



# Supplemental Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: November 22, 2022 Meeting date: November 28, 2022

Subject: City Response Letter to Notice of Preparation of an Environmental Impact Report for the Malibu Lower-Cost Accommodations Public Works Plan

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**RECOMMENDED ACTION:** Review and provide comments on a draft comment letter for the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Malibu Lower-Cost Accommodations Public Works Plan (PWP) proposed by the Mountains Recreation and Conservation Authority (MRCA).

**DISCUSSION:** On November 18, 2022, the agenda packet for this item was issued with a caveat that the City draft comment EIR letter will be distributed under separate cover. Attached to this report is the draft NOP comment letter (Attachment A) for Council's consideration. In addition to comments from each City Department, the City of Malibu Public Safety Commission and the Public Works Commission provided comments (Attachment B). Some of the comments were specific to the project and not the EIR. These comments can be addressed when the Draft PWP and EIR are released for City review. The purpose of the NOP comment letter is to provide comments and suggestions regarding the scope and content of the EIR and the environmental issues and alternatives to be addressed in the EIR.

The comment period for the NOP ends on December 16, 2022. Comments must be received or postmarked by December 16, 2022. A tentative schedule for the release of the Draft EIR and Public Works Plan is the Summer/Fall of 2023. More information regarding the project is available on the MRCA's website at <https://mrca.ca.gov/about/land-use-planning-documents/>.

## **Ramirez Canyon Memorandum of Understanding**

Though the item before the Council is regarding the submittal of a comment letter for the preparation of the Draft EIR for the subject PWP, it would be remiss not to provide a brief history of the Santa Monica Mountains Conservancy's (SMMC) and MRCA's previous proposals to develop Ramirez Canyon Park and the litigation that ensued as a result. In short, though the courts have ruled in the City's favor, the use of Ramirez Canyon remains unresolved. For a complete history of the litigation, the January 14, 2013 City Council Agenda Report Item 7.B. (Charmless Wilderness Park Swap) is attached to this report as a reference. The City Attorney's Office will be reviewing this matter and report back to the Council at a future date.

NEXT STEP: After the Council provides staff with direction on the comment letter, staff will revise and finalize the letter and submit it to MRCA within the comment period.

### ATTACHMENTS:

- A. Draft City EIR Comment Letter
- B. Comments from City of Malibu Public Safety Commission and Public Works Commission
- C. January 14, 2013 City Council Agenda Report Item 7.B.



# City of Malibu

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*Sent via email to [public.comments@mrca.ca.gov](mailto:public.comments@mrca.ca.gov)*

November 29, 2022

Mountains Recreation and Conservation Authority  
RE: Malibu Lower-Cost Accommodations Public Works Plan  
Attn: Mario Sandoval, Project Manager  
26800 Mulholland Highway  
Calabasas, CA 91302

Re: Comments on Notice of Preparation – Malibu Lower-Cost Accommodations Public Works Plan

Dear Mr. Sandoval:

The City provides comments on the scope of the potential environmental impacts of the proposed Malibu Lower-Cost Accommodations Public Works Plan (PWP). Public Resources Code section 30605 requires your coordination and consultation with the City of Malibu “so as to be consistent, to the fullest extent feasible, with the appropriate local coastal program.” Such consultation and coordination with the City has not occurred to date, and this project cannot continue unless, and until, such consultation and coordination has occurred. This letter does not constitute the City’s full comments on the proposed PWP, nor does it excuse Mountains Recreation and Conservation Authority’s (MRCA) obligations to consult and coordinate with the City. The City provides these comments in an abundance of caution due to the lack of outreach to the City. The City awaits MRCA’s coordination and consultation with the City’s elected officials, staff, and the public. Such consultation, at a minimum, requires public outreach and meetings. If possible it would be helpful if future outreach meetings could be held within the City of Malibu near the subject project locations.

The City continues to object to MRCA’s use of Section 30605 of the Coastal Act to process a PWP for the proposed improvements which include camping areas with associated support facilities, parking, and trail improvements for two parks located in the City. Such projects, which are all located within the City, should be applied for through the coastal development permit process of the City’s LCP. The PWP process was not designed for such projects, and appears to be used here to avoid input from the City and its residents. This process not only undermines public involvement and the purpose and design of the City’s Local Coastal Program (LCP) and the Coastal Act, but reduces notice to and participation from residents in the City, especially the property owners directly adjacent to the proposed improvements.

MRCA’s use of the PWP process to bypass the City and its lack of engagement with the City is in direct conflict with the mission statement of the California Coastal Commission which advocates strong public participation and effective intergovernmental coordination. The City requests that

Attachment A

MRCA withdraw the PWP and submit coastal development permits for the proposed improvements so that a more robust public engagement process can occur and more detailed information and analysis of each project can be provided to the public.

In the meantime, the City provides the following comments in response to the Notice of Preparation (NOP):

1. The NOP was insufficiently detailed to allow the City and the public to have a full understanding of the proposed improvements. At a minimum, preliminary policies, standards, site plans, and elevations should be provided. It is difficult for the public to understand the full impact of a project without some visual representation of the project. In addition, the project description should include a list of draft policies and standards to allow comments on the adequacy and consistency of the policies to the City's LCP. For this reason, a revised NOP should be issued which includes a draft PWP with policies, standards, site plans, and elevations.
2. The environmental impact report (EIR) should discuss in detail how the project will ensure fires are not utilized at the proposed campsites or on hiking trails. A detailed description of a flameless campsite and the kitchen, noted in the project description for the Malibu Bluffs site, should be provided in the EIR and the following questions should be addressed in the EIR.
  - a. How will MRCA ensure that campers do not use fires or smoke at their campsite as they are hiking the trails?
  - b. Will there be rangers on-site at all times at both sites? What is the staffing ratio of rangers to campers and day-use visitors?
  - c. How will the campsites be monitored, especially during the nighttime hours?
  - d. Will camping, hiking, and events at the proposed amphitheater be allowed on red-flag days?
  - e. What is the plan for coordination with the City to monitor Live Fuel Moisture (LFM), relative humidity, temperature, and dead fuel moisture to determine hazardous fire conditions for Malibu?
  - f. How will rangers address issues with the homeless that may be attracted to the on-site facilities and choose to camp on or near the project sites?
  - g. How will MRCA ensure the property, campsites and facilities are properly and consistently maintained and kept clear of debris, trash and refuse?
3. A detailed evacuation plan utilizing the City's Mass Evacuation Plan (August 2020) needs to be included in the EIR. The plan should include regular testing of the plan and education of on-site rangers and other staff.
4. The EIR should include an analysis of how emergencies such as fires, earthquakes, tsunamis, and other city-wide emergencies will be handled including how people will be evacuated or whether shelter-in-place is proposed.

5. The EIR should include all reasonably available technologies in order to rapidly identify fires on the property, such as an alert siren or automatic sprinkler system, to be shared with the City and local public agencies.
6. The EIR should include a fire hazard study on fire behavior and how fire burns. This is especially important in Malibu given the history of fires in Malibu. A history of fires in Malibu along with the cause of the fire and the challenges and methods used in fighting the fires should be included in the fire hazard study.
7. Detailed information is needed in the EIR on the proposed amphitheater at the Malibu Bluffs site in order to understand potential environmental impacts. What types of events would be held there? Will amplified sound be allowed? What is the capacity of the amphitheater? What would be the hours of operation? Where will visitors to the amphitheater park? At a minimum, the EIR should study: traffic and parking impacts, impacts on wildlife from both noise and lighting, view impacts both daytime and nighttime from Pacific Coast Highway (PCH) and surrounding residential communities, and noise impacts to surrounding residential communities.
8. The EIR should discuss and analyze the need for a medical building at the Malibu Bluffs site given the close proximity of other medical facilities.
9. The EIR should include a detailed noise study of potential noise impacts and mitigations from campers, staff, maintenance personnel, and day-use visitors, including the amphitheater, on adjacent residential properties. How will noise be controlled at the campsites during the evening hours?
10. A visual impact analysis to determine view impacts is needed in the EIR. View impacts should be analyzed from all public streets or public viewing areas from which the sites would be visible. The visual impact analysis should include views of the proposed campsites and any proposed trail construction.
11. A lighting study should be provided in the EIR that provides information and mitigation measures on lighting impacts from the proposed new buildings, campsites, and other facilities. The proposed buildings, campsites, and other facilities will introduce new lighting in areas that are currently dark at night.
  - a. All proposed lighting, including parking lot lighting, must be consistent with the City's Dark Sky Ordinance.
  - b. What view impacts will occur from the introduction of lighting to both sites?
  - c. How will the new lighting affect wildlife that may currently utilize the sites?
12. The projects will require biological assessments for each property. Both proposed projects sit within ESHA and near a stream for the Ramirez Canyon Project. Development should be sited to avoid ESHA. All development shall provide a buffer of no less than 100 feet from the edge of ESHA and/or riparian areas. A permitted use within ESHA is "public accessways and trails, including directional signs". No other use shall be permitted in ESHA.

13. The EIR should include information on the availability of water to serve both sites. Both sites would require extensive utility upgrades to install the correct water lines to the sites. Can Waterworks District No. 29 provide the site with a will serve or allow improvements at the locations for the additional water demand?
14. The existing trail at the Ramirez Canyon Park project site does not lead to the existing campground but to the adjacent residential neighborhood. The EIR should study trail alternatives that provide direct access to the campground in order to reduce impacts on the neighborhood.
15. The EIR should provide details on the restrooms proposed at both project sites and describe how wastewater will be handled along with analyzing the impact on how the restrooms will be managed. The number of restrooms proposed at the Malibu Bluffs site is not provided.
  - a. Will the restrooms be locked at night and if so, how will the campers access the restrooms at night?
  - b. What safety precautions will be taken to ensure individuals that are not registered campers or day-use visitors don't utilize the campsite restrooms?
  - c. Nighttime noise and potential safety impacts from unlocked restrooms at each site must be addressed in the EIR.
  - d. For the proposed restroom building on Malibu Road, the EIR should discuss how that restroom will be utilized and how it will be monitored to ensure it is kept clean, safe, and well-maintained.
16. The EIR should provide information on the number of staff that will be needed to manage the proposed day-use and camping areas and the number/frequency of maintenance visits. An MRCA staff capacity assessment based on both current and proposed staff should be provided in the EIR.
17. A needs assessment should be included in the EIR to determine the need for new camping sites beyond what currently exists in the area. Given the history of fires in Malibu and the fact that the entire City is in a Very High Fire Hazard Severity Zone (VHFHS), introducing new campsites will increase the fire danger in Malibu. A list of all available campsites in and adjacent to Malibu including capacity and use statistics should be provided in the EIR.
18. The EIR should include a management plan of sufficient detail for the public to understand any potential environmental impacts related to the maintenance of the facilities. How will trash pick-up and litter control, maintenance of restrooms, maintenance of kitchen and food preparation areas, and general site monitoring of after-hours use of the trails be addressed?
19. The EIR should analyze and provide mitigation measures for traffic on PCH and Kanan Dume Road during the construction and provide a timeline for construction. A detailed construction management plan should be provided to ensure the emergency response is not adversely affected.

20. The EIR should discuss how the coordination and permitting of a new onsite wastewater treatment system (OWTS) for domestic wastewater disposal for both sites will be addressed. A soils report would need to be submitted to the City to determine septic feasibility. If the installation of a septic system is feasible, a complete and detailed evaluation of the proposed OWTS would need to be conducted by the City of Malibu, Environmental Health (EH) staff during the plan review. EH staff must review and verify all relevant documentation, including but not limited to: geotechnical reports, system design calculations, compliance with local building codes, and historic geological data, for the area. Conformance with the Malibu Municipal Code, State OWTS policy, OWTS manual, and the Local Coastal Program/Local Implementation Plan as well as proper routine maintenance of OWTS, will be needed to reduce any project-specific and cumulative impact to a level considered less than significant.
21. The EIR should include detailed geology reports to determine the feasibility of the project. The following items must be considered in the geology reports.
  - a. The slopes on the bluffs above Malibu Road and in some areas of Ramirez Canyon are historically prone to surficial and deep-seated landslides. Any development on the bluffs or above the bluffs will need to conform to LCP-LIP standards with respect to slope stability. This includes the habitable structures, campsites, and restrooms as well as the new OWTS that will be required.
  - b. Standards for new facilities that are public use (whether temporary occupancy or not) within mapped hazard areas may require mitigation of hazards.
  - c. Any proposed changes to surface grade will need to be accompanied by erosion control and drainage plans, and maintenance should be addressed.
22. The feasibility of new onsite wastewater treatment facilities should be addressed in the EIR as locations may be limited by geologic conditions (e.g. slope stability). The proposed development should specify whether the restrooms include shower facilities or not.
23. The EIR should study the geological impacts of access road grading. While this may not be an issue at Bluffs Park it may be an issue at the Ramirez Canyon site. Impacts will need to be evaluated in the EIR.
24. Occupancy will need to be described for all structure types so as to determine geotechnical mitigation requirements in the EIR. Any habitable structure (as determined by CBC occupancy) must meet all LCP-LIP and CBC standards.

Comments Specific to Malibu Bluffs Site (#25 through #28)

25. Driveway entrance. The NOP indicated that the majority of the project improvements will be located within the northwestern portion of the site. However, the NOP does not indicate what traffic improvements are needed to accommodate the entrance to the site. The traffic study prepared for the EIR must consider the following items:
  - a. If the project intends to use the intersection of John Tyler Drive and PCH, then additional improvements on PCH would be required, such as a dedicated westbound left turn lane and a dedicated eastbound right turn lane. Any proposed improvements shall not reduce the existing shoulder widths.
  - b. The proposed project will need to improve the bicycle infrastructure in the area.

- c. The proposed project will also be required to upgrade the traffic signal at this intersection to accommodate any driveway entrance modifications. The City will be upgrading this traffic signal with its PCH Signal Synchronization Project. Any proposed improvements to the traffic signal shall be consistent with the City's improvements.
26. On-Site Parking and Circulation – A parking study should be included in the EIR which analyzes whether adequate parking is proposed. Based on the information provided in the NOP, additional parking beyond what is described in the NOP may be needed to accommodate the number of people that could utilize the campsites and day-use facilities, in addition to the staff needed to manage the facilities. Any expansion of the project footprint to accommodate additional parking would require recirculation of the NOP.
- a. With the number of proposed camping areas, day-use sites, and trail improvements, the proposed 30-40 parking spaces will not be sufficient to accommodate this use. The proposed project would likely need closer to 100-150 parking spaces to accommodate the planned uses at the site as well as the camper's and general public's use of the trails. Other MRCA trails within the City have a very large parking demand and the current parking supply does not fully accommodate the parking. This results in the need for the public to park in various areas not designated for trail use which causes an impact on the community. The parking study should include an analysis of parking impacts from existing MRCA-owned facilities and how those same impacts will be avoided with the proposed project.
  - b. Any proposed parking shall be contained within the project area and not on PCH or on Malibu Road. The project shall not include project-related parking on Malibu Road. Malibu Road cannot accommodate parking for the project and public parking for the community and beach access. The EIR needs to address how this impact will be mitigated.
  - c. There is a large natural drainage course located within the area indicated where the improvements will be located. The project will likely need to install a bridge at this location. A proposed bridge will include a series of impacts, including environmental and flood control, and it would require various agency permits to construct. The EIR must address these impacts and how they will be mitigated.
27. Wastewater – The project includes a ranger residence, medical building, office, and kitchen along with restrooms for campers. This project is located in the septic prohibition zone as defined by the Regional Water Quality Control Board November 5, 2019 resolution. The EIR must analyze how the MRCA intends to install these improvements within the existing septic prohibition.
28. Resources – The proposed project will impose a severe impact to the City's resources. The EIR must address the number of rangers and staff needed to enforce the no-fire restrictions, any parking violations, excess noise, and other medical or sheriff needs. Without sufficient rangers, any emergency or enforcement action would likely come from the Los Angeles County Sheriff or the Los Angeles County Fire Department. This would impact the response time from these agencies to the Malibu community. Any impact to the response time for agencies that



currently serve Malibu must be mitigated. The proposed project should be required to contribute additional funds to provide sufficient fire and law enforcement.

Comments Specific to Ramirez Canyon Site (#29 and #30)

29. Driveway Entrance – The EIR should include an analysis of how access to the site will be accommodated. To enter into the proposed project, a dedicated left turn and right turn lane would be required. Kanan Dume Road is a two-lane canyon road that cannot accommodate additional travel lanes to construct a protected left turn lane or right turn lane. Having the public access to the proposed project on Ramirez Canyon Road from PCH poses other access and easement issues. Ramirez Canyon Road is a private road and is not intended to be a public road. Although the MRCA properties may possess an access easement to their parcels on Ramirez Canyon Road, the easement documents may not include language that provides the public the right to use Ramirez Canyon Road.
30. On-Site Parking and Circulation – The EIR must provide additional information on on-site parking and circulation in order for the public to understand potential impacts. No parking study was performed to determine the number of parking spaces required for this project. Inadequate parking will likely expand onto Kanan Dume Road and cause other safety-related issues – inadequate parking spaces, public walking into the existing travel lane, and unsafe U-turns on Kanan Dume Road. There are no specific details or project descriptions that indicate how the public will access the proposed campsites from the curbside parking spaces at the Kanan Dume Road entrance.

Sincerely,

Richard Mollica  
Planning Director

cc: Mayor Grisanti and Honorable Members of the Malibu City Council  
Steve McClary, City Manager

## **MRCA Lower-Cost Accommodations PWP**

November 2022

### **Comments from Public Works Commission**

MOTION Vice Chair Dittrich moved, and Commission Major seconded a motion to strongly reject the development proposal of the MRCA Malibu Lower Cost Accommodations Public Works plan, preserve and designate Ramirez Canyon and Bluffs Park as open space, and send a letter including the many concerns conveyed by the community participants and the Public Works Commissioners at the November 10, 2022, Regular Meeting.

- Audit for the actual need of campgrounds in the area
- Concern about lack of staff levels for both campgrounds
- The need and necessity of having a medical building when there is ample facilities nearby.
- Need to install septic is within the prohibition zone Phase III as part of the MOU with the State
- Proposed Ramirez Canyon site is located in ESHA and cannot install septic
- Concerns about the amphitheater with increased density and congestion and fire concerns and noise pollution and lighting
- Concerns about the lighting not meeting the City's Dark Sky Ordinance
- The proposed trails and existing trails are not suitable or safe for night-use
- Substantial concerns related to traffic issues with both sites
- The Ramirez Canyon site is in an extreme fire danger zone where there have been past wildfires
- The Bluffs Park site is also located in an extreme fire danger zone where fires have been present in the past and had significant damage to the homes below
- There should be no camping
- There is an excess strain on emergency services already within the area
- Each site should only be used for day-use
- The development at both sites will impact the view preservation within those areas
- Wildlife specific to the Santa Monica Mountains
- Burden to evacuate and administer shelter-in-place for earthquakes and tsunamis, etc.

The question was called and the motion carried unanimously.

### **Comments from Public Safety Commission**

MOTION Chair Frost moved, and Commissioner Spiegel seconded a motion to provide a recommendation to the City Council that the following concerns and suggestions be included in the City's comments presented to MRCA in response to its Malibu Lower-Cost Accommodations Public Works Plan:

- Fires every day with no one there to ensure it did not happen and did not get out of control.
- Ranger residence needed to include minimum number of rangers per number of campers.
- Will the kitchen and food preparation areas be properly maintained.
- Facilities could become an attractive nuisance to late night homeless individuals.

- Must include strong evacuation plan for both properties that meets City's requirements and should include regular testing of the plan.
- City's Ordinance prohibiting camping when Life Fuel Moisture reaches a specific minimum level should close the campground.
- Consider increasing citation fines for violations of the City's campfire ordinance
- Can the City label the property a nuisance in response to multiple violations of City ordinances in accordance with the City's nuisance ordinance?
- Allow City inspection of the property at any time for compliance with City ordinances and the CDP.
- Determine an appropriate number of rangers per campers as part of the CDP.
- Are there sufficient parking spaces for the number of MRCA rangers and staff?
- How is MRCA going to ensure campers will not walk through ESHA
- Campgrounds will be a significant strain on City public safety resources
- Include all reasonably available technologies in order to rapidly identify fires on the property, such as an alert siren or automatic sprinkler system, to be shared with the City and local public safety agencies
- Specify that flameless facilities include prohibiting camp stoves
- All electrical outlets must be ground fault interrupted (GFI) devices

The question was called, and the motion carried 4-0, Commissioner Anneet absent.



Agenda Item VII  
MRCA  
1/7/13

City Council Meeting  
01-14-13

**Item  
7.B.**

# Council Agenda Report

To: The Honorable Members of the City Council

From: Christi Hogin, City Attorney   
On behalf of Mayor La Monte and Mayor Pro Tem House

Date prepared: December 26, 2012

Meeting date: January 14, 2013

Subject: Proposal to Swap Charmlee Wilderness Park for the ~83 acres of Bluffs Park Owned by the State and Operated by the Santa Monica Mountains Conservancy/Mountains Recreation and Conservation Authority (SMMC/MRCA) and Settle SMMC/MRCA v. City of Malibu Los Angeles County Superior Court Case No. SC092212 (Mayor La Monte and Mayor Pro Tem House)

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**RECOMMENDED ACTION:** Direct the City Attorney to negotiate agreements and implementing documents to effect land swap resulting in complete city control over all 93 acres of Bluffs Park and reach resolution in the lawsuit over the uses in Ramirez Park.

**FISCAL IMPACT:** Unknown fiscal impact, but believed to be no net change to the City's budget. The cost of operating and maintaining Charmlee Park would be saved by the City while the cost to operate and maintain land adjacent to Bluffs work would be incurred. Lawsuit settlement will eliminate future litigation costs.

**DISCUSSION:** This report discusses two separate proposals, which are offered to the City as a package only. I will describe each component in turn and then what steps will be required should the City wish to proceed. This offer is time-sensitive and some direction is required from the City Council tonight.

Since 1998, the City has owned Charmlee Wilderness Park, which consists of over 532 acres within the Santa Monica Mountains Coastal Slope Environment. Approximately 410 acres of the park are within the incorporated City boundaries. The park includes picnic areas and over 8 miles of hiking trails, native plant displays, and a nature center. The City has a volunteer docent program and offers school and group nature programs, as well as a variety of public hikes and interpretive programs. The City acquired Charmlee from the County in 1998 as part of the settlement of a lawsuit of a major proposed subdivision and residential development in the County adjacent to the City.

The transfer included a restriction that the park be used for passive recreation. Specifically, the restriction reads as follows:

5. The express condition that the City use, operate and maintain Charmlee Natural Area and the improvements thereon exclusively and in perpetuity for passive public recreation and coastal habitat conservation purposes. "Passive recreation" shall mean resource dependant outdoor recreation, including, but not limited to, nature observation, interpretation and education (including organized or supervised nature walks and astronomy observation), horseback riding, and hiking and picnicking. "Passive recreation," shall be inconsistent with, and shall preclude, any commercial use of Charmlee Natural Area or the improvements thereon (except the existing small gift shop selling items related to the public use of Charmlee Natural Area and the understanding of its resources), and shall further preclude any recreational use depending on structures, including, but not limited to, golf, driving range, tennis, ball fields, volleyball courts, swimming pool, use of powered vehicles of any kind, archery facilities, climbing or repelling towers, or equestrian facilities (except trails). This deed restriction does not preclude those improvements incidental and necessary to the permitted uses, that is, a nature education and interpretation center, a caretaker's residence, public restrooms, public parking, picnicking tables, water supply facilities, and a maintenance facility, provided that any such improvement shall be located in, or in the immediate vicinity of, the entrance area (which encompasses the currently existing parking lots and structures). In the event that ownership or operation of Charmlee Natural Area reverts to the County of Los Angeles, the County shall continue to use, operate and maintain Charmlee Natural Area and the improvements thereon exclusively and in perpetuity for passive public recreation and coastal habitat conservation purposes.

This deed restriction runs with the land and is in full force and effect regardless of which public entity owns the property.

In 2006, the City acquired from the state 10 of the 93 acres of Bluffs Park. This transaction was a part of a negotiated deal that facilitated the Santa Monica Mountains Conservancy's (SMMC) acquisition of Soka University while allowing the City to acquire the existing turf playing fields at Bluffs. The 10 acres included a deed restriction limited the uses to park uses. The remaining 83 acres are operated by the Santa Monica Mountains Conservancy/Mountains Recreation and Conservation Authority (SMMC/MRCA) and owned by the state.

The current arrangement limits the City's uses of the 10 acres and specifically limits the City's ability to make any changes to the parking lot, which is shared between the City and the SMMC/MRCA. The lack of local control recently frustrated the City's consideration of a plan that would re-configure and increase parking at Bluffs Park; the SMMC rejected the proposal to make any changes to the parking lot.

Recently, Mayor La Monte and Mayor pro Tem House approached Joe Edmiston to see whether SMMC and MRCA had any interest in a swap – Charmlee for the rest of Bluffs. The SMMC and the MRCA are interested in swapping Bluffs Park for Charmlee, if the transaction commences in January, but they also want to resolve the Ramirez Canyon Park lawsuit.

With respect to the land swap, the actual exchange of fee interest will require action by the state of California, which will take time. In order to provide each other immediate benefits of the eventual swap, Mr. Edmiston suggested that the City and the SMMC/MRCA enter into respective \$1-per-year leases which would confer possession of the respective parks while the longer process of transferring title is underway.

With respect to the uses of Ramirez Canyon Park, SMMC proposes to agree to the exact same restrictions that have been in place since 2007, which the City and SMMC negotiated as part of a stipulation to suspend a lawsuit while the SMMC applied for an LCP amendment which would address the uses in the park. The relevant portion of the stipulation reads as follows:

2. That a preliminary injunction (“Preliminary Injunction”) shall issue enjoining and restraining plaintiffs [SMMC/MRCA] from using the property known as Ramirez Canyon Park located at 5750 Ramirez Canyon Road (“Ramirez Canyon Park”) other than for the following ongoing activities (and necessary associated activities) (collectively “Agreed Activities”), which specifically do not include renting out Ramirez Canyon Park for private events and/or parties:

- A. Administrative and government offices for up to 15 employees
- B. A residential caretaker and his family
- C. Two special programs a week for disabled youth and/or for seniors
- D. Occasional employee training programs
- E. Ongoing property maintenance

Before these restrictions were in place, the SMMC actively sought to rent the facility for private events, such as weddings. On the occasions that the facility was used for larger events, the neighborhood was overwhelmed and disrupted. Ramirez Canyon Park is 22 acres nestled at the end of a winding, narrow private street exclusively serving a residential neighborhood in a tranquil canyon. The property itself was the former gated estate of Barbra Streisand. There are five homes on the estate and it is accessible by appointment only. The property is bounded on three sides by National Park Service wilderness and includes a section of the regionally significant Coastal Slope Trail.

The restrictions set out above have been in place continuously for the past five years. The SMMC has abided by their terms and the City has not had any complaints from activities at Ramirez since these restrictions have been in place.

For many years the City struggled to find the correct restrictions to ameliorate the adverse impacts of the use of the facility as an event venue and to enforce those restrictions. During the 1990s, the SMMC embarked on an effort to develop a facility rental business for private events. The City requires a Temporary Use Permit for such events and limited their number; further, the Malibu Municipal Code makes violations of the zoning regulations a public nuisance subject to abatement. The SMMC took the position that it was an agency of the state and immune from compliance with the City's laws. A state agency is immune from local regulation unless the Legislature expressly waives immunity in a statute or the California Constitution.

The property is zoned R-1. After the property was donated to the SMMC, it became the headquarters of MRCA and was used for a variety of revenue-raising events to support the Conservancy, including garden tours, weddings, filmings, picnics, banquets, business dinners, receptions, fund raisers, bar mitzvahs, retreats, seminars and conferences. The City filed a lawsuit seeking a judicial declaration that SMMC was subject to the local laws and that an altered streambed on the property violated the California Coastal Act; the lawsuit also sought an injunction to abate the nuisance caused by SMMC's failure to obtain TUPs from the City prior to holding commercial events on the property or a CDP for the streambed alteration. The Court of Appeal held that the Conservancy was subject to the City's zoning. *City of Malibu v. Santa Monica Mountains Conservancy* (2002) 98 Cal.App.4th 460, 1382.

Regrettably, that lawsuit did not resolve the differences between the City and the SMMC/MRCA over the appropriate uses at Ramirez Park. Since the 2002 appellate decision interpreting the statute that created the SMMC as requiring the SMMC to comply with the City's zoning laws, SMMC/MRCA employed two strategies to avoid the City's involvement in determining the appropriate uses. One was to obtain an amendment to the state statute that creates the SMMC and then file a lawsuit against the City claiming that the amendment undid the holding in the 2002 appellate decision. If SMMC were successful in that lawsuit, it could avoid compliance with local laws. The second strategy was to prepare a "Public Works Plan" (PWP) and urge the Coastal Commission to "override" the City's LCP so that the PWP would be consistent with the LCP and the SMMC could avoid having to obtain CDPs from the City for its development implementing a Coastal Commission-approved PWP.

Here is a thumbnail chronology of the highlights these two strategies:

\*2005-2006 the SMMC decides it wants to develop a master plan for the development and use of its several park holdings in Malibu (Ramirez, Corral, Escondido, Solstice). The SMMC purports that this plan is a Public Works Plan within the meaning of the Coastal Act. A PWP is subject to approval by the Coastal Commission and avoids the City altogether. Under the Coastal Act, the Coastal Commission may only approve the PWP if it is consistent with the Malibu LCP.

\*2006 SMMC sues the City seeking a court order that its uses in Ramirez are permitted, that it is immune from compliance with the City's Municipal Code and that its uses are consistent with the Malibu LCP. The City cross-complains against the SMMC for violations of the Coastal Act (this the Ramirez Canyon Park Lawsuit).

\*2006-2007 the City objects to the PWP because the plan is not consistent with the LCP and because the City wants to assure that the development and uses are consistent with the neighboring residential uses. The City and MRCA/SMMC reach agreement in which SMMC applies for an LCP amendment within acceptable parameters.

\*2008 SMMC complies with the agreement and applies for an LCP Amendment to accommodate a proposal within the agreed parameters. The City Council approves the SMMC's LCP amendment in part BUT removes all camping and requires a secondary road at Ramirez. These components frustrate the SMMC's goal in part. The City submits the modified LCP Amendment for certification by the Coastal Commission, but the SMMC is no longer satisfied with its content.

\*2009 The City is informed that the Coastal Commission, at the SMMC's behest, is considering amending the LCP to accommodate SMMC's plan, whether the City likes it or not, by invoking a previously dormant provision of the Coastal Act that allows the Commission to make such amendments for certain qualifying energy facilities and public work projects. This gave rise to the Override Lawsuit, which the City recently won. The Court of Appeal held that the Coastal Commission exceeded its jurisdiction by purporting to amend the City's certified LCP over its objections to accommodate the SMMC's request. *City of Malibu v. California Coastal Comm'n.* (2012) 206 Cal.App.4th 549.

\*2010 Meanwhile, while the Override Lawsuit was pending, the Commission approved the SMMC's PWP, which was consistent with how the Commission changed Malibu's LCP, but not consistent with the unchanged LCP. That action by the Coastal Commission forced us to file another lawsuit to challenge the PWP, in case the courts interpreted the Override provision against the City (which ultimately the court did not do). Due to the statute of limitation and guided by prudence, the City filed the PWP Lawsuit. After the City prevailed in the Override Lawsuit, the Commission agreed to an order revoking the approval of the approval of the PWP. That revocation resolved the PWP Lawsuit in the City's favor.

With the Override and PWP Lawsuits (including the attorneys' fees) resolved in the City's favor, the remaining litigation involves just the second lawsuit over the uses at Ramirez Park.

SMMC and MRCA have indicated that they are interested in proceeding with the land swap (Charmlee for the state-owned portion of Bluffs) on the condition that the City also settle the dispute over the uses at Ramirez Canyon Park. The Ramirez Canyon Park



settlement would include a requirement to restore the riparian habitat disturbed by the unpermitted development at the property and otherwise bring the property into compliance with the Coastal Act.

There are a lot of legal and technical details that need to be worked out to implement this proposal. The proposal requires two leases, an agreement to effectuate the transfer of title, and a settlement agreement, which will need to determine the best way to memorialize the permitted uses.

Tonight the Mayor and Mayor Pro Tem are seeking the Council's direction to proceed with the proposal and general approval of the concept to swap Bluffs (restricted to public park use) for Charmlee (subject to the existing passive recreation restriction) and direct that the final documents be brought back to the City Council for action at the next regular meeting.

#### ATTACHMENTS:

1. Charmlee Deed (Note the relevant deed restriction is on page 6; Ex. B)
2. Bluffs Park Deed (Note the relevant restriction on Page 8)
3. 2007 Stipulation and MOU reflecting the previously agreed to uses at Ramirez Canyon Park

B

EXHIBIT C TO QUITCLAIM DEED  
MALIBU BLUFFS COMMUNITY PARK  
DEED RESTRICTION, COVENANT & CONDITIONS

These deed restrictions, covenants and conditions are made by and between the State of California (Grantor) and the City of Malibu, a California Municipal Corporation (Grantee) herein.

WHEREAS, Grantor and Grantee for themselves and their successors and assigns agree that the property described in Exhibit "A" is subject to the following restrictions, covenants and conditions;

NOW THEREFORE, the following restrictions, covenants and conditions are imposed for the benefit of the public and have been agreed to by the City freely and voluntarily and for valuable consideration:

City Park Property shall remain open to use by members of the public consistent with general operating rules and regulations established by the City. These rules and regulations shall not substantially differ from the rules and regulations set forth at Malibu Municipal Code Chapter 12.08. The use of the City Park Property is and shall be limited and restricted to those uses that the City Park Property is being used at the time of the transfer of the City Park Property to Grantee including but not limited to youth and adult active and passive recreation, community educational and recreation programs, facility rentals and community events. Grantee agrees that the City Park Property shall also be used by members of the public and by the Santa Monica Mountains Conservancy for the purposes of providing public access to property described in Exhibit "D", including parking on a first come first serve basis, subject only to the provisions of Malibu Municipal Code Chapter 12.08 as enacted as of the date of this conveyance of the City Park Property to the Grantee and consistent with the allowed uses of the City Park Property.

Grantee acknowledges that Grantor may pursue any or all remedies available in law or equity and seek an order of a court of competent jurisdiction to enforce, including enjoining any violation of, this deed restriction. The prevailing party is entitled to reasonable attorney's fees and costs including the costs of appeal.

9

Unless specifically modified or terminated in writing by the Grantor, this deed restriction shall remain in full force and effect in perpetuity.

The execution of this deed restriction by Grantor shall constitute an agreement with the Grantee of each provision, term and condition contained herein and shall constitute a covenant running with the land, which shall be binding upon the heirs, devisees, assigns, transferees, and successors in interest of Grantee.

If any sentence, clause, phrase or portion of this deed restriction is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this deed restriction.

06 2007736

03/03/03

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court  
MAR 08 2007

John A. Clarke, Executive Officer/Clerk  
By E. Mora, Deputy

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – WEST DISTRICT**

SANTA MONICA MOUNTAINS  
CONSERVANCY; MOUNTAINS  
RECREATION AND CONSERVATION  
AUTHORITY,

Plaintiffs,

v.

CITY OF MALIBU,

Defendant.

CASE NO. SC092212

**STIPULATION FOR ENTRY OF  
PRELIMINARY INJUNCTION,  
STAY OF LITIGATION AND  
CONTINUANCE OF INITIAL  
STATUS CONFERENCE;  
[PROPOSED] PRELIMINARY  
INJUNCTION, STAY OF  
LITIGATION AND ORDER  
CONTINUING INITIAL STATUS  
CONFERENCE**

Action Filed: December 22, 2006  
Trial: None Set

(Hon. John L. Segal, Dept. M)

**AND RELATED CROSS-ACTION.**

**STIPULATION**

WHEREAS, plaintiff and cross-defendant Santa Monica Mountains Conservancy, a California State agency formed and existing pursuant to the Santa Monica Mountains Conservancy Act ("SMMC"), plaintiff and cross-defendant Mountains Recreation and Conservation Authority, a joint powers authority created pursuant to the Joint Exercise of Power Act ("MRCA"), (collectively, "plaintiffs") and defendant and cross-complainant City of Malibu, a California municipal corporation ("City"), have met and discussed a

1 process that may lead to a resolution of the matters raised in this case without further  
2 litigation, and have entered into a Memorandum of Understanding dated January 23,  
3 2007 ("MOU") setting forth their agreement, a true and correct copy of which is attached  
4 hereto as Exhibit A and incorporated herein;

5 WHEREAS, that process requires a series of duly noticed public hearings that are  
6 anticipated to occur in the next six to twelve months;

7 WHEREAS, while these administrative procedures are pending, the parties wish to  
8 stay this action in its entirety ("Pending Action") and preserve the *status quo* as provided  
9 in this Stipulation for Entry of Preliminary Injunction and Stay of Litigation;

10 WHEREAS, the parties agree that, during the pendency of the preliminary  
11 injunction and stay of litigation sought to be entered through this Stipulation  
12 ("Preliminary Injunction and Stay"), plaintiffs' ongoing activities identified below will be  
13 treated as if they are in compliance with the City's Local Coastal Plan ("LCP"), the  
14 California Coastal Act (Public Resources Code section 30000, *et seq.*) ("Coastal Act"),  
15 and other City ordinances;

16 WHEREAS, the parties believe that the interests of justice will be advanced, and  
17 that good cause exists for entry of the Preliminary Injunction and Stay, as stipulated  
18 below;

19 WHEREAS, the parties have agreed, without waiving any of their respective  
20 rights and positions, including, without limitation, those each has asserted in the Pending  
21 Action, to stipulate to the entry of Preliminary Injunction and Stay, and have executed  
22 this Stipulation on the condition that these be approved by this Court;

23 WHEREFORE, the parties hereby stipulate, through their respective counsel of  
24 record, and respectfully request the Court to issue the Preliminary Injunction and Stay, as  
25 follows:

- 26 1. That the Pending Action be stayed pending final action on plaintiffs'  
27 application for an amendment to the Malibu Local Coastal Program ("LCP") as set forth  
28 in the MOU, or until the MOU is terminated, whichever occurs first (the "Stay").

1           2.     That a preliminary injunction ("Preliminary Injunction") shall issue  
2     enjoining and restraining plaintiffs from using the property known as Ramirez Canyon  
3     Park, located at 5750 Ramirez Canyon Road ("Ramirez Canyon Park"), other than for the  
4     following ongoing activities (and necessary associated activities) (collectively, "Agreed  
5     Activities"), which specifically do not include renting out Ramirez Canyon Park for  
6     private events and/or parties:

- 7           A.     Administrative and government offices for up to 15 employees.  
8           B.     A residential caretaker and his family.  
9           C.     Two special programs a week for disabled youth and/or for seniors.  
10          D.     Occasional employee training programs.  
11          E.     On-going property maintenance.

12          3.     That the Preliminary Injunction shall also enjoin and restrain the City from  
13     taking any enforcement action or proceeding against plaintiffs, or either of them, other  
14     than this Pending Action, on or with respect to the Agreed Activities, or any of them,  
15     whether under the LCP, the Coastal Act or City ordinances, except that any of the parties  
16     hereto may seek to enforce this stipulated Preliminary Injunction.

17          4.     That the Preliminary Injunction shall be dissolved upon the occurrence of  
18     the earlier of any of the following events:

- 19          A.     The entry of final judgment in the Pending Action.  
20          B.     The dismissal of the Pending Action in its entirety by the parties or this  
21     Court.  
22          C.     The approval of plaintiffs' activities at Ramirez Canyon Park by the  
23     California Coastal Commission or the City.  
24          D.     Plaintiffs' delivery to the City of a written notice that they have abandoned  
25     the administrative process through which they were seeking approval by the City of their  
26     activities at Ramirez Canyon Park.  
27          E.     The filing with this Court of a written declaration by the City stating that  
28     (1) plaintiffs have delivered to the City a written notice that plaintiffs have abandoned the

1 administrative process through which they sought approval by the City of their activities  
2 at Ramirez Canyon Park, and (2) the 90-day period following the City's receipt of the  
3 notice of abandonment, during which the MOU requires the parties to participate in  
4 voluntary mediation before the Hon. Steven J. Stone (Ret.), has expired.

5 5. That no undertaking shall be required of any party in connection with the  
6 Stay and Preliminary Injunction, and that during the pendency of the Stay and  
7 Preliminary Injunction, no party shall seek to require any other party to provide any such  
8 undertaking.

9 6. That the status conference currently set for April 11, 2007, shall be  
10 continued to August 10, 2007 at 8:30 a.m. in Department M of the above-entitled court,  
11 or to such other date and time as may be convenient to this Court.

12  
13 Dated: February 8, 2007

RICHARDS, WATSON & GERSHON

14  
15 By: 

16 Steven R. Orr

17 Attorneys for SANTA MONICA  
18 MOUNTAINS CONSERVANCY

19 Dated: February 8, 2007

20 PAUL, HASTINGS, JANOFSKY & WALKER, LLP

21  
22 By: 

23 A. Catherine Norian

24 Attorneys for MOUNTAINS  
25 RECREATION & CONSERVATION  
26 AUTHORITY

27 Dated: February 9, 2007

28 CITY OF MALIBU

By: 

Christi Hogin  
City Attorney

-4-

Stipulation for Entry of Stay and Preliminary Injunction; [Proposed] Order

[PROPOSED] ORDER

Upon the Stipulation of the parties, set forth above, and for good cause shown, IT IS HEREBY ORDERED:

1. This action is stayed in its entirety ("Pending Action") pending final action on the application submitted by plaintiffs and cross-defendants (collectively, "plaintiffs") to defendant and cross-complainant ("City") for an amendment to the Malibu Local Coastal Program ("LCP") as set forth in the Memorandum of Understanding attached as Exhibit A hereto ("MOU"), or until the MOU is terminated, whichever occurs first.

2. Plaintiffs are hereby enjoined and restrained during the pendency of the Pending Action from using the property located at 5750 Ramirez Canyon Road ("Ramirez Canyon Park") other than for the following ongoing activities (and necessary associated activities) ("Agreed Activities"), which specifically do not include renting out Ramirez Canyon Park for private events and/or parties:

- A. Administrative and government offices for up to 15 employees.
- B. A residential caretaker and his family.
- C. Two special programs a week for disabled youth and/or for seniors.
- D. Occasional employee training programs.
- E. On-going property maintenance.

3. The City is hereby enjoined and restrained during the pendency of the Pending Action from taking any enforcement action or proceeding against plaintiffs, or either of them, other than the Pending Action, on or with reference to the Agreed Activities, or any of them, whether under the LCP, Coastal Act or City ordinances.

4. Notwithstanding the foregoing, any of the parties may seek to enforce this preliminary injunction in the manner provided by law.

5. This preliminary injunction will be dissolved upon the occurrence of the earlier of any of the following events:

- A. The entry of final judgment in this Pending Action.



1 B. The dismissal of the Pending Action in its entirety by the parties or this  
2 Court.

3 C. The approval of plaintiffs' activities at Ramirez Canyon Park by the  
4 California Coastal Commission or the City.

5 D. Plaintiffs' delivery to the City of a written notice that they have abandoned  
6 the administrative process through which they were seeking approval by the City of their  
7 activities at Ramirez Canyon Park.

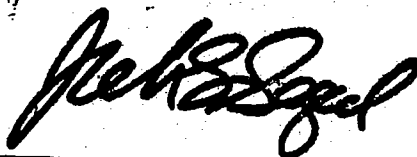
8 E. The filing with this Court of a written declaration by the City stating that  
9 (1) plaintiffs have delivered to the City a written notice that plaintiffs have abandoned the  
10 administrative process through which they sought approval by the City of their activities  
11 at Ramirez Canyon Park, and (2) the 90-day period following the City's receipt of the  
12 notice of abandonment, during which the MOU requires the parties to participate in  
13 voluntary mediation before the Hon. Steven J. Stone (Ret.), has expired.

14 6. No undertaking will be required of any party, and no party shall seek any  
15 such undertaking from any other party, at any time during the pendency of the  
16 preliminary injunction and stay.

17 7. The status conference currently set for April 11, 2007, is continued to  
18 August 10, 2007 at 8:30 a.m. in Department M of the above-entitled court.

19  
20 Dated:

MAR 08 2007



22 JOHN J. SEGAL  
23 Judge of the Superior Court  
24  
25  
26  
27  
28

## MEMORANDUM OF UNDERSTANDING AGREEMENT

This Memorandum of Understanding Agreement ("MOU") is entered into by and between the CITY OF MALIBU, a California municipal corporation (hereinafter "City"), on the one hand; and the Santa Monica Mountains Conservancy ("SMMC" or the "Conservancy"), a California state agency formed and existing pursuant to the Santa Monica Mountains Conservancy Act, codified as Public Resources Code section 33000 *et seq.*, and the Mountains Recreation and Conservation Authority ("MRCA"), a joint powers authority created pursuant to the Joint Exercise of Power Act, codified as Government Code section 6500 *et seq.*, and composed of the Conservancy and two local recreation and park districts, the Rancho Simi Recreation and Park District and Conejo Recreation and Park District, (collectively referred to as "SMMC/MRCA"), on the other hand. Together the City and the SMMC/MRCA are sometimes referred to herein as "the parties."

### RECITALS

- A. In early 2006, the SMMC/MRCA began preparation of a comprehensive development plan for its properties in and around the City of Malibu and for property it does not presently own but wishes to acquire. The SMMC/MRCA titled the document the "Malibu Parks Public Access Enhancement Plan Public Works Plan" ("Public Works Plan"). The Public Works Plan is a comprehensive planning document purporting to regulate and govern future development on property within its "planning area."
- B. The City contends that the Public Works Plan constitutes a discretionary project within the meaning of Public Resources Code section 21080, subd. (a) and, therefore, is subject to the California Environmental Quality Act ("CEQA") and the CEQA Guidelines. The SMMC/MRCA contends, *inter alia*, that the Public Works plan is reviewed in the same manner prescribed for the review of local coastal programs, and is exempt from CEQA under Public Resources Code section 30605 and the same provisions of CEQA and the CEQA guidelines that exempt LCP amendments from CEQA.
- C. The City further contends that the Public Works Plan is inconsistent with the Malibu LCP and therefore invalid and/or uncertifiable. The SMMC/MRCA contends, *inter alia*, that the Public Works Plan is consistent with the Malibu LCP, that the SMMC/MRCA is immune from local land use regulations and that no coastal development permit is required for any of its activities or proposed activities because they are each either within the legal ambit of the Public Works Plan or not development within the meaning of the Coastal Act.
- D. The SMMC/MRCA filed a lawsuit in the Los Angeles County Superior Court seeking declaratory relief regarding its contentions with respect to the use of the Ramirez Canyon Park. That lawsuit is designated LACSC Case No. SC 92212. City has filed an answer and cross complaint in Case No. SC 92212. The City has also filed a petition for writ of mandate and complaint for declaratory relief against the SMMC/MRCA.

challenging its noncompliance with CEQA and use the Public Works Plan for its proposed development. That lawsuit is designated LACSC Case No. BS 106878. Together these cases are referred to as the "Pending Litigation."

- E. The parties have met and discussed their differences. Each party has determined that it is in the best interest of all interested parties to attempt to resolve the differences through employing the provisions of the Coastal Act and the Malibu Local Coastal Program which provide for amendment to the Malibu LCP. The parties further agree that they will enter into and participate in the LCP amendment process in good faith; however, both parties wish to preserve their legal rights and positions and participate without prejudice to those respective rights and positions.
- F. The parties recognize that the LCP amendment process may take many months to complete and will require, inter alia, duly noticed public hearings before the Malibu Planning Commission, the Malibu City Council and the California Coastal Commission. In order to address in the interim certain of the pressing issues that will be addressed by the LCP amendment, the parties agree, without waiving any of their respective rights and positions, including, without limitation, those asserted in the Pending Litigation, that the City and SMMC/MRCA will stipulate to a preliminary injunction ("Preliminary Injunction") which will, pending the conclusion of the procedures contemplated herein, maintain the status quo with respect to the use of Ramirez Park and will otherwise limit the use of the Ramirez Park facility while the LCP amendment process is on-going, and which will stay the proceedings in the Pending Litigation and the City's enforcement against SMMC/MRCA of its LCP and the Coastal Act.
- G. This MOU sets forth the terms and conditions and mutual understanding of the parties relative to the foregoing.

**NOW, THEREFORE,** in consideration of the foregoing and of the promises and covenants set forth herein, and without waiving any of their respective rights and positions, including, without limitation, those asserted in the Pending Litigation, the parties agree as follows:

- 1. Obligations of the SMMC/MRCA. The SMMC/MRCA shall be responsible for the following:
  - 1.1 Within two weeks of the execution of this MOU, or as soon thereafter as the SMMC can make its quorum, the SMMC shall hold a public hearing to consider rescission of Resolution No. 06-91 adopted November 29, 2006, and any other action it took to approve the Public Works Plan and MRCA shall hold a public hearing to consider rescission of Resolution No. 06-174 and any other action it took to approve the Public Works Plan. If the Conservancy or the MRCA fails to rescind the Resolutions, this

agreement shall be null and void without the necessity of any further action by either party.

1.2 Within ninety (90) days of the execution of this MOU the SMMC/MRCA shall submit to the City a complete application for an amendment to the Malibu LCP, which shall be in the nature of a comprehensive, specific, area or public works plan, and which shall include the substantive proposals for planning and development that the SMMC/MRCA wishes to propose.

1.3 The SMMC/MRCA shall amend its Public Works Plan to submit as an LCP amendment with at least the following changes:

1.3.1 Overnight camping in Escondido shall be eliminated if camping is included at Charmlee Wilderness Park;

1.3.2 Overnight camping (in a program run by the SMMC/MRCA) shall be proposed in Charmlee Wilderness Park;

1.3.3 An expansion of the City's shuttle service (currently connecting the Headlands with Zuma beach) shall be proposed to include Charmlee Nature Preserve, Corral Canyon Park as well as the Point Dume Headlands and Zuma Beach. This proposal may include the use of the City's Prop A funds as appropriate and needed, which funds the City will cooperate in making available to SMMC/MRCA.

2. Obligations of the City. The City shall be responsible for the following:

2.1 The City shall in good faith make staff from its Planning and Parks & Recreation departments available for pre-application review. The purpose of this obligation is to assure that the SMMC/MRCA's application is complete and avoid unnecessary delays in processing the SMMC/MRCA's LCP amendment application;

2.2 The City shall accept for processing a complete LCP amendment application and shall hold the necessary public hearings and reach a final determination within 180 days receipt of a complete application. The parties agree that a complete

application for the LCP amendment contemplated by this MOU consists of the required processing fee and the following:

- 2.2.1 Summary of Public Notice and Participation;
  - 2.2.2 Policies, plans, standards, objectives, diagrams, drawings, maps, photographs contained in the current PWP as adopted;
  - 2.2.3 Supplementary data (special studies) contained in the current PWP as adopted related to biology, traffic, geology, creek restoration, accessibility, fire protection and emergency evacuation, as revised to reflect project changes;
  - 2.2.4 Public access component of the LPCA, included in chapter 3 of the current PWP as adopted;
  - 2.2.5 Planning Area Map, showing the location of the properties included in the plan, the location of all highways, streets and alleys, public easements or Offers to dedicate Public Easements and all lots and parcels of land within a distance of five hundred feet from the exterior boundaries of the property involved included as figures in the current PWP as adopted and as revised to reflect project changes;
  - 2.2.6 Summary of amendment's relationship to and effect on other sections of the certified LCP and analysis that demonstrates conformity with the requirements of Chapter 6 of the Coastal Act;
  - 2.2.7 Zoning measures/implementation that will be used to carry out the amendment to the land use plan, included as Implementation measures of the current PWP as adopted.
- 2.3 In light of the stipulated preliminary injunction constraining the use of Ramirez Canyon Park as referred to in (paragraph 3.2 below) and the agreement to apply for an LCP amendment (as referred to in paragraph 1.2 above), which, if approved and certified, will resolve any possible inconsistencies with the Malibu LCP or Municipal Code, aside from the cross-complaint and its defense in LACSC case No. SC092212 the City will not

take enforcement action against the SMMC/MRCA, including, without limitation, under the LCP or Coastal Act, during the term of this MOU, except that any of the parties may seek, as necessary, to enforce the Preliminary Injunction.

3. Joint Obligations. The City and the SMMC/MRCA also agree as follows:
  - 3.1 The parties agree to stay the Pending Litigation until final action is taken on the LCP amendment and to cooperate with one another in obtaining the Preliminary Injunction and a stay of the Pending Litigation from the court. The intention of this obligation is to minimize costs associated with the Pending Litigation and avoid the parties' use of resources prosecuting or defending the Pending Litigation.
  - 3.2 The parties agree to stipulate to a preliminary injunction enjoining the SMMC/MRCA's use of Ramirez Canyon Park and further enjoining the City as set forth in the proposed Preliminary Injunction attached hereto as Exhibit A in the form attached hereto as Exhibit A.
  - 3.3 The parties shall cooperate to secure changes, if any required, to the deed restrictions for Charmlee Wilderness Park in order to allow overnight camping in the park.
  - 3.4 The parties agree to defend, and cooperate with one another to defend, any challenge to this MOU, the attached Preliminary Injunction, and the LCP Amendment approved by the City.
  - 3.5 The parties further agree that if any court enjoins, restrains or otherwise prohibits the SMMC/MRCA from conducting the ongoing activities described in the Preliminary Injunction attached hereto as Exhibit A, the SMMC/MRCA can elect to terminate this MOU effective immediately upon giving notice to the City under the notice provisions set forth at Paragraph 6, below, and each party shall bear its own attorneys fees and costs incurred in connection with this MOU and the attached Preliminary Injunction.
4. Not an Impairment of the Police Powers. Nothing in this agreement is meant to nor shall be construed to constrain or impair the City's police powers impermissibly in connection with any decision it shall make in connection with the proposed LCP amendment or any other matters

contemplated by this MOU.

5. Dismissal or Resumption of Pending Litigation.

5.1 If the City Council approves an LCP amendment acceptable to the SMMC/MRCA and the Coastal Commission thereafter certifies that LCP amendment as approved by the City or suggests modifications acceptable to both the City and the SMMC/MRCA, in their sole, independent and respective discretion, the parties shall dismiss the Pending Litigation within two weeks after the issuance by the City of a CDP which applies to Ramirez Canyon Park consistent with and pursuant to the certified LCP amendment. The dismissal shall be without prejudice and all parties shall bear their own costs and attorneys fees. In the event the City dismisses its petition for writ of mandate and complaint for declaratory relief in Case No. BS 106878 following the rescission by the SMMC and MRCA of the resolutions and actions taken to approve the Public Works Plan, as provided in paragraph 1.1 above, the parties agree that each shall bear its own costs and attorneys fees in that action.

5.2 If the City Council fails to approve an LCP amendment acceptable to the SMMC/MRCA or the Coastal Commission fails to certify the LCP amendment approved by the City Council or the Coastal Commission insists on modifications unacceptable to either the SMMC/MRCA or the City, the MOU is terminated and the parties may resume the Pending Litigation and neither party shall use this MOU or any actions taken to implement it as evidence or a defense in the Pending Litigation (except with respect to any claims of laches, waiver, estoppel or the expiration of a statute of limitation that has not expired as of the date this MOU is executed).

6. Notices. All notices of matters under this MOU shall be given in writing by first class mail, personal delivery or facsimile. Mailed notices shall be addressed or transmitted as set forth below, but either party may change its address or facsimile number by giving written notice thereof to the other parties in accordance with the provisions of this paragraph:

CITY: City of Malibu  
ATTN: City Manager  
23815 Stuart Ranch Road  
Malibu, CA 90265

FAX (310) 456-2760

SMMC/MRCA: Mountains Recreation & Conservation Authority  
ATTN: Joseph T. Edmiston Executive Officer  
570 West Avenue 26, Suite 100  
Los Angeles, California 90065  
FAX (323) 221-9934

With copy to:

Paul, Hastings, Janofsky and Walker, LLP  
ATTN: Robert I. McMurry, Esq.  
515 S. Flower Street, 25<sup>th</sup> Floor  
Los Angeles, California 90071

Santa Monica Mountains Conservancy  
ATTN: Joseph T. Edmiston, Executive Director  
5750 Ramirez Canyon Road  
Malibu, California 90265  
FAX (310) 589-3207

With copy to:

Richards, Watson and Gershon  
ATTN: Steven H. Kaufmann, Esq.  
355 South Grand Avenue, 40<sup>th</sup> Floor  
Los Angeles, California 90071  
FAX (213) 626-0078

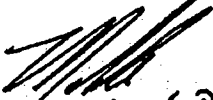
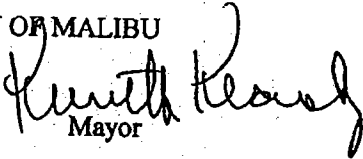
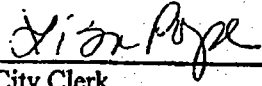
7. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this MOU. Any action, suit or proceeding related to or arising from this MOU shall be filed in the Los Angeles County Superior Court.
8. Term. This MOU shall commence upon execution by the parties and shall remain in effect until all obligations hereunder have been performed. A failure to perform any material obligation of this MOU constitutes a material breach. In the event of a material breach of this MOU, the non-breaching party shall give written notice to the other party, pursuant to Paragraph 6 above, specifying the purported material breach. The parties agree to meet and confer within seven calendar days of such written notice in an effort to cure the breach. If the parties are unable to reach agreement



within that seven-day period, the parties agree to mediation before the Hon. Steven J. Stone (Ret.) ("Mediator") at the offices of JAMS and the non-breaching party shall contact the Mediator for that purpose within fourteen calendar days of written notice of the breach. If Justice Stone is not available to act as Mediator, the parties agree to use best efforts to mutually agree upon the selection of another JAMS mediator. If the parties are unable to reach agreement within fourteen calendar days of being notified that Justice Stone is not available to act as the Mediator, then, within the next seven calendar days, SMMC/MRCA shall choose a JAMS mediator and the City shall choose a JAMS mediator for the purpose of having those two mediators choose a third JAMS mediator, and the three mediators shall conduct the mediation. The MRCA/SMMC on the one hand and the City on the other agree to share the costs of mediation equally. The parties agree that the Mediator's decision shall be binding upon all parties.

9. No Third Party Beneficiaries. This MOU is made and entered into for the sole benefit of the parties hereto. No other person shall have any right of action based upon any provision of this MOU.
10. Joint Preparation. This MOU shall be deemed to have been prepared jointly and equally by the parties, and none of its terms shall be construed against any party on the ground that the party prepared the MOU or caused it to be prepared.
11. Entire Agreement. This MOU constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings, both written and oral. This MOU may not be modified or amended except in a writing signed by all parties hereto.
12. Authority to Execute. The persons executing this MOU on behalf of each of the parties warrant and represent that they have the authority to execute this MOU on behalf of the party for whom they execute and have the authority to bind the party to the obligations hereunder.
13. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be considered to be an original agreement and all of which together shall be considered to be but one enforceable agreement.

IN WITNESS WHEREOF, the parties have executed this MOU as of the dates set forth below.

<p>MOUNTAINS RECREATION CONSERVATION AUTHORITY</p> <p>By:  Michael D. Berger</p> <p>Dated: January <u>30</u>, 2007</p> <p>CITY OF MALIBU</p> <p>By:  Mayor</p> <p>Dated: January <u>23</u>, 2007</p> <p>ATTEST:</p> <p> City Clerk (seal)</p>	<p>SANTA MONICA MOUNTAINS CONSERVANCY</p> <p>By: Elizabeth A. Cheadle, Chair</p> <p>Dated: January <u>1</u>, 2007 <i>February</i></p>
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