MEMORANDUM OF UNDERSTANDING AGREEMENT

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

RECITALS

A. In early 2006, the SMMC/MRCA began preparation of a comprehensive development plan for its properties in and around the City of Malibu and for property it does not presently own but wishes to acquire. The SMMC/MRCA titled the document the "Malibu Parks Public Access Enhancement Plan Public Works Plan" ("Public Works Plan"). The Public Works Plan is a comprehensive planning document purporting to regulate and govern future development on property within its "planning area."

B. The City contends that the Public Works Plan constitutes a discretionary project within the meaning of Public Resources Code section 21080, subd. (a) and, therefore, is subject to the California Environmental Quality Act ("CEQA") and the CEQA Guidelines. The SMMC/MRCA contends, *inter alia*, that the Public Works plan is reviewed in the same manner prescribed for the review of local coastal programs, and is exempt from CEQA under Public Resources Code section 30605 and the same provisions of CEQA and the CEQA guidelines that exempt LCP amendments from CEQA.

C. The City further contends that the Public Works Plan is inconsistent with the Malibu LCP and therefore invalid and/or uncertifiable. The SMMC/MRCA contends, *inter alia*, that the Public Works Plan is consistent with the Malibu LCP, that the SMMC/MRCA is immune from local land use regulations and that no coastal development permit is required for any of it activities or proposed activities because they are each either within the legal ambit of the Public Works Plan or not development within the meaning of the Coastal Act.

D. The SMMC/MRCA filed a lawsuit in the Los Angeles County Superior Court seeking declaratory relief regarding its contentions with respect to the use of the Ramirez Canyon Park That lawsuit is designated LACSC Case No. SC 92212. City has filed an answer and cross complaint in Case No. SC 92212. The City has also filed a petition for writ of mandate and complaint for declaratory relief against the SMMC/MRCA

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

E. The parties have met and discussed their differences. Each party has determined that it is in the best interest of all interested parties to attempt to resolve the differences through employing the provisions of the Coastal Act and the Malibu Local Coastal Program which provide for amendment to the Malibu LCP. The parties further agree that they will enter into and participate in the LCP amendment process in good faith; however, both parties wish to preserve their legal rights and positions and participate without prejudice to those respective rights and positions.

F. The parties recognize that the LCP amendment process may take many months to complete and will require, inter alia, duly noticed public hearings before the Malibu Planning Commission, the Malibu City Council and the California Coastal Commission. In order to address in the interim certain of the pressing issues that will be addressed by the LCP amendment, the parties agree, without waiving any of their respective rights and positions, including, without limitation, those asserted in the Pending Litigation, that the City and SMMC/MRCA will stipulate to a preliminary injunction ("Preliminary Injunction") which will, pending the conclusion of the procedures contemplated herein, maintain the status quo with respect to the use of Ramirez Park and will otherwise limit the use of the Ramirez Park facility while the LCP amendment process is on-going, and which will stay the proceedings in the Pending Litigation and the City's enforcement against SMMC/MRCA of its LCP and the Coastal Act.

G. This MOU sets forth the terms and conditions and mutual understanding of the parties relative to the foregoing.

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

1. Obligations of the SMMC/MRCA. The SMMC/MRCA shall be responsible for the following:

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

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

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

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

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

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

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

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

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

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

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

2.2.1 Summary of Public Notice and Participation;

2.2.2 Policies, plans, standards, objectives, diagrams, drawings, maps, photographs contained in the current PWP as adopted;

2.2.3 Supplementary data (special studies) contained in the current PWP as adopted related to biology, traffic, geology, creek restoration, accessibility, fire protection and emergency evacuation, as revised to reflect project changes;

2.2.4 Public access component of the LCPA, included in chapter 3 of the current PWP as adopted;

2.2.5 Planning Area Map, showing the location of the properties included in the plan, the location of all highways, streets and alleys, public easements or Offers to dedicate Public Easements and all lots and parcels of land within a distance of five hundred feet from the exterior boundaries of the property involved included as figures in the current PWP as adopted and as revised to reflect project changes;

2.2.6 Summary of amendment's relationship to and effect on other sections of the certified LCP and analysis that demonstrates conformity with the requirements of Chapter 6 of the Coastal Act;

2.2.7 Zoning measures/implementation that will be used to carry out the amendment to the land use plan, included as Implementation measures of the current PWP as adopted.

2.3 In light of the stipulated preliminary injunction constraining the use of Ramirez Canyon Park as referred to in (paragraph 3.2 below) and the agreement to apply for an LCP amendment (as referred to in paragraph 1.2 above), which, if approved and certified, will resolve any possible inconsistencies with the Malibu LCP or Municipal Code, aside from the cross-complaint and its defense in LACSC case No. SC092212 the City will not

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

3. Joint Obligations. The City and the SMMC/MRCA also agree as follows:

   3.1 The parties agree to stay the Pending Litigation until final action is taken on the LCP amendment and to cooperate with one another in obtaining the Preliminary Injunction and a stay of the Pending Litigation from the court. The intention of this obligation is to minimize costs associated with the Pending Litigation and avoid the parties' use of resources prosecuting or defending the Pending Litigation.

   3.2 The parties agree to stipulate to a preliminary injunction enjoining the SMMC/MRCA's use of Ramirez Canyon Park and further enjoining the City as set forth in the proposed Preliminary Injunction attached hereto as Exhibit A in the form attached hereto as Exhibit A.

   3.3 The parties shall cooperate to secure changes, if any required, to the deed restrictions for Charmlee Wilderness Park in order to allow overnight camping in the park.

   3.4 The parties agree to defend, and cooperate with one another to defend, any challenge to this MOU, the attached Preliminary Injunction, and the LCP Amendment approved by the City.

   3.5 The parties further agree that if any court enjoins, restrains or otherwise prohibits the SMMC/MRCA from conducting the ongoing activities described in the Preliminary Injunction attached hereto as Exhibit A, the SMMC/MRCA can elect to terminate this MOU effective immediately upon giving notice to the City under the notice provisions set forth at Paragraph 6, below, and each party shall bear its own attorneys fees and costs incurred in connection with this MOU and the attached Preliminary Injunction.

4. Not an Impairment of the Police Powers. Nothing in this agreement is meant to nor shall be construed to constrain or impair the City's police powers impermissibly in connection with any decision it shall make in connection with the proposed LCP amendment or any other matters

contemplated by this MOU.

5. Dismissal or Resumption of Pending Litigation.

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

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

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

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

FAX (310) 456-2760

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

With copy to:

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

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

With copy to:

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

7. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this MOU. Any action, suit or proceeding related to or arising from this MOU shall be filed in the Los Angeles County Superior Court.

8. Term. This MOU shall commence upon execution by the parties and shall remain in effect until all obligations hereunder have been performed. A failure to perform any material obligation of this MOU constitutes a material breach. In the event of a material breach of this MOU, the non-breaching party shall give written notice to the other party, pursuant to Paragraph 6 above, specifying the purported material breach. The parties agree to meet and confer within seven calendar days of such written notice in an effort to cure the breach. If the parties are unable to reach agreement

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

9. No Third Party Beneficiaries. This MOU is made and entered into for the sole benefit of the parties hereto. No other person shall have any right of action based upon any provision of this MOU.

10. Joint Preparation. This MOU shall be deemed to have been prepared jointly and equally by the parties, and none of its terms shall be construed against any party on the ground that the party prepared the MOU or caused it to be prepared.

11. Entire Agreement. This MOU constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings, both written and oral. This MOU may not be modified or amended except in a writing signed by all parties hereto.

12 Authority to Execute. The persons executing this MOU on behalf of each of the parties warrant and represent that they have the authority to execute this MOU on behalf of the party for whom they execute and have the authority to bind the party to the obligations hereunder.

13. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be considered to be an original agreement and all of which together shall be considered to be but one enforceable agreement.

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

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