

Council Agenda Report

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

Prepared by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: April 10, 2023 Meeting date: April 24, 2023

Subject: Update Regarding Local Coastal Program Amendment No. 16-006
(Sea View Hotel Project)

RECOMMENDED ACTION: Receive a status update regarding City Local Coastal Program Amendment (LCPA) No. 16-006 for the Sea View Hotel Project LCPA submittal, review the California Coastal Commission (CCC) approved LCPA as modified on February 8, 2023 (LCPA No. LCP-4-MAL-21-0073-2), and provide direction on the following:

- 1) The Council's position on the LCPA as modified by the CCC and a determination if the modifications made by the CCC are generally consistent with the City's LCPA as adopted on September 13, 2021, or that the modifications substantially deviate from the LCPA; and
- 2) Preparation of an Ordinance to accept the modified LCPA; or
- 3) Preparation of a Resolution to withdrawal the City's submitted LCPA with the Council's stated findings.

Should the Council desire to change the modified LCPA, the Council would need to withdraw and resubmit the amendment as a new LCPA.

FISCAL IMPACT: As described in the Council's September 13, 2021, staff report, the applicant for LCPA No. 16-006 and associated Coastal Development Permit (CDP) No. 17-086 would contribute a fee of \$110,000, in-lieu of providing six low-cost visitor accommodations. The City would be able to transfer these funds to a public agency, non-profit organization, or private entity after entering a Memorandum of Understanding or other contractual agreement that requires use of the funds for construction of lower cost overnight visitor accommodations in the Malibu/Santa Monica Mountains coastal zone area of Los Angeles County or Ventura County and which requires that the accommodations remain lower cost. However, the transfer of funds is not required, and the funds could be deposited into the General Fund Undesignated Reserve. In addition to

the LCPA and CDP, associated Development Agreement No. 21-001 stipulated that the applicant would also contribute \$800,000 to the City for public benefits at the time the construction permits are issued for the associated project. Pursuant to General Plan Section 1.5.0, public benefits shall include physical improvements dedicated and reserved for public use, including, but not limited to, open space, wetlands, trails and walkways, parks, athletic fields, and civic or public buildings (such as senior centers, youth facilities, city hall, etc.). These funds would total \$910,000 and must be deposited into a General Fund Designated Reserve for a public benefit purpose. In 2021, the applicant forecasted that the project would generate over \$1.0 million in Transient Occupancy Tax revenue annually; however, this projection was not confirmed by staff at the time as nightly room rates or the occupancy projections were unknown.

The CCC's actions on February 8, 2023, modified the LCPA and included additional financial contributions associated with the project. As further described in this report, CCC's Modification 3 to the LCPA included an \$800,000 fee to be paid by agreement between the CCC, and the applicant to fund new lower cost overnight visitor accommodations elsewhere in the Malibu/Santa Monica Mountains coastal zone. The CCC described that the payment could be directed toward a public project to implement affordable visitor-serving accommodations in the area. In addition, the CCC described a commitment made by the applicant to provide \$250,000 to a nonprofit organization that provides free surf lessons and transportation to beaches in the Malibu area for children in underserved communities in the general Los Angeles area. These additional fees totaling \$1,050,000, would be submitted directly to the CCC and Los Courage Camps per the CCC's proposed modifications.

In total, the applicant will be contributing \$1,960,000.

WORK PLAN: This item was not included in the Work Plan for Fiscal Year 2022-2023.

BACKGROUND: On September 13, 2021, the Council amended its LCP to change the land use and zoning designation of two adjacent commercially developed parcels identified as 22729 Pacific Coast Highway (PCH) (APN: 4452-022-010) and 22741 PCH (APN: 4452-022-017), from Community Commercial (CC) to Commercial Visitor Serving Two (CV-2) on the LCP Land Use Plan (LUP) Land Use Map and LCP Local Implementation Plan (LIP) Zoning Map. These two parcels together comprise approximately 1.18 acres of land known as the Sea View Hotel Site.

The LIP amendment proposed the creation of a new overlay district (the Sea View Hotel Overlay District) to accommodate the construction of a new 39-room hotel with associated amenities at 22729 and 22741 PCH. The overlay map would be added to the LIP Zoning Maps and would apply use restrictions and development standards over the properties. The CC land use and zoning designation is intended to provide the community's resident-serving needs, including uses such as restaurants, banks, offices, and retail. Hotel use is

not permitted in the CC zone and is only permitted within the CV-2 zone. To accommodate the proposed hotel development, the City determined that the properties needed to be rezoned from CC to CV-2 as part of the LCPA.

At the September 2021 meeting, the Council approved the LCPA and submitted the LCPA application to the CCC on November 15, 2021. The LCPA submittal was deemed complete by CCC staff and filed on March 21, 2022, for a hearing. At its June 2022 CCC meeting, the CCC extended the 90 working-day time limit to act on the LCPA for a period not to exceed one year from the original deadline of July 28, 2022.

DISCUSSION: On February 8, 2023, the CCC declined to approve the LCPA as approved by the City; however, the CCC conditionally approved the LCPA subject to the City Council approving the particular modifications required by the CCC. Because the LCPA was modified by the CCC, the LCPA must come back to the Council for consideration. The Council has until August 8, 2023, six months following CCC's action, to either accept the modified LCPA or withdraw the LCPA. If the Council does not act within six months, the LCPA would not become effective.

If the Council accepts the modified LCPA, the Council will need to adopt an Ordinance at a future meeting since the modifications affect the LIP portion of the LCP. If adopted, the Ordinance would be transmitted to the CCC Executive Director for a final determination that the Council's acceptance is consistent with the CCC's action in February 2023. In this scenario, the modified LCPA would only become final when the CCC Executive Director reports its determination to the CCC at its next regularly scheduled meeting after receipt of the City's Ordinance. Once reported, the LCPA becomes effective and is part of the City's LCP.

If the Council does not accept the modified LCPA within six months of the CCC's action, then the LCPA would remain uncertified and would not become effective. The Council has two options to not accept the modifications: 1) adopt a Resolution to formally withdraw the LCPA with the Council's stated findings as to why the Council is not able to move forward with the LCPA modifications; or 2) allow the LCPA process to expire by not taking action within six months.

Should the Council choose to decline to accept the changes, the applicant could request that the Council submit a modified LCPA to address the CCC concerns. As the CCC has already taken action on the LCPA, modifications are no longer an option unless resubmitted as a new application.

The CCC's approval of the amendment included seven suggested modifications (Attachments 1 and 2). These are summarized as follows:

Suggested Modification 1: Adds the corresponding addresses and assessor parcel numbers (22729 Pacific Coast Highway/APN 4452-022-010 and 22741 Pacific Coast Highway/APN 4452-022-017) to LIP Section 3.4.6 (Sea View Hotel Overlay District) and a minor typo edit referencing LIP Section 3.8.

Suggested Modification 2: Adds clarifying language to LIP Section 3.4.5(D) (Development Agreement) to require the applicant to contribute \$800,000 to the City to be used for public benefits and amenities.

Suggested Modification 3: Adds a new subsection to LIP Section 3.4.6 (Sea View Hotel Overlay District) as follows:

E. Overnight Visitor-Serving Accommodations

NOTE: In addition to the requirements of LIP Section 12.10 regarding providing a component of lower cost overnight visitor accommodations, the owner of the Sea View Hotel Site as of the date of the Coastal Commission's action on LCP Amendment No. LCP-4-MAL-21-0073-2 ("Applicant") has agreed to enter into an agreement with the Coastal Commission to fund an associated escrow account, thereby committing to pay an in-lieu fee to another entity acceptable to the Executive Director of the Coastal Commission for use in developing lower cost visitor accommodations, to be released upon Applicant's securing of entitlements to develop the site consistent with development standards of the Sea View Hotel Overlay District below.

CCC explained that Modification 3 was added to note an agreement made between the CCC and the property owner regarding payment of the \$800,000 fee is in addition to the existing LCP requirements regarding the development of luxury overnight accommodations. CCC clarified that the purposes of the fee would be to fund new lower cost overnight visitor accommodations elsewhere in the Malibu/Santa Monica Mountains coastal zone. As part of the agreement with the CCC, the property owner funded an escrow account that would be released once the owner secures entitlements to development the hotel and said entitlements are no longer subject to challenge. The CCC described the payment could be directed toward an identified, potential public project to implement affordable visitor-serving accommodations – a planned campground on a 23.71-acre site (Lauber Smith Property) acquired by the Mountains Recreation and Conservation Authority (MRCA). The site is located outside of City limits in unincorporated Los Angeles County and adjacent to Ramirez Canyon Park. If proposed, portions of the property could be developed as a campground with flame-less facilities (tent pad sites, including ADA accessible tent pad sites) and visitor-serving improvements (parking, restrooms, and picnic areas) to serve the general public as well as underserved and foster youth programs of MRCA. However, CCC staff provides additional clarification in an Appendix to its February 2023 report (Attachment 2) that “no specific project for the in lieu

fee is called out in the Commission's suggested modification, and it remains uncertain if the mitigation fee will go towards a campground project in Ramirez Canyon or to some other project."

In addition to the in-lieu fee, the CCC explained that the property owner also committed to and entered into a contract to provide \$250,000 to a nonprofit organization called "Los Courage Camps" to further its work providing free surf lessons and transportation to beaches in the Malibu area for children in underserved communities in the general Los Angeles area. The CCC explained that the additional \$250,000 will increase equitable public access and recreation opportunities, furthering the goals of the Coastal Act and LCP with regard to access and environmental justice.

Note that the above amounts are in addition to a City-in lieu fee payment of \$110,000 to provide lower cost overnight accommodations onsite or offsite. This in-lieu fee was required as part of the City's previous approval of CDP No. 17-086 on September 13, 2021, for construction of the Sea View Hotel project. As part of the CDP, the City included Special Condition 34 requiring the \$110,000 payment. The CCC explained that the City's in-lieu fee option has not kept pace with the cost of providing lower cost accommodations in the coastal zone and is too low in comparison to the in-lieu mitigation fee that the CCC has required in recent past actions for new hotel development along the coast. CCC's staff report provides its rationale and analysis to support the added \$800,000 in-lieu fee in addition to the City's \$110,000 in-lieu fee.

On January 27, 2023, City staff provided comments to CCC staff regarding Suggested Modification 3 and requested that the \$800,000 not be used to fund camping in high fire severity zones or in Environmentally Sensitive Habitat Areas (ESHA). CCC disagreed with City staff's request for the following reasons:

- Camping is a form of lower-cost overnight visitor accommodations.
- The entire City is within the Very High Fire Severity Zone (VHFSZ).
- Requiring any camping to be situated outside of the VHFSZ would effectively preclude any new camping from being located within the City or the adjacent unincorporated Santa Monica Mountains.
- If the CCC were to restrict camping in the VHFSZ, this type of restriction would directly conflict with the lower cost overnight visitor accommodations in-lieu mitigation fee, policies and goals of the City's LCP which is to assist in funding affordable overnight accommodations in the Malibu/Santa Monica Mountains coastal zone.
- Any new camping development will trigger a CDP to be reviewed by either the City or Los Angeles County depending on the location.
- Both the City's LCP and Los Angeles County's LCP require new development to minimize risks to life and property in fire hazard areas and also require the protection of areas designated as ESHA and require new development in areas

adjacent to ESHA to be sited and designed to prevent impacts which would significantly degrade those areas.

Suggested Modification 4: Adds language to LIP Section 3.4.6(F) (Development Standards) to clarify which LCP standard a proposed visitor-serving commercial development standard is intended to replace or supplement, as applicable (e.g., projections into yards, landscaping, open space, height projections, parking, and layout and paving). CCC explained that since many of the proposed development standards for visitor serving commercial development reflect the requirements that are currently contained in the LCP, but do not reflect all of them, it is important to provide clarification regarding the applicability of standards in order to ensure internal consistency and adequacy in carrying out the policies of the Land Use Plan.

Suggested Modification 5: Adds language to LIP Section 3.4.6(G) (Permitted Uses) that reads:

Permitted and conditionally permitted uses that are a component of the hotel development are subject to the custom development standards of the Sea View Hotel Overlay District. Permitted or conditionally permitted uses that are not a component of the hotel development are subject to all applicable policies and provisions of the certified LCP, including the Commercial Development Standards in LIP Section 3.8.

CCC explained this modification will ensure that all other permitted and conditionally permitted uses that are not associated with hotel development cannot be developed with the modified hotel-specific development standards under the overlay district and, therefore, will ensure that new development will not have significant adverse effects, either individually or cumulatively, on coastal resources. Other minor clarifications are incorporated into this section to avoid ambiguity (e.g., deleted reference to design standards and restaurant parking, and clarification on conditional use permits being required in addition for conditionally permitted uses).

Suggested Modification 6: Adds the corresponding addresses and assessor parcel numbers (22729 Pacific Coast Highway/APN 4452-022-010 and 22741 Pacific Coast Highway/APN 4452-022-017) to the proposed LIP Section 3.4.6 Sea View Hotel Overlay District text and Sea View Hotel Overlay District Map.

Suggested Modification 7: Modifies the LIP Zoning Map to depict the Sea View Hotel Overlay District site as two parcels APN 4452-002-010 and 4452-022-017.

ENVIRONMENTAL IMPACT: The proposed City Council actions, including without limitation, direction to prepare an Ordinance or Resolution was adequately covered in Initial Study (IS) No. 21-001 and Mitigated Negative Declaration (MND) No. 21-001 for the

Sea View Hotel (SCH #2012041087), adopted by the City Council on September 13, 2021 (Resolution No. 21-45). The proposed City Council actions are not a separate “project” for CEQA purposes but is a subsequent discretionary action related to a previously approved project (CEQA Guidelines § 15378(c)). Additionally, pursuant to CEQA Guidelines Section 15162, and based on the review of the entire record, including without limitation, the IS/MND, the City Council finds that the proposed actions do not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the IS/MND due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that shows the project will have one or more significant effects not discussed in the IS/MND. Pursuant to CEQA Guidelines §15162(b), the City Council finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed City Council actions are merely a step-in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

CONCLUSION: Staff requests Council to provide direction on next steps regarding the LCPA. If the Council accepts the modified LCPA, staff will return with an Ordinance to accept the modified LCPA. If the Council does not accept the modified LCPA, staff could return with a Resolution to withdraw the LCPA with the Council’s stated findings if so directed.

ATTACHMENTS:

1. CCC Modifications to City LCPA (redlined version)
2. CCC Staff Report and Attachments, February 8, 2023

CCC Modifications to City LCPA – February 8, 2023
(City text in straight type; CCC edits in ~~strikethrough~~ and underline)

LIP Chapter 3.4 is amended to add Section 3.4.6 as follows:

3.4.6 Sea View Hotel Overlay District (22729 Pacific Coast Highway/APN 4452-022-010 and 22741 Pacific Coast Highway/APN 4452-022-017)

A. Purpose. The provisions of this section provide custom development criteria and uses for the development of the Sea View Hotel project, as referred to in the Sea View Hotel Development Agreement, a commercial, visitor-serving, transient lodging accommodation development. These include maximum density and intensity standards, including floor area ratios for commercial use not to exceed the maximum floor area ratio allowed pursuant to the LUP where public benefits and amenities are provided as part of the project, development standards, including heights, lot coverage, setbacks and open space requirements.

B. Description of Area Subject to LIP Section 3.4.6. The provisions of this section shall apply to the Project Site, a 51,776 square foot (1.19 acre) ~~site parcel~~, comprised of two ~~merged~~ parcels, currently identified as 22729 Pacific Coast Highway and 22741 Pacific Coast Highway (Los Angeles County Assessor Parcel Numbers 4452-022-010 and 4452-022-017) in the Sea View Hotel Overlay District map.

C. Applicability. The Commercial Development Standards contained in LIP Section 3.48, as well as other applicable certified LCP policies and provision shall apply, unless specifically modified by this section.

D. Development Agreement. Pursuant to a Development Agreement between the property owner and the City of Malibu, the allowable Floor to Area Ratio (FAR) is increased from 0.15 to 0.52 ~~if~~ if the applicant ~~will~~ will contribute \$800,000 to the City for public benefits and amenities, to be expended as the City Council determines to be an appropriate use.

E. Overnight Visitor-Serving Accommodations

NOTE: In addition to the requirements of LIP Section 12.10 regarding providing a component of lower cost overnight visitor accommodations, the owner of the Sea View Hotel Site as of the date of the Coastal Commission's action on LCP Amendment No. LCP-4-MAL-21-0073-2 ("Applicant") has agreed to enter into an agreement with the Coastal Commission to fund an associated escrow account, thereby committing to pay an in-lieu fee to another entity acceptable to the Executive Director of the Coastal Commission for use in developing lower cost visitor accommodations, to be released upon Applicant's securing of entitlements to develop the site consistent with development standards of the Sea View Hotel Overlay District below.

EF. Development Standards.

YARDS/SETBACKS. The provisions of LIP Section 3.8(A)(2) shall not apply. The Sea View Hotel yards/setbacks requirements are as follow:	
Minimum Front Yard Setback	16% of lot depth
Minimum Rear Yard Setback	15% of lot depth
Minimum Side Yard Setback (West)	15% of lot width
Minimum Side Yard Setback (East)	12 feet
Minimum Side Yard Setback (Cumulative)	None
PROJECTIONS INTO YARDS	
	<p>The provisions of LIP Section 3.5.3(B) <u>apply with the is modified as follows additional provision:</u></p> <ul style="list-style-type: none"> Access and exit stairs required by the Fire Department, and existing retaining walls may project without limit into required side yards.
SITE DEVELOPMENT CRITERIA	
Maximum Floor Area Ratio (F.A.R.)	<p>The provisions of LIP Section 3.8(A)(5)(a) shall not apply. The Sea View Hotel site development criteria are as follow:</p> <ul style="list-style-type: none"> The gross square footage of all buildings shall be limited to a maximum FAR of 0.52 of the lot area (excluding any street rights of way). Floor area excludes access hallways and storage areas created by excavation into the hillside and not visible from Pacific Coast Highway or any other public area not to exceed 386 square feet.
Minimum Onsite Landscaping	<p><u>The provisions of LIP Section 3.8(A)(5)(b) shall not apply. The Sea View Hotel landscaping criteria are as follows:</u></p> <p>A minimum of 8,977 square feet of landscaping at ground level. Additionally, there shall be a minimum of 2,528.6 square feet of plants in planters on the southerly seaward areas of the various decks.</p>
Minimum Onsite Open Space	<p><u>The provisions of LIP Section 3.8(A)(5)(b) shall not apply. The Sea View Hotel open space criteria are as follows:</u></p> <p>A minimum of 1,313.8 square feet of private recreational area at ground level and first level reception area and 21,494 square feet at guest deck patios, not already included in landscape area, are required.</p>

HEIGHT	
Maximum Height Projections	<p>The provisions of LIP Section 3.8(A)(1) shall not apply. The Sea View Hotel height requirements are as follow:</p> <ul style="list-style-type: none"> • New structures which have sloping roofs that slope less than 25% shall be no higher than 24 feet above the <u>existing-natural</u> grade or finished grade, whichever results in a lower building height, excluding basements • New structures which have sloping roofs that slope 25%, or more, shall be no higher than 28 feet above the <u>existing-natural</u> grade or finished grade, whichever results in a lower building height, excluding basements. Areas such as elevator shafts in order to comply with ADA laws, the wooden deck above the existing tile rooftop deck, the fire exit stairs required by the Fire Department, the safety railing around the decks, and the sound wall as described in the Mitigated Negative Declaration are excluded from the referenced height restrictions. Seven-foot overhangs to eliminate sun from hitting south facing windows are excluded from the height standards.
PARKING AND ACCESS	
Parking Requirements	<p>The provisions of LIP Sections 3.14.2 and 3.14.3 shall not apply. The Sea View Hotel parking requirements are as follows:</p> <ul style="list-style-type: none"> • 1.5 parking spaces per hotel room. • 1 space for each, per-shift employee (15-full time-employees-per-shift=15-spaces) • <u>1</u> space for each 100 square feet of gross floor area used for consumption of food or beverages, or public recreation areas (890/100=9-spaces). • <u>1 space for each 5 fixed seats, or for every 35 square feet of assembly area where there are no fixed seats in meeting rooms or other assembly areas.</u>
Parking Location	<p>The provision of LIP Section 3.14.5(A)(2) is modified as follows:</p> <ul style="list-style-type: none"> • Required parking may be located in the required front yard setback.

Layout and Paving	<p>The provisions of LIP Section 3.14.5 are modified or shall not apply as follows:</p> <ul style="list-style-type: none"> • The provision of LIP Section 3.14.5(D)(5) shall not apply. Tire stops are not required for valet parking spaces. • The provisions of LIP Sections 3.14.5(C) and (E) shall not apply. • The landscaped areas and the parking plan shown on the Sea View Hotel plans are an integral part of the proposed hotel and are acceptable within the overlay district.
MONUMENT SIGN AND GENERAL SIGN REQUIREMENTS	
	<p>The provisions of LIP Section 3.15.6 are modified or shall not apply as follows:</p> <ul style="list-style-type: none"> • The provisions of LIP Section 3.15.6(A)(2)(d)(iii) shall not apply. • Two signs shall be permitted, each sign shall be a maximum of 48 square feet, and a maximum height of 6 feet, excluding the base area supporting the sign. One monument sign and one building sign shall be permitted. • One address monument sign shall be permitted up to a maximum of 16 square feet, excluding the base area supporting the sign. • There shall be no setbacks required from rights of way or property lines for monument signs.

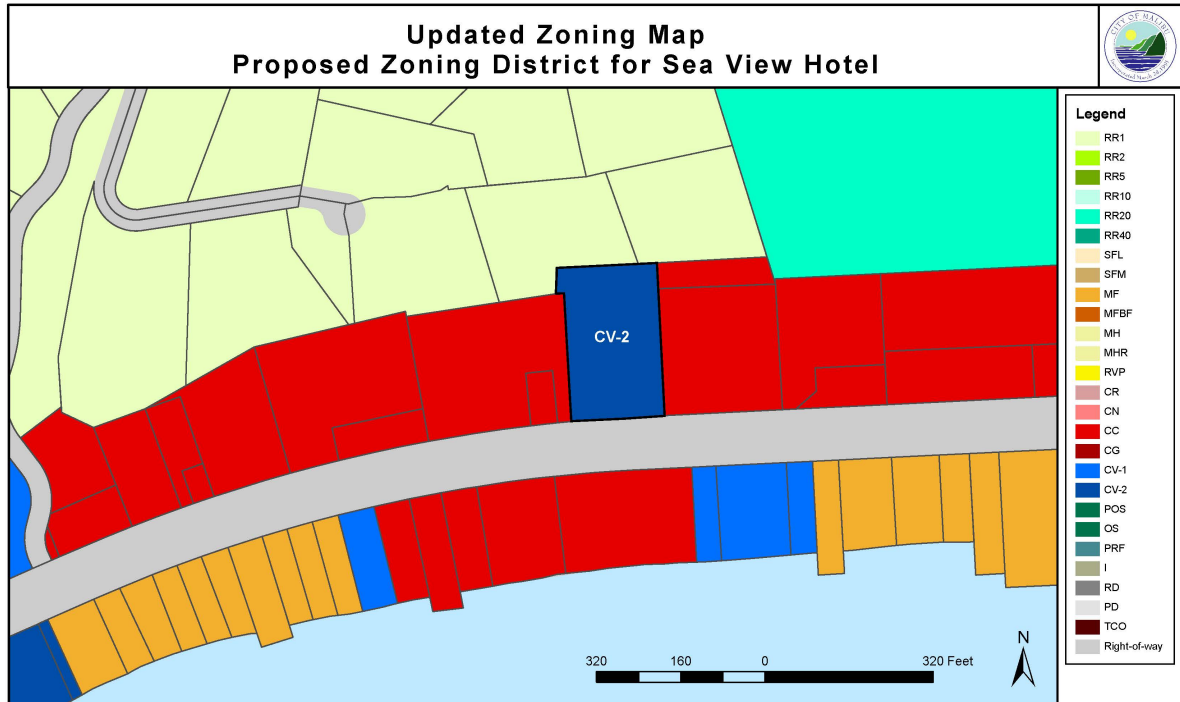
~~F.~~ G. PERMITTED USES

The following permitted, conditionally permitted, and prohibited uses ~~and design standards are as follows:~~ shall apply to the Sea View Hotel Overlay District. Permitted and conditionally permitted uses that are a component of the hotel development are subject to the custom development standards of this Sea View Hotel Overlay District. Permitted or conditionally permitted uses that are not a component of the hotel development are subject to all applicable policies and provisions of the certified LCP, including the Commercial Development Standards in LIP Section 3.8.

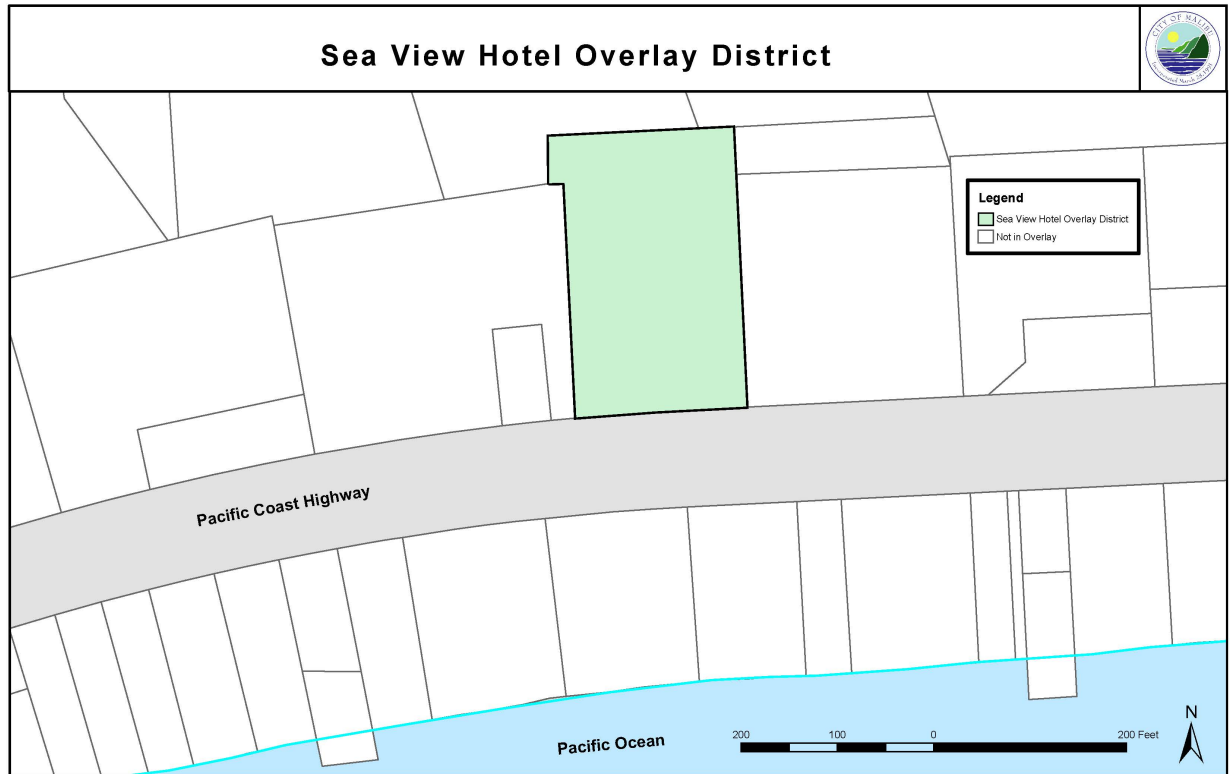
- a. Permitted Uses: The uses and structures permitted within Sea View Hotel Overlay District are as follows:
 - i. All uses permitted in the Commercial Visitor Serving-2, (CV-2), land use zoning district, as specified in the LCP.
 - ii. Restaurants that are open to the general public ~~will require one parking space for every 100 square feet of serving area.~~

- iii. Retail store which sells beach towels, chairs, sunscreen, hats, bathing suits, food items, and other items that may be desired by hotel guests.
 - iv. Electric car charging stations.
 - v. Private lockers available to guests for storage of recreational equipment including, but not limited to surfboards, boogie boards, beach towels, umbrellas, and chairs.
 - vi. Residential accommodations for a full-time onsite property manager to ensure that all hotel rules are followed at all times.
 - vii. Medical offices.
 - viii. Special events for public congregations or entertainment, which are temporary in nature.
 - ix. Spas, including, but not limited to, steam rooms, lockers, bathrooms.
 - x. Salons.
 - xi. Gyms with physical fitness training equipment.
 - xii. Guest rooms with private decks, rooftop deck; rooftop decks are restricted to hotel guests unless used for special events.
 - xiii. General office use including, but not limited to the reception office.
 - xiv. Other uses determined by the Planning Director to be of a similar nature to uses permitted in this district and the uses referenced above.
- b. Prohibited Uses. The following uses are specifically prohibited:
- i. Fast food restaurants with drive-thru facilities.
 - ii. Liquor stores (stand-alone).
 - iii. Adult book stores.
 - iv. Hazardous waste facilities.
 - v. Gas stations.
- c. Conditionally Permitted Uses. The following uses may be permitted subject to [additionally](#) obtaining a Conditional Use Permit in accordance with the requirements of the MMC:
- i. All conditionally permitted uses in the Commercial Visitor Serving-2, (CV-2), land use zoning district, as specified in the LCP.
 - ii. Cocktail lounges, ancillary to restaurant use.
 - iii. Nursery schools and daycare facilities.
 - iv. Veterinary hospitals.
 - v. Churches, temples, mosques and other places of worship.
 - vi. Hand car washing and detailing, except when the vehicles are owned by a guest of the hotel.
 - vii. Wireless telecommunications antennae and facilities.
 - viii. Emergency communication and service facilities.
 - ix. Cultural and artistic uses (museums, galleries, and performing arts studios).
 - x. Sale or onsite consumption of alcoholic beverages

[Modify the Zoning Map to depict the Sea View Hotel project site as two parcels. 22729 Pacific Coast Highway/APN 4452-002-010 & 22741 Pacific Coast Highway/APN 4452-022-017](#)



Modify the Sea View Hotel Overlay District Figure to depict the Sea View Hotel project site as two parcels and add addresses to depict which parcels are subject to the overlay.



CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001
(805) 585-1800



W11a

DATE: January 26, 2023

TO: Commissioners and Interested Persons

FROM: Steve Hudson, District Director
Barbara Carey, District Manager
Deanna Christensen, District Supervisor
Denise Gonzalez, Coastal Program Analyst

SUBJECT: City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0073-2 (Sea View Hotel Project) for February 8, 2023 Commission Meeting

SUMMARY OF STAFF RECOMMENDATION

The City of Malibu's ("City") proposed Local Coastal Program (LCP) Amendment No. LCP-4-MAL-21-0073-2 consists of changes to the Land Use Plan (LUP) and Local Implementation Plan (LIP) portions of its certified LCP. Staff recommends that the Commission, after public hearing, **approve** the proposed LUP amendment as submitted. The proposed LUP amendment is consistent with and meets the requirements of the policies of Chapter 3 of the Coastal Act. Commission staff further recommends that the Commission **deny** the proposed LIP amendment as submitted and approve the proposed LIP amendment with seven suggested modifications. The modifications are necessary to ensure the proposed LIP amendment conforms with, and is adequate to carry out, the provisions of the certified LUP, as amended. The motions to accomplish these recommendations are found on Pages 7-9 of this staff report.

The City is requesting an amendment to modify the land use and zoning designation of two parcels at 22741 Pacific Coast Highway (APN: 4452-022-017) and 22729 Pacific Coast Highway (APN: 4452-022-010) from Community Commercial (CC) to Commercial Visitor Serving-Two (CV-2) on the LUP Land Use Map and LIP Zoning Map. These two parcels, which are owned variously by three property owners, together comprise approximately 1.18 acres of land known as the Sea View Hotel Site ("subject site"). The amendment further proposes the creation of a new overlay district (Sea View Hotel Overlay District) with special development standards to facilitate the development of a new 39-room luxury hotel. The amendment also includes increasing the development's allowable Floor Area Ratio (FAR) beyond what is permitted under the existing LCP, which triggers the need for a Development Agreement to be approved through an LCP amendment certified by the Coastal Commission pursuant to LIP Section 3.8(A)(5). Therefore, the proposed amendment also includes the approval of a Development Agreement between the City and the property owners to increase the maximum allowable FAR from 0.15 to 0.52 in conjunction with a payment of \$800,000 to the City to be expended as the City Council

determines to be an appropriate use.

The standard of review for the changes to the Land Use Plan is whether the amendment meets the requirements of and is consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed changes to the Local Implementation Plan is whether the amendment conforms with and is adequate to carry out the provisions of the Land Use Plan portion of the certified City of Malibu LCP as amended.

The amendment request is project-specific to allow for the construction of a new 39-room luxury hotel on the subject site. The proposed overlay map will be added to the LIP Zoning Maps and the proposed overlay text will apply use restrictions and development standards over the property. The proposed overlay site is currently zoned Community Commercial, which does not allow hotels as a permitted use. Hotel use is only permitted within Commercial Visitor Serving Two. Therefore, to accommodate the proposed hotel development, the City proposes to change the land use and zoning designation of the subject site from CC to CV-2.

Visitor-serving commercial development, including overnight accommodations, is considered a priority use under the Coastal Act and the Malibu LCP and is given priority over other land uses such as general commercial or residential development. The subject site is located on the landward side of Pacific Coast Highway (PCH) in a commercial area of the City, approximately one-third mile east of the Malibu Pier and Civic Center area. The site is developed with existing commercial buildings and associated surface parking areas. Properties in the immediate vicinity are zoned CC, CV-1, and CV-2 and are developed with commercial structures and uses, including hotels such as the Malibu Beach Inn and Nobu Ryokan and several restaurants. Further north, there is an area of hillside residential development.

Visitor-serving commercial uses provide greater public benefit than community commercial uses because they are designed to serve a larger segment of the population that can take advantage of and enjoy the use of the property, and such uses support visitors to the coast. All future development on the subject site will need to support the visitor-serving nature of the area, be consistent with the allowable uses under the Commercial Visitor Serving land use designation and be consistent with the policies and provisions of the certified LCP. The site is appropriate for visitor-serving commercial use, for instance, the proposed hotel development. The proposed LUP amendment to change the land use designation to CV-2, as submitted, is consistent with Chapter 3 policies of the Coastal Act.

The key issue raised by this amendment request is the adequate provision of lower-cost visitor-serving overnight accommodations. In this case, no existing lower-cost rooms are being demolished or replaced since the proposed hotel project does not include the demolition of an existing lower-cost hotel or motel. However, this is a project-specific request to allow a new 39-room luxury hotel at the site and the proposal raises an issue of whether the project specific LCP amendment is consistent with the Coastal Act and LCP policies to ensure that proposed visitor-accommodation facilities in the coastal zone include lower-cost accommodations. Under the City's LCP, if a property owner proposes to build new overnight luxury accommodations, LUP Policy 2.35 and LIP Section 12.10 allow for the payment of an in-lieu fee of \$10,419 (and adjusted for inflation) applied to fifteen percent (15%) of the total number of new rooms built on a property as a mechanism to ensure

compliance with the objectives of Section 30213 and 30222 of the Coastal Act and Policies 2.33, 2.34, 2.36 and 2.37 of the Malibu LCP. However, recognizing that the LCP's required base in-lieu mitigation fee of \$10,419 is too low in comparison to the in-lieu mitigation fee per required lower-cost room (not provided onsite) that the Commission has required in recent past actions for new hotel development along the coast, the property owners have offered to pay a total in-lieu mitigation fee of \$800,000 (or approximately \$133,000 per room applied to 15% of the new 39 luxury hotel rooms) to assist in funding affordable overnight accommodations elsewhere in the Malibu/Santa Monica Mountains coastal zone. However, because the property owners did not propose the \$800,000 mitigation fee as part of its underlying coastal development permit applications to the City, this proposed fee is not reflected in the proposed LCP amendment request.

To provide an effective alternative mechanism for the hotel project proponent to provide a component of lower cost overnight visitor accommodations through an up-to-date in-lieu mitigation fee as required by the Commission in recent Commission's actions, the property owners and the Commission staff have worked cooperatively to reach an agreement on a mechanism whereby the property owners have agreed to provide an \$800,000 in-lieu fee to an appropriate third party entity through an escrow account for use in developing low-cost visitor serving overnight accommodations in the Malibu/Santa Monica Mountains coastal zone. These escrow funds would be released once the owners secure entitlements to develop the site with a hotel use and those entitlements are no longer subject to challenge. The owners have also agreed to deliver in escrow a Declaration of Covenants, to be recorded upon effective certification of this LCP amendment. Once the Declaration of Covenants is recorded, the obligation for payment of the \$800,000 in-lieu fee runs with the land and is binding on any future owners. This provision provides extra assurances that the lack of provision for lower cost overnight accommodations with a new luxury hotel development will be mitigated even if the current property owners decide not to pursue the project. As such, the agreement is structured to provide the Commission with the assurance of payment of the fee, which represents an opportunity to provide lower cost visitor-serving accommodations elsewhere near the project area. And using an escrow arrangement provides the property owners assurance that the required fee will only be transferred upon securing final entitlements for the hotel development. In order to ensure that the proposed amendment will provide a component of lower cost visitor-serving overnight accommodations in the Coastal Zone through an up-to-date in-lieu mitigation fee, Staff is recommending a suggested modification to note the agreement between the Coastal Commission and the property owners regarding payment of the fee is in addition to the existing LCP requirements regarding the development of luxury overnight accommodations.

The LCP amendment includes creation of a new overlay district (Sea View Hotel Overlay District) with special development standards to facilitate the development of a new 39-room luxury hotel. The coastal development permit for the hotel development within the overlay district site has already been approved by the City of Malibu, conditioned to not be effective until certification of the subject LCP amendment. As such, Commission staff have conducted a project-level review of the proposed development and recommend adopting suggested modifications to the proposed overlay district development standards to ensure consistency with the relevant policies and provisions of the LCP. The remaining

modifications are minor clarifications to LIP text and figures that further the intent and implementation of the LCP and to avoid ambiguity.

For the reasons described in this report, Staff recommends that the Commission find that the proposed LUP amendment is consistent with and meets the requirements of the policies of Chapter 3 of the Coastal Act, and find the proposed LIP amendment, only if modified as suggested, is consistent with and adequate to carry out the applicable policies of the certified LUP as amended.

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Exhibits

[Exhibit 1 – Proposed LIP Amendment Text Changes in Strikethrough/Underline](#)

[Exhibit 2 – Proposed Land Use and Zoning Map Change](#)

[Exhibit 3 – Proposed Sea View Hotel Overlay District Map](#)

[Exhibit 4 – Proposed Development Agreement](#)

[Exhibit 5 – Vicinity Map](#)

[Exhibit 6 – Aerial View of the Subject Parcels](#)

[Exhibit 7 – Parcel Map](#)

[Exhibit 8 – Overall Site Plan for Sea View Hotel Project](#)

I. PROCEDURAL OVERVIEW

A. Standard of Review

The Coastal Act provides:

The Commission shall certify a land use plan, or amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200) ... (Section 30512(c))

The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter...(Section 30513)

...The Commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out together with its reasons for the action taken...(Section 30513)

The Commission may suggest modifications in the rejected zoning ordinances, zoning district maps, or other implementing actions, which, if adopted by the local government and transmitted to the commission, shall be deemed approved upon confirmation by the executive director...(Section 30513)

Any proposed amendments to a certified local coastal program shall be submitted to, and processed by, the commission in accordance with the applicable procedures and time limits specified in Sections 30512 and 30513... (Section 30514(b))

Pursuant to Section 30512(c), the standard of review that the Commission utilizes in reviewing the adequacy of the proposed amendment to the City's certified land use plan (LUP) is whether the proposed amendment is consistent with, and meets the requirements of, the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the City's certified local implementation plan (LIP), pursuant to Sections 30513 and 30514(b) of the Coastal Act, is whether the proposed amendment is in conformance with, and adequate to carry out, the provisions of the LUP portion of the City's certified local coastal program (LCP).

B. Procedural Requirements

If the Commission certifies the LCP amendment as submitted, no further City Council action will be necessary pursuant to Section 13544(b)(2) of Title 14 of the California Code of Regulations. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City

Council, and the LCP amendment is not effective, pursuant to Section 13542(f). Should the Commission deny the LCP Amendment, as submitted, but then approve it with suggested modifications, then the City Council may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the City Council's acceptance is consistent with the Commission's action. In that scenario, pursuant to Section 13544(c) of Title 14 of the California Code of Regulations, the modified LCP Amendment will become final when the Executive Director reports the determination that the local government's action is legally adequate to the Commission at its next regularly scheduled public meeting. If the City Council does not accept the suggested modifications within six months of the Commission's action, then the LCP amendment remains uncertified and not effective.

C. Public Participation

Section 30503 of the Coastal Act requires public input in the preparation, approval, certification, and amendment of any LCP. The City held public hearings on this amendment and received oral and written comments regarding the proposed changes from concerned parties and members of the public. The hearings were duly noticed, consistent with the provisions of Section 13515 of Title 14 of the California Code of Regulations. Notice of the Coastal Commission's consideration of the subject amendment has been distributed to all known interested parties.

II. STAFF RECOMMENDATION, MOTION, AND RESOLUTION FOR THE LAND USE PLAN AMENDMENT

Following public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided.

A. APPROVAL OF THE LAND USE PLAN AMENDMENT AS SUBMITTED

MOTION I:

I move that the Commission certify Land Use Plan Amendment No. LCP-4-MAL-21-0073-2 as submitted by the City of Malibu.

STAFF RECOMMENDATION TO CERTIFY:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Land Use Plan amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY THE LAND USE PLAN AMENDMENT AS SUBMITTED:

The Commission hereby **certifies** the City of Malibu Land Use Plan Amendment No. LCP-

4-MAL-21-0073-2 as submitted by the City of Malibu and adopts the findings set forth below on the grounds that the amendment will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the land use plan on the environment, or 2) there are no further feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan amendment may have on the environment.

III. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS FOR THE LOCAL IMPLEMENTATION PLAN AMENDMENT

Following public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided prior to each resolution.

A. DENIAL OF THE LOCAL IMPLEMENTATION PLAN AS SUBMITTED

MOTION I:

I move that the Commission reject Local Implementation Plan Amendment No. LCP-4-MAL-21-0073-2 as submitted by the City of Malibu.

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **YES** vote. Passage of this motion will result in denial of the Implementation Plan Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO DENY AS SUBMITTED:

The Commission hereby **denies** certification of the Local Implementation Plan Amendment No. LCP-4-MAL-21-0073-2 as submitted by the City of Malibu and adopts the findings set forth below on the grounds that the Local Implementation Plan Amendment, as submitted, does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Local Implementation Plan Amendment would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the local implementation plan amendment as submitted.

B. APPROVAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS

MOTION II:

I move that the Commission certify Local Implementation Plan Amendment No. LCP-4-MAL-21-0073-2 for the City of Malibu if it is modified as suggested in this staff report.

STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the local implementation plan amendment with suggested modifications and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

The Commission hereby **certifies** the Local Implementation Plan Amendment No. LCP-4-MAL-21-0073-2 for the City of Malibu, if modified as suggested, and adopts the findings set forth below on grounds that the local implementation plan amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment, if modified as suggested, complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen the any significant adverse effects of the land use plan amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the local implementation plan amendment may have on the environment.

IV. SUGGESTED MODIFICATIONS ON THE LOCAL IMPLEMENTATION PLAN AMENDMENT

The staff recommends the Commission certify the proposed LIP amendment, with seven suggested modifications as shown below. Existing language of the certified Local Implementation Plan is shown in straight type. Language proposed to be added by the City of Malibu in this amendment is shown in underlined. Language proposed to be deleted by the City of Malibu in this amendment is shown as ~~striketrough~~. Language recommended by Commission staff to be inserted is shown in double underlined. Language recommended by Commission staff to be deleted is shown in ~~double striketrough~~.

Suggested Modification No. 1

LIP Section 3.4.6 (Sea View Hotel Overlay District), and subsection B and C of LIP Section 3.4.6 shall be modified as follows:

3.4.6 Sea View Hotel Overlay District (22729 Pacific Coast Highway/APN 4452-022-010 and 22741 Pacific Coast Highway/APN 4452-022-017)

...

B. Description of Area Subject to LIP Section 3.4.6. The provisions of this section shall apply to the Project Site, a 51,776 square foot (1.19 acre) site, parcel, comprised of two merged parcels, currently identified as 22729 Pacific Coast Highway and 22741 Pacific Coast Highway (Los Angeles County Assessor Parcel Numbers 4452-022-010 and 4452-022-017) in the Sea View Hotel Overlay District map.

C. Applicability. The Commercial Development Standards contained in LIP Section 3.48, as well as other applicable certified LCP policies and provision shall apply, unless specifically modified by this section.

Suggested Modification No. 2

Subsection D of LIP Section 3.4.6 (Sea View Hotel Overlay District) shall be modified as follows:

D. Development Agreement. Pursuant to a Development Agreement between the property owner and the City of Malibu, the allowable Floor to Area Ratio (FAR) is increased from 0.15 to 0.52 if ~~the applicant will~~ contributes \$800,000 to the City for public benefits and amenities, to be expended as the City Council determines to be an appropriate use.

Suggested Modification No. 3

The following subsection shall be added to LIP Section 3.4.6 (Sea View Hotel Overlay District):

E. Overnight Visitor-Serving Accommodations

NOTE: In addition to the requirements of LIP Section 12.10 regarding providing a component of lower cost overnight visitor accommodations, the owner of the Sea View Hotel Site as of the date of the Coastal Commission's action on LCP Amendment No. LCP-4-MAL-21-0073-2 ("Applicant") has agreed to enter into an agreement with the Coastal Commission to fund an associated escrow account, thereby committing to pay an in-lieu fee to another entity acceptable to the Executive Director of the Coastal Commission for use in developing lower cost visitor accommodations, to be released upon Applicant's securing of entitlements to develop the site consistent with development standards of the Sea View Hotel Overlay District below.

Suggested Modification No. 4

Subsection E of LIP Section 3.4.6 (Sea View Hotel Overlay District) shall be modified as follows:

~~E~~F. Development Standards.

...	
<u>PROJECTIONS INTO YARDS</u>	
	<p>The provisions of LIP Section 3.5.3(B) <u>apply with the is modified as following-s additional provision:</u></p> <ul style="list-style-type: none"> • <u>Access and exit stairs required by the Fire Department, and existing retaining walls may project without limit into required side yards.</u>
<u>SITE DEVELOPMENT CRITERIA</u>	
...	
<u>Minimum Onsite Landscaping</u>	<p><u>The provisions of LIP Section 3.8(A)(5)(b) shall not apply. The Sea View Hotel landscaping criteria are as follows:</u></p> <p><u>A minimum of 8,977 square feet of landscaping at ground level. Additionally, there shall be a minimum of 2,528.6 square feet of plants in planters on the southerly seaward areas of the various decks.</u></p>
<u>Minimum Onsite Open Space</u>	<p><u>The provisions of LIP Section 3.8(A)(5)(b) shall not apply. The Sea View Hotel open space criteria are as follows:</u></p> <p><u>A minimum of 1,313.8 square feet of private recreational area at ground level and first level reception area and 21,494 square feet at guest deck patios, not already included in landscape area, are required.</u></p>
<u>HEIGHT</u>	
<u>Maximum Height Projections</u>	<p><u>The provisions of LIP Section 3.8(A)(1) shall not apply. The Sea View Hotel height requirements are as follow:</u></p> <ul style="list-style-type: none"> • <u>New structures which have sloping roofs that slope less than 25% shall be no higher than 24 feet above the existing natural grade or finished grade, whichever results in a lower building height, excluding basements</u> • <u>New structures which have sloping roofs that slope 25%, or more, shall be no higher than 28 feet above the existing natural grade or finished grade, whichever results in a lower building height, excluding basements. Areas such as elevator shafts in order to comply with ADA laws, the wooden deck above the existing tile rooftop</u>

	<u>deck, the fire exit stairs required by the Fire Department, the safety railing around the decks, and the sound wall as described in the Mitigated Negative Declaration are excluded from the referenced height restrictions. Seven-foot overhangs to eliminate sun from hitting south facing windows are excluded from the height standards.</u>
<u>PARKING AND ACCESS</u>	
<u>Parking Requirements</u>	<p>The provisions of LIP Sections 3.14.2 and 3.14.3 shall not apply. The Sea View Hotel parking requirements are as follows:</p> <ul style="list-style-type: none"> • <u>1.5 parking spaces per hotel room.</u> • <u>1 space for each, per-shift employee (15 full time employees per shift <u>15 spaces</u>)</u> • <u>1 space for each 100 square feet of gross floor area used for consumption of food or beverages, or public recreation areas.</u> • <u>1 space for each 5 fixed seats, or for every 35 square feet of assembly area where there are no fixed seats in meeting rooms or other assembly areas.</u>
...	
<u>Layout and Paving</u>	<p>The provisions of LIP Section 3.14.5 are modified or shall not apply as follows:</p> <p>...</p> <ul style="list-style-type: none"> • The landscaped areas and the parking plan shown on the Sea View Hotel plans are an integral part of the proposed hotel and are acceptable within the overlay district.
<u>MONUMENT SIGN AND GENERAL SIGN REQUIREMENTS</u>	
	<p>The provisions of LIP Section 3.15.6 are modified or shall not apply as follows:</p> <ul style="list-style-type: none"> • <u>The provisions of LIP Section 3.15.6(A)(2)(d)(iii) shall not apply.</u> <p>...</p>

Suggested Modification No. 5

Subsection F of LIP Section 3.4.6 (Sea View Hotel Overlay District) shall be modified as

follows:

FG. PERMITTED USES

The following permitted, conditionally permitted, and prohibited uses and design standards are as follows: shall apply to the Sea View Hotel Overlay District. Permitted and conditionally permitted uses that are a component of the hotel development are subject to the custom development standards of this Sea View Hotel Overlay District. Permitted or conditionally permitted uses that are not a component of the hotel development are subject to all applicable policies and provisions of the certified LCP, including the Commercial Development Standards in LIP Section 3.8.

- a. Permitted Uses: The uses and structures permitted within Sea View Hotel Overlay District are as follows:
 - i. All uses permitted in the Commercial Visitor Serving-2, (CV-2), land use zoning district, as specified in the LCP.
 - ii. Restaurants that are open to the general public will require one parking space for every 100 square foot of serving area.
- ...
- c. Conditionally Permitted Uses. The following uses may be permitted subject to additionally obtaining a Conditional Use Permit in accordance with the requirements of the MMC:
 - i. All conditionally permitted uses in the Commercial Visitor Serving-2, (CV-2), land use zoning district, as specified in the LCP.

Suggested Modification No. 6

Modify the Sea View Hotel Overlay District Map (attached as Exhibit 3 of this staff report) to depict the Sea View Hotel Overlay District site as two parcels and add corresponding addresses and assessor parcel numbers (22729 Pacific Coast Highway/APN 4452-022-010 and 22741 Pacific Coast Highway/APN 4452-022-017) to differentiate which parcels are subject to the Sea View Hotel Overlay District.

Suggested Modification No. 7

Modify the LIP Zoning Map (attached as Exhibit 2 of this staff report) to depict the Sea View Hotel Overlay District site as two parcels APN 4452-002-010 and 4452-022-017.

V. FINDINGS FOR APPROVAL OF THE LUP AMENDMENT AS SUBMITTED, DENIAL OF THE LIP AMENDMENT AS SUBMITTED, AND APPROVAL OF THE LIP AMENDMENT IF MODIFIED AS SUGGESTED

The following findings support the Commission's certification of the proposed Land Use Plan amendment as submitted, the Commission's denial of the proposed Local Implementation Plan amendment as submitted, and approval of the Local Implementation Plan Amendment if modified as suggested (detailed in Section IV. Suggested Modifications above).

The Commission hereby finds and declares as follows:

A. Amendment Description and Background

The City of Malibu ("City") is requesting an amendment to the Land Use Plan (LUP) and Local Implementation Plan (LIP) portions of its certified LCP to change the land use and zoning designation of two adjacent commercially developed parcels identified as 22729 Pacific Coast Highway (PCH) (APN: 4452-022-010) and 22741 Pacific Coast Highway (APN: 4452-022-017), from Community Commercial (CC) to Commercial Visitor Serving Two (CV-2) on the LUP Land Use Map and LIP Zoning Map. These two parcels together comprise approximately 1.18 acres of land known as the Sea View Hotel Site ("subject site").

The LIP amendment further proposes the creation of a new overlay district (Sea View Hotel Overlay District) to accommodate the construction of a new 39-room hotel with associated amenities on the subject site (22729 and 22741 Pacific Coast Highway). The proposed overlay map will be added to the LIP Zoning Maps (Exhibit 2) and will apply use restrictions and development standards over the property. The proposed overlay site is currently zoned Community Commercial and contains existing development consisting of commercial buildings and associated parking areas. The Community Commercial (CC) land use and zoning designation is intended to provide the community's resident-serving needs, including uses such as restaurants, banks, offices, and retail. Hotel use is not permitted in the CC zone and is only permitted within the Commercial Visitor Serving Two (CV-2) zone. To accommodate the proposed hotel development, the City determined that the subject site needed to be rezoned from CC to CV-2.

Additionally, the proposed hotel project seeks to remodel and convert one of the existing commercial buildings (which is currently non-conforming in regard to height and floor area ratio) located on the subject site at 22741 PCH. It proposes an allowable floor area ratio greater than currently allowed under the commercial development standards of the City's LCP. The existing FAR for the existing development on 22741 PCH is 0.46. Therefore, the City determined that a new overlay district with specific development standards (maximum density, including floor area ratios for commercial use, heights, lot coverage, open space requirements, setbacks, and parking and sign requirements) is needed to accommodate some of the as-built existing development (which would remain on the subject site), as well as modifying some of the development standards related to parking, parking locations, maximum allowable floor area ratio to accommodate the proposed hotel development.

Development Agreement

Pursuant to the certified Malibu LCP, increasing the Floor Area Ratio (FAR) beyond what is allowed under the LCP, which is proposed in the overlay district development standards,

triggers the need for a development agreement to be approved through an LCP amendment certified by the Coastal Commission (LIP Section 3.8(A)(5)). Therefore, the proposed amendment also includes the approval of a Development Agreement between the City and property owners that sets forth the terms of the agreement regarding the eventual development of the subject site, including allowable uses, development standards, and maximum allowable floor area ratio (FAR). The development agreement also details the applicant's ability to develop a new hotel with an increased allowable floor area ratio from 0.15 to 0.52 in conjunction with a payment of \$800,000 to the City to be expended as the City Council determines to be an appropriate use. The Development Agreement is discussed in greater detail in Subsection B (New Development and Cumulative Impacts) below.

The full text of the City's proposed changes to the LCP is included as Exhibits 1-3 of this report.

On August 13, 2021, before the City's August 19, 2021, City Council hearing, Commission staff emailed City staff with regarding the proposed LIP Amendment. Furthermore, Commission staff has met with City staff to discuss the proposed amendment, and staff has provided the suggested modifications to the City's planning staff. However, the City staff has not indicated whether or not they are supportive of the suggested modifications. In addition, Commission staff has coordinated closely with the property owners to reach an agreement on a mechanism whereby the property owners have agreed to provide an in-lieu fee for use in developing low-cost visitor serving overnight accommodations in the Malibu/Santa Monica Mountains coastal zone.

The City of Malibu submitted the subject LCP Amendment to the Commission on November 15, 2021. The amendment submittal was deemed complete by Commission staff and filed on March 21, 2022. At its June 2022 Commission meeting, the Commission extended the 90 working-day time limit to act on the LCP amendment for a period not to exceed one year from the original deadline of July 28, 2022.

Background and Sea View Hotel Project Description

The subject "Sea View Hotel" property is comprised of two parcels (22729 and 22741 PCH) and is at the base of a steep hillside to the north (Exhibit 6). The site is located on the landward side of PCH in a commercial area of the City, approximately one-third mile east of the Malibu Pier and Civic Center area. Further north, there is an area of hillside residential development. The site is developed with an existing 15,392 square foot, four-level office building (still operating today with business tenants) and an associated 9,500 square foot parking area containing 60 parking spaces (22741 PCH), and a 1,000 square foot building, two canopies, and surface parking for a gas station use that operated until 2005. Due to the steep hillside, the office building was constructed in a stepped fashion, such that each level is located higher up and stepped into the hillside. As such, the height of the existing commercial/office building varies from 26.5 feet to 48 feet above the existing grade and up to 25 to 40 feet higher in elevation than 22729 PCH.

The subject Sea View Hotel property owners propose merging the two parcels associated

with the proposed overlay district and constructing a new 39-room luxury hotel, including remodeling the existing commercial building that would remain in place. An Initial Study and Mitigated Negative Declaration were prepared and adopted for the project by the City pursuant to CEQA. The City has also approved the coastal development permit for the lot merger and hotel development. However, the coastal development permit was conditioned by the City to only be effective after certification of the subject LCP amendment. Notwithstanding the requirements of Malibu LIP Section 13.16 that a Final Local Action Notice be submitted to the Commission within seven days of City action, the Final Local Action Notice, in this case, has never been submitted to the Commission. Therefore, the approved CDP related to this site is not final. Specifically, the City approved the following:

On September 13, 2021, the City approved Demolition Permit No. 20-019, Coastal Development Permit No. 17-086, Conditional Use Permit No. 21-001, and Lot Merger No. 20-002 to merge the two subject parcels (22741 and 22729 PCH), demolish the existing gas station, and construct a new four-story, 26,734 square foot, 39-room hotel involving the remodel of an existing four-story, commercial building, and construction of a new two-story, 11,342 square foot addition with a basement. The project includes a restaurant/bar, spa, rooftop deck, swimming pool, new surface parking lot, hardscape and landscaping, grading, retaining wall, utilities, and an upgrade and expansion of the existing onsite wastewater treatment system. Pursuant to Special Condition 34 of the CDP, the applicant/property owner is required to pay a fee of \$110,000 to the City in-lieu of providing lower cost overnight accommodations.

On September 13, 2021, the City approved the subject LCP amendment to modify the land use and zoning designation of two subject parcels from Community Commercial to Commercial Visitor Serving-Two, a new overlay district with special development standards to facilitate the development of a hotel, and a Development Agreement to allow an increase in allowable floor area from 0.15 to 0.52. The City also adopted Initial Study No. 21-001, Mitigated Negative Declaration No. 21-001, and Mitigation Monitoring and Reporting Program No. 21-001 for the project.

B. Public Access and Recreation

A core goal of the Coastal Act is to protect the public's ability to recreate in and enjoy the coastal zone, particularly for coastal visitors not fortunate enough to live by the shoreline. The Coastal Act's access and recreation policies provide significant direction regarding protecting existing public recreational access opportunities and ensuring that such access opportunities are provided and maximized. Specifically, Coastal Act Section 30210 requires that maximum public access and recreation opportunities be provided, stating:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Similarly, the Coastal Act requires that overnight accommodations, particularly lower-cost accommodations, be protected and encouraged as a means of providing public recreation access to the coast.

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Development providing public recreational opportunities are preferred.

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Furthermore, Coastal Act Section 30222 places a higher priority on the provision of visitor-serving uses designed to enhance public opportunities for coastal recreation over residential, industrial, or general commercial uses.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential general commercial development, but not over agriculture or coastal-dependent industry.

The Coastal Act policies above have been incorporated in their entirety into the certified Land Use Plan. The Malibu LCP also contains several additional policies to ensure the protection of public access and overnight accommodations.

The following Land Use Plan (LUP) policies are applicable in this case:

Land Use Plan Policy 2.1 states:

The shoreline, parklands, beaches and trails located within the City provide a wide range of recreational opportunities in natural settings which include hiking, equestrian activities, bicycling, camping, educational study, picnicking, and coastal access. These recreational opportunities shall be protected, and where feasible, expanded or enhanced as a resource of regional, state and national importance.

Land Use Plan Policy 2.25 states:

New development shall provide off-street parking sufficient to serve the approved use in order to minimize impacts to public street parking available for coastal access and recreation.

Land Use Plan Policy 2.33 states:

Priority shall be given to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation. On land designated for visitor-serving commercial and/or recreational facilities, priority shall be given to such use over private residential or general commercial development. New visitor-serving uses shall not displace existing low-cost visitor-serving uses unless an equivalent replacement is provided.

Land Use Plan Policy 2.34 states:

Existing, lower cost visitor-serving and recreational facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreational facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.

Land Use Plan Policy 2.35 states:

New development of luxury overnight visitor-serving accommodations shall be designed to provide for a component of lower cost overnight visitor accommodations (e.g., campground, RV park, hostel, or lower cost hotel/motel). The lower-cost visitor accommodations may be provided on-site, off-site, or through payment of an in-lieu fee into a fund to subsidize the construction of lower-cost overnight facilities in the Malibu-Santa Monica Mountains Coastal Zone area of Los Angeles County or Ventura County. The applicant shall be required to provide lower-cost overnight accommodations consisting of 15 percent of the number of luxury overnight accommodations that are approved.

Land Use Plan Policy 2.36 states:

Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities, shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.

Land Use Plan Policy 2.37 states:

Priority shall be given to the development of visitor-serving commercial and/or recreational uses that complement public recreation areas or supply recreational opportunities not currently available in public parks or beaches. Visitor-serving commercial and/or recreational uses may be located near public parks and recreational areas only if the scale and intensity of the visitor-serving commercial recreational uses is compatible with the character of the nearby parkland and all applicable provisions of the LCP.

Land Use Plan Policy 5.11 states:

Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent uses. All uses shall be consistent with protection of public access and ESHA.

In addition, the following Local Implementation Plan (LIP) sections are specifically applicable in this case:

LIP Section 12.10 (New Luxury Overnight Accommodations), in relevant part, states:

- A. The City may approve new luxury overnight visitor accommodations if the evidence shows and the City finds, that the project provides a component of lower cost overnight visitor accommodations, such as a campground, RV park, hostel, or lower cost hotel or motel rooms. The lower cost overnight accommodations may be provided, either onsite, offsite, or through payment of an in-lieu fee to the City for deposit into a fund to subsidize the construction of lower cost overnight facilities in the Malibu-Santa Monica Mountains Coastal Zone area of Los Angeles County or Ventura County. The applicant shall be required to provide lower cost overnight accommodations consisting of fifteen (15) percent of the number of luxury overnight accommodations that are approved. Luxury overnight accommodations shall be defined as the point at which the cost of an overnight room exceeds 120 percent of the median cost of an overnight room for all overnight accommodations in the City of Malibu.
- B. If the applicant chooses the in-lieu fee option, the project approval shall be conditioned to require that, prior to issuance of the coastal development permit, the applicant shall pay the required in-lieu fee to the City. The amount of the in-lieu fee shall be \$10,419 per required unit of lower cost overnight accommodations, plus an additional amount for inflation from January 2000 to the date of approval of the coastal development permit. If the City completes a fee study to determine the appropriate in-lieu fee, which provides the necessary mitigation, the in-lieu fee requirement may be revised accordingly.

Visitor-Serving Lands

Visitor-serving commercial development is considered a priority use under the Coastal Act and the Malibu LCP, and is given priority over other non-coastal dependent development. In order to ensure that new development is located in areas able to accommodate it and where it will not have significant cumulative impacts on coastal resources, as required by the Coastal Act and Malibu LCP, it is necessary for the LCP to designate the appropriate location, density, and intensity for different kinds of development. Such designations must also take into account the requirements of other applicable policies of Chapter 3 of the Coastal Act and the Malibu LUP, including public access, recreation, land and marine resources, and scenic and visual quality.

The City is requesting an amendment to the LUP and LIP portions of its certified LCP to change the land use and zoning designation of two adjacent commercially developed

parcels identified as 22729 Pacific Coast Highway (PCH) and 22741 Pacific Coast Highway from Community Commercial (CC) to Commercial Visitor Serving Two (CV-2) on the LUP Land Use Map and LIP Zoning Map. These two parcels together comprise approximately 1.18 acres of land known as the Sea View Hotel Site (“subject site”). The subject site contains existing development consisting of commercial buildings and surface and covered parking. The City has stated that the proposed LUP/Zoning Map change is intended to accommodate the development of a new 39-room luxury hotel.

The Community Commercial (CC) designation is intended to provide for the resident-serving needs of the community, similar to the types of uses allowed in the neighborhood serving commercial developments but on parcels of land more suitable for concentrated commercial activity. Uses that are allowed in the CC land use designation include, but are not limited to, small retail stores, salons and bookstores, restaurants, offices, financial institutions, medical clinics, service stations, health care facilities, offices, and public open space and recreation. The maximum Floor to Area Ratio (FAR) for CC development is 0.15. The maximum FAR may be increased to a maximum of 0.20, where public benefits and amenities are provided as part of the project.

The Commercial Visitor Serving (CV) designation provides for visitor serving uses such as hotels and restaurants that are designed to be consistent with the rural character and natural environmental setting, as well public open space and recreation uses. Additionally, CV designations are divided into two levels of intensity. Hotels are only permitted in CV-2 designations, the highest intensity designation. The maximum Floor to Area Ratio (FAR) for CV development is 0.15. The maximum FAR may be increased to a maximum of 0.25, where public benefits and amenities are provided as part of the project.

The subject site is located on the landward side of PCH in a commercial area of the City, approximately one-third mile east of the Malibu Pier and Civic Center area. Properties in the immediate vicinity are zoned CC, CV-1, and CV-2 and are developed with commercial structures and uses, including hotels such as the Malibu Beach Inn and Nobu Ryokan, and several restaurants. Further north, there is an area of hillside residential development. The site is near parks, public beaches, accessways, and trails/bikeways where public access and recreation is available to visitors. For these reasons, the site is appropriate for visitor-serving commercial use, such as the proposed hotel development. Consistent with Coastal Act Section 30222, and LUP Policies 2.33, 2.36, and 5.11, which state that priority shall be given to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation, the proposed land use/zoning change from community commercial to visitor serving commercial will ensure that visitor serving uses are prioritized on the subject sites. Visitor-serving commercial uses provide greater public benefit than community commercial uses because they serve a larger segment of the population who can take advantage of and enjoy the use of the property, and such uses support visitors to the coast. All future development of the subject site will need to support the visitor-serving nature of the area, be consistent with the allowable uses under the CV land use designation/zone, and be consistent with the policies and provisions of the certified LCP.

Lower Cost Overnight Accommodations

These Coastal Act and LCP policies make clear that public recreational access, particularly as it relates to the specific needs of the visiting public, is of critical importance and must be protected and maximized. Overnight accommodations are necessary for providing public access and recreational opportunities for the many visitors that live further from the coast, including those from inland areas, where a coastal trip may require a lengthy car, train, or bus ride. For many low and moderate-income visitors, lower-cost overnight accommodations are essential to being able to access the California coast at all. These access issues are perhaps more apparent than ever now and more critical as they relate to overnight accommodations, as coastal visitors are increasingly priced out of the overnight accommodations market, particularly impacting low and middle-income households, communities of color, and many young people.¹

Specifically, Section 30213 of the Coastal Act provides for the protection and provision of lower cost visitor and recreational facilities. Visitor-serving commercial development is considered a priority use under the Coastal Act, and, pursuant to public access policies of the Coastal Act, the Commission has the responsibility to ensure that a range of affordable facilities be provided in new development along the coast, including overnight accommodation options.

Furthermore, given the limited availability of overnight accommodations in Malibu, access issues also raise environmental justice concerns. Under Section 30604 of the Coastal Act, “[w]hen acting on a coastal development permit, the issuing agency, or the Commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.” As defined in Section 30107.3 (a) of the Coastal Act, “environmental justice” means “the fair treatment and meaningful involvement of people of all races, cultures, incomes and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” Thus, environmental justice considerations are relevant to the Commission’s review.

Overview of Malibu’s Overnight Accommodations

Demand for overnight accommodations is especially high in the City of Malibu because of its proximity to the coast and historical reputation as a popular coastal community. The City lies entirely within the Coastal Zone and extends approximately 26 miles from the Ventura County Line to Topanga Canyon Boulevard on the east. The beaches of Malibu are world-famous tourist destinations for millions of visitors annually from foreign countries, all 50 states of the U.S., as well as for residents of cities and towns throughout California. In addition, the Santa Monica Mountains area within and adjacent to the City provides an extensive network of public trails that traverse and connect Federal, State, and County parklands and a system of heavily used historic trails on private land. Overall, a wide variety of recreational opportunities exist in the area, including hiking, biking, horseback riding, camping, fishing, picnicking, nature study, surfing, diving, and swimming. Public access to and along the shoreline and trails and the provision of public recreational opportunities and visitor-serving facilities such as campgrounds, hotels, and motels have

¹ See [“Explore the Coast Overnight: An Assessment of Lower-Cost Coastal Accommodations” by the California Coastal Conservancy \(March 2019\)](#) and [California Coastal Commission Public Workshop Staff Report on Lower-Cost Visitor-Serving Accommodations \(October 2016\)](#).

historically been a critical and controversial issue in Malibu.

Despite being a significant visitor-serving destination, there are limited facilities within the City that offer overnight accommodations for visitors within its 21 miles of coastline. There are six hotels (The M Malibu, The Surfrider, Malibu Beach Inn, Malibu County Inn, The Native, and Nobu Ryokan) within the City, containing a total of 130 rooms. Additionally, the City contains one Recreational Vehicle (RV) park (Malibu RV Park), which includes 142 RV sites and 35 tent camping sites. Although there are several hotels and motels in other cities surrounding Malibu, the approximate 21 miles of Malibu coastline is only serviced by approximately 130 hotel rooms, 142 RV sites, 35 tent sites, and the City's existing short-term rental stock.

Trends in Coastal Overnight Accommodations

The Commission has approved new hotel developments along the coastline as high-priority visitor-serving facilities, however, high room rates can render these visitor-serving hotels exclusive². The Commission has required mitigation for the use of land that would have otherwise been available for lower-cost and visitor-serving facilities. The Commission has also approved projects and LCP amendments requiring the development of overnight accommodations with facilities that serve a range of incomes. In past actions, where the development proposed has not provided for a range of affordability on-site, the Commission had required offsite mitigation, in the form of payment of an in-lieu mitigation fee to fund construction of lower-cost overnight accommodations, e.g., hostels, recreational vehicle (RV) parks, campgrounds, etc.

In November 2016, the Commission staff presented a comprehensive study of lower-cost visitor accommodations eliminated from the coastal zone since 1989³. The study considered six cost categories ranging from “economy” to “luxury” and found that 24,720 total economy rooms had been lost, while only 11,247 rooms of the higher cost categories had been lost since 1989⁴. These survey results indicate that nearly 70% of all hotel rooms eliminated from the coastal zone from 1989 to 2016 were economy rooms, whereas less than 10% of the rooms lost were in the upscale and luxury categories. Of the hotels that are being developed, a greater number of hotels offer high-cost accommodations. The remaining moderate and lower-cost hotels in the coastal zone typically constitute older structures that become less economically viable as time passes. It is often more lucrative for developers to replace these older structures with higher-cost accommodations. Such trends have thus made it difficult for visitors with limited financial means to access the coast; many of these visitors travel from inland locations and cannot easily make the trip to the coast and back home again in a single day.

Although statewide demand for lower-cost accommodations in the coastal zone is difficult

² [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

³ Ref. [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016.

⁴ Ref. [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016.

to quantify, there is no question that low-cost hotels, camping, and hostel opportunities are in high demand in coastal areas and that there is an ongoing need to provide more lower-cost opportunities along California's coast. In a Coastal Conservancy-commissioned survey conducted in 2017, an assessment of lower-cost overnight accommodations found that "respondents cited financial concerns as the primary reason they do not stay overnight at the coast. Over 45% of Californians said that overnight accommodations at the coast were inconvenient or unaffordable."⁵

Sea View Hotel Project-Specific LCP Amendment

The amendment request is project-specific to allow for the construction of a new 39-room luxury hotel on the subject site with changes to the land use and zoning designation to permit the construction of new overnight luxury accommodations and a new overlay district with special development standards to facilitate the development of a hotel.

As stated above, in light of current trends in coastal overnight accommodations, the Commission is increasingly concerned with the challenge of providing lower-cost overnight accommodations consistent with the Coastal Act. Although low-cost overnight facilities are not currently developed on the subject site, the proposed change in both the land use and zoning designation and the proposed overlay district would accommodate the development of a luxury hotel that may not include a component of lower cost overnight accommodations. As the trend continues to build upscale and luxury hotel development on land that is designated for hotel/motel development, persons of low and moderate incomes will make up fewer of the guests staying in the City of Malibu's coastal zone. By forcing this economic group to lodge elsewhere, there will be a direct impact on public access to the beach and coastal recreational areas within the area. With the loss of potential low-cost lodging facilities, a large segment of the state's population will be excluded from overnight stays within this coastal area. Therefore, by protecting and providing low-cost lodging for the price-sensitive visitor, a larger segment of the population will have a greater opportunity to enjoy access to the beach area through overnight stays along or near the coast. Furthermore, access to coastal recreational facilities, such as the beaches, harbor, piers, and other coastal points of interest, are also enhanced when there are overnight lodging facilities that serve a broader segment of the population.

The certified Malibu LCP also contains policies and provisions for the protection of lower-cost overnight accommodations, outlined above. Specifically, LUP Policy 2.33 prioritizes the development of visitor-serving commercial recreational facilities that enhance public opportunities for coastal recreation over private residential or general commercial development. LUP Policy 2.36 protects existing, lower cost visitor serving facilities and encourages the development of new lower cost facilities. LUP Policy 2.35 requires that new development of overnight visitor-serving accommodations include a component of lower cost facilities or provide mitigation in the form of an in-lieu fee to help subsidize the construction of lower cost facilities.

Furthermore, LUP Policy 2.35 and LIP Section 12.10 state that the City may approve new

⁵ [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

luxury overnight visitor accommodations if the evidence shows and the City finds, that the project provides a component of lower cost overnight visitor accommodations, such as a campground, RV park, hostel, or lower cost hotel or motel rooms. Furthermore, LIP Section 12.10 states that lower cost overnight accommodations may be provided, either onsite, offsite, or through payment of an in-lieu fee to the City for deposit into a fund to subsidize the construction of lower cost overnight facilities in the Malibu-Santa Monica Mountains Coastal Zone area of Los Angeles County or Ventura County. The applicant shall be required to provide lower cost overnight accommodations consisting of fifteen percent of the total number of approved luxury overnight accommodations. If instead the applicant chooses the in-lieu fee option, the project approval shall be conditioned to require the applicant to pay an in-lieu fee to the City of \$10,419 per required unit of lower cost overnight accommodations, plus an additional amount for inflation from January 2000 to the date of approval of the CDP. In this case, fifteen percent of the proposed 39 luxury overnight accommodations/rooms equates to 5.85 lower cost overnight accommodations/rooms required to be provided under the LCP.

As stated above, the City has already approved the coastal development permit (CDP No. 17-086) for the subject hotel development and conditioned the CDP to require the property owners to pay a fee of \$110,000 to the City in-lieu of providing lower cost overnight accommodations (Special Condition No. 34). The property owners agreed to contribute an in-lieu fee to the City of \$17,671.22 per 6 rooms for a total of \$106,027.32 (\$10,419 plus inflation using the California Department of Industrial Relations CPI Increase 2000-2020 equates to \$17,671). Therefore, the City approval of the CDP for the hotel development provides for this in-lieu fee to offset the loss of low-cost overnight accommodations opportunities.

In this case, no existing lower-cost rooms are being demolished or replaced since the proposed project related to the subject LCP amendment does not include demolishing an existing lower-cost hotel or motel. However, the project raises an issue of whether the project specific LCP amendment is consistent with the Coastal Act's and LCP's policies to ensure that proposed visitor-accommodation facilities in the coastal zone include lower-cost rooms.

As stated above, the preferred method to ensure consistency with Coastal Act sections 30213 and 30222 is the provision of new lower-cost rooms on or near the project site. However, the City's LCP (LIP Section 12.10) allows for lower cost overnight accommodations to be provided, either onsite, offsite, or through payment of an in-lieu fee to the City for deposit into a fund to subsidize the construction of lower cost overnight facilities. In this case, the property owners decided to provide lower cost overnight accommodations through payment of an in-lieu fee to the City.

However, the City's LCP in-lieu fee option of \$10,419 per required unit of lower cost overnight accommodations, plus an additional amount for inflation, has not kept pace with the cost of providing lower cost accommodations in the coastal zone and is therefore too low in comparison to the in-lieu mitigation fee per required lower-cost room (not provided onsite) that the Commission has required in recent past actions for new hotel development along the coast, which is discussed in more detail below.

In-Lieu Mitigation Fee

In 2014, following Commissioner questions regarding the adequacy of the in-lieu fee for lower-cost accommodations at Commission hearings, Hostelling International provided an updated report representing the true construction costs of a new hostel, which stated that new construction costs approximately \$42,120 per hostel bed without the cost of land acquisition. In order to verify this information, the Commission consulted Maurice Robinson & Associates. Robinson concurred with the figures and stated: “This lends itself to a two-tiered Index for a representative cost to develop low-cost lodging statewide. The \$42,120 per bed estimate for the structure can be indexed on an annual basis, either by CPI (Consumer Price Index) or, alternatively, with a more construction industry-specific index such as the Turner Building Cost Index.”

The Turner Building Cost Index is used widely by federal and state governments to measure costs in the non-residential building construction market in the United States.⁶ Robinson further expanded on the cost of providing motel or hotel rooms rather than hostel beds and estimated:

“These new motel rooms would likely cost nearly \$100,000 per room to develop (excluding land), which is more than twice the cost of a hostel bed, mostly due to the fact that motels require approximately twice the gross square footage per person than hostels.”

A standard hotel or motel room (250 sq. ft. average) represents a much larger space than a single hostel bed. The cost of constructing new low-cost hotel rooms with new lower-cost hotel/motel rooms is significantly higher than replacing them with hostel beds. Following this information and suggestion, the Commission required new high cost hotel projects and projects that eliminated existing lower-cost overnight accommodations to pay an in-lieu mitigation fee of \$100,000 per required lower-cost room not provided onsite.⁷ This requirement was based on information provided in 2015. However, when considering the approximate 27% increase in the Turner Building Cost Index in the last seven years (likely related to inflation and other factors), the estimated cost of constructing a lower-cost hotel or motel room has increased from \$100,000 per room to \$127,000 per room.⁸

Robinson also recommended that land costs be calculated separately from construction costs in the in-lieu mitigation fee. It is important to note that in-lieu mitigation fees are often accepted and used by many public and non-profit organizations. The in-lieu fees provide funding to public agencies and non-profit organizations, including California State Parks, Mountains Recreation and Authority, and Hostelling International, for the provision of lower-cost overnight visitor accommodations within or near the coastal zone. These lower-cost overnight visitor accommodations include, but are not limited to, RV park sites, hostel accommodations, campgrounds, cabins, and lower-cost hotel or motel accommodations.

⁶ The Turner Building Cost Index is used widely by federal and state governments to measure costs in the nonresidential building construction market in the United States. (Ref. <https://www.turnerconstruction.com/cost-index>)

⁷ Ref. CDP [5-18-0872](#) (Sunshine Enterprises, LP), CDP [5-20-0181](#) (B&J Capital Group Investments)

⁸ The Turner Building Cost Index was 943 for 2015 and 1199 for 2021.

$1199 - 943 = 256 / 943 = 0.27 * 100\% = 27\%$ increase

These agencies and organizations often already own land and require solely construction funds. As such, the mitigation fee of \$127,000 per lower-cost hotel room does not include land costs. Maurice Robinson & Associates addresses the widely varying cost of land acquisition:

“The range in land costs might be as great as from \$100/sf to \$600/sf in Los Angeles County’s Coastal Zone. For a 10,000 sf parcel of land, the total land costs could be anywhere from \$1 million to \$6 million—a huge range. This variability in the price of land dwarfs the cost of providing the hostel improvements[.] ...This illustrates the need for the Commission to find alternative, lower-cost ways to acquire the land replacement low-cost lodging. As examples, the proposed hostels could be built on land owned by the following non-private-sector types of entities:

- Public agencies, such as State Parks, which have similar social goals;
- Non-profit organizations, which may not require a market-level rate of return; or
- Quasi-public agencies, such as Port Districts, but leased at a below-market rate. Indeed, while the cost to construct the hostel building would be expected to remain fairly constant throughout the State, the land costs could vary dramatically in each case.”

Here, a mitigation fee including the cost of land acquisition is unnecessary because the mitigation funds proposed by the applicant would be directed to a third party entity acceptable to the Executive Director of the Coastal Commission that has land available for providing lower-cost visitor amenities in the Malibu/Santa Monica Mountains coastal zone, with the intention that such projects do not require the purchase of land.

As indicated above, the property owners propose the construction of 39 luxury overnight accommodations and has volunteered to pay a fee of \$110,000 to the City in-lieu of providing lower cost overnight accommodations onsite or offsite. In addition, the property owners, in consultation with Commission staff, have offered to pay an in-lieu mitigation fee of \$800,000 (\$133,000 per room) to assist in funding affordable overnight accommodations elsewhere in the Santa Monica Mountains coastal zone. The fee proposed by the property owners is consistent with the in-lieu mitigation fee per required lower-cost room that the Commission has required in recent past actions⁹ for new hotel development along the coast and is significantly more than the fee required by the City (\$110,000).

The property owners, in consultation with Commission staff, have identified a potential public project to which to direct the \$800,000 fee to implement affordable visitor-serving accommodations. In May 2020, the Mountains Recreation and Conservation Authority (“MRCA”) acquired the 23.71-acre Lauber Smith Property in the Santa Monica Mountains for a mix of habitat conservation, open space, and public access and recreation uses. The property is about 9 miles northwest of the subject “Sea View Hotel” site, within the coastal zone of unincorporated Los Angeles County, adjacent to Ramirez Canyon Park, and just outside Malibu city limits. In particular, MRCA’s goal is, in part, to develop campground

⁹ Ref. CDP [A-5-VEN-21-0011](#) (Wynkoop Properties, LLC); CDP [5-18-0872](#) (Shore Hotel)

facilities, including flame-less facilities (tent pad sites, including ADA accessible tent pad sites) and visitor-serving improvements (parking, restrooms, and picnic areas) on portions of the property to serve the general public as well as underserved and foster youth programs of MRCA. The use of these funds in this manner would be consistent with LUP Policies 2.33, 2.34, 2.36, and 2.37 to create or protect visitor serving and recreational uses.

Because the property owners did not propose the \$800,000 mitigation fee as part of its underlying coastal development permit applications to the City, this proposed fee is not reflected in the proposed LCP amendment request.

To provide an effective mechanism for the project proponent to provide a component of lower cost overnight visitor accommodations through an up-to-date in-lieu mitigation fee required by the Commission in recent actions, the property owners and the Commission staff have worked cooperatively to reach an agreement on a mechanism whereby the property owners have entered into an agreement with the Coastal Commission and funded an associated escrow account, thereby committing to pay an \$800,000 in-lieu fee for use in developing lower cost visitor accommodations, to be released once the owner secures entitlements to develop the site with a hotel use and those entitlements are no longer subject to challenge. Commission staff, in consultation with MRCA, have identified a potential public project to which to direct the \$800,000 fee in this case (new camping at the Lauber Smith Property adjacent to Ramirez Canyon,) that is in close proximity to the subject site and will provide a greater range of low-cost camping experiences for a more diverse ability range of the public.

The escrow agreement also provides for the delivery into escrow of a Declaration of Covenants by the current property owners, to be recorded upon effective certification of the LCP amendment. If the conditions for recordation of the Declaration of Covenants are met, the obligation for payment of the \$800,000 in-lieu fee runs with the land and is binding on any future owners, so that the mitigation will be secured whenever a hotel project eventually proceeds, even if the specific project covered by the City's existing CDP does not ultimately come to fruition and the escrow funds are returned. This provision thus provides extra assurances that the lack of provision for lower cost overnight accommodations with a new luxury hotel development will be mitigated even if the current property owners decide not to pursue the hotel project. As such, the agreement is structured to provide the Commission with assurance of payment of the fee, which is necessary to provide a component of lower cost overnight visitor accommodations through an up-to-date in-lieu mitigation fee. Using an escrow arrangement assures the property owners that the required fee will only be transferred upon securing final entitlements for the planned development beyond legal challenge.

The Commission is requiring **Suggested Modification Three (3)** to note the agreement between the Coastal Commission and the property owners regarding payment of the fee is in addition to the existing LCP requirements regarding the development of luxury overnight accommodations. The purpose of the fee would be to fund new lower cost overnight visitor accommodations elsewhere in the Malibu/Santa Monica Mountains coastal zone.

In addition to the in-lieu fee proposed to provide a component of lower cost overnight

accommodations, the property owners have also committed to and entered into a contract to provide \$250,000 to a nonprofit organization called “Los Courage Camps” to further its work providing free surf lessons and transportation to beaches in the Malibu area for children in underserved communities in the general Los Angeles area. The organization’s website states that: “Los Courage Camps’ mission is to teach the diverse children of Los Angeles who have never experienced the ocean how to surf and consequently connect them with their courage, potential, inner strength, and leadership”. The property owners state that the proposed funding will provide for a large bus and driver, lunches, towels, wetsuits, surfboards, surfing instructors, and a grant writer (to seek additional grant funding). While the provision of this proposed funding does not directly provide lower cost overnight accommodations, it will increase equitable public access and recreation opportunities, furthering the goals of the Coastal Act and LCP with regard to access and environmental justice.

Sea View Hotel Overlay District

The LIP portion of the City’s amendment request proposes to create a new overlay district (Sea View Hotel Overlay District), which will apply use restrictions and development standards over the subject site. The proposed Sea View Hotel project involves the construction of a new four-story, 26,734 square foot, 39-room luxury hotel involving the remodel of an existing four-story, non-conforming commercial building (non-conforming in regards to the building height and square footage/floor area ratio), and construction of a new two-story, 11,342 square foot addition with a basement. The new Sea View Hotel overlay district has been tailored to accommodate the proposed Sea View Hotel development project. One of the proposed Sea View Hotel overlay development standards is a reduction in the required parking for hotel development at the subject site (1.5 parking spaces per hotel room instead of 2 spaces per hotel room). LUP Policy 2.25 requires that new development provide sufficient off-street parking to serve the approved use in order to minimize impacts to public street parking available for coastal access and recreation. Reductions in parking standards have the potential to affect public access. In this case, although the proposed overlay standard includes a reduction in the required parking for hotel development, this reduction will only apply within this overlay district, and the City determined that the reduced parking standard provides sufficient off-street parking to serve the proposed hotel development and would not result in any adverse impacts to public street parking available for coastal access and recreation consistent with LUP Policy 2.25.

Conclusion

For the reasons stated above, the Commission finds that the proposed LUP amendment to change the land use designation of the subject property from Community Commercial (CC) to Commercial Visitor Serving Two (CV-2), as submitted, will give priority to visitor serving commercial recreation uses and is therefore consistent with the Chapter 3 policies of the Coastal Act.

As discussed in detail above, the City’s certified Land Use Plan (LUP) goal is to preserve coastal access, including the provision of lower cost overnight accommodations within the City’s Coastal Zone. If modified as suggested, the LIP amendment to rezone the subject

property and add a zoning overlay will give priority to visitor serving commercial recreation uses and ensure that a component of lower cost overnight accommodations will be provided. For the reasons stated above, the Commission finds that, if modified as suggested, the LIP amendment conforms with and will be adequate to carry out the applicable policies of the certified Land Use Plan.

C. New Development and LCP Administration

The following Local Implementation Plan (LIP) sections are specifically applicable in this case:

LIP Section 3.8(A)(5) (Site Development Criteria), in relevant part, states:

- (a) The gross square footage of all buildings on a given parcel shall be limited to a maximum Floor Area Ratio (F.A.R) of 0.15, or 15% of the lot area (excluding any street rights of way). Additional gross square footage may be approved, up to the maximum allowed for the parcel under the Land Use Plan provided the increase complies with the provisions of Section e and/or f below, where applicable.

...

- (f) Additional Square Footage. The City Council shall have the authority to approve additional square footage for commercial development, except with the Civic Center area, as provided in Section 3.8(A)(5) of the Malibu LIP, where the applicant has offered to the City public benefits and amenities in connection with a project subject to a Development Agreement processed pursuant to Section 13.28 of the Malibu LIP.

...

Sea View Hotel Overlay District

The LIP portion of the City's amendment request proposes to change the zoning designation of the site from CC to CV-2, and to create a new overlay district (Sea View Hotel Overlay District) to accommodate the construction of a new 39-room hotel with associated amenities on the subject site (22729 PCH and 22741 PCH).

The associated Sea View Hotel project involves the construction of a new four-story, 26,734 square foot, 39-room luxury hotel involving the remodel of an existing four-story, non-conforming commercial building (non-conforming in regards to the building height and square footage/floor area ratio), and construction of a new two-story, 11,342 square foot addition with a basement. Additionally, the proposed hotel development proposes an allowable floor area ratio greater than currently allowed under the commercial development standards of the City's LCP. Therefore, the City determined that a new overlay district with specific development standards (maximum density, including floor area ratios for commercial use, heights, lot coverage, open space requirements, setbacks, and parking and sign requirements) is needed to accommodate some of the as-built existing development, as well as modifying some of the development standards related to parking, parking locations, and an increase in the maximum allowable floor area ratio.

The new Sea View Hotel overlay district has been tailored to accommodate the proposed Sea View Hotel development project. Permitted uses and development standards have been customized for the overlay area, including heights, lot coverage, setbacks, signage requirements, and landscape/open space requirements. The permitted uses allowed under the proposed overlay district include all uses permitted in the Commercial Visitor Serving-2 land use/zoning designation (which includes uses allowed in other commercial land use designations (Commercial Neighborhood, Community Commercial, and Commercial General)), and uses typically associated with hotel development (such as restaurants, spas, guest rooms, gym, etc.). The intent of allowing the permitted and conditionally permitted uses of the CV-2 land use designation is to accommodate a situation in which the proposed hotel development project is never constructed, and the existing office and commercial development onsite (currently permitted under the Community Commercial designation) can remain conforming and permitted under the overlay district.

However, the proposed amendment would allow non-hotel related uses permitted under the CV-2 land use designation to be developed on the subject property using the development standards under the proposed overlay district instead of the existing commercial development standards that would normally apply. For example, a new restaurant or medical office could be constructed on the subject site using the modified setbacks or modified building height standards of the overlay district that are tailored for a hotel development, and this could result in potential adverse individual and cumulative impacts on coastal resources. Therefore, **Suggested Modification Five (5)** adds clarifying language that the proposed “permitted, conditionally permitted uses that are a component of the hotel development are subject to the custom development standards of the overlay district, and that permitted or conditionally permitted uses that are not a component of the hotel development are subject to all applicable policies and provisions of the certified LCP, including the Commercial Development Standards in LIP Section 3.8.” This will ensure that all other permitted and conditionally permitted uses that are not associated with hotel development cannot be developed with the modified hotel-specific development standards under the overlay district and, therefore, will ensure that new development will not have significant adverse effects, either individually or cumulatively, on coastal resources.

As previously discussed, the City has already approved the coastal development permit for the proposed hotel, which is conditioned to not be effective until certification of the subject LCP amendment. Therefore, Commission staff has had the opportunity to analyze the specifics of the approved development in relation to the development standards proposed in the LCP amendment. Although the individual coastal development permit that the City approved is not a part of this LCP amendment, the Commission must analyze whether the specific development standards proposed in the LIP for the overlay district are adequate to ensure the development is consistent with the policies and provisions of the LUP related to the protection of coastal resources.

As discussed previously, the Commission finds that the proposed intensity of visitor serving commercial development on the property is consistent with the area's character and with the adjacent development and land uses. LIP Section 3.8(A)(5) limits the allowable square footage for commercial development to the maximum Floor Area Ratio (FAR) of 0.15 of the lot area. As part of the proposed development standards for the hotel development, and

discussed in greater detail below, the City has proposed a larger FAR for the subject site than would otherwise be allowed by strict application of Section 3.8(A)(5) of the LIP. The allowable 0.15 FAR for the two parcels (22741 and 22729 PCH) is 7,750.05 square feet. The existing commercial building at 22741 PCH is legally non-conforming with a FAR of 0.46 (15,392 square feet). The FAR standard proposed in the subject LCP amendment request would increase the allowed FAR to a maximum of 0.52 (26,866.84 square feet). Since the approved development would also need to comply with all other resource protection provisions of the LCP, such as scenic resources and setbacks, the proposed deviations from the existing standard of the LCP would not result in any adverse impacts to coastal resources.

Since many of the proposed development standards for visitor serving commercial development reflect the requirements that are currently contained in the LCP but do not reflect all of them, it is important to provide clarification regarding the applicability of standards in order to ensure internal consistency and adequacy in carrying out the policies of the Land Use Plan. Therefore, **Suggested Modification Four (4)** to proposed LIP Section 3.4.6 (E) (Development Standards)) is required to clarify which LCP standard a proposed visitor-serving commercial development standard is intended to replace or supplement, as applicable. All other applicable standards in the certified LCP would apply, such as those related to hazards and geologic stability, public access, land divisions, water quality, and scenic resources.

Development Agreement and Public Benefits

Pursuant to the certified Malibu LCP, increasing the Floor Area Ratio (FAR) beyond what is allowed under the LCP, as in this case, triggers the need for a development agreement to be approved through an LCP amendment certified by the Coastal Commission (LIP Section 3.8(A)(5)). Therefore, the LIP amendment also includes the approval of a Development Agreement between the City and the property owners to allow an increase in allowable floor area ratio (FAR) from 0.15 to 0.52 in conjunction with a payment to the City. As previously mentioned, a maximum floor area ratio (FAR) of 0.15 is permitted under the certified LCP, except that the project FAR may be increased if public benefits and amenities are provided. The project site is included as part of a proposed development subject to a Development Agreement approved under an LCP amendment certified by the Coastal Commission.

California Government Code Sections 65864-65869.5 authorizes any city, county, or city and county, to enter into a development agreement with any person having a legal or equitable interest in real property for the development of property owned by that entity. A development agreement specifies the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. According to Government Code Section 65865.2, the development agreement "...may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent the development of the land for the uses and to density or intensity of development set forth in the agreement. The agreement may provide that construction shall

be commenced within a specified time and that the project or any phase thereof be completed within a specified time. The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.” Government Code Section 65866 states further that, “[u]nless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to the development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent a city, county, or city and county, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.”

However, pursuant to Section 65869, “...[a] development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action.” Since the City of Malibu has a certified local coastal program, the approval of a development agreement does not require the approval of a coastal development permit by the Commission. Rather, as required by Malibu LIP Section 13.28, development agreements are processed as amendments to the LCP. In this case, the subject LCP amendment request includes the approval of the Sea View Hotel Development Agreement.

The Development Agreement between the City and the property owners sets forth the terms of the agreement regarding the eventual development of the subject site, including allowable uses, development standards, and maximum allowable floor area ratio (FAR). The development agreement also details the applicant’s ability to develop a new hotel with an increased allowable floor area ratio from 0.15 to 0.52 in conjunction with a payment of \$800,000 to the City to be expended as the City Council determines to be an appropriate use.

Although the City has formalized a 0.52 FAR with a payment of \$800,000 to the City through a Development Agreement with the property owners for the subject site, the City has also chosen to effectuate the 0.52 FAR in the required LCP amendment by incorporating the 0.52 FAR as a development standard under the new overlay district. The Development Agreement approved by the City is not incorporated into the proposed LCP amendment language in full. Instead, the proposed new overlay district designation reflects the allowable uses, density, and development standards agreed upon in the Development Agreement.

The proposed overlay district density standard (proposed LIP Section 3.4.5(D)) only requires that pursuant to a Development Agreement between the property owners and the City of Malibu, the allowable FAR is increased from 0.15 to 0.52 if the applicant contributes \$800,000 to be expended as the City Council determines to be an appropriate use. Yet, the proposed language does not specifically require the contribution to be used for public benefits or amenities, as required by LIP Section 3.8(A)(5) (Site Development Criteria). In order to ensure that the public benefits associated with the increased FAR for the subject site are incorporated into the LCP, **Suggested Modification Two (2)** adds clarifying language to proposed LIP Section 3.4.5(D) to require the applicant to contribute \$800,000 to the City to be used for public benefits and amenities.

LCP Administration

Several proposed revisions relate to the administration of the LCP. **Suggested Modifications One (1), Four (4), Six (6), and Seven (7)** include minor modifications to the proposed overlay district amendment language necessary to ensure consistency with the LCP, such as correcting typos, adding the corresponding addresses and assessor parcel numbers (22729 Pacific Coast Highway/APN 4452-022-010 and 22741 Pacific Coast Highway/APN 4452-022-017) to the proposed LIP Section 3.4.6 Sea View Hotel Overlay District text and Sea View Hotel Overlay District Map, and making minor clarifications that further the intent and implementation of the LCP and that avoid ambiguity.

In conclusion, the proposed Sea View Hotel Overlay District and associated development standards in the proposed LIP amendment, as suggested to be modified herein, will accommodate a hotel use, and will do so in a manner that protects coastal resources, ensures internal LCP consistency, and is consistent with the LUP policies. Thus, the Commission finds that only as modified will the proposed LIP amendment conform with and be adequate to carry out the policies of the certified Land Use Plan.

D. California Environmental Quality Act

Section 21080.9 of the California Public Resources Code—within the California Environmental Quality Act (CEQA)—exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission; however, the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is not obligated to prepare an EIR for each LCP action.

Nevertheless, the Commission is required, in approving an LCP submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13540(f) and 13555(b).

The City's LCP amendment consists of a Land Use Plan amendment and Local Implementation Plan amendment.

The Land Use Plan amendment has been found to be in conformance with Chapter 3 policies of the Coastal Act. As discussed above, the Local Implementation Plan amendment is not in conformance with and is not adequate to carry out the Land Use Plan as amended. With the incorporation of the suggested modifications, the Local Implementation Plan amendment is in conformity with the Land Use Plan as amended. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the LCP amendment. If modified as suggested, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

The Commission finds that for the reasons discussed in this report if the LCP amendment is modified as suggested, there are no additional feasible alternatives, feasible alternatives, or feasible mitigation measures available that could substantially reduce any adverse environmental impacts. The Commission further finds that the proposed LCP amendment, if modified as suggested, is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



W11a

City of Malibu LCP Amendment**LCP-4-MAL-21-0073-2 (Sea View Hotel Project)****February 8, 2023****Exhibits****Table of Contents**

Exhibit 1 – Proposed LIP Amendment Text Changes in Strikethrough/Underline

Exhibit 2 – Proposed Land Use and Zoning Map Change

Exhibit 3 – Proposed Sea View Hotel Overlay District Map

Exhibit 4 – Proposed Development Agreement

Exhibit 5 – Vicinity Map

Exhibit 6 – Aerial View of the Subject Parcels

Exhibit 7 – Parcel Map

Exhibit 8 – Overall Site Plan for Sea View Hotel Project

Due to size, Exhibits can be viewed on the CCC website at:

<https://documents.coastal.ca.gov/reports/2023/2/W11a/W11a-2-2023-exhibits.pdf>

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001-2801
VOICE (805) 585-1800
FAX (805) 641-1732



W11a

LCP-4-MAL-21-0073-2 (Sea View Hotel Project)

February 8, 2023

APPENDIX

APPENDIX 1 - Substantive File Documents

Certified City of Malibu Local Coastal Plan;

Malibu Planning Commission Agenda Report and Associated Documents for Coastal Development Permit No. 17-086, Local Coastal Program Amendment No. 16-006, Zoning Map Amendment No. 17-002, Zoning Text Amendment No. 20-001, Development Agreement No. 21-001, Lot Merger No. 20-002, Demolition Permit No. 20-19, Initial Study No. 21-001, and Mitigated Negative Declaration No. 21-001, dated June 24, 2021;

Malibu City Council Agenda Report and Associated Documents for Coastal Development Permit No. 17-086, Local Coastal Program Amendment No. 16-006, Zoning Map Amendment No. 17-002, Zoning Text Amendment No. 20-001, Development Agreement No. 21-001, Lot Merger No. 20-002, Demolition Permit No. 20-19, Initial Study No. 21-001, and Mitigated Negative Declaration No. 21-001, dated July 29, 2021;

Malibu City Council Agenda Report and Associated Documents for Coastal Development Permit No. 17-086, Local Coastal Program Amendment No. 16-006, Zoning Map Amendment No. 17-002, Zoning Text Amendment No. 20-001, Development Agreement No. 21-001, Lot Merger No. 20-002, Demolition Permit No. 20-19, Initial Study No. 21-001, and Mitigated Negative Declaration No. 21-001, dated July 29, 2021;

Malibu City Council Agenda Report and Associated Documents for Coastal Development Permit No. 17-086, Local Coastal Program Amendment No. 16-006, Zoning Map Amendment No. 17-002, Zoning Text Amendment No. 20-001, Development Agreement No. 21-001, Lot Merger No. 20-002, Demolition Permit No. 20-19, Initial Study No. 21-001, and Mitigated Negative Declaration No. 21-001, dated August 11, 2021;

Malibu City Council Agenda Report and Associated Documents for Coastal Development Permit No. 17-086, Local Coastal Program Amendment No. 16-006, Zoning Map Amendment No. 17-002, Zoning Text Amendment No. 20-001, Development Agreement No. 21-001, Lot Merger No. 20-002, Demolition Permit No. 20-19, Initial Study No. 21-001, and Mitigated Negative Declaration No. 21-001, dated August 25, 2021;

Malibu City Council Agenda Report and Associated Documents for Ordinance No. 491 for Local Coastal Program Amendment No. 16-006, Zoning Map Amendment No. 17-002, Zoning Text Amendment No. 20-001, and Development Agreement No. 21-001, dated September 15, 2021;

City of Malibu Resolution No. 21-45;

City of Malibu Resolution No. 21-46;

City of Malibu Ordinance No. 491;

[Initial Study No. 21-001 and Mitigated Negative Declaration No. 21-001 \(IS/MND\);](#)

[“Explore the Coast Overnight: An Assessment of Lower-Cost Coastal Accommodations” by the California Coastal Conservancy \(March 2019\);](#)

[California Coastal Commission Public Workshop Staff Report on Lower-Cost Visitor-Serving Accommodations \(October 2016\);](#)

Coastal Development Permit No. [5-18-0872](#) (Sunshine Enterprises, LP);

Coastal Development Permit No. [5-20-0181](#) (B&J Capital Group Investments);

Coastal Development Permit No. [A-5-VEN-21-0011](#) (Wynkoop Properties, LLC);

Coastal Development Permit No. [5-18-0872](#) (Shore Hotel)

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SOUTH CENTRAL COAST DISTRICT OFFICE
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001-2801
VOICE (805) 585-1800
FAX (805) 641-1732



W11a

LCP-4-MAL-21-0073-2 (Sea View Hotel Project)

February 8, 2023

CORRESPONDENCE

Due to size, Correspondence can be viewed on the CCC website at:

<https://documents.coastal.ca.gov/reports/2023/2/W11a/W11a-2-2023-corresp.pdf>

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SOUTH CENTRAL COAST DISTRICT OFFICE
89 S. CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001
(805) 585-1800



W11a

ADDENDUM

February 7, 2023

TO: Coastal Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: **Addendum to Item W11a, City of Malibu LCP Amendment No. LCP-4-MAL-21-0073-2 (Sea View Hotel Project) For the Commission Meeting of Wednesday, February 8, 2023**

The purpose of this addendum is to: 1) add a link to Appendix A, Substantive File Documents; and 2) attach correspondence received to date and provide a response to certain correspondence. The correspondence letters are available in the Correspondence tab for this item on the Commission's website.

I. APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

On page 5, after the Table of Contents, add Appendix A (Substantive File Documents) with link as follows:

<https://documents.coastal.ca.gov/reports/2023/2/W11a/W11a-2-2023-appendix.pdf>

II. CORRESPONDENCE RECEIVED, STAFF'S RESPONSE TO CORRESPONDENCE

- a. On January 27, 2023, after the publication of the January 26, 2023 staff report, staff received comments from the City's planning department regarding Suggested Modification No. 3. The City's staff comment stated, "Our only comment based on your last correspondence was is if is possible to condition the money collected as an in-lieu fee for affordable overnight accommodations to not be used to fund camping in high fire severity zones or in ESHA areas." Specifically, the City staff requested that Commission staff condition the lower cost overnight visitor accommodations in-lieu mitigation fee of \$800,000 (which is being implemented through an escrow agreement between Commission staff and the property owners) not to fund camping located within high fire severity zones or Environmentally Sensitive Habitat Areas (ESHA).

Generally, the Santa Monica Mountains are considered to be a high fire hazard severity zone. The entire City of Malibu is within territory designated by the California Department of Forestry and Fire Protection (“CAL FIRE”) as a Very High Fire Hazard Severity Zone (VHFHSZ). Therefore, requiring any new camping (a form of lower-cost overnight visitor accommodations) to be sited outside high fire severity zones would effectively preclude any new camping from being located within the City or adjacent unincorporated Santa Monica Mountains. This restriction would directly conflict with the lower cost overnight visitor accommodations in-lieu mitigation fee and policies and goals of the Malibu Local Coastal Program (LCP), which is to assist in funding affordable overnight accommodations in the Malibu/Santa Monica Mountains coastal zone.

In addition, any new camping within the Malibu/Santa Monica Mountains coastal zone will trigger the need for a coastal development permit. At that time, the respective permitting authority (City of Malibu or Los Angeles County) must review a proposed camping project in a manner that is consistent with the policies and provisions of their respective Local Coastal Programs (City of Malibu LCP or Santa Monica Mountains LCP). Both the City of Malibu LCP and Santa Monica Mountains LCP require new development to minimize risks to life and property in fire hazard areas and also require the protection of areas designated as ESHA and require new development in areas adjacent to ESHA to be sited and designed to prevent impacts which would significantly degrade those areas.

For these reasons, the Commission staff disagrees with the City’s requested modification to condition the in-lieu mitigation fee for affordable overnight accommodations not to fund camping located within high fire severity zones or Environmentally Sensitive Habitat Areas (ESHA).

- b. Correspondence dated February 3, 2023, was submitted by Marshall A. Camp, of Hueston Hennigan LLP, on behalf of Mani Brothers Real Estate Group, Mani MBI (DE), LLC, and affiliated companies (collectively, the “Mani Brothers”), that own properties in the vicinity of the proposed Sea View Hotel, including the Malibu Beach Inn at 22878 Pacific Coast Highway (PCH), the former Hertz lot at 22853 PCH, and the multifamily properties at 22640 and 22648 PCH, which are located approximately 500 feet from the proposed Sea View Hotel. This letter is available under the correspondence tab. This letter urges the Commission to deny the LCP amendment due to alleged inconsistencies with the Coastal Act and the Malibu LCP and because of alleged non-compliance with the California Environmental Quality Act (“CEQA”).

Specifically, the letter expresses opposition to the proposed LCP amendment raising concerns that the proposed increase in maximum Floor to Area ratio under the proposed overlay district is inconsistent with the City’s LCP and claims the amendment results in “spot zoning.” In response, Commission staff notes that these issues are addressed in Sections V (Findings for Approval of the LUP Amendment as Submitted, Denial of the LIP Amendment as Submitted, and Approval of the LIP Amendment if Modified as Suggested) of the January 26, 2023, staff report.

In addition, the letter claims that the January 26, 2023 staff report fails to demonstrate CEQA compliance. However, as discussed in the January 26, 2023 staff report, the City completed its CEQA review prior to submitting the subject LCP amendment to the Commission for review. Before adopting the Mitigated Negative Determination (MND) for the Sea View Hotel Project, the City Council considered the MND and all the comments received during the public review process. Based on the record, including the initial study and the comments received, which were included as part of the City's LCP Amendment submittal and can be found under Appendix A – Substantive File Documents for the January 26, 2023 staff report, the City Council determined that there would be no significant environmental impacts with the implementation of specific mitigation measures. The City Council also determined that the project does not have the potential to cause significant adverse impacts to the environment.

The commenter claims that the staff report's statements regarding CEQA in Section D of that report are "conclusory" and that the Commission has failed to comply with CEQA. This is incorrect. The entire staff report constitutes the Commission's CEQA-equivalent document under its certified regulatory program. The Commission, as with certain other state agencies, has a certified regulatory program under CEQA. Public Res. Code § 21085.5; 14 Cal. Code Regs. § 15252. Documents prepared by certified programs, such as the Commission's staff reports, are considered the functional equivalent of documents that CEQA would otherwise require.¹

As part of its certified program, the Commission reviews a proposal to determine if there are feasible mitigation measures, or feasible alternatives, that would substantially lessen any significant adverse effect on the proposed development. The Commission's review of the proposed LCP amendment built off of the City's record, including the Initial Study and MND, which the City submitted to the Commission. Moreover, the Commission may rely on environmental documents prepared by the City that are part of the City's LCP submission.² In this case, the City prepared an extensive record, provided for public notice and comment, and determined that there would be no significant environmental impacts with the implementation of specific mitigation measures. The City also evaluated alternatives to the project and additional mitigation measures. Commission staff has reviewed the City's record as part of the Commission's review of the City's LCP amendment submittal.

As noted in the staff report, Commission staff is suggesting several modifications to the City's proposed LCP Amendment, including an in lieu mitigation fee for low-cost overnight accommodations. To the extent that potential impacts to public access and recreation may be considered environmental impacts under CEQA, the Commission is specifying a feasible mitigation measure and an alternative mechanism to provide a component of lower cost overnight accommodations. Specifically, the Commission's suggested modification would reflect the agreement by the property owners to provide a \$800,000 in lieu fee for the development of low-cost overnight accommodations in the Malibu/Santa Monica Mountains coastal

¹ *Mountain Lion Found. v. Fish & Game Com.*, 16 Cal. 4th 105, 113 (1997).

² *See Ross v. Coastal Com.*, 199 Cal. App. 4th 900 (2011).

zone. The Commission has met its CEQA obligations under its certified regulatory program.

Finally, the commenter argues that the Commission is required to consider the “environmental impacts of the campground project in Ramirez Canyon” under CEQA. This is also incorrect. As an initial matter, no specific project for the in lieu fee is called out in the Commission’s suggested modification, and it remains uncertain if the mitigation fee will go towards a campground project in Ramirez Canyon or to some other project. Likewise, although the commenter claims that this project will usher in other citywide growth through other City-approved projects, this is speculative and does not require CEQA analysis in the context of this proposed LCP amendment.

In addition, as part of its review of this proposed LCP Amendment for the Sea View Hotel overlay district, the Commission is not required to evaluate the impacts of a future project when that project would have a different proponent, would serve a different purposes, or can be implemented independently,³ as would be the case with any low-cost, visitor-serving development funded by the in lieu fee (or with any unrelated project). Thus, the Commission’s review of the proposed LCP amendment complies with CEQA.

- c. Correspondence has been received from Norman R. Haynie on behalf of the Sea View Hotel Project Site property owners on January 31, 2023. The correspondence supports the staff recommendation for the subject LCP amendment and includes a project rendering for the related Sea View Hotel Project. This letter is available under the correspondence tab.
- d. Correspondence has been received from the Mountains Recreation and Conservation Authority (MRCA) on February 6, 2023. The correspondence supports the staff’s recommendation of an in-lieu mitigation fee of \$800,000 to assist in funding affordable overnight accommodations in the Malibu/Santa Monica Mountains coastal zone. This letter is available under the correspondence tab.

³ *Aptos Council v. City of Santa Cruz*, 10 Cal. App. 5th 266, 280 (2017).