

# Memorandum

To : The Conservancy  
The Advisory Committee

Date: December 28, 2007

From :  Joseph T. Edmiston, FAICP, Hon. ASLA, Executive Director

**Subject: Agenda Item 7: Consideration of resolution authorizing the Executive Director to submit a Malibu Local Coastal Program Amendment pursuant to the LCP override procedures of the California Coastal Commission (14 Cal. Code Regs. Sec. 13666 *et seq.*), such amendment to include, but not be limited to: (1) levels of usage at Ramirez Canyon Park consistent with those approved by the California Coastal Commission on April 12, 2000 (CDP No. 4-98-334) in addition to provision of overnight public park camping and handicapped access camping at Ramirez Canyon Park; (2) establishment of a Malibu Parks Affordable Access Fund using the net proceeds from events at Ramirez Canyon Park to provide inner city outreach for the use of Malibu parks; (3) acquisition and improvement of all potential trail segments and linkages to and along the Coastal Slope Trail, together with improvement of public restrooms and public parking areas to serve such public trails and trail linkages; (4) public camping, public restrooms, and public parking at Escondido Canyon Park together with related handicapped access improvements and satellite parking and trail staging areas serving such park, and (5) public camping, public restrooms, and public parking at Corral Canyon Park, as such park boundaries exist or may hereafter be expanded, together with related handicapped access improvements, city of Malibu and unincorporated Los Angeles County.\***

Staff Recommendation: That the Conservancy and Advisory Committee adopt a resolution incorporating this staff report and authorizing the actions noticed above.

Legislative Authority: Public Resources Code Sections 33203.5, 33204.5(a), 33204.27(a), and 33211 subdivisions (b) and (c); 14 Cal. Code Regs. Sec. 13666 *et seq.*

Background: In early 2006 the Coastal Commission's representative to the Conservancy (then David Allgood) requested that staff put together a presentation on increased public access opportunities within the Malibu coastal zone.

On February 27, 2006 the Conservancy heard two items relative to this, one a comment letter to the city of Malibu on its trails plan implementation, and the second authorizing a project planning and design grant to the Mountains Recreation and Conservation Authority for development of a public works plan that would authorize access improvements at Ramirez and Escondido Canyons.

A staff presentation was made on March 27, 2006 relative to the various access improvement alternatives. The consensus of the Advisory Committee and Conservancy comments was that the staff should proceed to develop a comprehensive program of public access involving as many properties as possible owned by the Conservancy or the Mountains Recreation and Conservation Authority (SMMC/MRCA) in Malibu.

On June 26, 2006 a public hearing was held and staff made a presentation on the Malibu Public Parks Enhancement Plan–Public Works Plan. At the motion of Mr. Seider, representing the city of Malibu, voting on the public works plan was postponed to allow further negotiation with city of Malibu and Ramirez Canyon Preservation Association lawyers.

On July 31, 2006 at Webster School in Malibu staff made a further presentation and the Conservancy and Advisory Committee held another public hearing (lasting two hours) on the proposed public works plan. At this hearing representatives from the city of Malibu (including then Mayor Kearsley and City Attorney Hogan) urged the Conservancy not to pursue a public works plan, but rather to apply to the city for a Local Coastal Program Amendment.

On August 28, 2006 the Conservancy and Advisory Committee held a public hearing and took action to augment the project planning and design grant for the Malibu public works plan to enable further studies as well as to provide additional legal analysis to ensure Coastal Act compliance.

On September 18, 2006 at a meeting in Agoura Hills the Conservancy and Advisory Committee held a public hearing on instructions to staff for amending the public works plan and submitting such at the next Conservancy meeting. At that hearing the fire management plan and an advice letter from the Attorney General's Office relative to access rights over Winding Way were considered.

On October 23, 2006 the Conservancy was back in Malibu at Webster School, again holding a public hearing on the public works plan, with a further staff report detailing responses to previous public comment.

On November 20, 2006, again at Webster School in Malibu, yet another public hearing was held on the public works plan. By a majority vote (only Mr. Seider voting against) the Advisory Committee voted to approve a resolution amending the public works plan and noticing it for final adoption. The Conservancy adopted the resolution by vote of 5-0-1 (Ms. Parks abstaining).

On November 29, 2006, the Conservancy and Advisory Committee held a public hearing on the public works plan. On a vote of 5-1 (Parks) the Conservancy adopted the Malibu Public Parks

#### Enhancement Plan–Public Works Plan.

The city continued to urge that the Conservancy submit a Local Coastal Program Amendment (LCPA) to the city rather than pursue a public works plan that would put the issue beyond the city's control and within the purview of the Coastal Commission itself. Various litigation options were discussed by all parties. On December 18, 2006 and again on January 12, 2007 the Conservancy considered litigation options in closed session. A negotiated Memorandum of Understanding and litigation stand-still agreement (together referred to as the MOU) was tentatively accepted by the Conservancy pending further discussion with the city. (As finally adopted by both parties, the MOU is attached as Exhibit "A.")

On January 22, 2007 the Conservancy and the Advisory Committee took two actions required of it by the MOU: (a) The Conservancy rescinded the resolution adopting the Malibu Public Parks Enhancement Plan–Public Works Plan, and (b) directed instead that a Local Coastal Program Amendment (LCPA) be submitted to the city of Malibu.

During the spring and summer of this year the Malibu Planning Department studied the proposal and so did the Malibu Environmental Review Board. Based on this staff work a favorable proposal was submitted to the Planning Commission.

On October 9, 2007 the Malibu Planning Commission held a public hearing and approved the LCPA, subject to a number of conditions and recommendations. (See *Malibu Times* 10-18-07 attached as Exhibit "B.")

On Saturday, November 10, 2007 the city held a public information workshop at the Point Dume Community Center. About 75 persons attended, along with city staff and two council members; April Verbanac made a presentation and answered questions to dispel misconceptions about the Conservancy's proposal; so did the Executive Director.

On November 12, 2007 the Malibu City Council heard extensive public testimony and took a "straw-vote" on the LCPA. Their tentative decision made severe changes to the Conservancy proposal (see *Malibu Times* 11-14-07 attached as Exhibit "C"), but there was a glimmer of light in that, well past midnight, the Council appeared to throw up their hands and instructed staff "to work with" the Conservancy.

Between that meeting and yours of November 26, 2007, Conservancy staff had inconclusive discussions with city representatives. They were inconclusive because neither city nor Conservancy staff could see a way to Council approval of the LCPA without changes that would make it unrecognizable from the initial proposal.

On November 26, 2007 the Conservancy and Advisory Committee heard public testimony on a report of Malibu's November 12, 2007 council meeting. The Conservancy and Advisory Committee the direction was clear: push forward with the LCPA. However, the public testimony of the President of the Ramirez Canyon Preservation Association and that of the Ramirez Canyon Homeowner's Association seemed to offer an avenue for further discussion.

On November 30, 2007 the Executive Director met at Malibu City Hall with the Mayor of Malibu, the City Attorney, and the presidents of the Ramirez Canyon Preservation Association and the Ramirez Canyon Homeowner's Association. The purpose was to follow-up on the possible opening for negotiation expressed by the Ramirez Canyon representatives at the Conservancy meeting. While it is our policy not to "negotiate and tell," we can report to you that the apparent openness for further discussion was illusory. Even if the Conservancy built the alternate access road demanded by the Ramirez interests, given the maximum number of events they would allow us to have—and the restrictions they would impose—it would take precisely 236 years to amortize the investment Ramirez Canyon was asking the Conservancy to make on their behalf.<sup>1</sup>

Based on the November 30<sup>th</sup> meeting in Malibu, on Monday December 3, 2007 the Conservancy staff, outside counsel, and consultants met *via* conference call to assess our situation and prepare for the December 5, 2007 council meeting. Here is what we were confronted with:

The staff recommendation was public and it was clear, whatever the initial intent had been of the city in entering into the MOU, the practical effect of subsequent events was an almost 180 degree turn about from what the Conservancy had intended: From provision of *increased* camping opportunity to *no* camping; from *fewer* uses and events at Ramirez Canyon Park than allowed by the Coastal Commission, to almost *no* public uses (not even garden tours) unless an alternative road was built; from *increased* parking at Escondido Canyon to *no* parking at Escondido (and only a weak study of alternative parking).

City officials of Malibu have strenuously asserted that they entered into the MOU with honest intent, but that the public outcry from Malibu residents after the fires necessitated their change of heart. There have even been suggestions that everything could be patched up at the Coastal Commission level "after the dust settled." No doubt some did harbor such hope. The risk that

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<sup>1</sup>Of course, such calculations are meaningless if no discount factor is applied to the future cost of money, and with these time periods comparisons are ridiculous. After all, 236 years ago would predate the American Revolution, albeit only one year prior to the founding of the City of Los Angeles. What this calculation shows is that the Ramirez Canyon demand is nothing less than a gift of public funds for private benefit without any hope of recompense.

such a strategy ran for the Conservancy was considerable. For one thing, three of the five members of the present City Council would be out of office when a “suggested modification” to the LCPA would come down from the Coastal Commission. There is no way of knowing who will be on the Council or how they would vote. Moreover, with camping precluded by the city at Charmlee, this major inducement cannot be put back on the table. Finally, when your Executive Director was discussing Ramirez Canyon with city officials the Friday before the vote, it escaped him that the Ramirez Canyon Preservation Fund had already opined, through their counsel, that the public access balancing test we all assumed would be applicable to the Lauber road and would enable it to be built through an ESHA, was restricted to beach access only and could not be used in Ramirez Canyon. (See footnote 2 on p. 6.) Obviously an opponent’s lawyer’s opinion is not determinative, but it is probative of likely litigation, and given the Coastal Commission staff’s very conservative position on ESHA encroachments, represents an unwarranted roll of the dice when such important public rights are at stake as they are with respect to Ramirez Canyon Park. But this is getting slightly ahead of the story.

On December 4, 2007 your Executive Director sent a letter to the City Council of Malibu requesting that, in light of the city staff recommendation, their next day’s consideration restore to the table all the concessions the Conservancy had made, so that an appeal to the California Coastal Commission could be based on the full panoply of options, not just the already scaled down version from which Malibu was making further drastic cuts. See Exhibit “D” attached.

The outcome of the December 5, 2007 City Council meeting is well known. No camping anywhere in Malibu (amend the LCP to move camping from a permitted use in all open space and recreation zones to a *prohibited* use in any zone); at Ramirez Canyon Park no meetings, conferences, events (outside of two handicapped camping sites) or other activities—not even garden tours—unless the Conservancy constructs a new access road into Ramirez Canyon from Kanan-Dume Road, at a minimum land acquisition cost of at least \$7,000,000 plus road construction costs of at least \$1,500,000. Moreover, the road would be built over a protected Environmentally Sensitive Habitat Area (ESHA) any further development of which the Coastal Commission staff said that it would oppose.<sup>1</sup> As if the Coastal staff’s opposition isn’t enough,

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<sup>1</sup>While the Conservancy staff believes that a balancing test is possible, and using such test a new access road would serve Coastal Act policies, the Coastal Commission staff’s position (at least as represented verbally in meetings with them) is quite different. Their view is that the Coastal Act’s exception to the “no development in ESHA” rule has been exercised by the Commission already having granted a permit for three lots on the property over which the road would traverse.

this alternative isn't universally supported by Ramirez Canyon residents either.<sup>2</sup> Also parking in Escondido Canyon is eliminated at the behest of the Winding Way neighbors, with a vague provision for study of alternatives, but nothing that actually binds the city to provide for extra visitor parking. Further insight into the "flavor" of the Malibu's meeting may be had by reading the *Malibu Times* story (attached as Exhibit "E").

While the work by planning and legal staff of Malibu was of the highest professional caliber, it is fair to say that your Executive Director, maybe alone among your advisors, was caught off-guard by the actions of elected officials taken and acknowledged to be contrary to the evidence. Indeed, here is what the *Malibu Times* reported: "Councilmember Ken Kearsley said although he was changing his vote from the last meeting, he still did not agree with the residents who have claimed overnight camping creates a fire danger. 'There is not one scintilla of evidence that as far as I can see that camping is going to start any more fires,' Kearsley said. 'There are illegal campsites that cause fires. But legal campsites, supervised, it doesn't happen.'"

Stung by this, and on advice of counsel, as a predicate to further appeals, on December 17, 2007 your Executive Director sent a formal request to the Malibu City Council to rescind its action of December 5, 2007. See Exhibit "F." The response from Malibu's city attorney is less than hopeful. See Exhibit "G."

Appeal of Malibu's December 5 Decision: The Conservancy can appeal Malibu's decision to the Coastal Commission. Such a straight out appeal probably does not serve the best interests of the Conservancy. This is because Malibu has permanently taken Charmlee Park camping off the table; no matter what the Coastal Commission does, because Malibu owns Charmlee, as the proprietor it can ban whatever activities it pleases. You will remember that the potential introduction of camping at Charmlee (proposed by the city as an alternative to Escondido) was a principal inducement for the Conservancy to rescind approval of the Public Works Plan in favor of going the LCPA route. It is true that the December 4<sup>th</sup> letter attempts to reinstate the Escondido camping proposal from the Public Works Plan, but as a practical matter we must acknowledge that the purported last minute amendment of our proposal (Exhibit "D") probably was an insufficient basis from which to form an appeal to the Coastal Commission. Additionally, a simple appeal does not put any of the Conservancy's *previous* compromises on the table, the making of which has gained the Conservancy nothing. Therefore the Conservancy should flat-out oppose Malibu's LCPA without further ado.

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<sup>2</sup>The practicality of this option has been further eroded by opposition from residents along Via Acero (who would be next to the access road), and because the Ramirez Canyon Preservation Association has filed a brief asserting that the access balancing test is only available where *beach* access is involved, not for access to upland recreation.

The Local Coastal Program “Override” Process: The California Coastal Act and the regulations promulgated thereunder (14 Cal. Code Regs. § 13666 *et seq.*) contemplate a situation where one municipality’s actions could adversely affect regional or statewide public sponsored projects. The “override” process involves these steps:

- (a) Submission of a proposed Local Coastal Program amendment to the Executive Director of the Coastal Commission. The Executive Director of the Coastal Commission has 30 days to determine if the submission meets the criteria: (1) unanticipated by the agency proposing the project at the time the Local Coastal Program was before the Coastal Commission for certification, and (2) meets the public needs of an area greater than that included in the certified Local Coastal Program.
- (b) If the Commission’s Executive Director rules favorably, then the proposal is submitted to the affected local government. The local government has 90 days in which to consider the proposal. If the local government fails to amend within that time, then the applicant can file directly with the Coastal Commission.
- (c) Coastal Commission review is based on Chapter 3 policies of the Coastal Act (Pub. Res. Code § 30200 *et seq.*).

Recommendation to Submit Pursuant to “Override” Process: At this point, to get the Conservancy’s proposals before the Coastal Commission in a timely and fair manner, the procedures of the Commission’s override regulations are directly on point. In this way the full range of proposals and public benefits can be submitted to the Coastal Commission without the limitations and fetters that were negotiated with Malibu, and from which Malibu subsequently benefitted by limiting the project scope, yet notwithstanding such concessions still denied the Conservancy’s proposals.

Content of Proposed Submission: The proposal under 14 Cal. Code Regs. § 13666 *et seq.* would have the same fundamental unity of purpose as was proposed in the Public Works Plan and the LCPA, *viz.*, a comprehensive program of public use and enjoyment of the already acquired parklands within the city of Malibu, and an expansion of the trail system linking those parklands, all while adhering to the highest standards of environmental protection.

- RAMIREZ CANYON PARK. We start with the fact that the California Coastal Commission has already issued a Coastal Development Permit, approved pursuant to the standards of Chapter 3 of the Coastal Act (the same standard as applied to Local Coastal Program amendments under the “override” provisions), for substantial uses at Ramirez Canyon Park, including a maximum of 32 major events, while staying under the 40 round-trip vehicle limits the Conservancy has adhered to, and which limitation we honored in our submission to

Malibu.<sup>1</sup> We propose the same flexibility as to medium sized events as proposed in the Malibu submission, but with the ability to utilize the full number of events as permitted by the Coastal Commission in 2000. Improvements for camping for special needs and disabled populations within the Malibu city limits (camping on the existing man-made meadow—outside the city limits—is already a permitted use and will be implemented separate from this request). Uses would continue to be limited by the 40 round trip limit, but within that limit a various mix of uses and group sizes would be permitted. Likewise, administrative use would not be constrained beyond the trip limitation factor.

- MALIBU PARKS AFFORDABLE ACCESS FUND. A new and unique part of the proposal is establishment of this fund which would contain all the net proceeds from major events at Ramirez Canyon Park. This fund would help pay for inner city outreach and supervised group use by persons who otherwise would not be able to afford to use parks within Malibu.

- COASTAL SLOPE TRAIL AND LINKAGES THERETO. Acquisition and improvement of all potential trail segments and linkage to and along the Coastal Slope Trail, together with improvement of public restrooms and public parking areas to serve such public trails and trail linkages.

- ESCONDIDO CANYON PARK. Public camping, public restrooms, and public parking together with related handicapped access improvements and satellite parking and trail staging areas serving such park.

- CORRAL CANYON PARK. Public camping, public restrooms, additional public and handicapped parking at Corral Canyon Park, as such park boundaries exist for may hereafter be expanded, together with related improvements.

- OTHER APPURTENANT IMPROVEMENTS AND RELATED PROVISIONS. As necessary, new signalized crossings and related trail and other improvements would be authorized. Conforming amendments would be made wherever a conflict exists between this proposal and the existing Malibu Local Coastal Program.

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<sup>1</sup>The Commission's April 2000 permit was overturned in February 2005 by the Ventura County Superior Court in *Ramirez Canyon Preservation Association v. California Coastal Commission*, (Civ 199846) on the sole ground that the Conservancy had not first presented the application to the City of Malibu as the Court of Appeals required in *City of Malibu v. Santa Monica Mountains Conservancy* (2002) 98 Cal.App.4th 1379. The court's ruling was entirely procedural; the court expressly did not rule on any of the substantive Coastal Act issues that the plaintiff presented to it.

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Relationship with Malibu Public Parks Access Enhancement Plan–Public Works Plan: This approach contemplates implementation of the Conservancy’s LCP Override Proposal by subsequent adoption of a Public Works Plan. This plan would be similar to that which was adopted by the Conservancy in November 2006 (and subsequently rescinded in January 2007 when the Conservancy authorized submission of the LCPA to Malibu), but would specifically track the LCP Override Proposal as approved by the Coastal Commission.