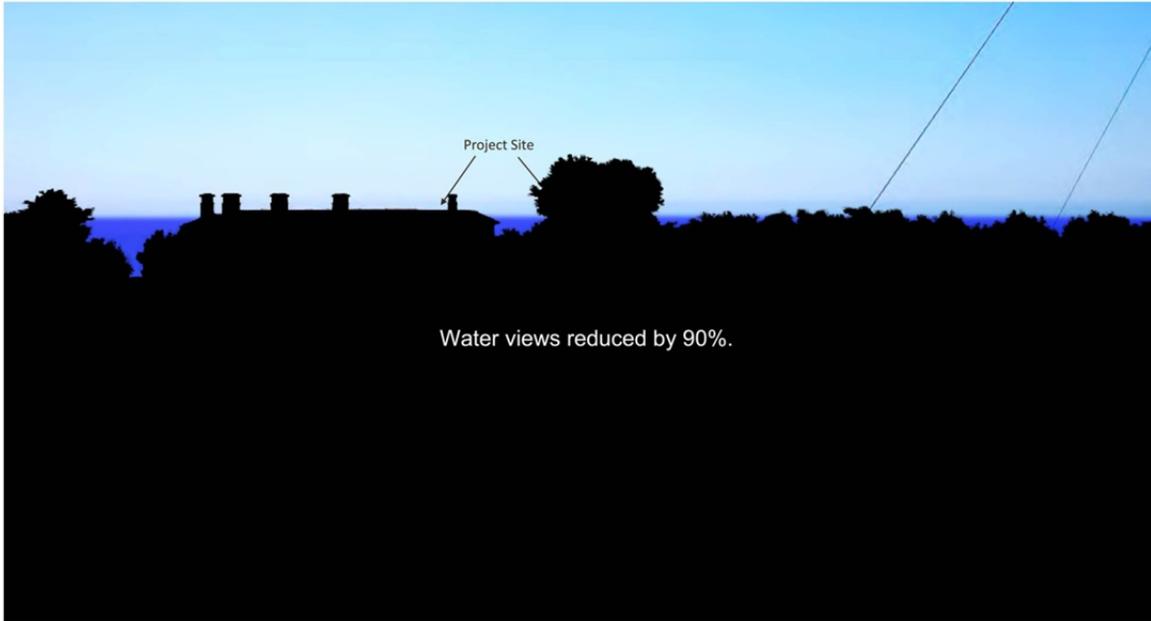
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 20, 2012, at San Diego, California.

\_\_\_\_\_  
D. Daswani  
Declarant

\_\_\_\_\_  
  
Signature

LA2011606805  
80789802.doc

### 3. Response to Comments

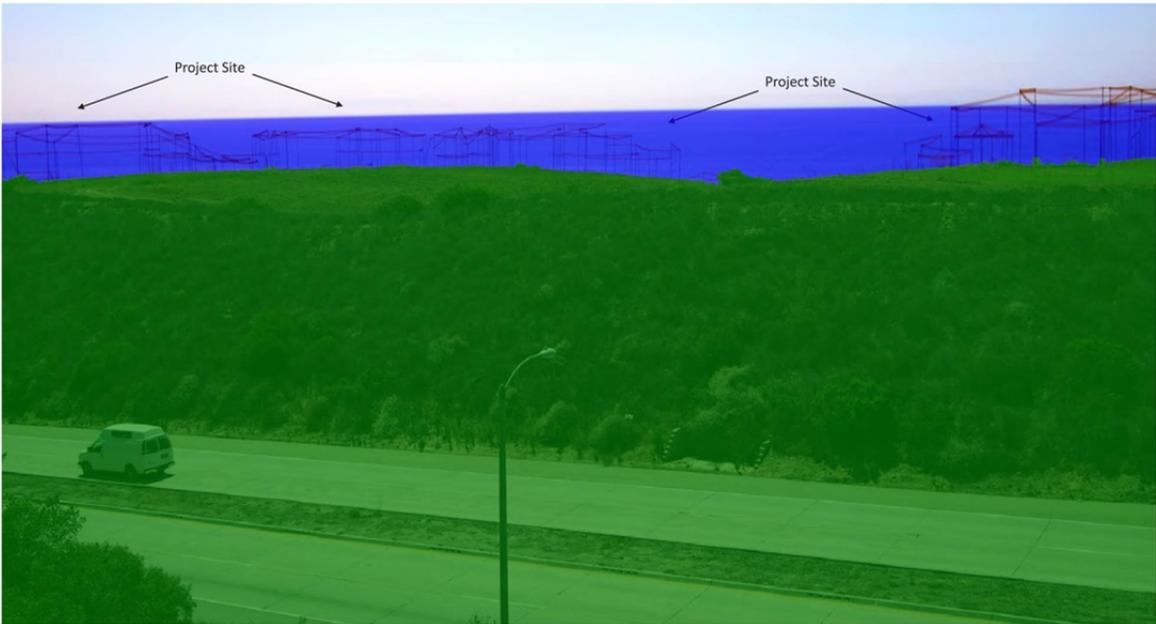


Draft EIR Fig. 5.1-6 Water Proposed

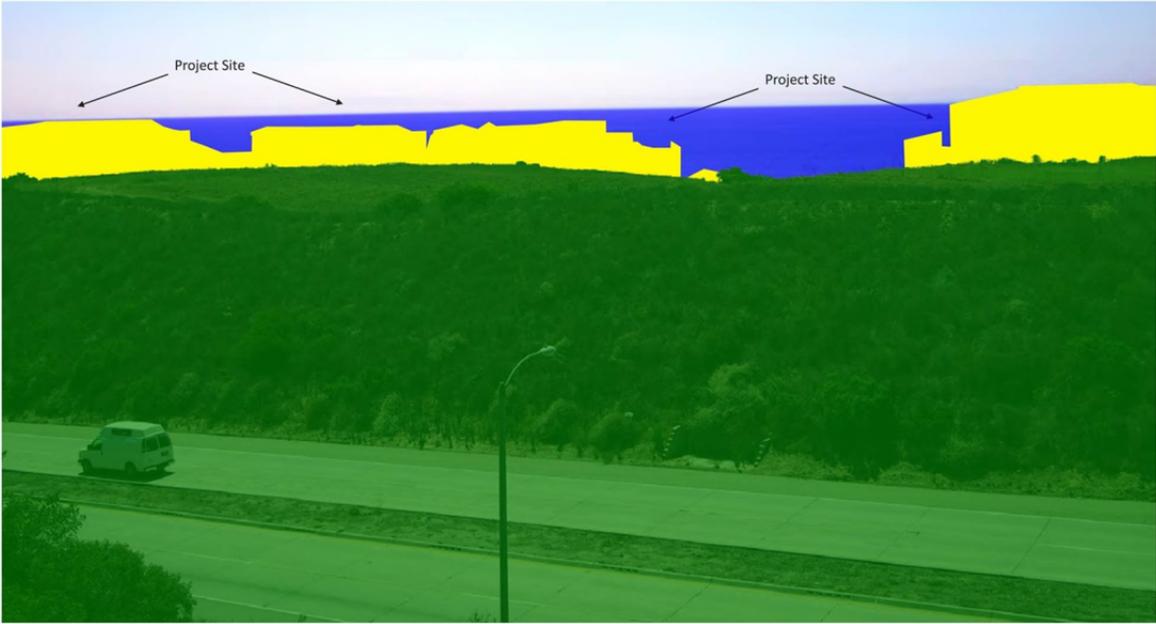


Draft EIR Fig. 5.1-7 Existing

3. Response to Comments



Draft EIR Fig. 5.1-7 Water Highlighted



Draft EIR Fig. 5.1-7 Story Poles Highlighted

### 3. Response to Comments

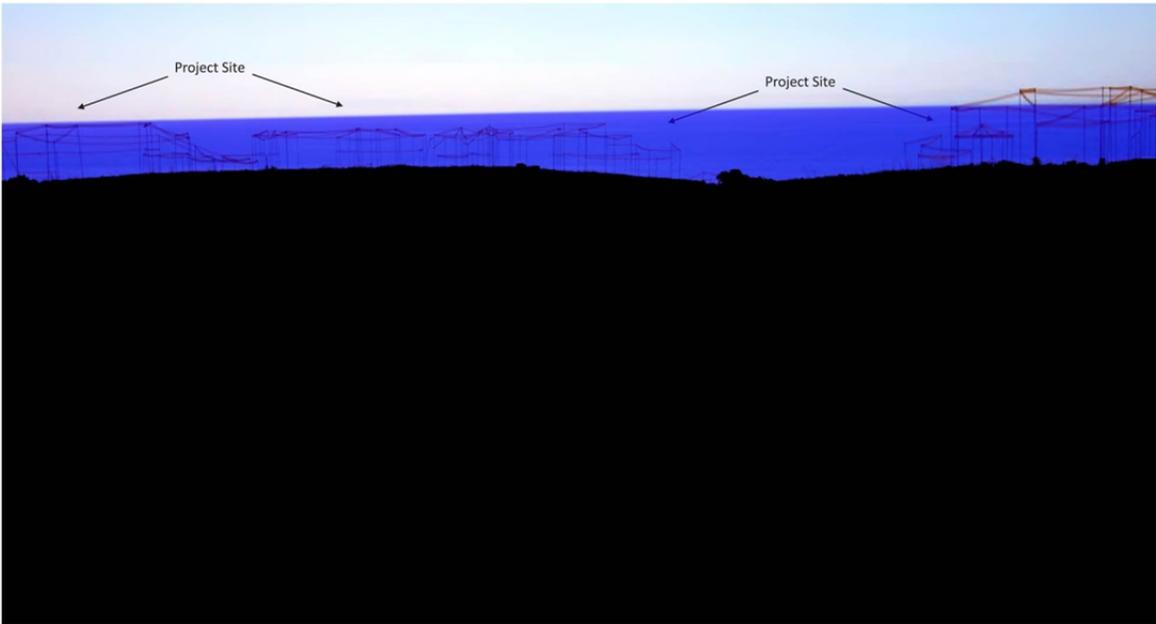


Draft EIR Fig. 5.1-7 Proposed Highlighted

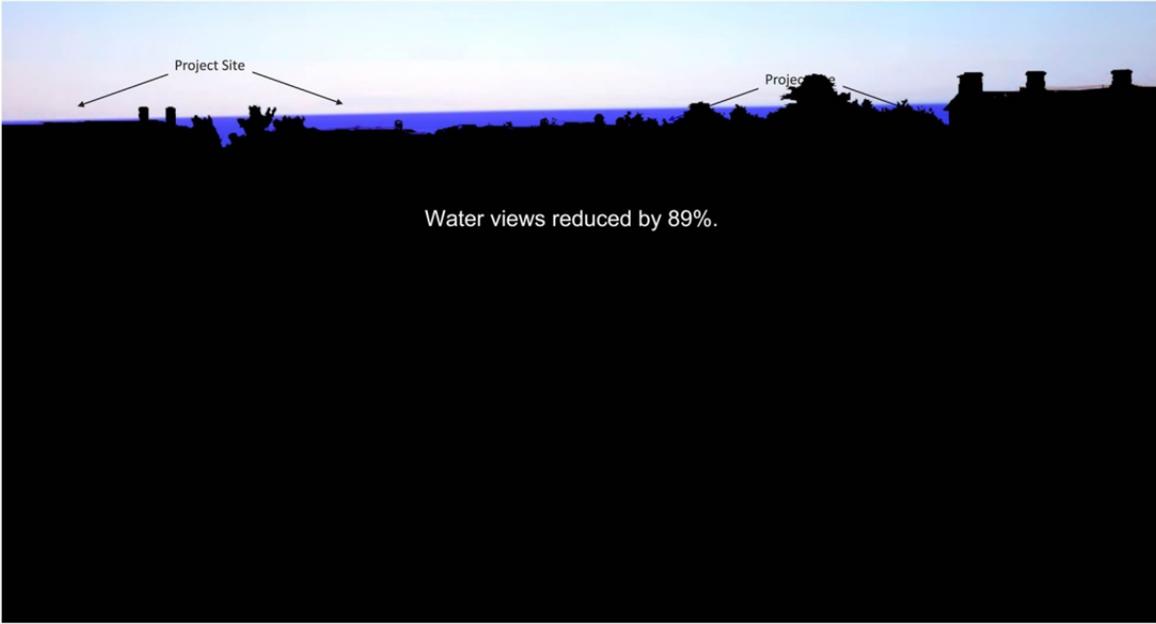


Draft EIR Fig. 5.1-7

### 3. Response to Comments

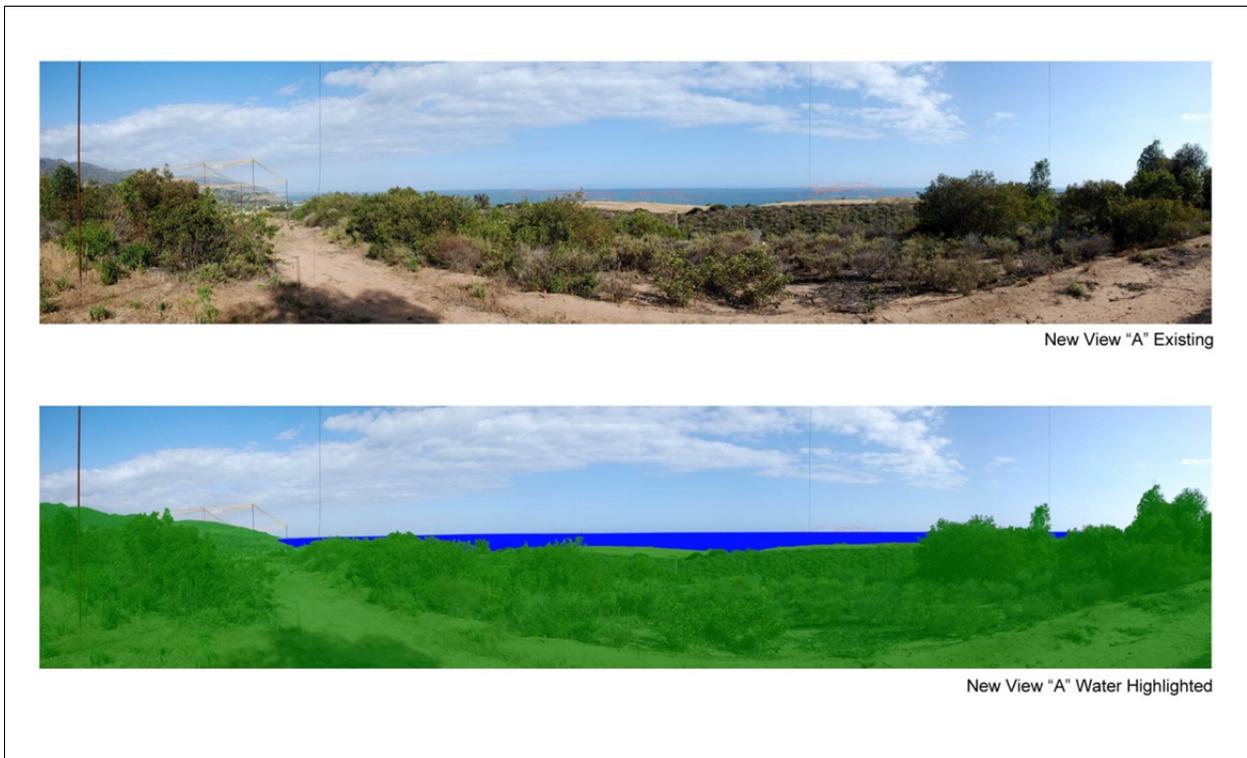


Draft EIR Fig. Water Existing

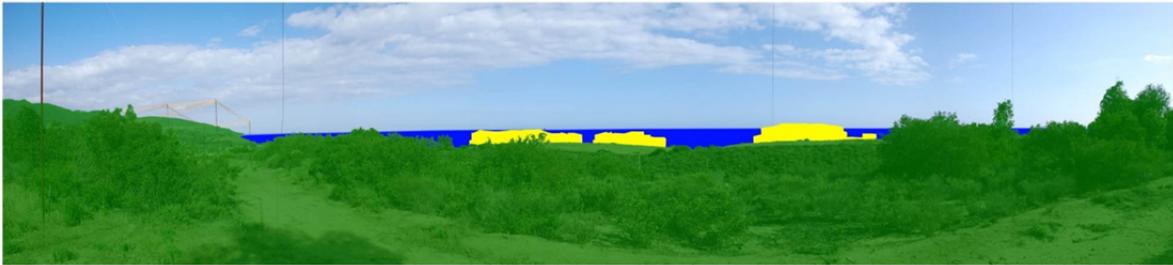


Draft EIR Fig. Water Proposed

### 3. Response to Comments



### 3. Response to Comments



New View "A" Story Poles Highlighted



New View "A" Water Existing



Water views reduced by 45%, based only on story pole silhouettes.

\*Landscaping represented in proposed photo simulations would significantly increase the view reduction.

New View "A" Water Proposed (Story Silhouettes Shown Only)

### 3. Response to Comments



New View "B" Existing



New View "B" Water Highlighted



New View "B" Story Poles Highlighted

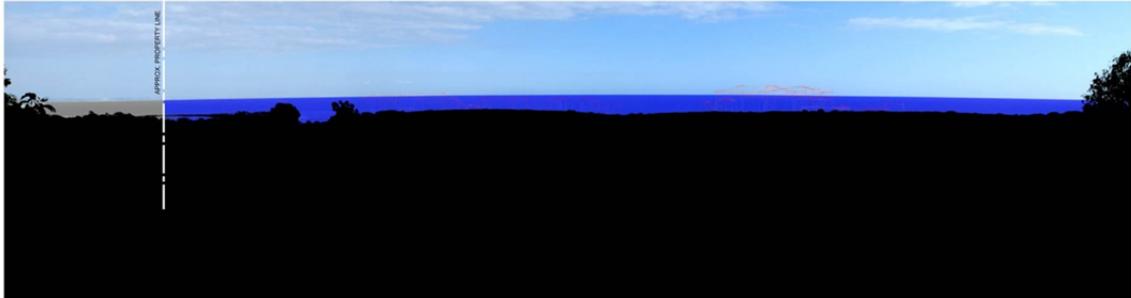


New View "B" Proposed Highlighted (Based on Draft EIR Simulations)

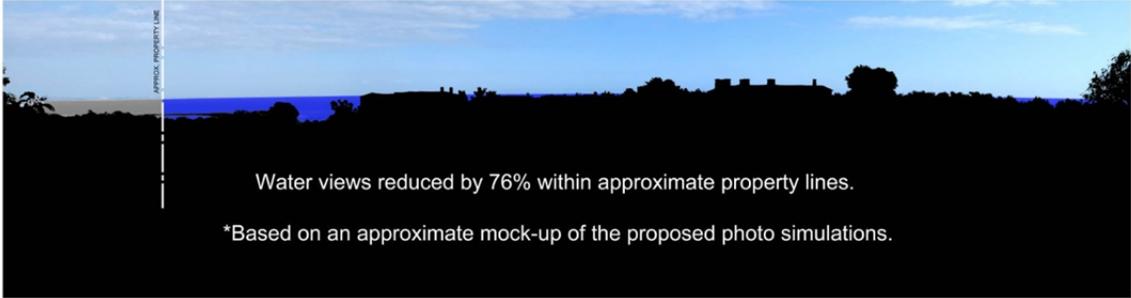
### 3. Response to Comments



New View "B" Proposed (Based on Draft EIR Simulations)



New View "B" Water Existing

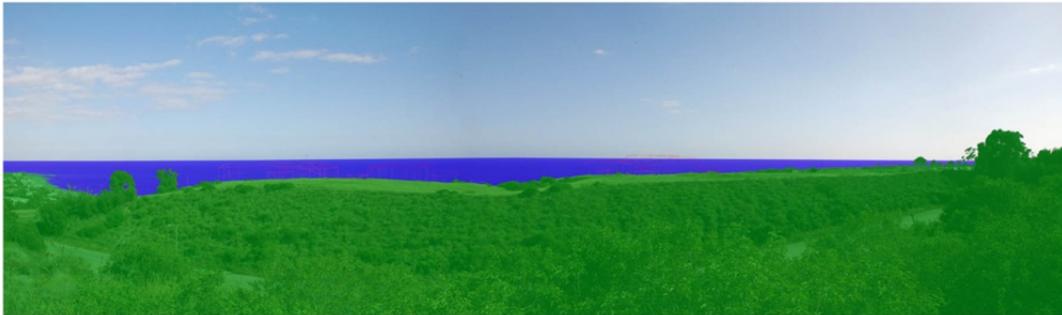


New View "B" Water Proposed (Based on Draft EIR Simulations)

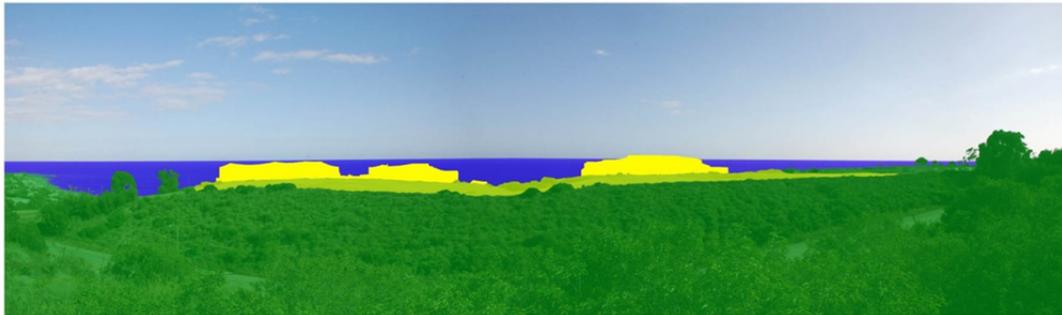
### 3. Response to Comments



New View "C" Existing



New View "C" Water Highlighted



New View "C" Story Poles Highlighted

### 3. Response to Comments



New View "C" Water Existing



Water views reduced by 33%, based only on story pole silhouettes.

\*Landscaping represented in proposed photo simulations would significantly increase the view reduction.

New View "C" Water Proposed (Story Sihouettes Shown Only)

### 3. Response to Comments

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### 3. Response to Comments

#### **R9. Response to Comments from Henri Lenny, dated May 13, 2013.**

Responses are based in part on the following technical report(s) prepared in response to comments:

- S.A. Johnson Architectural Simulation. 2013, September. Malibu Coast Estates: Visual Simulations Supplemental Report. GLA. 2013, September. Responses to Comments

Complete copies of these studies are included in Appendix A to this FEIR.

R9-1 to R9-12

On behalf of Green Acres, LLC, Henry Lenny submitted a letter report dated May 13, 2013 regarding visual impacts to a site owned by Green Acres, LLC (the “Lenny Report”). Green Acres, LLC has proposed to develop a hotel known as the proposed Rancho Malibu Hotel project, on its site, which located north of the project site across Pacific Coast Highway (the “Rancho Malibu Hotel”).

The Lenny Report stated that it was a “peer review of the work done for the Crummer Property’s Proposed Development at the request of my client” Green Acres, LLC. The Lenny Report concludes that “Crummer proposal is inconsistent and non-compliant with the policies and guidelines prescribed therein.”

In response, S.A. Johnson Architectural Simulation prepared a revised View Simulation Report (September 30, 2013). The revised view simulation report was peer reviewed by The Planning Center | DC&E.

S.A. Johnson Architectural Simulation prepared the following response:

The Lenny Report includes numerous exhibits, none of which are labeled. The exhibits appear to consist of three visual simulations that are based on the DEIR’s view simulations (Scott A. Johnson, DEIR Appendix E) of the proposed project from Views 1, 2 and 3 in the DEIR (Figures 5.1-5, 5.1-6 and 5.1-7). In addition, the Lenny Report mentions three photographic views, referred “New View A,” “New View B,” and “New View C,” each of which purports to “reflect a wider view of the Crummer project.” None of the photographic exhibits is labeled and it is impossible to determine which photographs are “New View A,” “New View B,” or “New View C.”

With respect to most of the photographic exhibits, the Lenny Report specifies a percentage of the water views that are purportedly reduced by the proposed project. In some cases, the percentage of reduction of the water views is calculated within the proposed project’s property lines even though the view shed extends well beyond the proposed project’s property lines.

### 3. Response to Comments

As a preface to the comments below, it should be noted that the Lenny Report includes no discussion or other description of the methodology used to prepare the report, both with respect to the photographic representations or the calculation of the reduction in the view of the water. Similarly, the Lenny Report does not state his qualifications for or experience in compiling the photographic representations or conducting an analysis of impacts to visual resources.

The Consultant and the project applicant met with Mr. Lenny and representatives of Green Acres, LLC, at the Rancho Malibu Hotel Site on August 14, 2012 in order to take the photographs used to create the visual simulations from the Rancho Malibu Hotel site included in the original DEIR view simulations report and this report. As noted in the original report, during the August 14, 2012 visit to the Rancho Malibu Site, the representative of Rancho Malibu Hotel and Mr. Henry indicated to the Consultant and the Applicant's representative that the primary view from the casitas on the plans filed with the City for the Rancho Malibu Hotel is oriented into the Rancho Malibu Hotel site and east rather than south toward the Project Site (See Rancho Malibu Hotel site plan annexed as Appendix E. The Lenny Report includes a site plan for the Rancho Malibu Hotel that confirms this visual orientation of the Rancho Malibu Hotel project – the views from the proposed hotel building and casitas are uniformly oriented to the east to the sweeping daytime and nighttime views of the coastline, the Santa Monica Mountains, Catalina Island and Santa Monica Bay, rather than directly south across the Project Site to the ocean. Vacant properties do not have primary views. Of the 21 casitas shown on the Rancho Malibu Hotel site plan, only a few appear to have views that could, if the buildings were re-orientated south and if the buildings had already been constructed, be considered a “primary view” into the project site. As noted above, all of the other casitas have views into the center of the Rancho Malibu Hotel site or east to coastline.

At the August 14, 2012 meeting, Rancho Malibu representatives requested that Applicant prepare visual simulations from View locations 2 and 3 with primary views oriented south toward the Project Site because Rancho Malibu's ownership intended to prepare and file new plans changing the view orientation of the casitas to face the direction of the Project Site.

Accordingly, Views 2 and 3 represent to the best of my knowledge the view from the casitas as indicated on August 14, 2012 by the representative acting on behalf of the owner of Rancho Malibu Hotel.

The Lenny Report states that the “New View A” and “New View C” “reflects a wider view of the Crummer project from the Rancho Malibu project, as a typical guest may experience the ocean”. The Lenny Report also concludes that, based on the simulations in the Lenny Report, the proposed project would block a high

### 3. Response to Comments

percentage (ranging from 75 to 90 percent) of the “blue water views” in the simulations. These statements are misleading and inaccurate for the following reasons:

- The site plan of Rancho Malibu Hotel included in the Lenny Report appears to be the same site plan referenced above in which the primary views from all of the proposed buildings at Rancho Malibu Hotel are oriented east to the sweeping daytime and nighttime views of the coastline, the Santa Monica Mountains, Catalina Island and Santa Monica Bay, rather than south toward the Project Site. Therefore, the typical experience is looking east, not toward the Project Site. Thus, based on the Lenny Report and the site plan attached, it appears that the Rancho Malibu Hotel project has not changed the view orientation of the casitas to face the direction of the Project Site.
- The Rancho Malibu Hotel project proposed on the Rancho Malibu site plan consists of a (i) large main building with hotel rooms on the top floor and other hotel services located below and (ii) twenty-one detached buildings referred to as casitas.<sup>4</sup> Five two-story casitas and one one-story casitas are planned along the southern property line of Rancho Malibu Site. Therefore, even if the primary views from the Rancho Malibu Hotel were reoriented from the east to the south only six of the twenty-one casitas would have direct southern views toward the Project Site (the “Southern Casitas”). The views from the other casitas would be blocked by the Southern Casitas.
- It should be noted that the three eastern-most of the Southern Casitas have an approximately 120 degree view of the ocean from east to south before viewing any development on the Project Site and the views from the two Southern Casitas on the western portion of the Rancho Malibu site are oriented toward southwest over Bluffs Park.
- The Lenny Report includes three new visual representations, “New View A,” “New View B,” and “New View C,” which were taken from the three easternmost of the Southern Casitas. In each case, the Lenny Report oriented the photographic view south across the proposed project Site. By referring to the Rancho Malibu Hotel site plan in the Lenny Report (see Revised View Simulation Exhibit E) it is obvious that the Lenny Report could have easily created a visual representation of the proper intended views from these locations to the east, in which case the proposed project would have minimal, if any, effect on those views.
- The views south from the other casitas and the rooms from the main building would be blocked by one, two or three buildings in the Rancho Malibu Hotel project, including the Southern Casitas. This as is inadvertently demonstrated

### 3. Response to Comments

on the western portion of DEIR Figure 5.1.5 where you can see the height of the proposed one-story casita.

- The landscape plan for the Rancho Malibu Hotel project also indicates the plant materials and site walls along the southern portion of the Rancho Malibu Hotel site and these elements of the Rancho Malibu Hotel project would affect the views from that area of the Rancho Malibu Hotel before the proposed project would.
- It should be noted that the landscaping on the proposed project is intended to soften the appearance of the proposed project and to provide privacy for both the residents of the proposed project and the guests of the Rancho Malibu Hotel.

Thus, it is a gross exaggeration and highly misleading to conclude that 75 to 90 percent of the ocean views from Rancho Malibu Hotel are blocked by the proposed project when only a small percentage of the Rancho Malibu Hotel guest room views would be affected by the proposed project and only if the Rancho Malibu project was redesigned to maximize views to the south rather than east.

The Lenny Report analyzes the effect the proposed project on the Rancho Malibu Hotel views as if all of the Hotel views are affected by the proposed project when, in fact, only a small percentage of the overall views are affected.

R9-13 The Lenny Report states that based on his review of the DEIR Aesthetics Section and the City of Malibu's General Plan, Mr. Lenny finds that the Crummer proposal "is inconsistent and non-compliant with the policies and guidelines prescribed therein." However, the Lenny Report contains no discussion or analysis of the City's policies, guidelines or regulations involving visual resources. This type of sweeping generalization, without any specific analysis of the City's policies, like the purported view blockage analysis, is highly misleading.

Finally, it should be noted that according to S.A. Johnson Report, the Lenny Report, even with its misleading and inaccurate discussion, never concludes that the proposed project would have a significant impact on the visual resources from the proposed Rancho Malibu Hotel project.

See also General Response 2.3, *Aesthetics*. The revised simulation report provides substantial evidence supporting the DEIR's conclusion that impacts to aesthetic resources are less than significant.

### 3. Response to Comments

LETTER R10 – Carol Randall (1 page [s])

Planning Commission

May 6, 2013

Crummer – DEIR comments  
*Carol Randall*

**Because of its proximity to Bluffs Park, the Crummer site development has been of interest to many in the community for years. I have zeroed in on the traffic impact as stated in the Draft EIR and am pleased to see that the consultant has used up-to-date numbers and has also taken into consideration all of the proposed future development in the area. It seems the greatest traffic impact would come from the weekend use of an additional, badly needed ballfield. According to the EIR this impact could be mitigated by restrictions being put on the number of games per day, the time interval between games being extended and the restriping of the through-lane of southbound Malibu Canyon Road to allow left and right-hand turns as well as the through lane. I was pleased to see that the City's Public Works Department feels that it would not be necessary to "tweek" the traffic lights and involve CalTrans as proposed by the consultant. Obviously this would eliminate a lot of time-consuming red tape.**

R10-1

**I am not a traffic engineer, but these fixes seem relatively simple and would allow for a much needed additional field and parking at Bluffs.**

### 3. Response to Comments

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### 3. Response to Comments

**R10. Response to Comments from Carol Randall, dated May 6, 2013.**

R10-1 The commenter is pleased with the results of the traffic study, the mitigation measures avoiding involvement with Caltrans and says the traffic fix would allow for more parking and field at Bluffs Park.

Comment noted and will be forwarded to decisionmakers for their approval. This page intentionally left blank.

### 3. Response to Comments

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3. Response to Comments

LETTER R11 – Jo Ruggles (1 page [s])

**Ha Ly**

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**From:** Joanna <jsrco@earthlink.net>  
**Sent:** Monday, May 20, 2013 11:36 PM  
**To:** Ha Ly  
**Cc:** Joyce Parker-Bozylinski  
**Subject:** Crummer Draft EIR - Cultural Resource Comments  
**Importance:** High

Hello Ha,

Tried to get this to you earlier today, but my email keeps going down...maybe due to the tornado activity in the midwest.

In any event, despite the fact that no cultural resources have been discovered on the Crummer property, I would strongly urge the city to REQUIRE ground-penetrating radar or sonar of this site as part of a Phase I initial evaluation and initial grading plans are finalized, just to make sure there are NO burials found on the property. The City of Malibu cannot afford another "black eye" for allowing developers to unearth ancient burials, when they could possibly be avoided by USING MODERN TECHNOLOGY.

R11-1

Please include this comment in the Draft EIR, because this site is very close to the Hotel site across the stree, which did contain burial sites, and disturbance was avoided by placing the parking lot in that location.

Thank you,

Jo Ruggles  
Former Chair, Malibu Planning Commission  
Former Member, General Plan Task Force

### 3. Response to Comments

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### 3. Response to Comments

#### **R11. Response to Comments from Jo Ruggles, dated May 20, 2013.**

R11-1 The commenter urges the use of ground penetrating radar or sonar to ensure that there are no burials found on the property.

An Updated Phase 1 Archaeological Study and Cultural Resource Sensitivity Testing has been conducted for a portion of a 24-Acre parcel located at 24200 Pacific Coast Highway (APN No's 4458-018-002, 4458-018-018 and, 4458-018-019) City of Malibu, Los Angeles County, California, HEART, was completed in June 2013.

An updated records search was performed by RPA certified archaeologist, Wayne Bonner on June 10, 2013 at the SCCIC which indicated that no previously recorded prehistoric or historic archaeological sites lie within the project site. In addition, nine prehistoric archaeological sites are recorded within a ½-mile radius of the project site: CA-LAn-264 (The village of Humaliwu lies to the east of the Project Site at the Adamson House and Malibu Lagoon State Historic Park), CA-LAn-266, CA-LAn-267, CA-LAn-386, CA-LAn-404, CA-LAn-1417, CA-LAn-1715, CA-LAn-1991, CA-LAn-2247.

Additional physical testing at the project area was conducted to ensure that buried cultural resource remains were not inadvertently missed during the field surveys. Although disked for many years, there was still a slight potential for buried resources to exist just under the plow zone (15 cm – 20 cm). Between June 16, 2013 to June 19, 2013, 76 soil augers were excavated, representing 76-person hours of field labor. The augers were excavated within a pre-placed grid to completely cover the area of proposed project area (nine acres of the proposed 24-acre parcel). All soil was mechanically excavated and screened through 1/8" wire-screened mesh. Notes, photographs and GPS points were taken in the field to confirm coverage. Each auger was excavated to a minimum depth of 40 cm or until a noticeable soil change occurred, so as to identify the disked soil from the subsoil. The completion of this testing phase revealed no evidence of surface or buried cultural resource remains inclusive of artifacts, shellfish, fauna, features or human remains. Based on the results of this test phase, no additional archaeological work was recommended within the boundaries of the proposed project. As stated in Section 5.4 of the DEIR, with mitigation, potential impacts associated with cultural resources would be reduced to a level that is less than significant. No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

### 3. Response to Comments

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3. Response to Comments

LETTER R12 – Jo Ruggles (6 page [s])

**Ha Ly**

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**From:** Joanna <jsrco@earthlink.net>  
**Sent:** Monday, May 20, 2013 4:28 PM  
**To:** hla@malibucity.org  
**Cc:** Joyce Parker-Bozylinski  
**Subject:** CRUMMER DRAFT EIR - Comments  
**Attachments:** hannon-geotechnical.pdf; warshall-landslide-map.pdf

**Importance:** High

Hello Ha,

Please include these comments in the Draft EIR on the Crummer Project property.

Attached are the Warshall Landslide map of the Crummer property and the Hannon Geotechnical Hazards map of the Crummer property.

R12-1

I was a member of the Malibu General Plan Task Force when the attached studies were prepared. These were used in drafting the Land Use Element of the General Plan and selecting the appropriate Land Use for each parcel in the City of Malibu. As you can see from the attached maps of the Crummer parcel, the entire Bluffs Park area was deemed TOO HAZARDOUS for any Land Use designation other than Open Space, because the slopes of Bluffs Park were shown to be all old LANDSLIDE, and the area contained traces of both the Puerco Canyon Fault and perhaps the Malibu Coast Fault, as well. Consequently, the entire Bluffs Parks area was designated Open Space in the Malibu General Plan adopted in 1995.

R12-2

How a portion of Bluffs Park was "rezoned" to Single Family Residential is hard to imagine, as the geological hazards of that area are too dangerous for human habitation and would pose a severe threat to potential future "residents."

R12-3

I am, therefore, adamantly opposed to ANY residential use of the Crummer property.

R12-4

Sincerely,

Jo Ruggles  
Former Chair, Malibu Planning Commission  
Former member of the Malibu General Plan Task Force.

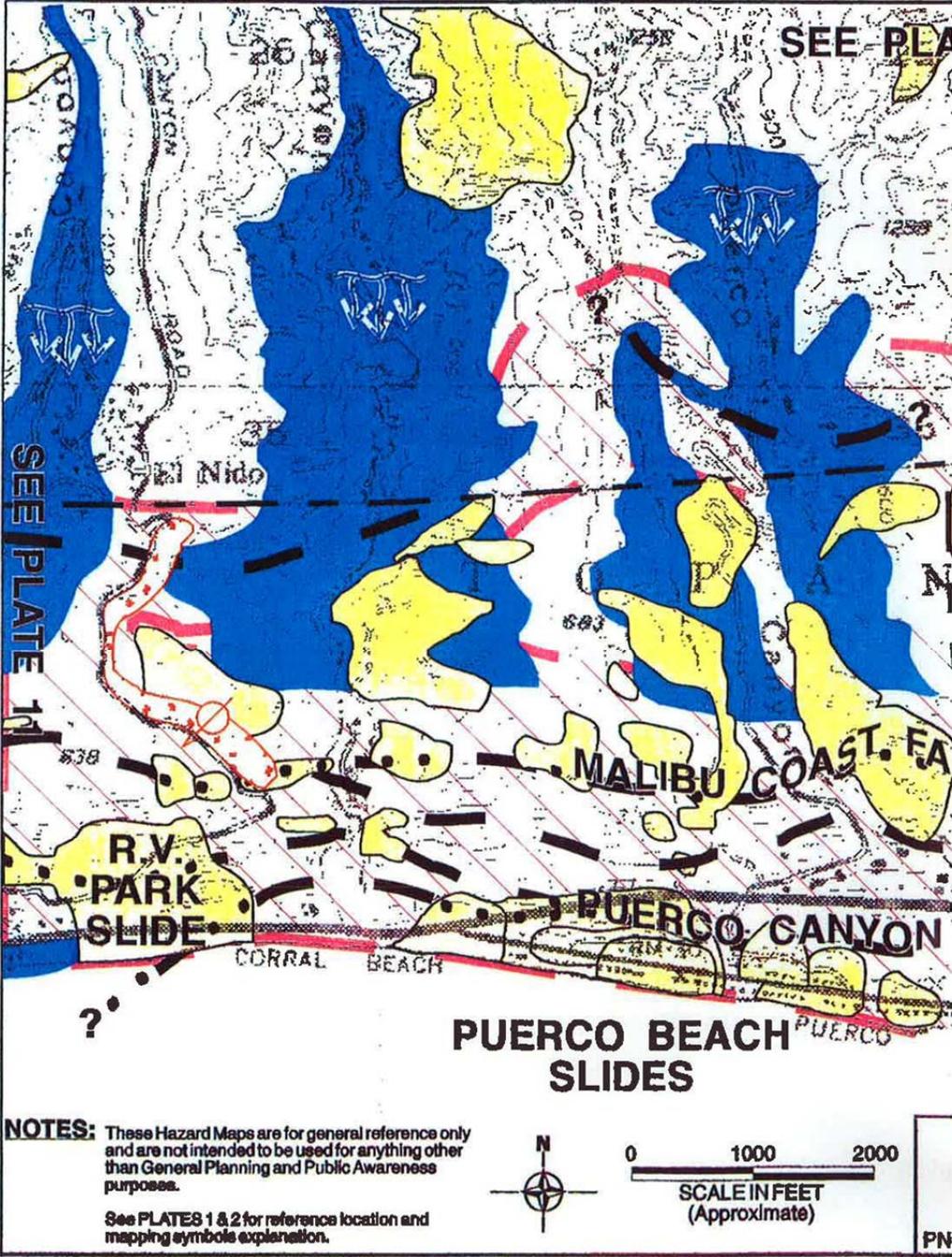
3. Response to Comments

| EXPLANATION                                                | Geologic Hazards Map Symbols | Visual Description | Textual Description                                                                                                                                                                                                                                                                                            |
|------------------------------------------------------------|------------------------------|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Geologic Hazards</b><br><b>SURFACE FAULTING HAZARDS</b> |                              |                    | Zone in pink may possess surface rupture hazard due to fault splays of Malibu Coast Fault Zone. Detailed geologic trenching investigations necessary. Dashed/dotted lines are approximate fault locations, queried where in doubt.                                                                             |
| <b>LANDSLIDE AREAS</b>                                     |                              |                    | Landslide areas include ancient, active, and recent slides and indicate general areas where detailed stability investigations would be necessary before construction.                                                                                                                                          |
| <b>DEBRIS FLOW HAZARDS</b>                                 |                              |                    | Debris flow/ Mudflow Hazard Areas indicate zones that can generate debris or be damaged by mudflows during intense periods of continual rainfall. Generally slope areas underlain by thick accumulations of poorly-drained soils, colluvium-filled swales or hollows, shallow landslides, or all of the above. |
| <b>COASTAL BLUFF SETBACKS</b>                              |                              |                    | Coastal bluff setbacks and slope stability analysis are critical in these areas, as well as aerial photograph analysis of historical coastal bluff retreat and erosion; stability analysis should include analyses via both circular and joint-controlled failure surfaces.                                    |
| <b>LIQUEFACTION HAZARDS</b>                                |                              |                    | Liquefaction occurs during strong earthquake ground-shaking, when saturated soil loses strength and structural support capacity.                                                                                                                                                                               |
| <b>ROCKFALL/ ROCKSLIDE HAZARDS</b>                         |                              |                    | Areas that may be prone to earthquake and storm damage induced by slides of falling rock.                                                                                                                                                                                                                      |

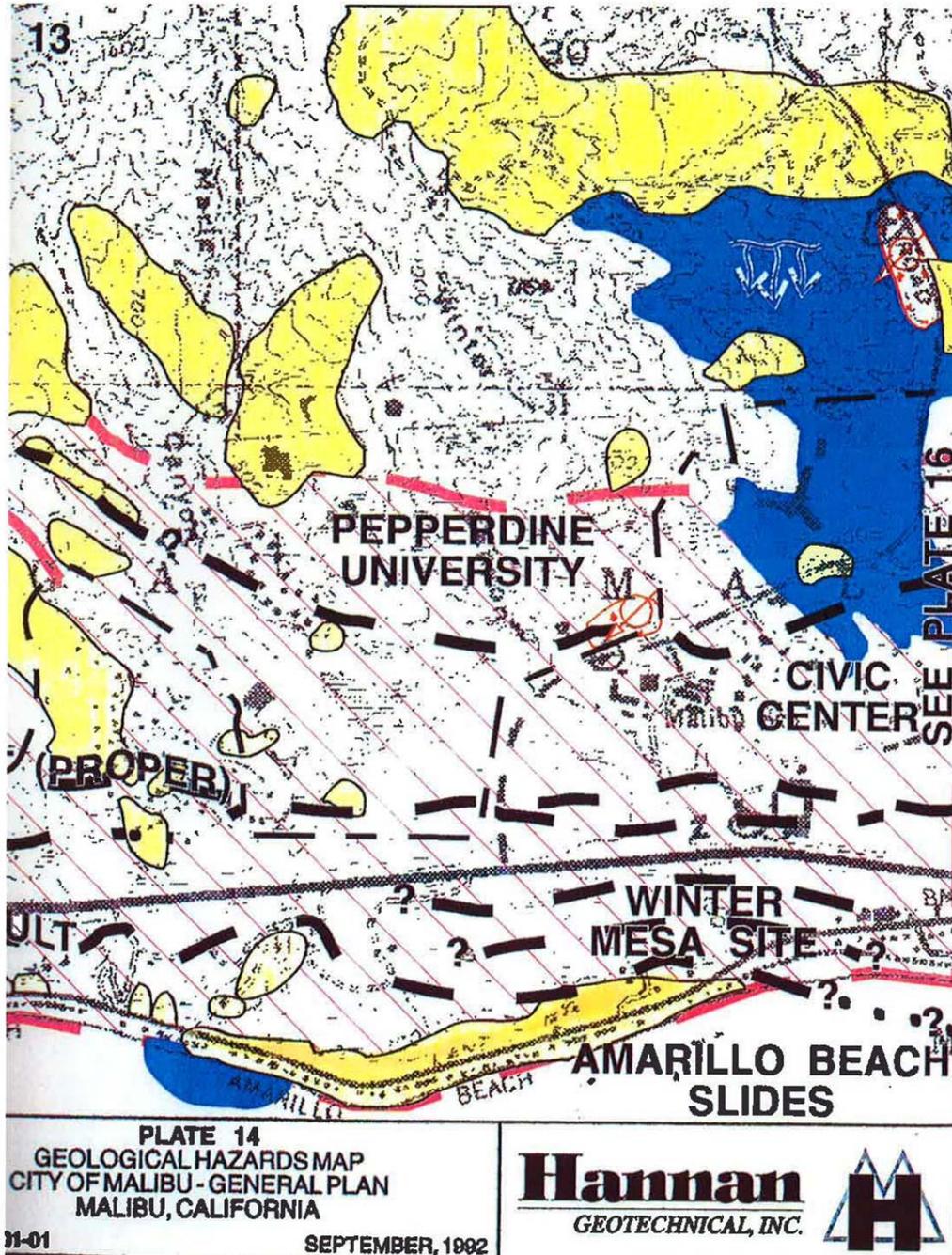
GEOLOGIC SYMBOLS LEGEND  
CITY OF MALIBU - GENERAL PLAN  
MALIBU, CALIFORNIA  
PNB 110-001-01  
SEPTEMBER, 1992



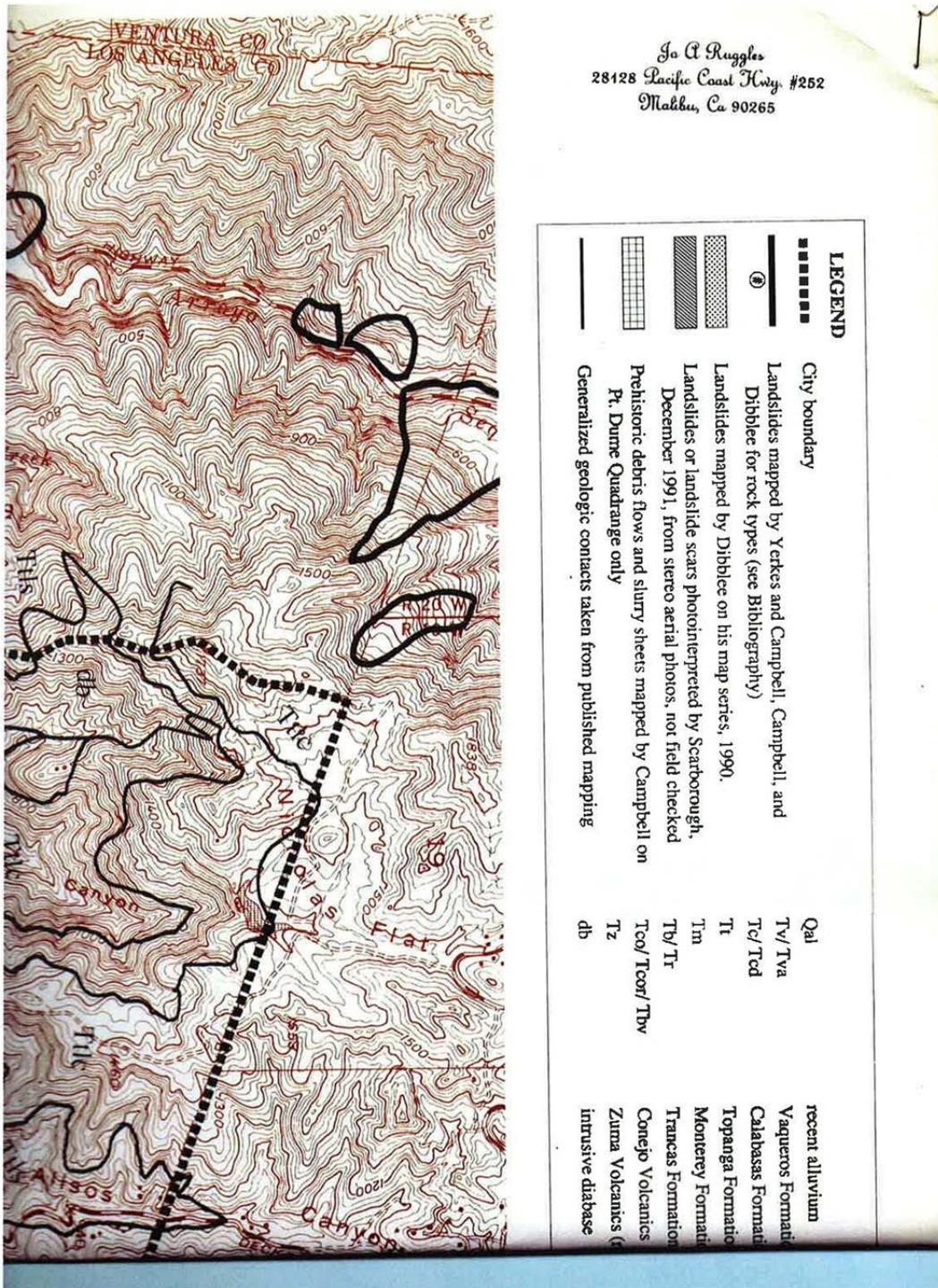
3. Response to Comments



3. Response to Comments



3. Response to Comments



### 3. Response to Comments



### 3. Response to Comments

#### **R12. Response to Comments from Insert Jo Ruggles, dated May 20, 2013.**

R12-1 The commenter provides a copy of the Warshall Landslide map of the Crummer property and the Hannon Geotechnical Hazards map of the Crummer property. She states that the Crummer parcel and the entire Bluffs Park area were deemed too hazardous for any Land Use designation other than Open Space, because the slopes of Bluffs Park were shown to be all old landslide, and the area contained traces of both the Puerco Canyon Fault and perhaps the Malibu Coast Fault, as well. Consequently, the entire Bluffs Parks area was designated Open Space in the Malibu General Plan adopted in 1995

The commenter mischaracterizes the designation of the site in the City's General Plan as Open Space. Exhibit LU-1C of the City's General Plan (City of Malibu, 1995) shows that the site was classified as private "Vacant Land". In addition, Figure H-2 identifies the eastern half of the site as a "Potential Housing Site". Furthermore, the zoning maps in the City's LCP designate the property as "PD" (Planned Development), which allows for a mix of residential and recreational uses.

Section 7.2.9 of the General Plan notes that, "..... the vast majority of this land .....", (referring to all Vacant Land within the City and not solely the Crummer site), "..... may be subject to some form of geologic or hydrologic hazard and will, therefore, require further study prior to approval of plans for new construction." As Leighton has noted in its prior reports (Leighton, 1989; 1993; 1994; and 2000), there are geologic and hydrologic hazards at the site. However, subsequent detailed exploration and analyses of the site by Leighton (2001; 2003; 2007; 2008a, b; 2009a, b; and 2012a-h) and by Psomas (2012a-e; 2013) have demonstrated that such hazards can be effectively mitigated and the site made suitable for structures intended for human occupancy. Such studies have been approved by the City of Malibu (2012a-g). Please refer to General Response 2.4.

Impacts remain less than significant.

R12-2 Refer to response to comment R12-1.

R12-3 Refer to response to comment R12-1.

R12-4 Refer to response to comment R12-1.

### 3. Response to Comments

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### 3. Response to Comments

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TRANSCRIPTION OF RECORDED PROCEEDINGS

IN RE: CRUMMER SITE DEVELOPMENT )  
AGENDA ITEM 6F, )  
 )  
 )  
 )  
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TRANSCRIPTION OF RECORDED PROCEEDINGS RE CRUMMER  
SITE SUBDIVISION ENVIRONMENTAL IMPACT REPORT NUMBER  
09-001, TRANSCRIBED BY LORI DENISE KOSTER, CERTIFIED  
SHORTHAND REPORTER NUMBER 10430, FOR THE STATE OF  
CALIFORNIA.

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NORMAN SCHALL & ASSOCIATES  
(800) 734-8838

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3. Response to Comments

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TRANSCRIPTION OF RECORDED PROCEEDINGS RE:  
CRUMMER SITE SUBDIVISION ENVIRONMENTAL IMPACT REPORT  
NUMBER 09-001

|                     | <u>PAGE</u> |
|---------------------|-------------|
| PROCEEDINGS BEGIN   | 4           |
| NO EXHIBITS OFFERED |             |

### 3. Response to Comments

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TRANSCRIPTION OF RECORDED PROCEEDINGS  
RE CRUMMER SITE SUBDIVISION ENVIRONMENTAL IMPACT REPORT  
NUMBER 09-001

---000---

MR. JENNINGS: LET'S COME TO ORDER, PLEASE. AND  
THIS IS ITEM 6F. THIS IS THE CRUMMER SITE SUBDIVISION  
ENVIRONMENTAL IMPACT REPORT NUMBER 09-001, AND THEN  
THERE'S COASTAL DEVELOPMENT PERMITS.

NOW, YOU'RE NOT GOING TO LISTEN TO ME, BUT I'M  
GOING TO TELL YOU ANYWAY. THIS IS -- THIS IS NOT A  
HEARING ON THE PROJECT. THIS IS MERELY A SESSION WHERE  
WE RECEIVE INFORMATION FROM THE PUBLIC. EVERY ONE OF  
THOSE -- THOSE COMMENTS HAS TO BE RESPONDED TO IN THE  
PREPARATION GOING FROM THE DRAFT EIR TO THE FINAL EIR.  
SO DON'T EXPECT A LOT OF BACK AND FORTH FROM EITHER US OR  
STAFF BECAUSE THIS IS JUST DESIGNED TO RECEIVE  
INFORMATION.

SO THE FIRST SPEAKER IS -- YOU WANT A STAFF  
REPORT, JOYCE?

MS. PARKER-BOZYLINSKI: HI, EDEN. DID YOU HAVE  
ANY -- ANYTHING YOU WANTED TO PRESENT?

OKAY. SO HA'S GOING TO JUST GIVE A BRIEF  
OVERVIEW, AND THEN I WAS GOING TO GIVE EVERYONE THE  
SPEECH YOU JUST GAVE. I MAY FOLLOW UP WITH IT TO -- AND

NORMAN SCHALL & ASSOCIATES  
(800) 734-8838

4

### 3. Response to Comments

1 REMIND PEOPLE THAT THIS IS SIMPLY A HEARING TO RECEIVE  
2 COMMENTS ON THE DRAFT EIR AND NOT THE MERITS OF THE  
3 PROJECT, AND THE PROJECT ITSELF ALONG WITH THE FINAL EIR  
4 WILL BE BROUGHT BACK TO THE PLANNING COMMISSION, AND THAT  
5 IS THE TIME IN WHICH WE'LL HAVE DISCUSSION ABOUT THE  
6 MERITS OF THE PROJECT.

7 SO WITH THAT, HA --

8 MS. LY: I JUST WANT TO ANNOUNCE THAT THE PUBLIC  
9 REVIEW PERIOD FOR THE DRAFT EIR STARTED ON APRIL 3RD,  
10 2013 AND WILL END ON MAY 20TH, 2013. SO IF THERE'S  
11 ANYONE WHO WOULD LIKE TO SUBMIT WRITTEN COMMENTS, THEY  
12 CAN E-MAIL IT TO ME AT HLY@MALIBUCITY.ORG.

13 THANKS.

14 MR. JENNINGS: OKAY.

15 MS. PARKER-BOZYLINSKI: I'M SORRY. COMMISSIONER  
16 JENNINGS, JUST FOLLOW UP WITH THAT, I WOULD ENCOURAGE  
17 PEOPLE TO PUT THEIR COMMENTS IN WRITING. THAT IS VERY  
18 HELPFUL FOR STAFF AND THE EIR CONSULTANT TO HAVE  
19 EVERYTHING IN WRITING.

20 WE WILL NOTE ALL OF THE COMMENTS WE RECEIVE  
21 TONIGHT AND RESPOND TO THEM ACCORDINGLY, BUT WE ENCOURAGE  
22 PEOPLE TO PUT THEIR COMMENTS IN WRITING.

23 MR. JENNINGS: OKAY. FIRST SPEAKER IS ROBERT  
24 BRISKIN. MR. BRISKIN, YOU HAVE EIGHT MINUTES.

25 FIRST OF ALL, BEFORE YOU BEGIN LET ME MAKE SURE

### 3. Response to Comments

1 ALL OF YOUR DONORS ARE HERE.  
2 ASTRID BERK, ARE YOU HERE? IS THAT ARISTID?  
3 MS. BERK: ARISTID IS HERE.  
4 MR. JENNINGS: OH, ARISTID. I'M SORRY. GOT IT.  
5 MR. KOTCHOUNIAN. GOT IT. ROBERT STATS. GOT IT  
6 QUENTIN LILY.  
7 MR. BRISKIN: QUENTIN HAD TO GO HOME TO HIS  
8 CHILDREN.  
9 MR. JENNINGS: OKAY. YOU LOST A MINUTE. ROBERT  
10 BOGIE -- BOGIE.  
11 MR. BOGIE: THAT'S ME.  
12 MR. JENNINGS: YOU -- OKAY. SO YOU NOW HAVE  
13 SEVEN MINUTES, ROBERT.  
14 MR. BRISKIN: NO PROBLEM. THANK YOU.  
15 I'M ROBERT BRISKIN. I'M A DIRECTOR OF THE  
16 MALIBU COUNTRY ESTATES HOMEOWNERS ASSOCIATION, AND I'M  
17 HERE TO REPRESENT OUR 100-PLUS HOMEOWNERS. I'M SPEAKING  
18 ON THEIR BEHALF.  
19 WE LIE IN SIGHT OF THE PACIFIC OCEAN, BUT,  
20 UNFORTUNATELY, OUR VIEWS ARE BEING IMPEDED BY THIS  
21 PROPOSED NEW CRUMMER HOUSING DEVELOPMENT. THE  
22 DEVELOPMENT NOT ONLY IMPEDES OUR VIEWS, BUT IMPEDES  
23 POINTS ON PACIFIC COAST HIGHWAY, SPECIFICALLY THOSE  
24 POINTS WEST OF PACIFIC COAST HIGHWAY.  
25 A VERY IMPORTANT ITEM WHICH IS NOT INCLUDED IN

PH  
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(800) 734-8838

6

3. Response to Comments

1 THE EIR IS ALUMNI PARK AT PEPPERDINE UNIVERSITY, WHICH,  
2 IF YOU LOOK RIGHT BEHIND YOU, YOU WILL SEE A SHOT FROM  
3 ALUMNI PARK OF THE STORY POLES. FOR SOME MYSTERIOUS  
4 REASON THE EIR DELETES NOT ONLY ALUMNI PARK, BUT OTHER  
5 FACETS OF PEPPERDINE UNIVERSITY AND ITS CONSTRUCTION  
6 PROJECTS.

7 ALUMNI PARK IS USED BY THE PUBLIC TO RECREATE,  
8 FOR SPORTS, FOR RUNNING, TO FLY KITES, TO TEACH OUR  
9 CHILDREN HOW TO BICYCLE, TO JUST STROLL, AND PEOPLE HAVE  
10 PICNICS AT ALUMNI PARK. IT'S USED BY THOUSANDS OF PEOPLE  
11 EVERY YEAR. YET, THIS NEW PROJECT, AS YOU CAN SEE HERE,  
12 IS GOING TO BLOCK THE VIEWS FROM ALUMNI PARK.

13 ALUMNI PARK IS WORLD RENOWNED. NBC NATIONAL  
14 NEWS BROADCAST FROM ALUMNI PARK LAST YEAR. IT'S A  
15 RECOGNIZED JEWEL OF MALIBU, AND IN MALIBU CITY'S  
16 PRONOUNCEMENTS THEY ALWAYS CITE ALUMNI PARK AS BEING THAT  
17 JEWEL ABOVE PACIFIC COAST HIGHWAY, THAT GREEN ITEM ON THE  
18 HILL.

19 SO I THINK HAVING THIS PROJECT THERE, THESE MEGA  
20 MANSIONS CALLED THE CRUMMER HOMES, BEING WEIGHED AGAINST  
21 THE THOUSANDS OF PEOPLE EVERY YEAR THAT USE ALUMNI PARK,  
22 I THINK WE WOULD ALL SAY THAT THE COASTAL ACT HERE IN  
23 CALIFORNIA WOULD COME DOWN IN FAVOR OF THE PUBLIC. WHY  
24 DO THEY ALLOW TWO-STORY MANSIONS? WHY ARE YOU ALLOWING  
25 11,500 SQUARE FOOT HOMES.

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cont'd

### 3. Response to Comments

1           AND, BY THE WAY, THE EIR IS DEFICIENT BECAUSE IT  
2           REALLY FAILS TO TELL US THE SQUARE FOOTAGES OF THESE  
3           HOMES. IT SAYS 11,500 SQUARE FEET, BUT THEY TALK ABOUT  
4           FULL BASEMENTS FOR A FOOTPRINT. WELL, ARE THESE  
5           BASEMENTS INCLUDED IN THE 11,500 OR NOT? ARE SECOND  
6           HOMES INCLUDED? ARE THE CABANAS INCLUDED? WHAT IS  
7           INCLUDED IN THESE SQUARE FOOTAGES? I'D LIKE TO KNOW.

8           WE'VE SUGGESTED AS ALTERNATIVES THAT SHOULD BE  
9           CONSIDERED IS ONE-STORY HOMES. BECAUSE, AS YOU CAN SEE  
10          ON THESE SHOTS OF ALUMNI PARK, IF YOU HAD ONE-STORY  
11          HOMES, IT OBVIOUSLY WOULD MITIGATE THE ENVIRONMENTAL  
12          EFFECT. IF YOU ELIMINATED BASEMENTS, IT WOULD ELIMINATE  
13          THE -- THE ENVIRONMENTAL EFFECT OF HAVING TO EXPORT  
14          TREMENDOUS AMOUNTS OF DIRT THAT THE ENVIRONMENTAL REPORT  
15          COMPLAINS ABOUT. BUT NOBODY SEEMS TO SUGGEST, GEE, WHY  
16          NOT HAVE A DELETION OF THE BASEMENTS? WHY NOT HAVE  
17          LESSER SQUARE FOOTAGES OF THESE HOMES?

18          MALIBU IS NOT LACKING FOR MANSION-SIZE HOMES.  
19          WE'RE NOT IN NEED OF MORE MANSIONS AS HOUSING. SO WHY  
20          ARE WE ALLOWING FIVE 11,500 SQUARE FOOT HOMES ON THIS  
21          CRUMMER SITE DEVELOPMENT. IT'S -- FRANKLY, DOESN'T MAKE  
22          SENSE TO ME.

23          THE EIR TALKING ABOUT PEPPERDINE UNIVERSITY, IT  
24          TALKS ABOUT CUMULATIVE EFFECTS. IT LISTS PRO -- IT MUST  
25          LIST A DOZEN PROJECTS; YET, IT FAILS TO LIST THE LARGEST

PH  
1-1  
cont'd

PH  
1-2

3. Response to Comments

1 PROJECT CERTAINLY IN MALIBU, MAYBE IN L.A. COUNTY, WHICH  
2 IS A PEPPERDINE CAMPUS LIFE PROJECT WHICH IS GOING TO  
3 INCLUDE -- INCLUDE A 5200-SEAT ARENA, CLASSROOM  
4 BUILDINGS, FACULTY HOUSING, STUDENT HOUSING THAT'S GOING  
5 TO BE STARTING IN THE NEXT FEW YEARS, AND THE CUMULATIVE  
6 IMPACT IS MULTIPLE TIMES ALL OF THE IMPACTS OF EVERYTHING  
7 MENTIONED IN THIS EIR.

PH  
1-2  
cont'd

8 WHY DIDN'T THE PERSON WHO DID THE EIR ON THIS  
9 ALUMNI PARK NOT TURN AROUND AND JUST LOOK AT ALUMNI PARK.  
10 THE CRUMMER DEVELOPMENT IS LITERALLY RIGHT IN FRONT OF IT  
11 AS YOU CAN SEE IN THESE PICTURES, AND YOU CAN SEE THE  
12 STORY POLES REALLY BLOCKING THE VIEWS, AND THEY'RE QUITE  
13 SPECTACULAR VIEWS. I MEAN, YOU CAN SEE CATALINA ISLAND,  
14 YOU CAN SEE THE CHANNEL ISLANDS, YOU CAN SEE THE SANTA  
15 MONICA COAST; YET WE'RE ALLOWING THE PUBLIC'S VIEW OF ALL  
16 THESE WONDERFUL OCEAN RESOURCES TO BE BLOCKED BY THIS ONE  
17 DEVELOPMENT, AND I JUST DON'T THINK THAT'S A PROPER  
18 BALANCING OF THE EQUITIES.

PH  
1-3

19 SO I THINK THE EIR SHOULD BE GOING THROUGH SOME  
20 OF THE ALTERNATIVES. AND WHAT ARE THOSE ALTERNATIVES?  
21 WELL, LET'S TALK ABOUT ONE-STORY HOUSING MAYBE. LET'S  
22 TALK ABOUT 3500 TO 4500 SQUARE FOOT HOUSING. THAT WOULD  
23 CERTAINLY BE HELPFUL. LET'S TALK ABOUT MAYBE REDUCING  
24 THE NUMBER OF HOMES ON EACH LOT. WHAT ABOUT THESE SECOND  
25 HOMES THAT THE EIR TALKS ABOUT OR THESE CABANAS. MAYBE

### 3. Response to Comments

1 BY ELIMINATING THOSE IT WOULD BE HELPFUL.

2 THE HOUSING IN THIS AREA, FOR EXAMPLE, MALIBU  
3 COUNTRY ESTATES, PROBABLY RANGES FROM 3500 TO 4500 SQUARE  
4 FOOT. WHY DO WE HAVE TO HAVE FIVE 11,500 SQUARE FOOT  
5 MANSIONS WHICH ARE GOING TO BLOCK THE PUBLIC'S VIEW OF  
6 THE PACIFIC OCEAN? SO THE THOUSANDS OF PEOPLE THAT LOOK  
7 IN THIS DIRECTION -- JUST BECAUSE PEPPERDINE IS OUTSIDE  
8 THE CITY OF MALIBU -- YOU KNOW, SITE LINES DON'T STOP AT  
9 THE CITY BOUNDARY. IT GOES OVER THE UNINCORPORATED  
10 COUNTY OF L.A. AND STRAIGHT TO THE BLUE PACIFIC OCEAN,  
11 AND IMPEDING THOSE VIEWS, WHICH IS GOING TO IMPEDE OUR  
12 RESIDENTS AT MALIBU COUNTRY ESTATES, IT'S GOING TO IMPEDE  
13 PEOPLE DRIVING WEST ON PACIFIC COAST HIGHWAY. IT'S GOING  
14 TO IMPEDE THE PEOPLE AT ALUMNI PARK AND OTHER VANTAGE  
15 POINTS WITHIN MALIBU.

16 YOU KNOW, ONE OF THE OTHER PROPOSALS HERE IS TO  
17 PUT AN ON-SITE SEPTIC AND SEWAGE DISPOSAL SYSTEM, WHICH  
18 IS GOING TO PUT FURTHER EFFLUENT INTO THE GROUND. WELL,  
19 PEPPERDINE IS ABOVE THIS SITE; YET IT FAILS TO TALK ABOUT  
20 THE CUMULATIVE AFFECT OF HAVING WATER COMING DOWN THIS  
21 AREA INTO THIS WATERSHED NOW BEING ADDED TO FURTHER BY  
22 THIS NEW SEPTIC AND SEWAGE SYSTEM, WHICH COULD SUGGEST  
23 SLOPE INSTABILITY FOR THOSE FOLKS ON OLD MALIBU ROAD.

24 IT ALSO WILL CAUSE TREES -- TREES LOVE WATER,  
25 AND THEY GROW BIGGER LIKE CHILDREN GROW BIGGER -- AND

PH  
1-3  
cont'd

PH  
1-4

PH  
1-5

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10

3. Response to Comments

1       THEY'RE GOING TO BLOCK THE VIEWS OF THE PACIFIC OCEAN  
2       EVEN FURTHER BECAUSE, CHANCES ARE, THESE TREES ARE GOING  
3       TO GROW ABOVE THE ROOF LINES.

PH  
1-5  
cont'd

4                SO HAVING ARTIFICIAL IRRIGATION, HAVING THE  
5       SEWAGE SEPTIC SYSTEM THAT THEY DESCRIBE IN THE EIR IS  
6       FURTHER GOING TO CONTRIBUTE TO VIEW BLOCKAGE. AGAIN, THE  
7       EIR DOESN'T REALLY TALK ABOUT THAT. IT DOESN'T TALK  
8       ABOUT SLOPE STABILITY. IT DOESN'T TALK ABOUT THE  
9       CUMULATIVE EFFECT OF THE OTHER ENVIRONMENTAL IMPACTS OF  
10      PEPPERDINE, WHICH IS ABOVE IT, COMBINING IT WITH THIS  
11      PROJECT, AND I THINK THE EIR NEEDS TO ADDRESS THOSE  
12      ISSUES.

PH  
1-6

13               THANK YOU.

14               MR. JENNINGS: THANK YOU, MR. BRISKIN.

15               JEFFERSON WAGNER. JAY, ARE YOU HERE? I DON'T  
16      SEE HIM. ANSON WILLIAMS.

17               MR. WILLIAMS: HERE.

18               MR. JENNINGS: THREE MINUTES, MR. WILLIAMS.

19               MR. WILLIAMS: OH, SURE. THIS WILL BE VERY  
20      SHORT. I JUST WANTED TO BRING YOUR ATTENTION HOW THIS  
21      DEVELOPMENT IS GOING TO IMPACT ONE OF THE MOST BEAUTIFUL  
22      PARKS IN SOUTHERN CALIFORNIA, BLUFFS PARK.

PH  
2-1

23               EVERY MORNING I RUN AROUND BLUFFS PARK, AND THIS  
24      MORNING AT 7:00 A.M. I TOOK THIS PICTURE TO SHOW YOU HOW  
25      THIS DEVELOPMENT WOULD NOT ONLY COMPLETELY BLOCK THE

### 3. Response to Comments

1 COASTAL VIEW FROM THE SOUTHWEST SIDE OF THE PARK, BUT  
2 CREATE A SKYLINE FOR THE PARK. I JUST DON'T THINK IT'S  
3 RIGHT FOR THE COMMUNITY. I THINK IT'S ONE OF THE MOST,  
4 YOU KNOW, BEAUTIFUL PARKS IN THE COUNTRY. AND SO NOT  
5 ONLY WOULD WE BE IMPACTING HOMEOWNERS, NOT ONLY WOULD WE  
6 BE IMPACTING THE COMMUNITY, YOU'LL BE IMPACTING THE --  
7 THE NATURAL BEAUTY OF MALIBU.

8 AND, HONESTLY, IF A DEVELOPMENT LIKE THIS GOES  
9 THROUGH, WHY NOT JUST BUILD A RESORT AT MALIBU BLUFFS  
10 PARK OR MAYBE TIMESHARE.

11 THANK YOU.

12 MR. JENNINGS: THANK YOU, MR. WILLIAMS.

13 ROBERT GOLD.

14 MR. GOLD: GOOD EVENING, COMMISSIONERS. MY NAME  
15 IS ROBERT GOLD. I'M HERE REPRESENTING THE APPLICANT, A  
16 PCH PROJECT OWNER. LIKE TO THANK JOYCE AND HER STAFF FOR  
17 THEIR WORK AND THE NUMEROUS INDIVIDUALS IN THE VARIOUS  
18 DEPARTMENTS IN THE CITY AND THE NUMEROUS INDIVIDUALS IN  
19 THE CITY, THE EMPLOYEES IN THE CITY OF MALIBU WHO HAVE  
20 REVIEWED THE PROJECT TO DATE.

21 WE EMBARKED ON THIS PROJECT OVER SEVEN YEARS  
22 AGO. WE UNDERSTOOD THAT BECAUSE OF ITS UNIQUE LOCATION  
23 AND ITS PRIOR DEVELOPMENT HISTORY THAT WHATEVER WE  
24 PROPOSED AT THE SITE WOULD COME UNDER GREAT SCRUTINY;  
25 THEREFORE, WE HIRED A GROUP OF PROFESSIONALS WHO BOTH HAD

PH  
2-1  
cont'd

PH  
3-1

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12

3. Response to Comments

1 DEEP AND LONGSTANDING DEVELOPMENT KNOWLEDGE OF THE CITY  
2 OF MALIBU, BUT ALSO SHARED OUR RESPECT AND CONCERNS FOR  
3 THE UNIQUE CHARACTER OF THIS CITY. IN FACT, MANY OF  
4 THOSE PROFESSIONALS RESIDE IN THIS CITY.

5 WE WERE GRATIFIED THAT OUR APPROACH TO THE  
6 PROJECT WAS CONFIRMED BY A DRAFT EIR. THEY CONCLUDED  
7 THAT THERE ARE NO UNMITIGATEABLE SIGNIFICANT  
8 ENVIRONMENTAL IMPACTS FOR THE -- FROM THE PROJECT.

9 WE LOOK FORWARD TO HEARING TONIGHT'S COMMENTS,  
10 CONTINUING OUR DIALOGUE WITH THE COMMUNITY AND STAFF AND  
11 COMING BACK TO THIS COMMISSION TO DISCUSS THE FULL MERITS  
12 OF THE PROJECT. AND, OF COURSE, I WILL BE HERE THIS  
13 EVENING TO ANSWER ANY QUESTIONS THAT ANY OF YOU MAY HAVE.

14 THANK YOU FOR YOUR TIME.

15 MR. JENNINGS: THANK YOU, MR. GOLD.

16 HOPE BERK.

17 MS. BERK: GOOD EVENING, COMMISSIONERS. MY NAME  
18 IS HOPE BERK, AND MY HUSBAND, ARISTID BERK, IS HERE WITH  
19 ME TONIGHT.

20 WE -- WE ARE HERE TO EXPRESS OUR OPPOSITION TO  
21 THE FIVE MONSTROUS MANSIONS A DEVELOPER WANTS TO BUILD  
22 NEXT TO BLUFF PARK, AND, IN DOING SO, HE WOULD INVADE ONE  
23 OF THE MOST BEAUTIFUL, UNIQUE LOCATIONS IN MALIBU ALONG  
24 WITH BLOCKING THE OCEAN VIEW'S OF MANY HOMES IN MALIBU  
25 COUNTRY ESTATES.

PH  
3-1

PH  
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### 3. Response to Comments

1                   FOR ALMOST 37 YEARS, WHEN WE MOVED TO MALIBU, WE  
2                   HAVE BEEN GRATEFUL TO THE STATE OF CALIFORNIA FOR HAVING  
3                   THE FORESIGHT TO SAVE AND PROTECT THIS PRECIOUS PUBLIC  
4                   PARK FOR THE PEOPLE OF CALIFORNIA. AND NOW A DEVELOPER  
5                   WANTS TO BUILD FIVE MANSIONS NEXT TO THE PARK, BLOCKING  
6                   THE VIEWS OF THE HOMES ABOVE AND THE VIEWS OF PEOPLE WHEN  
7                   THEY COME TO ENJOY STROLLING IN THE PARK.

PH  
4-1  
cont'd

8                   RATHER THAN ENJOY THE LANDSCAPE AS MOTHER NATURE  
9                   LEFT IT FOR US, WE WOULD BE CONFRONTED WITH ROOFTOPS  
10                  WHERE THERE SHOULD BE BLUE SKY AND OBSTRUCT --  
11                  UNOBSTRUCTED VIEWS OF THE COASTLINE.

12                  WE URGE YOU TO STOP THIS PROJECT AND SUGGEST TO  
13                  THE DEVELOPERS THAT THIS IS AN INAPPROPRIATE PLACE FOR  
14                  FIVE -- TO BUILD FIVE TWO-STORY 11,000 SQUARE FEET  
15                  MANSIONS.

16                  THANK YOU.

17                  MR. JENNINGS: THANK YOU, MS. BERK.

18                  LUHUI ISHA.

19                  MS. ISHA: GOOD EVENING, COMMISSIONERS. MY NAME  
20                  IS LUHUI ISHA CHUMASH. I BELONG TO THE BARBER  
21                  (INAUDIBLE) CHUMASH TRIBE, AND I AM THE CULTURAL  
22                  RESOURCES DIRECTOR FOR THE RESTORAL FOUNDATION. I ALSO  
23                  BELONG TO -- I'M A MEMBER OF THE CHUMASH ALLIANCE, WHICH  
24                  IS A COMBINATION OF TRIBAL LEADERS AND INDIVIDUALS  
25                  THROUGHOUT CHUMASH TERRITORY FROM SAN LUIS OBISPO TO

PH  
5-1

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14

3. Response to Comments

1 MALIBU.

2 SO I'M HERE TONIGHT TO PARTICIPATE IN THE

3 BEGINNING OF THIS PROCESS. I OPPOSE -- THE PEOPLE THAT I

4 WORK WITH AND COLLABORATE WITH IN AN ALLIANCE OPPOSE THIS

5 PROJECT.

6 THE DRAFT EIR, WE'RE ASKING FOR YOU TO CONSIDER

7 EXTENDING IT, GIVING US A 60-DAY EXTENSION SO THAT WE CAN

8 DO OUR OWN INDEPENDENT REVIEW ON THIS PROJECT.

9 THE SITE ITSELF HAS NOT BEEN PROPERLY -- THE

10 REPORT THAT -- THAT THEY DID ON THE CULTURAL RESOURCES

11 ASPECT OF THE PROJECT HAS NOT BEEN DONE EFFICIENTLY,

12 SO -- AND THE PEOPLE -- THE PROFESSIONALS THAT HAVE DONE

13 THIS REPORT ARE QUESTIONABLE TO -- TO THE ARCHAEOLOGISTS

14 THAT WE WORK WITH. SO WE WOULD LIKE TO ASK FOR THE

15 EXTENSION OF 60 DAYS SO THAT WE CAN DO OUR OWN

16 INDEPENDENT REVIEW AND STUDY, BECAUSE WE FEEL THAT THE

17 DRAFT EIR IS INSUFFICIENT ON THE AREA OF CULTURAL

18 RESOURCES.

19 THANK YOU.

20 MR. JENNINGS: THANK YOU.

21 MATI WAIYA.

22 MR. WAIYA: EVENING, COMMISSIONERS. WE HAVE A

23 HISTORY HERE OF NOT NECESSARILY BEING CHUMASH FRIENDLY IN

24 THIS CITY. WE HAVE TO CHANGE THAT, AND YOU'RE THE ONES

25 THAT CAN CHANGE THAT BY YOUR ACTIONS.

PH  
5-1  
cont'd

PH  
6-1

### 3. Response to Comments

1                   THIS PROPERTY HAS BEEN DISKED AND HAS PROVIDED  
2                   OTHERS TO PICK AT OUR RESOURCES AND TAKE THEM OFF THE  
3                   SITE. YOU ARE PROPOSING BASEMENTS, SWIMMING POOLS, ROADS  
4                   ON A STUDY OF A CONSULTANT THAT'S MORE OF A GHOST HUNTER  
5                   THAN A CULTURAL RESOURCES PERSON OF CHUMASH MATERIALS.

6                   YOU DON'T HAVE A HOPI CONSULTANT COME OVER HERE  
7                   AND LEARN ABOUT CHUMASH CULTURAL RESOURCES. THEY'VE BEEN  
8                   DISKING THIS PLACE FOR YEARS. I OPPOSE THIS PROJECT  
9                   BECAUSE OF THE FLAWS AND THE OUTDATED INFORMATION THAT IT  
10                  CONTAINS.

11                  THIS -- THIS PROJECT HAS BEEN REVIEWED BY THE  
12                  COMMITTEES IN MALIBU, THE BIOLOGISTS, GEOLOGISTS, PUBLIC  
13                  WORKS AND SO ON, AND THIS CITY DOES NOT HAVE ANY CULTURAL  
14                  RESOURCES COMMITTEE.

15                  A FEW MONTHS AGO YOU ELIMINATED THE CULTURAL  
16                  RESOURCES TASK FORCE ON CHUMASH REVIEW OF SITES.  
17                  THAT'S -- THAT'S CONCERNING BECAUSE THE CEREMONIAL USE OF  
18                  THIS CULTURAL LANDSCAPE, EVEN WHEN YOU HAVE VETERANS DAY,  
19                  HAVE PEOPLE LOOK OUT INTO THE OCEAN LIKE THERAPY AND THAT  
20                  MEDICINE THAT IT GIVES AND PEACE TO THESE FAMILIES.

21                  WE HAVE A HISTORY HERE IN HU MALIBU, IN MALIBU,  
22                  AND YOU DON'T SEE SIGNS OF CHUMASH RESPECT OR HONOR IN  
23                  THIS CITY. IT'S NOT IN YOUR VERBIAGE IN THE LOBBY IN ANY  
24                  DEPICTION, BUT, YET, LIKE MEXICAN FOOD, YOU LIKE THE FOOD  
25                  BUT NOT THE PEOPLE. YOU LIKE THE HEART AND SOUL OF THE

PH  
6-1  
cont'd

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16

3. Response to Comments

1 SPIRIT OF THE CHUMASH PEOPLE. AND TO DEVELOP ON A  
2 CULTURAL LANDSCAPE, A SITE THAT IS BEING PROPOSED TO BE  
3 UNEARTHED AND DUG DOWN INTO, AND SCAR THE MOTHER OF THIS  
4 LAND IS GOING TO EXPOSE BURIALS AND SITES THAT YOU'LL  
5 REGRET.

6 I'M ASKING YOU TO DENY THIS PROJECT OR TO REVIEW  
7 IT, LIKE LUHUI ISHA SAID, WITH INDEPENDENT STUDIES. AND  
8 MALIBU OUR CULTURAL HISTORY IS YOURS, TOO. IF YOU  
9 PROTECT CHUMASH CULTURAL RESOURCES, YOU PROTECT MALIBU.

10 WE HAVE TO WORK TOGETHER ON THIS, AND IT STARTS  
11 WITH PLANNING. IT STARTS WITH OUR FUTURE AND THE  
12 GENERATIONS THAT HAVE BEEN IMPACTED THROUGH TIME AND  
13 MEMORIAL.

14 THANK YOU.

15 MR. JENNINGS: THANK YOU.

16 RYAN EMBRY.

17 MR. EMBRY: I LIVE WITHIN THIS PROJECT'S  
18 PROPOSED SITE FOR THE LAST -- WITHIN ONE MILE FOR THE  
19 LAST 29 YEARS, AND, LOOKING AT THE STORY POLES THAT ARE  
20 THERE, IT'S QUITE CLEAR THEY'RE TWO-STORY POLES, AS IN  
21 TWO STORIES OFF THE GROUND. AND I THINK MAYBE THAT'S --  
22 THE CRUX OF THE ISSUE HERE IS IT'S NOT THE LEAST  
23 ENVIRONMENTALLY DAMAGING PROJECT BECAUSE IT'S GOING TWO  
24 STORIES, AND, OF ALL PLACES, REALLY, THIS IS WHERE THE  
25 AMOUNT OF LAND EXISTS, AND THE HEIGHT OF THE PROJECT

PH  
6-1  
cont'd

PH  
7-1

### 3. Response to Comments

1 SHOULD BE CONDITIONED TO ONE STORY. THIS CREATES A  
2 SKYLINE VIEW FROM THE FAMOUS PLACES OF MALIBU ROAD,  
3 MALIBU LAGOON, PACIFIC COAST HIGHWAY AREAS WITHIN THE  
4 CIVIC CENTER. YOU HAVE INCREDIBLE MOUNTAIN VIEWS, AND  
5 THIS CREATES ON THE RIDGE THE VIEW OF "LOOK AT ME," HOUSE  
6 SUPERIMPOSED ON THE SANTA MONICA MOUNTAINS.

7 SO I'M SURE THE DEVELOPER KNEW THAT FROM DAY ONE  
8 AND THAT WE'D ALL BE HERE TONIGHT SAYING "WOW." IT'S  
9 KIND OF LIKE SESAME STREET. YOU GOT TO LOOK AND SEE WHAT  
10 DOESN'T BELONG, AND THIS DOESN'T BELONG. SO YOU HAVE TO  
11 FIGURE OUT AS PLANNING COMMISSIONER SITTING UP THERE WHAT  
12 ARE YOU GOING TO DO ABOUT IT. IT'S NOT THE LEAST  
13 ENVIRONMENTALLY DAMAGING ALTERNATIVE, AND THEY COULD  
14 STILL HAVE GREAT USE OF THEIR PROPERTY AND BUILD SOME  
15 FABULOUS HOMES AT ONE STORY.

16 THANK YOU.

17 MR. JENNINGS: THANK YOU, RYAN.

18 PAUL GRISANTI FOLLOWED BY CAROL RANDALL.

19 MR. GRISANTI: GOOD EVENING, COMMISSIONERS. I  
20 ACTUALLY INTEND TO TRY AND SPEAK TO THE DEIR. I KNOW  
21 IT'S A SHOCK TO YOU.

22 I'M PAUL GRISANTI. I'VE BEEN A REAL ESTATE  
23 BROKER IN THE COMMUNITY FOR 35 AND A HALF YEARS. I'M  
24 VERY FAMILIAR WITH THE PROPERTY, AS I REPRESENTED THE  
25 CRUMMER TRUST WHEN THEY SOLD THE PROJECT TO THE CURRENT

PH  
7-1  
cont'd

PH  
8-1

3. Response to Comments

1 OWNERS.

2 WHAT IS NOT INCLUDED IN THE DEIR IS THE HISTORY  
3 OF THE PREVIOUS PROPOSED DEVELOPMENTS ON THE SITE PRIOR  
4 TO THIS DEVELOPMENT. THESE PROJECTS INCLUDED A THINK  
5 TANK, OFFICE BUILDINGS SIMILAR TO THE HUGHES RESEARCH  
6 LAB. THEY INCLUDED A LUXURY HOTEL, AND, AS MANY OF YOU  
7 REMEMBER FROM A COUPLE OF YEARS AGO, THIS DEVELOPER HAD  
8 TO OFFER TO PAY THE COASTAL COMMISSION AN IMPACT FEE FOR  
9 NOT PROPOSING A HOTEL ON THIS PROPERTY. SO WE KNOW WHAT  
10 THEY WANTED. THERE WAS A CONDOMINIUM PROJECT THAT WAS  
11 PUT FORTH AND VERY QUICKLY EXTINGUISHED YEARS AGO.

12 ALMOST IMMEDIATELY PRECEDING THEIR PURCHASE  
13 THERE WAS A PROPOSAL FOR EIGHT HOUSES ON THE PROPERTY  
14 WHICH WOULD HAVE BEEN -- COULD HAVE BEEN PERMITTED UNDER  
15 THE LOCAL COASTAL PROGRAM AND WAS MUCH CLOSER TO BEING  
16 APPROVED THAN THIS IS AT THAT TIME.

17 HAVING BUILT A FEW HOUSES IN MALIBU AND HAVING  
18 WORKED WITH MANY HOMEOWNERS AND DEVELOPERS, I'M ALSO  
19 FAMILIAR WITH THIS CITY'S PLANNING REVIEW PROCESS. THE  
20 ENVIRONMENTAL -- THE DEIR DID A VERY THOROUGH JOB OF  
21 ANALYZING THE PROPOSED PROJECT AND ALL OF THE POTENTIAL  
22 IMPACTS FROM THE PROJECT, INCLUDING THE VISUAL IMPACTS OF  
23 THE PROJECT FROM MANY VANTAGE POINTS.

24 MY ONLY CRITICISM OF THE AESTHETIC ANALYSIS IS  
25 THAT IT FAILED TO DISCUSS THAT MALIBU'S BUILDING CODE

PH  
8-1  
cont'd

### 3. Response to Comments

1 PROHIBITS, AMONG OTHER THINGS, BUILDING STRUCTURES ON  
2 STEEP SLOPES AND FOR NEW DEVELOPMENT REQUIRES 100 FOOT  
3 SETBACK FROM THE BLUFF EDGE. THEREFORE, STRUCTURES CAN  
4 ONLY BE BUILT ON 11 OF THE 24 ACRES.

5 AND THE APPLICANT HAS AGREED TO DONATE ONE AND  
6 THREE-QUARTERS OF THOSE ACRES TO THE CITY OF MALIBU,  
7 WHICH IS OVER FIFTEEN PERCENT OF THE BUILDABLE LAND FOR  
8 ADDITIONAL PARK LAND.

9 I BELIEVE THAT THIS LIMITED BUILDING AREA MAKES  
10 TWO-STORY HOMES A BETTER ALTERNATIVE THAN SINGLE-STORY  
11 HOMES. THE MASSING OF SINGLE-STORY HOMES AND THE  
12 LANDSCAPE AREAS AROUND THEM WOULD RESULT ON NINE ACRES,  
13 WOULD RESULT IN A PROJECT LOOK AND FEEL THAT IS MORE  
14 URBAN, SUBURBAN THAN THE RURAL WHICH WE ARE SUPPOSED TO  
15 MAINTAIN AS OUR GOAL.

16 THE PROPOSED PROJECT WITH TWO-STORY HOMES WOULD  
17 BE CONSISTENT WITH MALIBU'S GENERAL PLANS AND WILL BE AN  
18 EXCELLENT ADDITION TO THE HOUSING OPTIONS IN MALIBU.  
19 THIS IS A BEAUTIFULLY DESIGNED PROJECT THAT IS SENSITIVE  
20 TO THE SITE REQUIREMENTS.

21 FINALLY, I THINK THE SITE -- THE APPLICANT  
22 SHOULD BE COMMENDED FOR PUTTING FORTH A PROJECT THAT  
23 REDUCES THE NUMBER OF HOMES FROM EIGHT TO FIVE, SO THIS  
24 IS A 40 PERCENT REDUCTION.

25 THANK YOU.

PH  
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cont'd

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3. Response to Comments

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MR. JENNINGS: THANK YOU.

CAROL FOLLOWED BY RON BOGIE -- IS IT BOGIE --  
BOGIE?

MS. RANDALL: GOOD EVENING, COMMISSIONERS.  
BECAUSE OF ITS PROXIMITY TO BLUFFS PARK, THE CRUMMER SITE  
DEVELOPMENT HAS BEEN OF INTEREST TO MANY IN THE COMMUNITY  
FOR YEARS. I'VE ZEROED IN ON THE TRAFFIC IMPACT AS  
STATED IN THE DRAFT EIR, AND I'M PLEASED TO SEE THAT THE  
CONSULTANT HAS USED UP-TO-DATE NUMBERS AND HAS ALSO TAKEN  
INTO CONSIDERATION ALL OF THE PROPOSED FUTURE DEVELOPMENT  
IN THE AREA.

IT SEEMS THE GREATEST TRAFFIC IMPACT WOULD COME  
FROM THE WEEKEND USE OF AN ADDITIONAL BADLY NEEDED  
BALLFIELD. ACCORDING TO THE EIR, THIS IMPACT COULD BE  
MITIGATED BY RESTRICTION BEING PUT ON THE NUMBER OF GAMES  
PER DAY, THE TIME INTERVAL BETWEEN GAMES BEING EXTENDED  
AND THE RESTRIPING OF THE THROUGH LANE OF SOUTHBOUND  
MALIBU CANYON ROAD TO ALLOW LEFT AND RIGHT-HAND TURNS AS  
WELL AS A THROUGH LANE, A CAN OF PAINT.

I WAS PLEASED TO SEE THAT THE CITY'S PUBLIC  
WORKS DEPARTMENT FEELS THAT IT WOULD NOT BE NECESSARY TO  
TWEAK THE TRAFFIC LIGHTS AND INVOLVE CALTRANS AS PROPOSED  
BY THE CONSULTANT. OBVIOUSLY, THIS WOULD ELIMINATE A LOT  
OF TIME-CONSUMING RED TAPE.

I AM NOT A TRAFFIC ENGINEER, BUT THESE FIXES

PH  
9-1

### 3. Response to Comments

1 SEEM RELATIVELY SIMPLE AND WOULD ALLOW FOR A MUCH-NEEDED  
2 ADDITIONAL FIELD AND PARKING AT BLUFFS.

3 THANK YOU.

4 MR. JENNINGS: THANK YOU, CAROL.

5 RON FOLLOWED BY KARI KRAMER.

6 MR. BOGIE: GOOD EVENING. WE ARE HOMEOWNERS IN  
7 MALIBU COUNTRY ESTATES, AND WE'VE ENJOYED LIVING THERE  
8 FOR THE PAST FEW YEARS. IT'S A BEAUTIFUL AREA WITH  
9 FANTASTIC VIEWS. AND WHEN WE SAW THE -- THE -- THE FLAGS  
10 GO UP, THE POLES -- STORY POLES GO UP, WE WERE, LIKE,  
11 VERY DISAPPOINTED, AND WE SAW, OKAY, THEY'RE GOING TO BE  
12 DOING SOME KIND OF DEVELOPMENT THERE.

13 AND WHAT REALLY CONCERNS US IS THAT -- IS THE  
14 HEIGHT OF THIS PROJECT BECAUSE THE HIGHER IT GOES THE  
15 LESS WE'RE GOING TO BE ABLE TO SEE OF THIS, YOU KNOW,  
16 LOVELY VIEW.

17 AND THE ONE THING THAT WE'RE VERY CONCERNED  
18 ABOUT ARE THE -- THE PLANTING OF TREES. AND IF THESE  
19 TREES GROW AS THEY EVENTUALLY WILL, OUR VIEW WILL BE  
20 AFFECTED EVEN MORE SIGNIFICANTLY. SO THOSE ARE  
21 OUR -- THE THINGS THAT WE ARE WORRIED ABOUT. SO WANTED  
22 TO BRING THAT UP TO YOU TONIGHT.

23 THANK YOU.

24 MR. JENNINGS: THANK YOU. KARI KRAMER FOLLOWED  
25 BY FRED GAINES.

PH  
9-1  
cont'd

PH  
10-1

3. Response to Comments

1 MS. KRAMER: HI. I'M SPEAKING TO YOU TONIGHT ON  
2 BEHALF OF CONCERNED MALIBU RESIDENTS AND PROPERTY OWNERS  
3 ADJACENT AND SOUTHERLY TO THE CRUMMER SITE. BASED ON OUR  
4 PREVIOUS DOCUMENT SUBMITTALS TO THE CITY AND ON  
5 DISCUSSIONS WITH MR. ROBERT GOLD ALL VOICING OUR SERIOUS  
6 VISUAL AND TECHNICAL CONCERNS, WE'VE LOOKED FORTH TO THE  
7 DEIR TO SEE HOW THEY WOULD BE ADDED AND MITIGATED.

8 UNFORTUNATELY, THE DEIR HAS FAILED TO  
9 SUBSTANTIVELY ADDRESSING OUR SPECIFIC SITE LOCATION  
10 CONCERNS AND ISSUES AS REQUIRED UNDER CEQA. WE WILL BE  
11 SUBMITTING DETAILED INFORMATION PRIOR TO THE RESPONSE  
12 DEADLINE; HOWEVER, THIS EVENING I'D LIKE TO READ INTO THE  
13 RECORD A GENERAL SUMMARY OF THE CONCERNS THAT HAVE NOT  
14 BEEN ADDRESSED.

15 THE VISUAL IMPACTS FROM THE STRUCTURES ON LOT 5  
16 WERE NOT ADDRESSED; INSTEAD, ALL VISUAL CONCERNS WERE  
17 DISMISSED AS LESS THAN SIGNIFICANT, THEREFORE NOT  
18 REQUIRING MITIGATION AND NOT ADDRESSING OUR SPECIFIC  
19 MALIBU ROAD CONCERNS.

20 IN FACT, THE DEIR SIMULATION PHOTOGRAPHS ONLY  
21 UNDERScore AND MAGNIFY THOSE CONCERNS. THE SETBACKS FROM  
22 THE BLUFF EDGE ARE QUESTIONABLE. THE ALTERNATIVES TO THE  
23 PROJECT ARE WEAK AND INADEQUATE.

24 THE REASONING FOR NOT CONSIDERING AN ALTERNATIVE  
25 SITE PLAN THAT WOULD REARRANGE FOOTPRINTS TO SET BACK

PH  
11-1

### 3. Response to Comments

1 FURTHER FROM THE BLUFF EDGE AND FOR EIGHTEEN FOOT HEIGHTS  
2 IS BASED ON ASSUMPTION WITH NO SUBSTANTIVE STUDY OR  
3 SUPPORTIVE FACTUAL DATA. THE WEAK ALTERNATIVES HAVE AN  
4 APPEARANCE OF IMPROPRIETY IN MEETING CEQA REQUIREMENTS  
5 AND IN CATERING TO THE DEVELOPER'S WISHES AND DESIRES  
6 INSTEAD OF THE INTENT AND LETTER OF THE REGULATIONS FOR  
7 BOTH THE STATE OF CALIFORNIA AND THE CITY OF MALIBU.

8 MANY OF THE TECHNICAL ISSUES HAVE BEEN MITIGATED  
9 BY STATING THAT THEY'LL BE ADDRESSED IN SUBSEQUENT CC&RS,  
10 THEREBY INSURING THE POTENTIAL FUTURE OFF-SITE HAZARDS  
11 WILL NOT OCCUR. THIS, OF COURSE, IS AN EASY WAY TO KICK  
12 THE CAN DOWN THE ROAD. THE CITY SHOULD NOT RELY ON  
13 UNKNOWN FUTURE CC&RS, BUT, RATHER, IMPOSE VERY STRICT  
14 CONDITIONS REGARDING THOSE ISSUES NOW, NOT LATER. IT IS  
15 IMPRUDENT TO PLACE THE CITY IN POTENTIAL LIABILITY THAT  
16 COULD OTHERWISE BE AVOIDED.

17 FINALLY, IT SHOULD BE STATED THAT THE ELEPHANT  
18 IN THE ROOM IS THE IMPOSING VISUAL IMPACTS OF THE  
19 PROJECT. REGARDLESS OF EXTENSIVE SUBJECTIVE DISCUSSIONS  
20 BY THE EIR CONSULTANT, IT IS COMMON SENSE THAT THE CITY'S  
21 UNDERLINING SPIRIT, INTENT AND DISCRETIONARY AUTHORITY  
22 FOR MAINTAINING MALIBU'S RURAL VISUAL CHARACTER SHOULD  
23 GUIDE THE GRANTING OF THE PRIVILEGE TO DEVELOP UNDER A  
24 PLANNED DEVELOPMENT PROJECT.

25 THE DEVELOPER HAS CREATED HIS OWN HARDSHIPS AND

PH  
11-1  
cont'd

PH  
11-2

PH  
11-3

3. Response to Comments

1 CONTROVERSY. THE CITY'S AUTHORITY SHOULD BE NOT SERVED  
2 BY SUBJECTIVE EIR CONCLUSIONS. MOST THOUGHTFUL  
3 ARCHITECTS WOULD AGREE THAT THERE ARE NUMEROUS DESIGNS  
4 THAT COULD HAVE BEEN APPLIED TO THE SITE WHEREBY THE  
5 ELEPHANTS WOULD HAVE NO OR LITTLE VISUAL IMPACT ON THE  
6 BLUFF AND SLOPE EDGES.

7 THIS IS THE GUIDING TASK FOR THE DEVELOPER AND  
8 ARCHITECT. THE CITY HAS A RESPONSIBILITY TO ENSURE THAT  
9 THIS TASK IS HONORABLY PERFORMED AND RIGHTFULLY ACHIEVED.

10 THANK YOU.

11 MR. JENNINGS: THANK YOU, KARI.

12 FRED GAINES FOLLOWED BY FARIMA DAMAVANDI.

13 MR. GAINES: THANK YOU, MR. CHAIRMAN, HONORABLE  
14 MEMBERS.

15 MY NAME IS FRED GAINES WITH THE LAW OFFICES OF  
16 GAINES & STACEY HERE TONIGHT ON BEHALF OF GREEN ACRES,  
17 LLC. THIS PROJECT PROPOSED BY A NEW YORK HEDGE FUND IS A  
18 BLUFFTOP MANSIONIZATION PROGRAM AND CONVERSION OF AREAS  
19 THAT ARE PLANNED -- HAD BEEN PLANNED FOR VISITOR SERVING  
20 AND RECREATIONAL USES INTO A PRIVATE GATED COMMUNITY.

21 WITH REGARD TO THE DRAFT ENVIRONMENTAL IMPACT  
22 REPORT, IT IS INADEQUATE AND VIOLATES CEQA IN A NUMBER OF  
23 AREAS. LET ME GO THROUGH JUST THREE OF THEM TONIGHT, AND  
24 WE WILL PROVIDE MORE DETAILED WRITTEN COMMENTS.

25 LET ME START WITH THE PROJECT DESCRIPTION. THE

PH  
11-3  
cont'd

PH  
12-1

### 3. Response to Comments

1 PROJECT DESCRIPTION, THERE'S AN INHERENT PROBLEM THAT  
2 AFFECTS THE ENTIRETY OF THE CEQA ANALYSIS. THE PROJECT  
3 INCLUDES A MAP FOR SEVEN LOTS, INCLUDED LOT 7 --  
4 INCLUDING LOT 7, WHICH IS TO BE DEDICATED TO THE CITY.

5 HOWEVER, THE EIR GOES ON TO SAY THAT THE  
6 RECREATIONAL USES ON LOT 7 WILL BE DETERMINED AT A LATER  
7 DATE AND ARE NOT PART OF THE PROJECT. SO IT FIRST SAYS  
8 PART OF THE PROJECT, THEN IT SAYS NOT PART OF THE  
9 PROJECT. IT SAYS IN STUDIES AS ALTERNATIVES A SKATE PARK  
10 AND A BALLFIELD, BUT, AGAIN, SAYS THAT THOSE ARE NOT PART  
11 OF THE PROJECT. NOW, THE PROJECT DESCRIPTION'S GOT TO --  
12 GOT TO DESCRIBE THE PROJECT PROPERLY.

13 FIRST OF ALL, THIS IS PROJECT-SPLITTING. YOU  
14 CAN'T REVIEW PART OF THE PROJECT AND LEAVE PART OF THE  
15 PROJECT FOR ANOTHER DAY, WHATEVER THOSE RECREATIONAL USES  
16 ARE GOING TO BE. IN THIS CASE THE PROJECT INCLUDES THIS  
17 DONATION OF A MILLION DOLLARS TO USE FOR LOT 7 FOR THOSE  
18 RECREATIONAL USES BUT, AGAIN, WITHOUT TELLING US WHAT  
19 THAT USE IS OR EXACTLY HOW IT'S GOING TO AFFECT THE  
20 ENVIRONMENTAL IMPACTS OF THIS PROJECT.

21 THE -- IT ALSO -- LOT 7 IS ALSO GOING TO BE USED  
22 FOR SEEPAGE PITS, SO IT'S NOT COMPLETELY BEING GIVEN TO  
23 THE -- TO THE PUBLIC. IT'S GOING TO BE GIVEN TO THE  
24 PUBLIC, BUT THERE'S SEEPAGE PITS WITH THE HOMEOWNERS  
25 ASSOCIATION HAVING MAINTENANCE RESPONSIBILITIES FOR

PH  
12-1  
cont'd

3. Response to Comments

1 THOSE -- FOR THOSE PITS. SO IT'S -- IT -- THIS IS NOT  
2 EXPLAINED, HOW THAT'S GOING TO WORK, HOW THIS PUBLIC  
3 PROJECT PARTNERSHIP IN DEALING WITH THOSE ISSUES IS GOING  
4 TO WORK.

PH  
12-1  
cont'd

5 PROBLEMS WITH THE LAND USE AND PLANNING SECTION.  
6 AS YOU KNOW, IT'S -- A 28-FOOT PROPOSED HEIGHT IS  
7 INCONSISTENT WITH THE CITY'S RESIDENTIAL HEIGHT LIMIT BY  
8 TEN FEET. WE'VE PROVIDED A GRAPHIC PROVIDED BY THE  
9 ARCHITECT, HENRY LENNY, THAT SHOWS WHAT SOME OF THOSE  
10 IMPACTS ARE GOING TO BE. THIS IS ONE OF THOSE IMPACTS  
11 WHERE YOU DON'T REALLY NEED AN EXPERT TO TELL YOU THAT  
12 THERE'S A -- THAT 28 FEET IS GOING TO HAVE MORE OF AN  
13 IMPACT THAN 18 FEET WHEN THIS PROJECT CAN BE SEEN FROM  
14 ALL OVER.

15 WE'VE GIVEN YOU A SIGHT -- A VIEW FROM WEBB WAY  
16 BUT FROM ALL OVER THE CITY, YET THE -- YET THIS  
17 ENVIRONMENTAL IMPACT REPORT TELLS YOU THAT THERE'S NO  
18 SIGNIFICANT IMPACT AND THERE'S NO MITIGATION NEEDED AND  
19 NO MITIGATION WOULD PROVIDE LESS OF AN IMPACT, AND YOU'VE  
20 HEARD THE TESTIMONY ALREADY ABOUT THE HEIGHT.

PH  
12-2

21 IN ADDITION, YOUR LAND USE PLAN TALKS ABOUT THIS  
22 PROPERTY AS BEING -- HAVING VISITOR SERVING AND  
23 RECREATIONAL POSSIBILITIES. NONE OF THOSE ARE STUDIED.

24 AND WHEN YOU GET TO THE ALTERNATIVE SECTION,  
25 SECTION 7, YOU HAVE NO STUDY OF SMALLER HOMES. YOU HAVE

### 3. Response to Comments

1 NO STUDY OF RECREATIONAL, YOUR VISITOR SERVING USES, AND  
2 IT ONLY INCLUDES AN ALTERNATIVE WITH THE SAME SIZE HOUSE  
3 AS A SINGLE STORY HOUSE BUT NOTHING EVEN SLIGHTLY  
4 SMALLER. THESE ARE INADEQUATE -- AN INADEQUATE REVIEW OF  
5 THE ALTERNATIVES.

6 THANK YOU FOR GIVING ME THE ADDITIONAL FEW  
7 MOMENTS THERE.

8 MR. JENNINGS: THANK YOU VERY MUCH.

9 FARIMA DAMAVANDI.

10 MS. DAMAVANDI: GOOD EVENING. MY CONCERN AS  
11 SOMEONE WHO LIVES SOUTHWARD OF THIS PROJECT ON MALIBU  
12 ROAD IS THAT A FEW YEARS AGO WHEN WE HAD SEVERE RAINFALL  
13 A TREMENDOUS AMOUNT OF MUD, WHICH PRACTICALLY BECAME A  
14 RIVER OF MUD, CAME DOWN FROM CRUMMER'S SITE DOWN THE HILL  
15 INTO OUR DRIVEWAY, MINE AND MY NEIGHBOR'S.

16 AND SO THIS DRAFT REPORT HAS REALLY NOT  
17 ADDRESSED THE CONCERNS REGARDING IRRIGATION AND THE  
18 STABILITY OF THE HILLSIDE. CONSIDERING THAT THERE IS  
19 GOING TO BE MUCH IRRIGATION AND SWIMMING POOLS, AND MY  
20 CONCERN IS COMPROMISING THE STABILITY OF THE HILLSIDE AND  
21 THE SLOPES BEHIND OUR HOMES, ACTUALLY, RIGHT ABOVE OUR  
22 HOMES. SO I'D LIKE TO JUST BRING THIS TO YOUR ATTENTION  
23 ABOUT THE STABILITY OF THE SLOPE.

24 THANK YOU.

25 MR. JENNINGS: THANK YOU VERY MUCH. THAT

PH  
12-2  
cont'd

PH  
13-1

3. Response to Comments

1 CONCLUDES THE PUBLIC SPEAKERS.

2 I JUST WANT TO -- I WANT TO REMIND YOU ALL THAT

3 THE PURPOSE OF THIS HEARING IS TO ADDRESS THE -- NOT THE

4 MERITS OF THE PROJECT BUT THE DRAFT EIR AND WHETHER IT

5 COMPLIES WITH THE REQUIREMENTS OF THE CALIFORNIA

6 ENVIRONMENTAL QUALITY ACT, AND I APPRECIATE ALL OF YOU

7 COMING DOWN HERE AND GIVING US YOUR THOUGHTS ON -- ON

8 THAT SUBJECT.

9 THIS PROJECT IS AT A VERY EARLY STAGE, EVEN

10 THOUGH IT'S BEEN GOING ON FOR WHAT SEEMS LIKE FOREVER,

11 BUT IT REALLY IS AT A VERY EARLY STAGE.

12 THE PREPARATION OF THE DRAFT EIR IS JUST NOW

13 GETTING BACK BEFORE THE CITY, AND SO THERE'S GOING TO BE

14 MANY OF THESE HEARINGS TO COME, AND I'M SURE THAT YOU ALL

15 WILL MAINTAIN YOUR INTEREST AND YOUR PARTICIPATION IN THE

16 PROCESS.

17 COMMISSION MEMBERS, IF YOU HAVE COMMENTS YOU

18 WOULD LIKE TO ADD WITH REGARD TO THE -- TO THE DRAFT

19 EIR -- STAFF IS LOOKING WITH TREPIDATION.

20 BUT ANY COMMENTS YOU'D LIKE TO ADD, JOHN?

21 MR. MAZZA: OKAY. I'LL TRY TO BE BRIEF. THERE

22 ARE SEVERAL THINGS I NOTICED IN READING THIS, WHICH WAS

23 QUITE A JOB. ONE, IT STRUCK ME RIGHT AWAY THAT LESS THAN

24 SIGNIFICANT IMPACTS ON SCENIC VIEWS WAS A STRETCH

25 SINCE -- SINCE I GOT MANY CALLS, "WHAT ARE THOSE THINGS

PH  
14-1

### 3. Response to Comments

1 UP ON THE HILL?" SO THAT'S ONE THING THAT HAS ALREADY  
2 BEEN MENTIONED.

PH  
14-1  
cont'd

3 THE OTHER THING IS A SHORT WHILE AGO WE -- WE  
4 GAVE A PERMIT FOR TEST WELLS FOR PEPPERDINE ON WATER  
5 MIGRATION ON BLUFFS PARK, AND I WONDERED WHY THAT WAS NOT  
6 IN THE EIR AS FAR AS REQUIREMENT FOR WATER MIGRATION ON  
7 THIS PROPERTY SINCE IT HAS -- ALSO HAS A SEWAGE TREATMENT  
8 PLANT.

PH  
14-2

9 THE -- THE THIRD THING THAT REALLY I QUESTION IS  
10 THIS -- ALL THIS EXPLANATION OF THE PD ZONE AND WHY THE  
11 PD ZONE WILL REMAIN. IT'S A ZONE THAT ONLY COVERS FIVE  
12 HOUSES IN MALIBU, AND IT WILL LAST IN PERPETUITY IF WE  
13 LEAVE IT THAT WAY, WHICH MEANS THAT EVERY TIME ANY HOUSE  
14 COMES UP FOR PERMIT IN THOSE FIVE HOUSES OR EVERY TIME WE  
15 CHANGE OUR R ZONING REQUIREMENTS ON R-1, R-2, R-3 OR  
16 WHATEVER, THIS WILL BE AN OUTLIER. IT'S -- IT'S A ZONE  
17 THAT IS GOING TO BE FORGOTTEN OR HAS NO SPECIFICS THAT  
18 HAVE GONE THROUGH THE PLANNING COMMISSION OVER AND OVER  
19 AND OVER AGAIN AND WORKED OUT. SO WHY HAVE A SEPARATE  
20 ZONE SHOULD BE ANSWERED. WHY CAN'T THIS BE RR-2 OR RR-5  
21 OR SOMETHING. WHY IS IT -- WHY IS IT DIFFERENT? AND I  
22 THINK THAT NEEDS TO BE EXPLAINED.

PH  
14-3

23 I THINK ALSO AN ALTERNATIVE THAT IS NOT HERE  
24 IS -- WHEN YOU LOOK AT VISUAL IMPACT FROM THE HIGHWAY,  
25 YOU SEE HOUSES. LOT 1 AND LOT 2 ARE WHAT YOU SEE, THESE

PH  
14-4

3. Response to Comments

1 GIANT THINGS, AND THERE IS NO DISCUSSION OF WHETHER SOME  
2 OF THE LOTS COULD BE TWO STORIES AND SOME OF THE LOTS  
3 COULD BE ONE STORY TO LESSEN VISUAL IMPACT.

4 NOW, THE -- ON -- ON 5.1-47 THE ANALYSIS SAYS  
5 THAT THE MUNICIPAL CODE DOES NOT COVER ANY COMMERCIAL.  
6 AND I MAY BE WRONG IN THIS, BUT I THINK WE'VE PASSED THE  
7 VIEW PRESERVATION ORDINANCE, NOT THE RESTORATION  
8 ORDINANCE, AND THAT DOES GOVERN COMMERCIAL. SO THAT'S  
9 ONE THING THAT MAY -- I MAY BE WRONG ON THAT.

10 NOW, ON 5-48 IT TALKS ABOUT LIGHTING, AND IT  
11 SAYS, QUOTE, "ANY FUTURE RECREATIONAL USE SUCH AS  
12 BALLFIELD OR SKATE PARKS WILL NOT INCLUDE NIGHTTIME  
13 LIGHTING." I'M NOT AWARE OF THAT PROVISION, THAT DEED  
14 RESTRICTION ON THAT PROPERTY.

15 I THINK TOMORROW MORNING THE CITY COULD  
16 AUTHORIZE LIGHTING IF THEY WENT THROUGH THE PROCESS THEY  
17 DID AT THE HIGH SCHOOL. SO THAT'S SOMETHING THAT'S  
18 CONTINGENT ON A FUTURE ACTION, WHICH I CAN'T IMAGINE OUR  
19 CITY COUNCIL DOING, BUT IT'S PART OF THIS EIR SO I THINK  
20 THAT SHOULD BE ANALYZED AS TO WHETHER OR NOT IT'S TRUE.  
21 WILL THERE BE STREETLIGHTS? WILL THE GATE BE LIT UP?  
22 NONE OF THAT IS DISCUSSED. SO I THINK THE LIGHTING  
23 SECTION IS INADEQUATE. AND TO SAY THAT THERE'S NOT GOING  
24 TO BE ANY LIGHTING IS QUESTIONABLE.

25 NOW, ON FRIDAY WE HAD AN EARTHQUAKE, AND -- AND

PH  
14-4  
cont'd

PH  
14-5

PH  
14-6

### 3. Response to Comments

1 THE -- THIS EIR SAYS THAT 200 FEET NORTH OF THIS PROPERTY  
2 IS THE MALIBU FAULT BUT THERE'S NO PROBLEM WITH  
3 EARTHQUAKE. I THINK THAT NEEDS TO BE EXPLORED MORE. AT  
4 ONE TIME -- AND I THINK THIS IS FROM INSTITUTIONAL  
5 MEMORY, BUT AT ONE TIME THERE WAS AN EARTHQUAKE FAULT  
6 ACROSS THIS PROPERTY, AND HUGHES -- I MEAN GENERAL MOTORS  
7 DESIGN LAB WALKED AWAY FROM IT. PAUL PROBABLY REMEMBERS  
8 THIS BECAUSE OF THE INSTABILITY, SO -- I DON'T KNOW.  
9 THAT'S NOT DISCUSSED IN HERE EITHER. NOW, MY BIGGEST  
10 CONCERN IS WE DON'T -- WE'RE NOT TAKING ANY MORE  
11 TESTIMONY.

12 MR. GRISANTI: I'M JUST ASKING.

13 MR. MAZZA: MY BIGGEST CONCERN IS SOME DATA  
14 THAT -- THAT THE CITY SUPPLIED. IT SAYS IN HERE  
15 THAT -- THAT THE TRAFFIC ON PACIFIC COAST HIGHWAY GOES UP  
16 1.5 PERCENT A YEAR AND HAS AND WILL IN THE FUTURE AND  
17 THAT NUMBER COMES FROM CITY STAFF, AND I'VE HEARD THAT  
18 OVER AND OVER AND OVER AGAIN, AND, AS FAR AS I'M  
19 CONCERNED, THERE'S NO SCIENTIFIC BASIS FOR IT.

20 ANYBODY WHO LIVES IN MALIBU KNOWS THAT IN THE  
21 LAST TEN YEARS TRAFFIC IS UP MORE THAN FIFTEEN PERCENT,  
22 AND THEY CERTAINLY KNOW IN THE LAST 20 YEARS IT'S UP MORE  
23 THAN 30. I MEAN, ANYBODY WILL TELL YOU THAT. SO I THINK  
24 THAT NUMBER NEEDS TO BE BACKED UP. THE WHOLE TRAFFIC  
25 STUDY IS BASED ON A GROWTH RATE THAT IS FALLACIOUS, AND

PH  
14-6  
cont'd

PH  
14-7

3. Response to Comments

1 IT'S NOT THE FIRST TIME THIS HAS COME UP.  
2 AND I THINK THE TRAFFIC STUDY ALSO DOES NOT  
3 ADEQUATELY ADDRESS PEPPERDINE AND THE IMPACTS OF SOME OF  
4 THESE OTHER PROJECTS, ESPECIALLY WHEN DURING THE SUMMER  
5 YOU HAVE PEPPERDINE GRADUATIONS, PEPPERDINE NEW  
6 FIELDHOUSE ALONG WITH CHUMASH DAYS AND ALL KINDS OF  
7 STUFF.  
8 SO I THINK THE -- THE FACT THAT THE EIR STATES  
9 THAT WE -- THIS -- THIS INTERSECTION FAILS AND IT IS A  
10 SIGNIFICANT IMPACT IS NOT ADEQUATELY ADDRESSED, AND, AS  
11 CAROL RANDALL SAID, IT'S A GALLON OF PAINT. WELL, A  
12 GALLON OF PAINT IS NOT GOING TO FIX COAST HIGHWAY, AND WE  
13 ONLY HAVE ONE ROAD IN MALIBU.  
14 SO IT'S NOT NECESSARILY THIS PROJECT'S PROBLEM,  
15 BUT WE'VE GOT MANY PROJECTS COMING ALONG IN THE OPENING  
16 DATED 2017, AND THERE'S NO WAY IN MY MIND THAT THOSE  
17 NUMBERS ARE CORRECT.  
18 NOW, ON -- ON LUP POLICY 1.3.2 IT SAYS, "THE  
19 CITY SHALL REQUIRE DEVELOPMENT TO AVOID SAFETY HAZARDS  
20 CREATED BY DEVELOPMENT." AND THIS PROJECT CONTEMPLATES  
21 BUILDING SWIMMING POOLS AND OTHER ACCESSORY BUILDINGS ON  
22 A LESS THAN 1.5 SLOPE SAYING THERE WILL BE MITIGATION.  
23 WELL, "SHALL" DOESN'T MEAN YOU GO OUT THERE AND PUT A  
24 BUNCH OF PYLONS IN. IT MEANS YOU AVOID IT. SO THAT WAS  
25 NOT ADDRESSED EITHER.

PH  
14-7  
cont'd

PH  
14-8

### 3. Response to Comments

1           NOW, THE OTHER THING THAT WAS NOT ADDRESSED, I  
2           THINK, IN THIS IS WHY -- WHY THESE PROPERTIES NEED TO GO  
3           BEYOND THE REQUIREMENTS OF OUR MUNICIPAL CODE ON MAXIMUM  
4           SIZE. THEY'RE UP TO 2200 SQUARE FEET LARGER THAN IS  
5           ALLOWED. THEY HAVE BASEMENTS THAT ARE NOT ALLOWED. THEY  
6           NEVER DISCUSS IN THIS THE DAYLIGHTING OF THE BASEMENTS  
7           THAT I COULD FIND, BUT APPARENTLY THEY DO DAYLIGHT, WHICH  
8           IS -- WAS A BIG DEAL IN THIS TOWN, AND IT'S NOT EXPLAINED  
9           IN HERE WHY THEY NEED TO BE THAT WAY.

10           I DON'T KNOW IF THERE'S A TWO-THIRDS RULE  
11           ESTABLISHED ON THESE BUILDINGS OR NOT. I COULD NOT FIND  
12           IT.

13           AND -- LET'S SEE. YEAH. BUT WHAT REALLY  
14           CONCERNS ME THE MOST IS NOT SOMETHING THAT THIS PROJECT  
15           REALLY -- REALLY DOES. IT'S THE REQUIREMENT FOR THE  
16           CUMULATIVE TRAFFIC IMPACT AND THE FACT THAT, AS FAR AS  
17           I'M CONCERNED, THAT 1.5 NUMBER -- I'VE HEARD IT TEN YEARS  
18           AGO, I HEARD IT FIVE YEARS AGO, I HEARD IT RIGHT HERE,  
19           AND IT'S NOT RIGHT, WHICH THROWS THE WHOLE TRAFFIC STUDY  
20           OFF.

21           AND WITHOUT SOME JUSTIFICATION OTHER THAN ONE  
22           LINE IN THIS REPORT THAT SAYS "CITY STAFF SUPPLIED THIS  
23           NUMBER," THAT DOESN'T CUT IT AS FAR AS I'M CONCERNED.  
24           THOSE ARE JUST SOME BASIC THINGS.

25           THANKS.

PH  
14-9

PH  
14-10

NORMAN SCHALL & ASSOCIATES  
(800) 734-8838

34

3. Response to Comments

1 MR. JENNINGS: THANK YOU, JOHN.

2 ANYBODY ELSE WHO WOULD LIKE TO SPEAK?

3 MR. PIERSON: I'LL ADD A FEW COMMENTS. I THINK  
4 JOHN COVERED A LOT OF THEM.

5 I THINK I HAVE TO AGREE ON THE AESTHETICS BEING  
6 LESS THAN SIGNIFICANT IS A LITTLE HARD TO FIGURE OUT,  
7 PARTICULARLY SINCE THAT'S WHAT MOST PEOPLE HERE SPOKE  
8 ABOUT. THAT CONCERNS ME.

9 ALSO -- I THINK JOHN MIGHT HAVE TOUCHED THIS ONE  
10 TOO, BUT WHY ALL BUILDINGS ARE LOOKED AT AS TWO STORY  
11 INSTEAD OF POTENTIALLY EITHER ALL -- I DON'T THINK THE  
12 STUDY OF THE ONE STORY WAS -- SEEMED VERY BELIEVABLE TO  
13 ME, THAT IT WAS -- YOU KNOW, IT WAS LESS IMPACT THAN  
14 TWO -- I MEAN IT WAS MORE IMPACT THAN TWO. WHEN I LOOK  
15 AT THE DRAWINGS OF THIS PROJECT, THE MASSING FROM THE  
16 TREES AND THE OUTBUILDINGS, TO ME IT MAKES IT ONE  
17 CONTINUOUS PROJECT. I DON'T SEE -- JUST FROM WHAT I SAW,  
18 I DON'T SEE AREAS OF BLUE WATER THROUGH THE DIFFERENT  
19 BUILDINGS. I SEE ONE GIANT MASSIVE BUILDINGS AND TREES.  
20 SO TO ME ONE STORY WOULD MAKE A LOT MORE SENSE,  
21 AS YOU'RE NOT SEEING THROUGH IT ANYHOW.

22 I ALSO WORRY A GREAT DEAL ABOUT THE BASEMENTS  
23 AND ITS IMPACT ON THE CULTURAL HISTORY AND RESOURCES ON  
24 THAT LAND. I THINK THERE'S A HUGE, HUGE HISTORY THERE  
25 THAT WE NEED TO BE VERY CAREFUL ABOUT AND HONOR, AND -- I

PH  
15-1

PH  
15-2

### 3. Response to Comments

1 KNOW IT'S MENTIONED IN THE EIR -- I THINK THAT COULD BE A  
2 SIGNIFICANT IMPACT, THOUGH, THAT IS UNMITIGATEABLE, AND  
3 THAT IS NOT ADDRESSED TO ME AT ALL. I DON'T THINK  
4 THERE'S A PROPER MENTION -- I THINK MATI BROUGHT THIS  
5 UP -- OF THE POSSIBLE CULTURAL -- HISTORIC CULTURE  
6 RESOURCE INVENTORY ON THAT PROPERTY. I WORRY ABOUT THAT.  
7 IT MIGHT HAVE BEEN HERE. IT WAS A HUGE DOCUMENT TO READ.

8 I DIDN'T SEE, TO ME, THAT I FOUND A GOOD  
9 CONVERSATION OR DISCUSSION, I MEAN, OF THE AMOUNT OF  
10 TREES BEING PROPOSED ON THE PROPERTY. I LOVE TREES, BUT  
11 IT, ONCE AGAIN, LOOKED TO ME FROM SOME OF THE PICTURES  
12 LIKE IT CREATED A LOT MORE MASSING ALSO.

13 PROBABLY REPEATING YOU SINCE YOU TALKED FOR A  
14 WHILE, BUT NOT MUCH OF A DISCUSSION OF -- OF SMALLER  
15 HOUSES IN THERE, WHICH SEEMED TO BE WARRANTED, NOT JUST  
16 ONE STORY.

17 AND THAT'S IT FOR NOW.

18 MR. JENNINGS: ANYBODY ELSE?

19 MR. MAZZA: I HAVE ONE MORE COMMENT.

20 MR. JENNINGS: I'LL -- WE'LL WAIT YOUR TURN.

21 MR. MAZZA: OKAY.

22 MR. JENNINGS: I READ SOMEPLACE THAT SOME  
23 COASTAL COMMISSION REPRESENTATIVE HAD RAISED THE ISSUE  
24 THAT THE PROPERTY WAS REALLY SUPPOSED TO BE VISITOR  
25 SERVING COMMERCIAL, AND I WONDER WHETHER THAT ISSUE HAS

PH  
15-2  
cont'd

PH  
15-3

PH  
16-1

3. Response to Comments

1 BEEN RESOLVED TO STAFF'S SATISFACTION. BECAUSE MY MEMORY  
2 OF IT IS THIS, THAT DURING THE LCP HEARINGS THEY APPLIED  
3 WHAT THEY CALLED A WHITE HOLE TO THIS PROPERTY, THAT IT  
4 WAS GOING TO BE JUST LEFT UNDESIGNATED IN THE LCP, AND  
5 THE PLANNED DEVELOPMENT ZONING ISSUE AROSE OUT OF THAT.  
6 BUT I WAS DISTURBED WHEN I READ SOMETHING IN SOME PAPER  
7 THAT COASTAL WAS RAISING THIS ISSUE.

8 CAN YOU -- CAN YOU SHED ANY LIGHT ON THAT?  
9 MS. PARKER-BOZYLINSKI: I DON'T HAVE THE EXACT  
10 POLICY IN THE LCP THAT THEY'RE RELYING UPON, BUT THERE IS  
11 A POLICY -- I BELIEVE IT'S ONLY ONE POLICY -- THAT WAS  
12 PUT IN PLACE WHEN THE CITY WAS NEGOTIATING TO GET THE  
13 BLUFFS PARK, THAT PORTION OF IT, AND I BELIEVE THERE WAS  
14 LANGUAGE IN THERE THAT SAID SOMETHING ALONG THE LINES  
15 THAT IF THIS TRANSFER DOESN'T OCCUR THEN IT SHOULD REMAIN  
16 VISITOR SERVING OR SOMETHING LIKE THAT.

17 I -- I CAN'T REMEMBER THE EXACT WORDS, AND SO WE  
18 NEED TO AMEND THAT. AND OUR ARGUMENT HAS ALWAYS BEEN IT  
19 DID OCCUR, SO THEREFORE IT'S PD AND DOES NOT NEED TO BE  
20 REZONED. THEY BELIEVE THAT IT IS A LOSS OF VISITOR  
21 SERVING USE AND IT HAS TO BE MITIGATED, AND SO THAT IS  
22 SOMETHING THAT THEY ARE DEALING WITH SEPARATELY WITH THE  
23 COASTAL COMMISSION AND -- BUT WE DO NOT BELIEVE THAT IT'S  
24 A LOSS OF VISITOR SERVING USE OR A REZONE. WE BELIEVE  
25 THAT IT'S PD AND -- AND WHAT THEY ARE PROPOSING IS

PH  
16-1  
cont'd

Staff  
Resp.

### 3. Response to Comments

1 ALLOWED AND PERMITTED USE.

2 MR. JENNINGS: THE MAIN QUESTION THAT I WANTED  
3 TO RAISE, IN READING THE REPORT IT -- IT APPEARS THAT IN  
4 MANY WAYS THE PARAMETERS OF THE DISCUSSION ARE SET DURING  
5 THE SCOPING MEETING. THAT'S WHEN THE -- THE RANGE OF  
6 POSSIBLE ALTERNATIVE PROJECTS IS SORT OF SET. BECAUSE AS  
7 HAS BEEN POINTED OUT EARLIER THE VISUAL IMPACT  
8 IS -- IS -- IS -- THE RESPONSE GIVEN IN THE EIR OR THE  
9 DRAFT EIR TO THE VISUAL IMPACT IS TO SAY, WELL, OKAY YOU  
10 CAN MAKE IT -- YOU KNOW, YOU CAN GO TO THE ALTERNATIVE,  
11 WHICH IS ONE STORY HOUSES, BUT THAT REALLY DOESN'T HAVE  
12 THAT MUCH IMPROVEMENT ON THE VISUAL IMPACT. SO IT'S NO  
13 SIGNIFICANT IMPACT AS A RESULT, BECAUSE THAT'S THE ONLY  
14 ALTERNATIVE PROJECT THAT'S CONSIDERED. AT ANY TIME WAS  
15 THERE EVER AN ALTERNATIVE CONFIGURATION CONSIDERED?

16 FOR EXAMPLE, WE USED TO TALK IN THE OLD DAYS  
17 ABOUT CLUSTERING HOUSING IN A RELATIVELY SMALL AREA OF A  
18 LARGE PIECE OF PROPERTY LIKE THIS. WAS THAT DISMISSED AS  
19 A POSSIBLE PROJECT ALTERNATIVE WHEN -- WHEN THIS EIR  
20 SCOPING WAS TAKING PLACE?

21 MS. PARKER-BOZYLINSKI: HA, DO YOU RECALL DURING  
22 THE SCOPING WHETHER CLUSTERING OF THE HOMES WAS  
23 DISCUSSED? I DON'T BELIEVE SO, BUT I --

24 MS. LY: NOT SO MUCH CLUSTERING OF THE HOMES,  
25 BUT ONE STORY -- THAT CAME UP QUITE OFTEN -- BUT NOT

PH  
16-2

Staff  
Resp.

3. Response to Comments

1 CLUSTERING.

2 MR. JENNINGS: ALL RIGHT. WELL, I GUESS I DON'T  
3 HAVE TO REPEAT WHAT WAS SAID. I -- MR. GAINES MADE THE  
4 POINT, I THINK, THAT THE CONCERN ABOUT -- ABOUT THE  
5 LIMITED SCOPE OF ALTERNATIVES THAT WERE CONSIDERED IN THE  
6 DRAFT EIR.

7 ANYBODY ELSE? JOHN?

8 MR. MAZZA: I JUST FORGOT TO MENTION ONE THING  
9 THAT I THINK SHOULD BE COVERED, AND THAT IS THE  
10 MITIGATION OF TRAFFIC IS APPARENTLY DEPENDENT UPON THE  
11 USE OF THE BASEBALL FIELDS. AND MUCH HAS BEEN MADE ABOUT  
12 US GETTING AN EXTRA BASEBALL FIELD, BUT FROM WHAT I READ  
13 HERE IT'S LIMITED TO THREE GAMES A DAY ON THE WEEKENDS  
14 PER FIELD AND TWO GAMES A DAY DURING THE WEEK.

15 AND THE ENFORCEMENT OF THAT -- WELL, IT'S TEN  
16 FIELDS -- TEN GAMES, THREE FIELDS, SO -- YOU CAN'T HAVE A  
17 THIRD OF A GAME. THAT'S WHY I CAME UP WITH THREE.

18 AND THE ENFORCEMENT OF THAT IS DEPENDENT UPON  
19 THE CITY HAVING SOME KIND OF PLAN TO ENFORCE IT, AND  
20 THERE'S NO DISCUSSION OF THE COST TO THE CITY OR WHAT'S  
21 THERE NOW, HOW MANY GAMES YOU CAN PLAY NOW AND WHETHER  
22 THERE IS A BENEFIT OR -- MAYBE IT'S JUST MORE FIELDS,  
23 LESS GAMES, BUT IT'S NOT DISCUSSED, AND THAT'S APPARENTLY  
24 ONE OF THE MITIGATING -- THE MITIGATING FACTOR.

25 IT'S ALSO SOMETHING THAT IF THE CITY IGNORES IT

PH  
16-2  
cont'd

PH  
17-1

### 3. Response to Comments

1 THEN -- THE MAIN PROBLEM WITH ANY PROJECT ON COAST  
2 HIGHWAY IS SIGNIFICANT, THAT THE CITY DOESN'T ENFORCE THE  
3 NUMBER OF GAMES AND, THEREFORE, THE HIGHWAY GOES TO F,  
4 AND NOTHING WORKS. SO I THINK THAT'S -- A SIGNIFICANT  
5 AREA THAT'S MISSING FROM THE EIR IS WHAT HAPPENS IF THE  
6 CITY DOESN'T PASS IT, IF THE CITY DOESN'T ENFORCE IT OR  
7 IF THE CITY HAS ANY BENEFIT AT ALL BY HAVING AN EXTRA  
8 FIELD AND NOT BEING ABLE TO USE IT.

9 MR. JENNINGS: OKAY. THAT -- AS I SAID, THIS  
10 WAS AN OPPORTUNITY FOR THE PUBLIC TO SPEAK AND FOR THE  
11 STAFF TO TAKE THE COMMENTS INTO ACCOUNT IN PREPARATION IN  
12 MOVING FROM THE DRAFT EIR TO THE FINAL EIR. THAT  
13 CONCLUDES THIS ITEM. IT ALSO CONCLUDES OUR AGENDA.

14 IS THERE A MOTION TO ADJOURN?

15 MR. MAZZA I MOVE WE ADJOURN.

16 MR. JENNINGS: SECOND? IS THERE A SECOND?

17 MR. PIERSON: SECOND.

18 MR. JENNINGS: ALL IN FAVOR?

19 MR. BROTMAN: AYE.

20 MR. STACK: AYE.

21 MR. MAZZA: AYE.

22 MR. JENNINGS: WE ARE ADJOURNED.  
23  
24  
25

PH  
17-1  
cont'd



### 3. Response to Comments

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### 3. Response to Comments

#### **PH1 Response to Comments at Public Hearing, dated May 6, 2013.**

##### **PH1 Response to Comments from Briskin, RObert, dated May 6, 2013**

PH1-1 First, the commenter believes the project would block views from Alumni Park and that analysis of Alumni Park and Pepperdine is excluded.

The commenter is referred to General Comment 2.3.1 and the revised view simulation analysis is Appendix A of the FEIR. A number of comments were received requesting that the City provide visual simulations from additional public viewpoints. Based on the comments to the DEIR, the Planning Department requested visual simulations to be provided from twelve (12) additional locations, seven (7) of which are from public viewpoints, and five locations are on the campus of Pepperdine University selected by an University representative. They include:

- View 15: Pepperdine University - Brock House Lawn.
- View 16: Pepperdine University - Thornton Administrative Center.
- View 17: Pepperdine University - Campus Walk
- View 18: Pepperdine University - Lake Sidewalk
- View 19: Pepperdine University - Alumni Park.

View 19 provides a panorama view looking south and east from the western portion of Alumni Park. This view is located on private property that is available to Pepperdine University students, faculty and staff and visitors to the Pepperdine University campus. This location is approximately three-tenths of a mile from the project site at an elevation approximately 50 feet above the project site. This image shows that the Project is only slightly visible from this location and does obstruct any of the blue water view because of the significant distance between the project site, the ocean and this location. The existing landscaping in Alumni Park blocks a small portion of the Project and the ocean views from this location. The proposed project would have a less than significant impact on visual resources from this location.

Secondly, the commenter questioned why two-story homes are permitted and expressed the opinion that DEIR is insufficient because the basements and cabanas are not described beyond being identified.

The chart on Page 3-20 does not show the gross square footage proposed, instead it shows the proposed Total Development Square Footage (TDSF) for each parcel. It includes square footage for all the accessory structures, including the cabanas, but only a portion of the basement because basements are calculated using a different formula for TDSF. LIP Section 3.6 provides a formula for how to calculate TDSF as follows:

### 3. Response to Comments

“Total development square footage shall be determined based on the following formula (slopes equal to or greater than 1:1 shall be excluded from the lot area calculation): for lot areas up to 1/2 acre, total square footage shall be 17.7% of lot area plus 1,000 square feet; for lot areas greater than 1/2 acre and up to 1 acre, total development square footage shall be increased by 10% of the amount of lot area exceeding 1/2 acre; for lot areas greater than 1 acre and up to 1 1/2 acre, total development square footage shall be increased by 5% of the amount of lot area exceeding 1 acre; for lot areas greater than 1 1/2 acres and up to 5 acres, total development square footage shall be increased by 2% of the amount of the lot area exceeding 1 1/2 acres. For the purposes of this subsection, arbors or trellis open to the sky shall not be calculated as part of the total development square footage.

Basements. The square footage of a basement shall be included in the calculation of total development square footage (TDSF), consistent with the following formula: The initial one-thousand (1,000) square feet of a basement shall not count toward TDSF; additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at the rate of one (1) square foot of TDSF for every two (2) square feet of proposed basement square footage.”

This comment related to square footage totals does not related to a physical impact of the project and does not make the DEIR deficient.

The City’s maximum residential height limit is not 18 feet. As stated on page 5.1-4 of the DEIR, per M.M.C. Section 17.62.060, a site plan review (SPR) is required for all non-beachfront construction in excess of 18 feet up to a maximum height of 28 feet with a pitched roof. The revised view simulation analysis in Appendix A of the FEIR provides a detailed response of the comparative merits of visual impacts of one-story homes compared to two-story homes. See General Response 2.3 and Response to the Lenny Henry Comment Letter R9.

Third, the commenter states the opinion that one-story homes would eliminate the environmental effect to view and that eliminating of basements would reduce the grading volumes and related export volumes.

While eliminating basements might reduce the amount of soil haul, the DEIR did not identify any significant unavoidable impacts, including any related to visual resources or construction related air quality impacts that result from soil export.

PH1-2 The commenter points out that the Campus Life project was not listed in the cumulative projects list.

The commenter is correct. The Pepperdine Campus Life project was not included because it would take place over 12 years, and would not likely generate (permanent) traffic by the Opening Year (2017) of the Crummer project. A Revised Traffic Impact

### 3. Response to Comments

Analysis has been prepared to analyze the impact of the Pepperdine Campus Life project. As with the DEIR, cumulative impacts remain less than significant with mitigation. Please see revised Traffic and Transportation Section 5.11 in Appendix M of the FEIR.

- PH1-3 The first part of this comment again deals with public views from Alumni Park. The second part of this comment suggests that reducing the size of the homes to 3,500-4,500 of the number of building on the lots by eliminating the cabanas would be helpful to not block views of the site from Pepperdine.

Regarding views from Pepperdine, please refer to Response PH1-1.

Regarding reducing the size of homes, in response to public comments this public hearing, Chapter 7, Alternatives of the DEIR has been revised to include a Reduced Project Alternative with smaller homes (FEIR Appendix E herein).

The Planning Department determined that the reduced project alternative should (i) reduce the square footage of each residence to comply with the maximum permitted under the City's development regulations, (ii) reduce the height of the residence on Lot 2 not to exceed 18 feet, (iii) reduce the square footage of the second floor on two of the residences, and (iv) modify the landscaping plan to respond to concerns that the landscaping would affect visual resources. The applicant directed its architect, Landry Design Group to prepare a conceptual plan modifying the proposed project in response to the City's direction. This modified plan reduced the proposed project's floor area by approximately 11% and the height and massing of some of the residences, and is reflected on the Reduced project site Plan attached as Revised View Simulation Report Appendix C and summarized as follows:

- Lot 1: Reduced the square footage on the second floor from 3,344 square feet to 1,619 square feet and the total square footage of the residence from 11,081 square feet to 10,052 square feet.
- Lot 2: Reduced the height of the entire residence not to exceed 18 feet and the square footage of the home from 11,068 square feet to 9,642 square feet.
- Lot 3: Reduced the square footage of the residence from 11,009 square feet to 8,999 square feet.
- Lot 4: Reduced the square footage on the second floor from 3,409 square feet to 3,152 square feet and the total square footage of the residence from 11,157 square feet to 9,536 square feet.

### 3. Response to Comments

- Lot 5: Relocated the siting of the pool cabana from the western side of the pool to the eastern side, moved the location of the residence further north and approximately 6 1/2 feet to the east and reduced the height of approximately 26 linear feet the roof on the southwestern portion of the house by 4' 4" by changing the roof from flat to pitched.

In addition, the Project's landscape architect, James Hyatt Studio/Valleycrest was asked to modify the landscape plan designed for the proposed project (the "Original Landscape Plan") in order to reduce the planting in certain locations in response to comments that the landscaping would impact visual resources. The Original Landscape Plan is shown as Figure 3-7 of the DEIR. The modified landscape plan is referred to herein as the "Modified Landscape Plan" and is attached as Revised View Simulation Report Appendix D and the changes shown in the Modified Landscape Plan are summarized in revised Chapter 7 (FEIR Appendix E).

Revised View Simulation Report (FEIR Appendix A) provides view simulations of the Reduced Project Alternative and its comparative merits to the proposed project. The report found that from certain view points at elevations lower than the project site the project can be seen against the background of the sky. At these viewpoints the Reduced Project Alternative shows a slightly lower profile for the residences on Lot 1 and Lot 2. Similarly, the modified landscaping plan of the Reduced Project Alternative, when seen from these viewpoints, shields the residences somewhat more than the proposed project when viewed from the same locations. These changes result in a slightly reduced profile and somewhat less prominent appearance than the proposed project. However, the Reduced Project Alternative does not materially reduce the visual impact compared to the proposed project's less than significant impacts.

PH 1-4 The commenter expresses concern over the onsite septic and sewage disposal system, which may put further effluent into the ground and the cumulative effect on slope instability for those folks on old Malibu Road. Please refer to General Topical 2.4.

PH1-5 This comment is concerned with trees growing above roof line and that they will block views. A condition of approval will be included which states that landscaping shall not block the primary views of adjacent neighbors.

PH1-6 Please see Response to Comment PH1-4 above.

The comments are noted and will be forwarded to decision-makers for their consideration.

#### **PH2 Response to Comments from Williams, Anson, dated May 6, 2013**

### 3. Response to Comments

PH2-1 The commenters express opposition to the proposed project on the basis of aesthetic impacts. The commenter presented a picture to demonstrate to the commissioners his opinion that the development “would not only completely block the coastal view from the southwest side of the park, but create a skyline for the park.” The commenter does not believe this right for the community.

The commenter is referred to General Comment 2.3.1 and the revised view simulation analysis is Appendix A of the FEIR. Specifically, View 24 is a panorama view looking north and east from the lawn in Bluffs Park. This location is considered a public viewing area. The Santa Monica Mountains and existing development, including the HRL Research complex and buildings in Bluffs Park in the vicinity of the project are visible. Only a very small portion of the project is visible on the far right side of this image and most of the project is obscured by vegetation. The project does not block or impair any views of the ocean, the mountains or other geological features or other valued aesthetic features. The proposed project would have a less than significant impact on visual resources from this location.

View 26: Pacific Coast Highway (west of entrance to Bluffs Park) is a standard view west of entrance to Bluffs Park. Pacific Coast Highway is a designated scenic highway. A large eucalyptus tree, which is approximately 30 feet high, is visible on the project site from this location and will be removed as part of the project. The project is not visible from this location and the proposed project would have no impact on the visual resources when viewed from this location.

The DEIR assessed impacts to visual resources within the context of the surrounding area. The project area is characterized by a mix of uses, including residential, recreational, commercial, and institutional, and the proposed project would be compatible with the project site and its surroundings. The project site is located in an area that has seen substantial development. Development within approximately one-half of a mile from the project site include single family residential development on Malibu Road, the Malibu Knolls (229 homes) and the Malibu Country Estates (97 homes) subdivisions, two condominium developments totaling 152 units, office buildings, including the HRL Research complex (approximately 225,000 square feet), Malibu City Hall and Los Angeles County offices, two wastewater treatment plants, Pepperdine University and the Malibu Colony Plaza Shopping Center. The DEIR concluded that while the proposed project would alter the visual appearance of the project site, the project would not substantially degrade visual character of the site or introduce any aesthetic elements incompatible with the project area.

The comments are noted and will be forwarded to decisionmakers for their consideration.

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#### **PH3 Response to Comments from Gold, Robert, dated May 6, 2013**

PH3-1 The commenter, a representative of the applicant, points out that the project does not have any significant environmental impacts that cannot be mitigated.

#### **PH4 Response to Comments from Berk, Hope, dated May 6, 2013**

PH4-1 The commenter expresses opposition to the proposed project on the basis of aesthetic impacts. Specifically because the project would block ocean views of homes within Malibu Country Estates and impact views of people visiting the park.

The commenter is referred to General Comment 2.3.1 and the revised view simulation analysis is Appendix A of the FEIR. Specifically, View 24 is a panorama view looking north and east from the lawn in Bluffs Park. This location is considered a public viewing area. The Santa Monica Mountains and existing development, including the HRL Research complex and buildings in Bluffs Park in the vicinity of the project are visible. Only a very small portion of the project is visible on the far right side of this image and most of the project is obscured by vegetation. The project does not block or impair any views of the ocean, the mountains or other geological features or other valued aesthetic features. The proposed project would have a less than significant impact on visual resources from this location.

There are two revised view simulations from Malibu Country Estates. View 4: Blue Dane Lane (Malibu Country Estates) looking southeast toward the project site. This is a view from a public street approximately one-half mile from the project site at an elevation approximately 100 feet above the project site. Because the Consultant was unable to identify a homeowner in the Malibu Country Estates neighborhood who would give him access to a private residence, this view is intended to represent a view from a private residence. The project is contained within the center of this view. This image shows that the project will block only a very small fraction of the blue water view from this location. However, because of the significant distance between the project site, the ocean and this location and the elevation of this location relative to the project site, the project is almost imperceptible and the expansive blue water views are otherwise unobstructed. Existing development in the vicinity of the project is also visible. The proposed project would have a less than significant impact on views from this location.

View 5: Vantage Point Terrace (Malibu Country Estates) looking southeast toward the project site. This is a view from a public street. Existing development in the vicinity of the project is visible. The project is visible from this location, however, the nearby housing, vegetation and topography block extensive ocean views to the east and west. This image shows the project will block a very small fraction of the blue water view from this location. In addition, because of the significant distance between the project site, the ocean and this location and the elevation of this location relative to the project

### 3. Response to Comments

site, the changes to the blue water view are minor. The proposed project would have a less than significant impact on views from this location.

The DEIR assessed impacts to visual resources within the context of the surrounding area. The project area is characterized by a mix of uses, including residential, recreational, commercial, and institutional, and the proposed project would be compatible with the project site and its surroundings. The project site is located in an area that has seen substantial development. Development within approximately one-half of a mile from the project site include single family residential development on Malibu Road, the Malibu Knolls (229 homes) and the Malibu Country Estates (97 homes) subdivisions, two condominium developments totaling 152 units, office buildings, including the HRL Research complex (approximately 225,000 square feet), Malibu City Hall and Los Angeles County offices, two wastewater treatment plants, Pepperdine University and the Malibu Colony Plaza Shopping Center. The DEIR concluded that while the proposed project would alter the visual appearance of the project site, the project would not substantially degrade visual character of the site or introduce any aesthetic elements incompatible with the project area.

The comments are noted and will be forwarded to s for their consideration.

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#### **PH5 Response to Comments from Isha, Luhui, dated May 6, 2013**

PH5-1 The commenter expresses opposition to the proposed project on the basis of cultural resources. Specifically, the commenter is questioning the adequacy of the cultural resources report and is asking for a 60 day extension so the Chumash Alliance can conduct an independent report.

An Updated Phase 1 Archaeological Study and Cultural Resource Sensitivity Testing has been conducted for a portion of a 24-Acre parcel located at 24200 Pacific Coast Highway (APN No's 4458-018-002, 4458-018-018 and, 4458-018-019) City of Malibu, Los Angeles County, California, HEART, was completed in June 2013.

An updated records search was performed by RPA certified archaeologist, Wayne Bonner on June 10, 2013 at the SCCIC which indicated that no previously recorded prehistoric or historic archaeological sites lie within the project site. In addition, nine prehistoric archaeological sites are recorded within a 1/2-mile radius of the project site: CA-LAn-264 (The village of Humaliwu lies to the east of the project site at the Adamson House and Malibu Lagoon State Historic Park), CA-LAn-266, CA-LAn-267, CA-LAn-386, CA-LAn-404, CA-LAn-1417, CA-LAn-1715, CA-LAn-1991, CA-LAn-2247.

Additional physical testing at the project area was conducted to ensure that buried cultural resource remains were not inadvertently missed during the field surveys. Although disked for many years, there was still a slight potential for buried resources to exist just under the plow zone (15 cm – 20 cm). Between June 16, 2013 to June 19, 2013, 76 soil augers were excavated, representing 76-person hours of field labor. Susie Ruiz (Native American Representative of the Ventureno Chumash) assisted in the excavation.

The augers were excavated within a pre-placed grid to completely cover the area of proposed project area (nine acres of the proposed 24-acre parcel). All soil was mechanically excavated and screened through 1/8" wire-screened mesh. Notes, photographs and GPS points were taken in the field to confirm coverage. Each auger was excavated to a minimum depth of 40 cm or until a noticeable soil change occurred, so as to identify the disked soil from the subsoil. The completion of this testing phase revealed no evidence of surface or buried cultural resource remains inclusive of artifacts, shellfish, fauna, features or human remains. Based on the results of this test phase, no additional archaeological work was recommended within the boundaries of the proposed project. As stated in Section 5.4 of the DEIR, with mitigation, potential impacts associated with cultural resources would be reduced to a level that is less than significant. No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

As stated in Section 5.4 Cultural Resources of the DEIR, with mitigation, potential impacts associated with cultural resources would be reduced to a level that is less than

### 3. Response to Comments

significant. No substantial evidence had been provided to call in to question the City's findings stated in the DEIR or the need for a 60 day extension.

The Updated Phase 1 Archaeological Study and Cultural Resource Sensitivity Testing report (HEART 2013) provides a cultural overview of the Chumash culture including prehistoric, protohistoric and ethnographic information. As a result, Section 5.4 Cultural Resources of the DEIR has been revised to include a cultural overview of the Chumash culture and history.

The commenter is referred to Response to Comment Letter O2 and Section 4 of the FEIR, *Revisions to the Draft EIR*.

#### **PH6 Response to Comments from Waiya, Mati, dated, May 6, 2013**

PH6-1 The commenter here emphasizes the importance of the Chumash culture and history on the City of Malibu and asserts that the site has ceremonial and "cultural landscape" significance. The commenter reiterates the comments of Luhui Isha (Comment PH5) requesting an independent cultural study.

The commenter is referred to Response to Comments PH51-1. An Updated Phase 1 Archaeological Study and Cultural Resource Sensitivity Testing report (HEART 2013) was conducted by RPA certified archaeologist, Wayne Bonner with the assistance of Susie Ruiz (Native American Representative of the Ventureno Chumash). Based on the results of this test phase, no additional archaeological work was recommended within the boundaries of the proposed project. In addition, the study provides a cultural overview of the Chumash culture including prehistoric, protohistoric and ethnographic information. As a result, Section 5.4 Cultural Resources of the DEIR has been revised to include a cultural overview of the Chumash culture and history.

The commenter is referred to Response to Comment Letter O2 and Section 4 of the FEIR, *Revisions to the Draft EIR*.

The comments are noted and will be forwarded to decisionmakers for their consideration.

#### **PH7 Response to Comments from Emery, Ryan, dated May 6, 2013**

PH7-1 The commenter expresses opposition to the proposed project on the basis of aesthetic impacts because the commenter believes the project creates skyline views from famous places in Malibu (Malibu Road; Malibu Lagoon; Pacific Coast Highway areas within the Civic Center). Finally, the commenter expresses the opinion that the height of the project should be conditioned to one story.

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Please refer to General Comment 2.3.1 The commenter is referred to General Comment 2.3.1 and the revised view simulation analysis is Appendix A of the FEIR. See also Response to Comments PH2-1 and PH4-1.

The revised view simulation analysis includes the following views:

View 8: Malibu Legacy Park looking west toward the project site. This is a public viewing area. The project will be on top of the bluff against with the sky as the background. However, there are no views of the ocean, mountains, trees or other vegetation, rock outcroppings or other valued aesthetic features from this location. Existing development in the vicinity of the project is visible. The project's landscaping visible from this vantage point has the effect of softening the buildings, helping the proposed development blend in with its surroundings and reducing the perceived mass of the structures. The proposed project would have a less than significant impact on visual resources from this location.

View 9: PCH & Webb Way looking west toward the project site. The Pacific Coast Highway is a designated as a scenic highway and this is a public view. However, the views from this portion of PCH are not of high scenic quality because views from this location do not include the ocean, mountain, significant trees or vegetation or other valued aesthetic features. Rather the project is visible on top of the bluff with the sky as the background. Substantial existing development in the vicinity of the project is visible from this view point, including the parking lot of a large shopping center and a large multifamily residential project. The appearance of the project is compatible with the other development in this area. The visual impact to passing motorists would be of short duration. The project's landscaping visible from this vantage point has the effect of softening the buildings helping the proposed development blend in with its surroundings and reducing the perceived mass of the structures. The proposed project would have a less than significant impact on visual resources from this location.

View 12: Malibu Road looking northeast toward the project site. This is a public view from a public street. Only a small portion of one residence can be seen on top of the bluff with the sky as the background. However, there are no views of the ocean, the mountains, or striking views or significant trees or other vegetation, geologic features, or any valued aesthetic unique features from this location. Existing single-family development on Malibu Road is visible from this location. The visual impact to passing motorists would be of short duration. The proposed project would have a less than significant impact on visual resources from this location.

View 20: Surfrider Beach. This is a standard view looking west from Surfrider Beach (by Malibu Lagoon). This is considered public viewing area. The Project can be seen on top of the bluff with the sky as the background. However, there are no views of the ocean or significant trees or other vegetation, geologic features, or other valued aesthetic

### 3. Response to Comments

features that are obstructed by the Project from this location. Other existing development in the vicinity of the Project is visible, including the Adamson House complex and large scale buildings on the Pepperdine University campus set against the Santa Monica Mountains in the background. The appearance of the Project in the context of the other buildings is appropriate in scale and massing and is aesthetically compatible with the other development. Similarly, the Project's landscaping visible from this vantage point has the effect of softening the appearance of the buildings, helping the proposed development blend in with its surroundings and reducing the perceived mass of the structures. The proposed project would have a less than significant impact on visual resources from this location.

View 23: Malibu Library. This is a standard view looking west from the sidewalk in from the Malibu Library. This is a public viewing area. The Project can be seen on top of the bluff in the background. Existing development in the vicinity of the Project is visible, including Civic Center Way, a parking lot serving the Civic Center, a stretch of the Pacific Coast Highway and a large multifamily residential project. The scale and massing of the Project is aesthetically compatible with the other development that is visible from this view point. The Project does not affect views of the ocean, the mountains or of significant trees or other vegetation, geological features, or other valued aesthetic features. The Project's landscaping visible from this vantage point has the effect of softening the buildings, helping the proposed development blend in with its surroundings and reducing the perceived mass of the structures. The proposed project would have a less than significant impact on visual resources from this location.

The DEIR assessed impacts to visual resources within the context of the surrounding area. The project area is characterized by a mix of uses, including residential, recreational, commercial, and institutional, and the proposed project would be compatible with the project site and its surroundings. The project site is located in an area that has seen substantial development. Development within approximately one-half of a mile from the project site include single family residential development on Malibu Road, the Malibu Knolls (229 homes) and the Malibu Country Estates (97 homes) subdivisions, two condominium developments totaling 152 units, office buildings, including the HRL Research complex (approximately 225,000 square feet), Malibu City Hall and Los Angeles County offices, two wastewater treatment plants, Pepperdine University and the Malibu Colony Plaza Shopping Center. The DEIR concluded that while the proposed project would alter the visual appearance of the project site, the project would not substantially degrade visual character of the site or introduce any aesthetic elements incompatible with the project area.

The comments are noted and will be forwarded to decisionmakers for their consideration.

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#### **PH8 Response to Comments from Grisanti, Paul, dated May 6, 2013**

PH8-1 In the opening comments the commenter provides the history of previous proposed developments on the project site. The commenter provides the opinion that the DEIR did a thorough job of analyzing the visual impacts. Next, the commenter points out buildings can only be built on 11 of the 24 acres due to setback requirements. Finally, the commenter expresses the opinion that due to the limited building area and two-story homes are a better than one-story homes because the massing and landscape around single-story homes would feel more urban, rather than rural.

The comments are noted and will be forwarded to decisionmakers for their consideration.

#### **PH9 Response to Comments from Randall, Carol, dated May 6, 2013**

PH9-1 The commenter expresses the opinion that the greatest traffic impacts would come from weekend use and is pleased the traffic consultant used updated traffic counts. The commenter offers support for the results of the traffic study and the traffic mitigation measures.

A Revised Traffic Impact Analysis has been prepared to analyze the impact of the Pepperdine Campus Life project. As with the DEIR, traffic impacts remain less than significant with mitigation. Please see revised Traffic and Transportation Section 5.11 in Appendix M of the FEIR.

The comments are noted and will be forwarded to decision makers for their consideration.

#### **PH10 Response to Comments from Ron Bogie, dated, May 6, 2013**

PH10-1 The commenters express opposition to the proposed project on the basis of aesthetic impacts. The commenter is specifically concerned with building height and height of trees as they grow over time.

Please refer to Response to Comment PH1-5 regarding building and tree heights.

#### **PH11 Response to Comments from Kramer, Kari, dated May 6, 2013**

PH11-1 The commenter's introductory remarks generally assert that the DEIR in addressing site location concerns. The commenter is concerned with visual impacts from structures on Lot 5 and questions the setbacks from the bluff's edge. The also commenter asserts that the project alternatives are weak because they did not rearrange building footprints, move the structures further from the bluff edge and analyze eighteen-foot building

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heights. The commenter finally states that the alternatives have an appearance of impropriety and do not represent the independent judgment of the City of Malibu.

Regarding the visual impacts of Lot 5, the commenter is referred to General Response 2.3.

While it is impossible to entirely remove subjectivity from a view impact analysis, the DEIR's analysis is based in part on professional view simulations created for the project by S.A. Johnson Architectural Simulation. On August 14, 2012, multiple photographs were taken from locations specified by the City of Malibu. Story poles had been erected on the project site showing the location and dimensions of the proposed single-family residential development. The story poles are placed on the project site in order to depict the precise outlines of the specific residences designed by the project architect. A professional land surveyor verified the accuracy of the location and height of the story poles and their conformance to the exhibit prepared by the architect and approved by the City. During the August 14, 2012 project site visit, multiple photographs were taken from 10 areas specified by the City's Planning Department. The location where each photograph was taken was established by a GPS data logger. Once the photographs and locations were reviewed, 14 were chosen to provide a broad sample of views from areas surrounding the project site, as follows:

- View 1: Rancho Malibu Site looking south to southeast across PCH to the project site
- View 2: Rancho Malibu Site (future casita placement, 2nd floor) looking south across PCH to the project site.
- View 3: Rancho Malibu Site (future casita placement, 2nd floor) looking southeast across PCH to the project site
- View 4: Blue Dane Lane (Malibu Country Estates) looking southeast toward the project site
- View 5: Vantage Point Terrace (Malibu Country Estates) looking southeast toward the project site
- View 6: PCH and Cross Creek Road looking west toward the project site
- View 7: Malibu Colony Beach looking west toward the project site
- View 8: Malibu Legacy Park looking west toward the project site
- View 9: PCH & Webb Way looking west toward the project site

### 3. Response to Comments

- View 10: Coast View Drive (Malibu Knolls) looking south toward the project site
- View 11: Malibu Canyon Road looking south toward the project site.
- View 12: Malibu Road looking northeast toward the project site
- View 13: Bluffs Park (Santa Monica Mountains Conservancy) looking east toward the project site
- View 14: Bluffs Park (baseball outfield) looking east toward the project site

City staff approved Views 12 and 13, which were specifically included in DEIR looking east and northeast toward Lot 5. The DEIR concluded that while the proposed project would alter the visual appearance of the project site, the project would not substantially degrade visual character of the site or introduce any aesthetic elements incompatible with the project area.

The commenter is referred to General Comment 2.3.1 and the revised view simulation analysis is Appendix A of the FEIR. In response to these comments, the following view simulations addressing the visual impacts of Lot 5 have been prepared for the proposed project:

View 12: Malibu Road looking northeast toward the project site. This is a public view from a public street. Only a small portion of one residence can be seen on top of the bluff with the sky as the background. However, there are no views of the ocean, the mountains, or striking views or significant trees or other vegetation, geologic features, or any valued aesthetic unique features from this location. Existing single-family development on Malibu Road is visible from this location. The visual impact to passing motorists would be of short duration. The proposed project would have a less than significant impact on visual resources from this location.

View 13: Bluffs Park (Santa Monica Mountains Conservancy) looking east toward the project site. This location is considered a public viewing area. Other residential development along the coast line and on the slopes of the Santa Monica Mountains is visible in the distance. The appearance of the Project is compatible with the other development in this area. A portion of the Project is visible from this location and obscures a very small portion of the view of a part of the Santa Monica Mountains. However, none of the ocean views are affected and the Project blends into the background. The Project's landscaping visible from this vantage point has the effect of softening the buildings, helping the proposed development blend in with its surroundings and reducing the perceived mass of the structures. The proposed project would have a less than significant impact on visual resources from this location.

### 3. Response to Comments

The original view simulations prepared in support of the DEIR were prepared by a professional architect and were approved by the City. The revised view simulations prepared for this FEIR in response to comments validate the DEIR's view simulations and provide substantial evidence that impacts are less than significant for the proposed project.

Regarding the setbacks from the bluff edge, the story poles were placed on the project site in order to depict the precise outlines of the specific residences designed by the project architect. A professional land surveyor verified the accuracy of the location and height of the story poles and their conformance to the exhibit prepared by the architect and approved by the City. Setbacks are as follows: Lot 1 – 100 feet min; Lot 2 – 95 feet min; Lot 3 – 55 feet min; Lot 4 – 115 feet min; Lot 5- 85 feet min.

Regarding adequacy of project alternatives, CEQA Guidelines Section 15126.6(a) states that "the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project ... " With the exception of the mandatory No Project Alternative, the alternatives were selected due to their potential to attain basic project objectives and lessen or avoid potentially significant environmental effects resulting from implementation of the proposed project, even though the proposed project would not result in any significant and unavoidable environmental effects. Although no significant and unavoidable impacts were identified, and impacts to visual resources were considered less than significant, the DEIR included a one-story alternative with view simulations to inform the public and decision makers of the relative merits of building one-story homes along with recreational facilities.

In addition to the No Project, Foreseeable Development Alternative, two other alternatives were provided to inform the public and decision makers about the project's relative merits; the Two-Story Homes with Skate Park Only Alternative and the One-Story Homes with Recreational Facilities Alternative. The One-Story Homes with Recreational Facilities Alternative analyzes the impacts of one-story homes compared to the proposed project, while the No Project, Foreseeable Development Alternative analyzes rearranged footprints for eight homes.

The project alternatives were prepared pursuant to CEQA Guidelines and in response to the community's comments requesting a one-story alternative. They were developed in conjunction with City staff and approved by the City. The DEIR was independently reviewed by City staff, including the City Attorney. Therefore, the DEIR and project alternatives represent the lead agency's independent judgment pursuant to CEQA Section §15084.

Please also refer to Response to Comment O3-86.

### 3. Response to Comments

In response to comments, an additional Reduced Project Size Alternative has been added to Chapter 7. Please see General Response 2.3 and revised Chapter 7 in FEIR Appendix E.

- PH11-2 The commenter states that “many technical issues have been mitigated by stating that they’ll be addressed in subsequent CC&Rs thereby insuring that future off-site hazards will not occur.”

Although not clear, it is assumed that the commenter is referring to the HOA maintenance of the OWTS system. The homeowner’s association, through use of CC&Rs, is responsible for maintaining the common infrastructure and landscaping. The HOA established for this residential project will be responsible, through CC&Rs for ensuring that the wastewater system is properly operated and maintained in perpetuity as required by the project’s standard conditions. Under the CC&Rs, each homeowner will be responsible for contributing a predetermined share of the operating and maintenance costs of the OWTS, typically on a monthly basis as a portion of the HOA fees and expenses payable under the CCRs. Under typical CC&Rs for a residential development of this kind, if a homeowner fails to make a required payment, the HOA will be entitled to a lien against the homeowner’s real property that is subject to the CC&Rs. The HOA can collect the defaulted payment by exercising its’ remedies with respect to the lien. This arrangement and the rights of the HOA are sufficient to protect against the possibility of a homeowner defaulting in its’ payments for OWTS maintenance as required by the CC&Rs.

The commenter is also referred to General Response 2.4, Slope Stability and Subsurface Water.

- PH11-3 In terms of the visual impacts, the commenter is referred to General Response 2.3, Aesthetic Impacts, and Response to Comment PH11-1. An additional Reduced Project Size Alternative with an alternative project design has been added to Chapter 7. The Revised View Simulation Report provides view simulations of the Reduced Project Alternative and its comparative merits to the proposed project. The report found that from certain view points at elevations lower than the project site the project can be seen against the background of the sky. At these viewpoints the Reduced Project Alternative shows a slightly lower profile for the residences on Lot 1 and Lot 2. Similarly, the modified landscaping plan of the Reduced Project Alternative, when seen from these viewpoints, shields the residences somewhat more than the proposed project when viewed from the same locations. These changes result in a slightly reduced profile and somewhat less prominent appearance than the proposed project. However, the Reduced Project Alternative does not materially reduce the visual impact compared to the proposed project’s less than significant impacts.

Please see General Response 2.3 and revised Chapter 7 in FEIR Appendix E.

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#### **PH12 Response to Comments from Fred Gaines, dated May 6, 2013**

PH12-1 In the opening remarks the commenter generally asserts that the DEIR is inadequate and violates CEQA. First the commenter asserts and project description is inadequate because it is not clear about the dedication of Lot 7 and how Lot 7 will be used in the future with regard to possible future recreational uses and seepage pits underneath the lot.

The commenter is referred to General Response 2.2 Project Description and Response to Comments O3-4, O3-5, and O3-6.

PH12-2 Here the commenter asserts that a 28-foot height is inconsistent with the City's residential height limit. The commenter is inferring that the height is excessive.

The City's maximum residential height limit is not 18 feet. As stated on page 5.1-4 of the DEIR, per M.M.C. Section 17.62.060, a site plan review (SPR) is required for all non-beachfront construction in excess of 18 feet up to a maximum height of 28 feet with a pitched roof. The revised view simulation analysis in Appendix A of the FEIR provides a detailed response by an architect to the Lenny Henry analysis. See General Response 2.3 and Response to the Lenny Henry Comment Letter R9.

PH12-3 The commenter questions the DEIRs conclusion that visual impacts are less than significant and claims the Land Use Section of the DEIR is flawed for not addressing the loss of visitor serving uses. Finally, the commenter claims the project's alternatives are inadequate for not analyzing smaller homes.

Regarding the DEIR's finding on visual impacts, the commenter is referred to General Response 2.3, Response to Comment letters PH-2, PH-4, PH-7, PH-7, and PH-11.

Regarding project alternatives, the commenter is referred to Response to Comment Letter PH11. In response to public comments this public hearing, Chapter 7, Alternatives of the DEIR has been revised to include a Reduced Project Alternative with smaller homes (Section 7, FEIR Appendix E). In addition, the Revised View Simulation Report (FEIR Appendix A) provides view simulations of the Reduced Project Alternative and its comparative merits to the proposed project. The report found that from certain view points at elevations lower than the project site the project can be seen against the background of the sky. At these viewpoints the Reduced Project Alternative shows a slightly lower profile for the residences on Lot 1 and Lot 2. Similarly, the modified landscaping plan of the Reduced Project Alternative, when seen from these viewpoints, shields the residences somewhat more than the proposed project when viewed from the same locations. These changes result in a slightly reduced profile and somewhat less prominent appearance than the proposed project. However, the Reduced Project Alternative does not materially reduce the visual impact compared to the proposed project's less than significant impacts.

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#### **PH13 Response to Comments from Damavandi, Farima, dated May 6, 2013**

PH13-1 The commenter is concerned with how irrigation swimming pools will impacts the slope stability of the slope above her home.

The commenter is referred to General Response 2.4, Slope Stability and Subsurface Water. The comment is noted and will be forwarded to decisionmakers for their consideration.

#### **PH14 Response to Comments from Planning Commissioner John Mazza, dated May 6, 2013**

PH14-1 The Commissioner expresses skepticism about the DEIR's conclusion that impacts to scenic views are less than significant.

Regarding the DEIR's finding on visual impacts, the commenter is referred to General Response 2.3, *Aesthetics*, Response to Comment letters PH-2, PH-4, PH-7, PH-7, and PH-11.

PH14-2 The Commissioner questions why the DEIR did not address test wells for water migration on Bluffs Park. The commenter is referred to Response to Comment Letter O7.

PH14-3 The Commissioner questions why the PD zone exists and that development within a PD zone would be an outlier from development in the Rural Residential (RR) zones. The Commissioner also questions why this project site is not zoned RR. The project site was zoned RR-2 when the City was incorporated in 1991. The proposed project is subject to the City of Malibu General Plan, Malibu Municipal Code (M.M.C.), and Malibu LCP. Pursuant to Section 1.3.1 of the LCP Local Implementation Plan, if there is a conflict between the LCP and the General Plan or any other City-adopted plan, resolution, or ordinance not included in the LCP, the LCP takes precedence.

The LCP zoning and land use maps designate the project site as PD. The PD designation is specific to the project site. The LUP, as amended November 18, 2008, states that "The PD designation provides for a mix of residential and recreational development on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway." On July 13, 2009, the City Council approved a General Plan map amendment to change the land use designation for the site to PD. A complete history of the project site land use and zoning designation is outlined in General Responses 2.1.

The project scope includes an LCPA (LCPA No. 12-001) and corollary zoning text amendment (ZTA No. 12-001) which specifies the type, density and intensity of development permitted within all seven lots. The LCPA (LCPA No. 12-001) and zoning

### 3. Response to Comments

text amendment (ZTA No. 12-001) propose to omit LUP Policy 2.78, amend LUP Chapter 6 Land Use Designations, and incorporate the Planned Development Ordinance in the Local Coastal Program and the M.M.C. Development on the proposed project site would not be subject to general development standards in LIP Section 3.6; but subject to development standards proposed in LCPA No. 12-001 and ZTA 12-001.

PH14-4 Regarding project alternatives, the commenter is referred to Response to Comment Letter PH11. In response to public comments this public hearing, Chapter 7, Alternatives of the DEIR has been revised to include a Reduced Project Alternative with smaller homes (FEIR Appendix E). In addition, the Revised View Simulation Report (Appendix A) provides view simulations of the Reduced Project Alternative and its comparative merits to the proposed project. The report found that from certain view points at elevations lower than the project site the project can be seen against the background of the sky. At these viewpoints the Reduced Project Alternative shows a slightly lower profile for the residences on Lot 1 and Lot 2. Similarly, the modified landscaping plan of the Reduced Project Alternative, when seen from these viewpoints, shields the residences somewhat more than the proposed project when viewed from the same locations. These changes result in a slightly reduced profile and somewhat less prominent appearance than the proposed project. However, the Reduced Project Alternative does not materially reduce the visual impact compared to the proposed project's less than significant impacts.

PH14-5 The Commissioner is concerned that City could someday authorize nighttime lighting for future recreational uses on Lot 7.

Lighting standards in the LIP and in the Municipal Code are considered existing regulations that automatically apply to the proposed project. LIP Section 6.5G specifically states that night lighting for sports fields is prohibited as follows:

Lighting. Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity features, shielded, and concealed to the maximum feasible extent so that no light source is directly visible from public viewing areas. Night lighting for sports courts, sports fields, or other private recreational facilities in scenic areas designated for residential use shall be prohibited. Permitted lighting shall conform to the following standards:

6.5G (a) requires that "Lighting shall be minimized, directed downward, and shielded using the best available visor technology and pole height and design that minimizes light spill, sky glow, and glare impacts to public views and wildlife to the maximum extent feasible."

The project has been designed to limit potential indirect impact associated with night lighting through the location and type of lighting used as well as shielding wherever

### 3. Response to Comments

appropriate, including removal of street lights. An illustrative lighting plan has been submitted to the City for review that will reduce lighting impacts to the maximum extent practicable while still allowing for public safety. The sports field will not have night lighting and exhibits no potential for lighting impacts. Because of the restriction on night lighting, the project exhibits no potential for significant light impacts to the Malibu Bluffs area, including significant impacts on wildlife. Therefore, existing regulations ensure that lighting shall be minimized, directed downward, and shielded and no new mitigation measures are necessary.

- PH14-6 The Commissioner is concerned that an earthquake fault existed across the project site in the past and believes that should be addressed in further detail.

This topic was addressed in an earlier response. The Commissioner is referred to Response to Comment Letter R5.

- PH14-7 The applicant worked with the City Public Works Department to prepare a Scope of Work memorandum for the traffic study prepared. The City Public Works Department directed the applicant use apply a 1.5 percent growth rate because it is consistent with the growth rate used by MTA. In September 2013, the traffic study has been revised to ensure that cumulative impacts, including impacts from Pepperdine University are adequately addressed. The revised traffic study reviewed and approved by the City Traffic Engineer. The project's traffic impacts remain less than significant.

Section 5-11, *Traffic and Transportation* has been revised and is included is FEIR Appendix M.

- PH14-8 Please refer to General Response 2.4.

- PH14-9 As discussed on page 5.9-10 of the DEIR, pursuant to LIP Section 2.1 and M.M.C. Section 17.02.060, the definition of a basement requires the vertical distance from finished grade to the bottom of the finished floor above is no more than three vertical feet at all points around the perimeter of all exterior walls. The proposed project include basement walls that daylight more than three vertical feet; however, the basement walls will not be visible from any location outside of the project site. The proposed ZTA 12-001 and LCPA 12-001 will set the applicable standards and is included as DEIR Appendix O. Appendix O of the DEIR also includes the proposed development standards for the subject property and all residences will be required to comply with the two-thirds rule.

With approval of the proposed ZTA 12-001 and LCPA 12-001, land use impacts related to basement limitations and two-thirds rule would be brought into conformance and would thus be less than significant. Refer to Section 5.1, *Aesthetics* for a detailed discussion of the visual resources impacts associated with the proposed project.

### 3. Response to Comments

PH14-10 The Commissioner again expresses concern over the project's cumulative traffic impacts and 1.5 percent annual growth rate. See Response PH14-7 above.

#### **PH15 Response to Comments from Commissioner Mikke Pierson, dated May 6, 2013**

PH15-1 The commissioner expresses concern over the impact of two-story structures and asks why a mixture of one-story and two story structures was not analyzed.

As discussed in Response to Comment PH14-4, in response to public comments this public hearing, Chapter 7, *Alternatives to the Proposed Project* of the DEIR has been revised to include a Reduced Project Alternative with smaller homes (See FEIR Appendix E).

The Planning Department determined that the reduced project alternative should (i) reduce the square footage of each residence to comply with the maximum permitted under the City's development regulations, (ii) reduce the height of the residence on Lot 2 not to exceed 18 feet, (iii) reduce the square footage of the second floor on two of the residences, and (iv) modify the landscaping plan to respond to concerns that the landscaping would affect visual resources. The applicant directed its architect, Landry Design Group to prepare a conceptual plan modifying the proposed project in response to the City's direction. This modified plan reduced the proposed project's floor area by approximately 11% and the height and massing of some of the residences, and is reflected on the Reduced project site Plan attached as Revised View Simulation Report Appendix C and summarized as follows:

- **Lot 1:** Reduced the square footage on the second floor from 3,344 square feet to 1,619 square feet and the total square footage of the residence from 11,081 square feet to 10,052 square feet.
- **Lot 2:** Reduced the height of the entire residence not to exceed 18 feet and the square footage of the home from 11,068 square feet to 9,642 square feet.
- **Lot 3:** Reduced the square footage of the residence from 11,009 square feet to 8,999 square feet.
- **Lot 4:** Reduced the square footage on the second floor from 3,409 square feet to 3,152 square feet and the total square footage of the residence from 11,157 square feet to 9,536 square feet.
- **Lot 5:** Relocated the siting of the pool cabana from the western side of the pool to the eastern side, moved the location of the residence further north and approximately 6 1/2 feet to the east and reduced the height of approximately 26 linear feet the roof on the southwestern portion of the house by 4' 4" by changing the roof from flat to pitched.

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In addition, the Project's landscape architect, James Hyatt Studio/Valleycrest was asked to modify the landscape plan designed for the proposed project (the "Original Landscape Plan") in order to reduce the planting in certain locations in response to comments that the landscaping would impact visual resources. The Original Landscape Plan is shown as Figure 3-7 of the DEIR. The modified landscape plan is referred to herein as the "Modified Landscape Plan" and is attached as Revised View Simulation Report Appendix D and the changes shown in the Modified Landscape Plan are summarized as

Revised View Simulation Report (FEIR Appendix A) provides view simulations of the Reduced Project Alternative and its comparative merits to the proposed project. The report found that from certain view points at elevations lower than the project site the project can be seen against the background of the sky. At these viewpoints the Reduced Project Alternative shows a slightly lower profile for the residences on Lot 1 and Lot 2. Similarly, the modified landscaping plan of the Reduced Project Alternative, when seen from these viewpoints, shields the residences somewhat more than the proposed project when viewed from the same locations. These changes result in a slightly reduced profile and somewhat less prominent appearance than the proposed project. However, the Reduced Project Alternative does not materially reduce the visual impact compared to the proposed project's less than significant impacts.

PH15-2 The commissioner is concerned about the impact that excavation of basement could have on cultural resources. The Commissioner is referred to Response to Comment Letters PH15, PH 16, O2 and O9. An Updated Phase 1 Archaeological Study and Cultural Resource Sensitivity Testing has been conducted and was completed in June 2013.

An updated records search was performed by RPA certified archaeologist, Wayne Bonner on June 10, 2013 at the SCCIC which indicated that no previously recorded prehistoric or historic archaeological sites lie within the project site. Additional physical testing at the project area was conducted to ensure that buried cultural resource remains were not inadvertently missed during the field surveys. Although disked for many years, there was still a slight potential for buried resources to exist just under the plow zone (15 cm – 20 cm). Between June 16, 2013 to June 19, 2013, 76 soil augers were excavated, representing 76-person hours of field labor. Susie Ruiz (Native American Representative of the Ventureno Chumash) assisted in the excavation. The completion of this testing phase revealed no evidence of surface or buried cultural resource remains inclusive of artifacts, shellfish, fauna, features or human remains. Based on the results of this test phase, no additional archaeological work was recommended within the boundaries of the proposed project. As stated in Section 5.4 of the DEIR, with mitigation, potential impacts associated with cultural resources would be reduced to a level that is less than significant. No substantial evidence had been provided to call in to question the City's findings stated in the DEIR.

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PH15-3 Please refer to Response to Comment PH15-1.

**PH16 Response to Comments from Commissioner Jeffery Jennings, dated May 6, 2013**

PH16-1 The commissioner expresses concern over the site's history and whether it was really supposed to be for visitor serving uses.

The commissioner is referred to General Response 2.1, Land Use regarding the project site's history and visitor serving uses.

## 4. Revisions to the Draft EIR

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### 4.1 INTRODUCTION

This section contains revisions to the DEIR based upon (1) additional or revised information required to prepare a response to a specific comment; (2) applicable updated information that was not available at the time of DEIR publication; and/or (3) typographical errors. This section also includes additional mitigation measures to fully respond to commenter concerns as well as provide additional clarification to mitigation requirements included in the DEIR. The provision of these additional mitigation measures does not alter any impact significance conclusions as disclosed in the DEIR. Changes made to the DEIR are identified here in ~~strikeout text~~ to indicate deletions and in underlined text to signify additions.

### 4.2 DEIR REVISIONS

The following text has been revised in the DEIR.

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Section 1, *Executive Summary*, and Section 7, *Alternatives to the Proposed Project*, of the DEIR were modified to include discussion and analysis of an additional project alternative as follows:

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Section 1 and Section 7 of the DEIR were modified to discuss and analyze an additional project alternative, the Reduced Project Alternative. Section 7, as modified, is included in this FEIR in its entirety as Appendix E. Section 1, as modified is included in this FEIR in its entirety as Appendix N.

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Page 3-19, Section 3, *Project Description*, of the DEIR was modified as follows:

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#### ***Dedication of Parkland***

The project includes the dedication of land (Lot 7) to the City of Malibu to expand the portion of Malibu Bluffs Park owned by the City by 1.74 acres to the east and northeast. The City owned portion of Malibu Bluffs Park currently has two baseball fields, a multipurpose field, the Michael Landon Center, picnic benches, viewing areas and an 81-space parking lot. The proposed project will dedicate Lot 7 to the City. The recreational area has yet to be designed and would not be developed as part of this project. Although no recreational improvements would be permitted as part of the applicant's current proposal, the land dedication is intended to expand Malibu Bluffs Park. Therefore, active recreation areas, passive recreation areas, and an expanded parking lot are all foreseeable future uses. At this time the City believes that the recreational area may be ~~used~~ developed as a baseball field or a skate park in the future. As such, these two foreseeable recreational uses are evaluated in the Draft EIR. The DEIR evaluates two reasonable future scenarios for Lot 7, based on the community's needs. The first is future development of Lot 7 for active recreational uses similar to existing use of Malibu Bluffs Park (such as organized sports which generate traffic). The second is a

## 4. Revisions to the Draft EIR

recreational use desired by the community (a skate park is being researched by the City Council and Skate Park Committee and skate park design firm has been hired by the City). The proposed site plans are provided in Figures 3-8, *Grading Plan with Baseball Field Option*, and 3-9, *Grading Plan with Skate Park Option*.

In addition, a portion of Lot 7 may be developed with a parking lot for Bluffs Park open to the general public, a City-owned maintenance shed, and passive recreational uses such as public sitting areas and picnic tables. The new parking lot, when combined with a portion of parking provided on Winter Mesa Drive could contain up to 94 parking spaces. The existing parking lot at Malibu Bluffs Park contains 81 spaces, an additional 40 vehicles can be parallel parked along both sides of Winter Mesa Drive. As shown in Table 3-1, with implementation of the future recreational facilities, the 40 parallel parking spaces along both sides of Winter Mesa Drive would be eliminated and replaced with a new 94-space parking lot on the project site, resulting in a net increase of approximately 54 new parking spaces for Bluffs Park. Therefore, the total number of parking spaces to serve the existing Malibu Bluffs Park and any future recreational uses would be 175 spaces (81 existing spaces plus 94 proposed spaces).

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Page 3-19, Section 3, *Project Description*, of the DEIR was modified as follows:

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Because certain recreational uses are foreseeable for Lot 7, this Draft EIR analyzes two additional different development options throughout the document to identify potential impacts associated with future recreational uses on Lot 7. The first development option is 5 single-family homes with Lot 7 as a baseball field. The second development option is 5 single-family homes with Lot 7 as a skate park. Any future recreational use on Lot 7 such as baseball field or skate park would not include nighttime lighting.

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Page 3-21, Section 3, *Project Description*, of the DEIR was modified as follows:

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### Dedication of Conservation Easement

In 2009, the applicant's predecessor in interest, AZ Winter Mesa, LLC, voluntarily agreed to dedicate to the Mountains Recreation and Conservation Authority (MRCA) a conservation easement totaling approximately 6.23 acres along the southern portion of the project site and the eastern property line of the adjacent property. MRCA agreed to accept the dedication of the conservation easement.

The project owner has agreed to voluntarily dedicate the conservation easement to the MRCA subject to the same terms and conditions and intends to enter into an agreement with the MRCA.

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Page 3-26, Section 3, *Project Description*, of the DEIR was modified as follows:

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The LCP PD zoning designation “is intended to provide for a mix of residential and recreational development of the Crummer Trust property [proposed project site] located east of Malibu Bluffs State Park and south of Pacific Coast Highway, and other commercial areas in order to encourage innovation in development concepts, land use mixes, and site design. Any planned development in such commercial areas would require an amendment to the Malibu LCP in order to specify the permitted type, density, and intensity of development.” Since it is not the City’s intent to relocate the existing athletic fields from Bluffs Park, LUP

## 4. Revisions to the Draft EIR

Policy 2.78 is now obsolete. Therefore, a local coastal program amendment (LCPA) and corollary zoning text amendment are being requested—including language that specifies the type, density and intensity of development permitted in the PD zoning designation. The LCPA (LCPA No. 12-001) and zoning text amendment (ZTA No. 12-001) propose to omit LUP Policy 2.78, amend LUP Chapter 6 Land Use Designations, and incorporate the Planned Development Ordinance in the Local Coastal Program and the M.M.C.. The LCPA will be forwarded to the California Coastal Commission for certification. The proposed LCPA is intended to correct the inconsistency between the policy and the zoning designation.

Site Plan Review Nos. 07-139 through 07-143 are being requested for construction over 18 feet in height on Lots 1 through 5.

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Page 4-4, Section 4, *Environmental Setting*, of the DEIR was modified as follows:

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In 2010, LCPA 08-006 went to the CCC to omit LUP Policy 2.78; however, the City of Malibu did not accept the changes made by the CCC. On December 8, 2008, the City Council adopted Resolution No. 08-68 and Ordinance No. 333 adopting an amendment to the LCP to remove LUP Policy 2.78 and to make two corollary changes in the LCP to correct inconsistencies between the LUP and LIP related to this policy.

On February 11, 2010, the CCC held a public hearing and discussed suggested modifications to the City's proposed amendment. On April 16, 2010, the CCC conditionally certified the amendment with modifications; however, formal adoption of the modifications to the amendment required action by the Malibu City Council. The City had to take action on the CCC's suggested modifications six months from the date of the CCC's action or the suggested modifications expire. The expiration date for the suggested modifications was August 11, 2010. On July 26, 2010, Council decided to allow LCPA to expire and not accept CCC changes; therefore, LCPA 08-006 is considered expired and the proposed project includes a new LCPA (LCPA 12-001) and corollary ZTA (ZTA 12-001).

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Page 4-7, Section 4, *Environmental Setting*, Table 4-1 of the DEIR was modified as follows:

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## 4. Revisions to the Draft EIR

Table 4-1

| Cumulative Projects List |                                                           |                                                                                                             |
|--------------------------|-----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| No.                      | Project                                                   | Land Uses                                                                                                   |
| 1                        | 5905 and 5909 Latigo Canyon Road                          | Single-Family Detached Housing (2 DUs)                                                                      |
| 2                        | 27535 PCH                                                 | Single-Family Detached Housing (1 DU)                                                                       |
| 3                        | City of Malibu Civic Center Wastewater Treatment Facility |                                                                                                             |
| 4                        | Housing Element Update                                    | 28455 PCH (Apartments –102 DUs)<br>28401 PCH (Apartments – 65 DUs)<br>3700 La Paz Lane (Apartments –46 DUs) |
| 5                        | Pepperdine Campus Life Project                            |                                                                                                             |
| 6                        | 18805, 18807 and 18809 PCH                                | Single-Family Detached Housing (4 DUs)                                                                      |
| 7                        | 3314 Serra Road Subdivision                               | Single-Family Detached Housing (3 DUs)                                                                      |
| 8                        | Seaboard                                                  | Single-Family Detached Housing (1 DU)                                                                       |
| 2-9                      | AZ Winter Mesa Towing Site                                | Single-Family Detached Housing (4 DUs)                                                                      |
| 3 10                     | Rancho Malibu Hotel                                       | Hotel (146-room)                                                                                            |
| 4-11                     | La Paz Shopping Center                                    | Shopping Center (77.110 TSF); General Office (34.948 TSF); Municipal Use (20.000 TSF)                       |
| 5 12                     | Whole Foods Shopping Center                               | Grocery Store (24,459 TSF)                                                                                  |
| 6-13                     | Santa Monica College                                      | Junior/Community College (200 Students)                                                                     |
| 7 14                     | Malibu Sycamore Village                                   | Shopping Center (30.000 TSF); General Office (30.000 TSF)                                                   |
| 8 14                     | Pierview Restaurant                                       | Quality Restaurant (7.100 TSF)                                                                              |
| 9 16                     | Windsail Restaurant                                       | Quality Restaurant (5.904 TSF)                                                                              |
| 10 17                    | Hajian Office                                             | General Office (9.685 TSF)                                                                                  |
| 11 18                    | 22959 PCH Office                                          | Shopping Center (4.517 TSF); General Office (2.630 TSF)                                                     |
| 12 19                    | 22729 PCH Office                                          | General Office (2.499 TSF)                                                                                  |
| 13 20                    | Carbon Condominiums                                       | Residential Condominium/Townhouse (8 DUs)                                                                   |
| 14 21                    | 22301, 22303, 22305 and 22309 PCH                         | Single-Family Detached Housing (4 DUs)                                                                      |
| 15 22                    | 21997 and 22003 PCH                                       | Single-Family Detached Housing (2 DUs)                                                                      |
| 16 26                    | 20624 and 20630 PCH                                       | Single-Family Detached Housing (2 DUs)                                                                      |

Source: City of Malibu Planning Department 2012.

<sup>1</sup> DU = Dwelling Units

<sup>2</sup> TSF = Thousand Square Feet

Page 5.1-1, Section 5, *Aesthetics*, of the DEIR was modified as follows:

According to the Local Coastal Program (LCP) Local Implementation Program (LIP), scenic areas are “places on, along, within, or visible from scenic public roads, trails, beaches, and parklands that offer scenic vistas of the beach and ocean, coastline, mountains, canyons, and other unique natural features or areas.” Per the Malibu General Plan EIR, the closest scenic areas are Malibu Bluffs Park, immediately west of the project site, Pepperdine University, the property of which extends to immediately northwest of the project site, and Malibu Lagoon, approximately one-half mile to the east. Other scenic areas in the vicinity of the project area include Amarillo Beach, approximately 300 feet south of the project site, and Legacy Park, approximately one-half mile east of the project site.

## 4. Revisions to the Draft EIR

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Page 5.1-47, Section 5, *Aesthetics*, of the DEIR was modified as follows:

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The proposed project would develop the project site with ~~several structures~~ five single-family residences, including various accessory structures and gatehouse, and would landscape the project site. Figures 5.1-8 and 5.1-9 illustrate the proposed project as viewed from higher elevation residential areas of Malibu Country Estates, north of the site. As shown in these figures, the proposed project would alter the horizon of the bluff, and would create buildings visible from these vantage points where no buildings currently exist.

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Page 5.3-1, Section 5.3, *Biological Resources*, of the DEIR was modified as follows:

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The project site is on top of a bluff. The majority of the project site is flat, but steep slopes descend from the project site along its south and east borders. The soils on the site are loose and friable and are classified as loamy. The flat portion of the project site is vacant, but it has been disturbed by disking and weed abatement. It contains little vegetation. There is, however, natural vegetation on the slopes to the south and east. Two large ~~ephemeral drainages~~ drainage features drain from northwest to southeast, down the slope toward Amarillo Beach. One of the drainages enters the project site from the southwest corner, and one enters the site from the center of the southern site boundary.

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Page 5.3-26, Section 5.3, *Biological Resources*, of the DEIR was modified as follows:

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**Impact Analysis:** No riparian habitat occurs on the project site. The project site contains two ~~ephemeral drainages~~ drainage features; however, GLA determined that these drainages are not streams according to Corps, CDFW, or CCC definitions. None of the plant communities identified as occurring on the project site are listed as sensitive communities by the California Department of Fish and Wildlife or the US Fish and Wildlife Service; therefore, no significant impacts to sensitive plant communities would occur as a result of the proposed project's implementation.

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Page 5.3-32, Section 5.3, *Biological Resources*, Mitigation Measure 3-1(b), of the DEIR was modified as follows:

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- 3-1(a)            A focused survey for Braunton's milk-vetch shall occur prior to the issuance of a grading permit. The focused survey shall occur within onsite suitable habitat (i.e., mixed sage scrub and coastal sage chaparral scrub) that may be disturbed as a result of the proposed project implementation, during the typical blooming period (February through July). This survey shall be conducted in accordance with the methodologies used for performing focused plant surveys per the CDFW's 2000 *Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Plant Communities*, and the CNPS's 2001 *Botanical Survey Guidelines of the California Native Plant Society*. In the event that Braunton's milkvetch are discovered during focused preconstruction surveys, a translocation plan shall be developed by a biologist familiar with the ecology of the species and the plan would be approved by the U.S. Fish and Wildlife Service prior to issuance of grading permit.

## 4. Revisions to the Draft EIR

- 3-1(b) Certain ornamental plants are known to escape from planted areas and invade native plant communities. In order to protect established native plant communities in the vicinity, the plants listed in Table 14 of the Biological Resource Study prepared by Impact Sciences, in 2008 for the proposed project shall not be planted within the project site. This list shall also be distributed to new homeowners and included within any covenants, conditions, and restrictions. The landscaping plans within common areas of the project shall be reviewed by a qualified botanist who shall recommend appropriate provisions to prevent other invasive plant species from colonizing remaining onsite or adjacent natural areas. These provisions may include the following: (a) review and screening of proposed plant palette and planting plans to identify and avoid the use of invasive species; (b) weed removal during the initial planting of landscaped areas; and (c) monitoring for and removal of weeds and other invasive plant species as part of ongoing landscape maintenance activities. The frequency and method of monitoring for invasive species shall be determined by a qualified botanist. In addition, the homeowner's association shall provide homeowners with the list entitled "City of Malibu Non-Native Invasive Plants Prohibited in Landscape Plans" which is maintained by the City of Malibu and can be found on the City's website.
- 

Page 5.4-5, Section 5.4, *Cultural Resources*, of the DEIR was modified as follows:

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### Cultural Setting

#### Prehistory/Protohistory

At Spanish contact, the region was occupied by the Hokan-speaking, Ventureno Chumash who derived their name from their association with Mission San Buenaventura. Radiocarbon dates from archaeological sites in the region, indicate that the ancestors of the Chumash arrived in Ventura County by 7000 B.C. The Chumash were credited with an extensive and elaborate material culture, extensive trade networks, and complex social and religious systems. To date, general chronological developed by Wallace (1955), Warren (1968) have focused on research in the South Coast region. Warren later revised Wallace's scheme to include regional variants and local traditions. Chester King (1982) proposed a multi-phased chronological sequence based on changes or shifts in ornaments, beads and other artifacts. Additional information on the Chumash comes from: Carrico and Wlodarski (1983), Dillon & Boxt (1989), Grant (1978), Hudson et al. (1977), Hudson & Underhay (1978), Hudson (1979), Hudson & Blackburn (1979-87), C. King (1994a, 2000), Kroeber (1925), Landberg (1965), Leonard (1971), Miller (1988), Gibson (1991), and Santa Barbara Museum of Natural History (1986, 1991).

#### Ethnographic Information

According to C. King (1994), Spanish explorers observed that the Chumash differed from surrounding tribes, and admired them for their craftsmanship, knowledge of the sea, canoe building capabilities, ritual and ceremonial organization. The Chumash were also lauded for their interest in acquiring and displaying possessions, willingness to work, and extensive trade network which was facilitated by a bead money economy (the protohistoric Chumash maintained the most complex bead money system documented anywhere in the

## 4. Revisions to the Draft EIR

world). Because of the large number of men who could be organized for warfare, the Spanish feared the Chumash more than any other California group encountered during Spanish rule. Ethnographic and archaeological data obtained since the late 1800s, suggests that the Chumash were divided into large political areas called provinces. Each province contained a capital which are now archaeological sites. One such important Chumash capital was that of Humaliwo (Malibu) located along the coast. Additionally, these provinces were united under a larger religious federation whose leader, the Kwaiyin resided at the major village of Simomo, located near Point Mugu (Muwu). This federation served the ultimate function of unifying the various political provinces for special ceremonies which were held every five years. Humaliwo was the name of the Chumash political province encompassing the many villages which existed in the Santa Monica mountains. This province extended west into the San Fernando Valley and included the villages of (Huwam) in Canoga Park, and (Talepop) at Century Ranch.

According to C. King (1994), Protohistoric Chumash society was one of the most complex non-agricultural societies documented. Therefore, the study of the evolution of Chumash society is relevant to the development of anthropological theory concerning the evolution of complex societies. The area inhabited by the Chumash measured approximately 200 miles by 70 miles, comparable to the smallest states of the eastern United States. The total Chumash population included between 15,000-20,000 people. The Chumash of the Santa Monica Mountains occupied approximately 3% of the area, and included around 1,300 people or 6.5% of the Chumash population. The Chumash did not have standing armies or full time police. However, despite its small size, Chumash society developed many discriminate subsystems, which included institutions that maintained regional, political, and administrative organizations; a market economic system; and a complex belief system. Chumash society was similar in scale to other societies that occupied the more densely populated areas of western North America before European colonization. Based on Van Valkenburgh/Farmer (1934), C. King (1969, 1975, 1994), Applegate (1974, 1975), and Horne (1981), the following Chumash placenames exist in the general area:

|                     |                                                                                |
|---------------------|--------------------------------------------------------------------------------|
| <u>Alqilko'wi</u>   | <u>"white of the eye" A village in Little Sycamore Canyon.</u>                 |
| <u>Humaliwo</u>     | <u>"[The surf] sounds loudly"? - Village at what is now Malibu</u>             |
| <u>Kats'ikinhin</u> | <u>"pine tree" - a village on Las Virgenes Creek, inland from Malibu.</u>      |
| <u>Kasaqtikat</u>   | <u>"the obstacle" - Undiscovered location near Mugu.</u>                       |
| <u>Kay'iwish</u>    | <u>"the Head" - village on what is now Calleguas Creek, southwest of Simi.</u> |
| <u>Lalimanuh</u>    | <u>A village on Calleguas Creek, northeast of Pt. Mugu.</u>                    |
| <u>Lisiqishi</u>    | <u>Village at Arroyo Sequit, west of Point Dume.</u>                           |
| <u>Lohostohni</u>   | <u>Village at Trancas Canyon, west of Point Dume.</u>                          |
| <u>Luulapin</u>     | <u>The name for Point Mugu.</u>                                                |
| <u>Luna</u>         | <u>An undiscovered location along Calleguas Creek.</u>                         |

## 4. Revisions to the Draft EIR

|                      |                                                                            |
|----------------------|----------------------------------------------------------------------------|
| <u>Muwu</u>          | <u>"beach" - A village at the mouth of Mugu Lagoon.</u>                    |
| <u>Niko</u>          | <u>"water?" - in Malibu, east of Point Dume</u>                            |
| <u>Sa' aqtik'oy</u>  | <u>"place sheltered from the wind" - village at Saticoy.</u>               |
| <u>S'ap tuhuy</u>    | <u>"house of the rain" - village on Potrero Creek, inland from Malibu.</u> |
| <u>S'apwi</u>        | <u>"house of the deer" - village on Conejo Creek, near Thousand Oaks.</u>  |
| <u>Satwiwa</u>       | <u>"bluff" - village on Rancho Guadaluca, north of Mugu.</u>               |
| <u>Seq'is</u>        | <u>"beachworm" - now Arroyo Sequit.</u>                                    |
| <u>Shalikuwewech</u> | <u>"it is piled up" - a place north of Point Mugu.</u>                     |
| <u>Shishlomo</u>     | <u>Estuary or lagoon near Surfside Drive.</u>                              |
| <u>Shisholop</u>     | <u>"in the mud" a coastal village just south of Ventura.</u>               |
| <u>Shuwalahsho</u>   | <u>"sycamore" - a village in Big Sycamore Canyon.</u>                      |
| <u>Simo'mo</u>       | <u>"the saltbush patch" - a village inland from Point Mugu.</u>            |
| <u>Sumo</u>          | <u>"abundance" - village at mouth of what is now Zuma Canyon</u>           |
| <u>Ta'lopop</u>      | <u>A village on Las Virgenes Creek.</u>                                    |

Prehistoric Chumash culture underwent dramatic changes following colonization in the late 18th century. The introduction of diseases quickly weakened and destroyed Native American cultures, with epidemics killing large numbers of people. Most Chumash towns and villages were abandoned by 1810. However, large segments of the population survived and worked to build the Spanish Missions, as well as the Mexican and American ranches which followed. Much of the Chumash culture managed to survive by "going underground" and effectively blending into the cultural landscape. Several thousand Chumash live today in Los Angeles, Ventura, Santa Barbara, and San Luis Obispo counties. In general, they place high value on objects and places associated with their past, namely archaeological sites, and artifacts from sites. Present-day Chumash are organized into dozens of social, cultural, and political groups, some of which take part in local affairs. Nearly all Chumash are concerned with preserving their cultural heritage and are therefore interested in the preservation of the prehistoric and ethnographic archaeological records. Because the Chumash have a longstanding interest in identifying cultural resources and preserving their cultural heritage, a significant amount of research focusing on the location of villages, cemeteries and other archeological sites has been conducted, including numerous studies pertaining to the archaeological resources in the vicinity of the Project Site. This research has lead to the discovery of nine archeological sites in vicinity of the Project Site. With respect to the project site, nothing in this large body of research indicates that the Project site is an archeological site, which is consistent with the results of the sensitivity testing described in this report.

## 4. Revisions to the Draft EIR

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Page 5.8-2, Section 5.8, *Hydrology and Water Quality*, of the DEIR was modified as follows:

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The Los Angeles County Flood Control District (LACFCD), which is a separate entity from the County of Los Angeles (LAC), is responsible for the construction and maintenance of the county storm drain systems, which consist of pipelines, catch basins, manholes, open channels, and detention basins.

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Page 5.8-12, Section 5.8, *Hydrology and Water Quality*, of the DEIR was modified as follows:

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Municipal discharges of stormwater runoff are regulated under the NPDES General Permit for Municipal Separate Storm Sewer Systems (MS4). The SWRCB issued an MS4 permit (NPDES No. CAS004001) to the ~~Los Angeles County Flood Control District~~ LACFCD and its 84 incorporated cities, including the City of Malibu. The permit covers approximately 3,100 square miles and serves a population of about 10 million. The MS4 permit requires permittees to develop and implement their own programs for stormwater management. To comply with this requirement, the City of Malibu developed a Clean Water Program in 2001 and participated with Los Angeles County in a 2006 campaign to identify bacteria sources along Malibu beaches.

~~Los Angeles County's~~ LACFCD's MS4 permit also requires implementation of standard urban stormwater mitigation plans (SUSMP) and design standards for BMPs.

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Page 5.8-24, Section 5.8, *Hydrology and Water Quality*, of the DEIR was modified as follows:

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However, the City of Malibu has more stringent sizing criteria for treatment of BMPs than ~~Los Angeles County~~ LACFCD.

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Section 5.11, Transportation and Traffic, of the DEIR and the Traffic Impact Analysis Study were modified as follows:

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Section 5.11, *Transportation and Traffic*, of the DEIR and the Traffic Impact Analysis Study have been modified to analyze additional cumulative projects. Section 5.11, as modified, is included in this FEIR in its entirety as Appendix M1 and a redline version has been provided as Appendix M2. The revised Traffic Impact Analysis Study is provided as Appendix H.

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Page 5.12-3, Section 5.12, *Recreation*, of the DEIR was modified as follows:

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Therefore, active recreation areas and an expanded parking lot are all foreseeable future uses. As described in Chapter 3, Project Description, at this time the City believes that the recreational area may be used as a baseball field or a skate park. In addition, a portion of Lot 7 may be developed with a parking lot for Bluffs Park open to the general public, a City-owned maintenance shed, and passive recreational uses such as public sitting areas and picnic tables. The new parking lot could contain up to 94 parking spaces. Any future recreational use on Lot 7 such as baseball field or skate park would not include nighttime lighting.

---

## 4. Revisions to the Draft EIR

Throughout this DEIR, both potential recreational options for dedicated Lot 7, the baseball field or skate park, have been analyzed.

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Page 5.15-2, Section 5.12, *Recreation*, of the DEIR was modified as follows:

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### **Impact 5.152-1: The proposed project would generate 14 additional residents that would increase the use of existing park and recreational facilities. [Threshold R-1]**

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***Impact Analysis:*** According to the 2010 Census, the City of Malibu has a population of 12,645 and an average household size of 2.87 people. The proposed creation of five units would therefore increase the population of the City by approximately 15 people, or less than 0.0125 percent of the population. This slight population increase would not cause a significant strain on the infrastructure of the City of Malibu. Impacts associated with population growth would be less than significant.

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### **Impact 5.152-2: Project implementation would result in environmental impacts to provide new and/or expanded recreational facilities. [Threshold R-2]**

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***Impact Analysis:***

The proposed project is for the development of five single-family homes and the dedication of land (Lot 7) to the City of Malibu to expand Malibu Bluffs Park by 1.74 acres to the east and northeast. Bluffs Park currently has two baseball fields and an 81-space parking lot. There are 40 additional parallel parking spaces along Winter Mesa Drive. The proposed project will dedicate Lot 7 to the City. The recreational area has yet to be designed and would not be developed as part of this project. Although no recreational improvements would be permitted as part of the applicant's current proposal, the land dedication is intended to expand Bluffs Park. Although no recreational improvements would be permitted as part of the applicant's current proposal, the land dedication is intended to expand Malibu Bluffs Park. Furthermore, the LCPA and corollary zoning text amendment being requested—including language that specifies the type, density and intensity of development permitted in the PD zoning designation—applies to all seven lots. Therefore, active recreation areas and an expanded parking lot are all foreseeable future uses.

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Page 6-1, Section 6, *Significant Unavoidable Adverse Impacts*, of the DEIR was modified as follows:

---

Chapter 1, *Executive Summary*, contains Table 1-1, which summarizes the impacts, mitigation measures, and levels of significance before and after mitigation. Based on analysis in Chapter 5 of this DEIR, the proposed project is not anticipated to result in a significant and unavoidable adverse impact. This project may have one remaining significant, unavoidable, and adverse impact if improvements pursuant to feasible mitigation measures are not completed for reasons beyond the City's control (i.e., the City cannot undertake or require improvements to Caltrans facilities). Should that occur, impacts relating to traffic generated by the project would remain significant and unavoidable.

## ~~6.1 Significant and Unavoidable Impacts~~

## 4. Revisions to the Draft EIR

### 6.1.1 Traffic/Transportation

---

~~Impact 5.11-1: The proposed project with baseball field option would result in a substantial increase in traffic in Opening Year 2017 and Future Year 2030 if the intersection of PCH and Malibu Canyon Road/Winter Mesa Road, which is operated and maintained by Caltrans, is not improved.~~

---

The signalized intersection of PCH and Malibu Canyon Road/Winter Mesa Road is operated and maintained by Caltrans. Based on the Opening Year 2017 plus Project and Future year 2030 LOS analyses and the City's significance criteria the proposed project would create a significant impact at Malibu Canyon Road/PCH because this intersection is forecast to continue to operate at LOS E (0.965 volume to capacity [V/C]), and the proposed project would increase the intersection's V/C by 0.012 V/C (i.e.,  $\geq 0.010$  V/C threshold at LOS E or F). However, the impact is considered less than significant based on the County of Los Angeles Congestion Management Program (CMP) criteria.

Implementation of transportation improvements to Caltrans facilities such as the intersection of Malibu Canyon Road/PCH, is the primary responsibility of Caltrans. Any modifications to the operation of a roadway by the project applicant and/or a contractor would require the issuance of an encroachment permit by Caltrans, the responsible agency for the intersection of Malibu Canyon Road/PCH. There is the potential that significant impacts may not be fully mitigated if such improvements are not completed for reasons beyond the City's control (i.e., the City cannot undertake or require improvements within the control of Caltrans).

While Caltrans has recognized that private development has a role to play in funding fair share improvements to impacts on Caltrans facilities, Caltrans has not adopted a program that can ensure that locally contributed impact fees will be tied to improvements. Only Caltrans has jurisdiction over improvements to Caltrans facilities. Because Caltrans has exclusive control improvements to the intersection of Malibu Canyon Road/PCH, and because there is no adopted program for locally contributed impact fees, there is no assurance that mitigation at this intersection will actually be implemented by Caltrans. However, a number of funding programs are in place in Los Angeles to assist in improving and upgrading the regional transportation system. If mitigation measure 11-1 and these programs are not implemented by the agencies with the responsibility to do so, the project's impacts to the intersection of Malibu Canyon Road/PCH, would remain significant and unmitigated for Impact 5.11-1.

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Page 13-1, Section 13, *Bibliography*, of the DEIR was modified to include the following references:

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Aquifer Science & Technology. 2008, July 10. Geophysical Survey (Resisivity) of the Crummer Site, Malibu, CA.

Arch Beach Consulting. 2013, September. Revised Traffic Impact Analysis Crummer Site Subdivision City Of Malibu, CA.

Earth Consultants International. 2009, September 21. Hydrogeological Treated Water Mounding Report, 24200 PCH, Malibu, CA, Appendices, Figures and Plates.

## 4. Revisions to the Draft EIR

————.2012, March 7. Response to Geographical Review Sheet dated January 12, 2012.

————.2012, March 7. Response to Environmental Health Review Sheet dated March 7, 2012.

————.2012, May 22. Response to Environmental Health Review Comments dated April 16, 2012.

Earth Forensics, Inc. 2013, May. Hydrogeological Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site,” 24108, 24120, 24134, 24150, 24174 Pacific Coast Highway, City of Malibu, California.

Ensitu Engineering. 2012, March 7. Summary of Geological Investigation.

————.2009, September 21. Preliminary Design Plans 24200 Pacific Coast Highway.

————.2009, September 21. Design Intent 24200 Pacific Coast Highway.

————.2012, March 7. Response to Environmental Health Review Sheet dated December 21, 2009.

————.2012, April 16. Summary of Design Intent.

————.2012, April 17. Response to Environmental Health Review Comments dated April 16, 2012.

————.2013, July. Crummer Residential Project Located at 24120 (aka 24200) Pacific Coast Highway, Malibu, CA – Response to Comments to DEIR.

Glenn Lukos Associates, Inc. (GLA). 2013, July. Biological Resources Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site”, 24108, 24120, 24134, 24150, 24174 Pacific Coast Highway, City of Malibu, California

————.2013, September. Responses to Comments.

Historical, Environmental, Archaeological, Research, Team (HEART). 2013, June. Updated Phase 1 Archaeological Study and Cultural Resource Sensitivity Testing for a portion of a 24-Acre parcel located at 24200 Pacific Coast Highway (APN No’s 4458-018-002, 4458-018-018 and, 4458-018-019) City of Malibu, Los Angeles County, California (CONFIDENTIAL).

Lawrence Young, Registered Environmental Health Specialist. 2013, July. The Crummer Site Subdivision Project 24200 Pacific Coast Hwy., Malibu, CA 90265.

Leighton and Associates. 2009, September 21. Geotechnical Evaluation of Proposed Onsite Wastewater Treatment System Crummer Site.

————.2012, March 7. Response to Environmental Health Review Sheet dated December 21, 2009.

————.2011, October 28. Phase I Environmental Site Assessment, 24200 Pacific Coast Highway, Malibu, Los Angeles County, California.

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## 4. Revisions to the Draft EIR

\_\_\_\_\_.2013, July. Geotechnical Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site,” 24108, 24120, 24134, 24150 and 24174 Pacific Coast Highway, City of Malibu, California.

Psomas Civil Engineering. 2013, July. Responses to Comments on Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site”, Lots 1 through 5, 24108, 24120, 24134, 24150 and 24174 Pacific Coast Highway, City of Malibu, California.

\_\_\_\_\_.2013, September. Civil Engineering Responses to Comment to City of Malibu Draft Environmental Impact Report: Proposed Residential Development, “Crummer Site,” Lots 1 through 5, 24108, 24120, 24134, 24150 and 24174 Pacific Coast Highway, City of Malibu, California.

S.A. Johnson Architectural Simulation. 2013, September. Malibu Coast Estates: Visual Simulations Supplemental Report.

Wormhoudt, Inc. 2012, October 4. Preliminary Skate Park Study, Crummer Project.

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The following agency name was modified throughout the DEIR:

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References to “Department of Fish and Game” were replaced with “Department of Fish and Wildlife” throughout the document.

---

The following was modified throughout the DEIR:

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References to “Malibu Luan Park” were replaced with “Malibu Legacy Park” throughout the document.

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Figure 3-8 *Grading Plan with Baseball Field Option* and Figure 3-9 *Grading Plan with Skate Park Option* have been revised to indicate the daylight line/limit of work as follows:

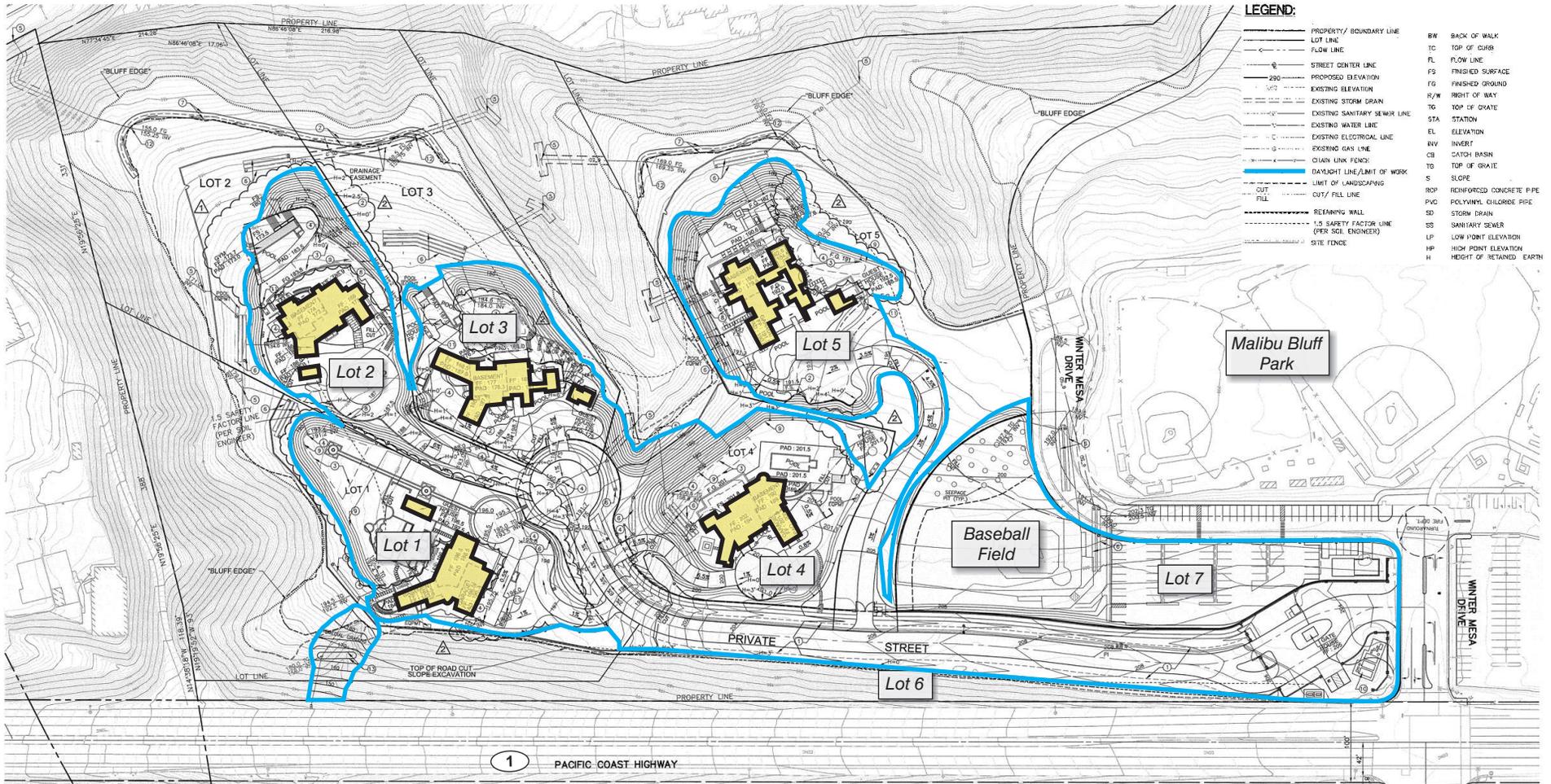
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### 3. Project Description

## Grading Plan with Baseball Field Option



Source: PSOMAS 2012

Crummer Site Subdivision Draft EIR

0 200  
Scale (Feet)



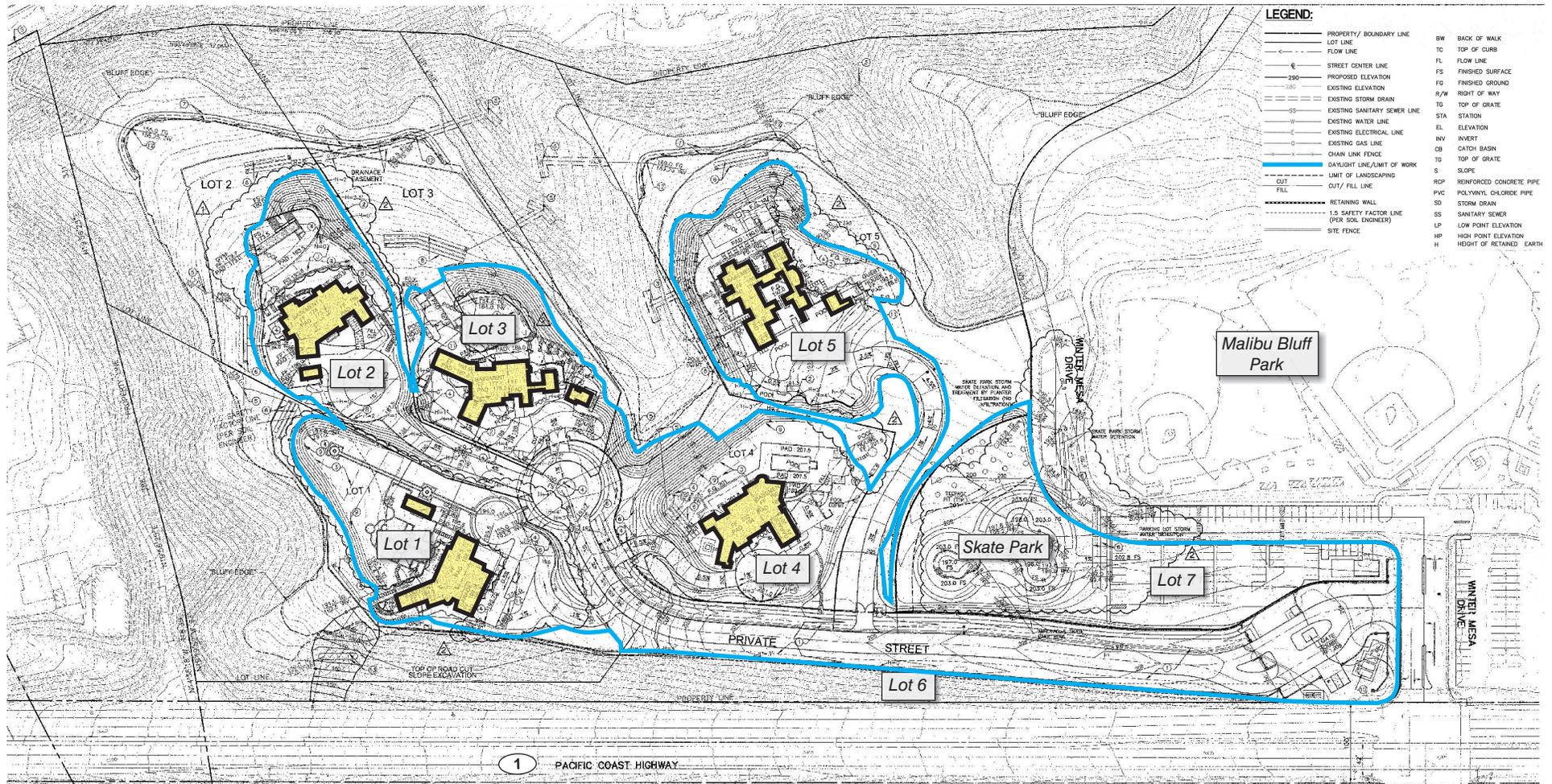
The Planning Center | DC&E • Figure 3-8

## 4. Revisions to the Draft EIR

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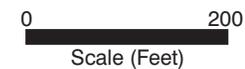
### 3. Project Description

## Grading Plan with Skate Park Option



Source: PSOMAS 2012

Crummer Site Subdivision Draft EIR



## 4. Revisions to the Draft EIR

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