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**Comments on Draft Environmental Impact Report No. 07-002, Coastal Development
Permit No. 07-132 for Malibu Legacy Park Project, 23500 Civic Center Way,
Malibu Creek watershed (State Clearinghouse No. 2007111092)**

Dear Ms. Danner:

The Santa Monica Mountains Conservancy (Conservancy) has reviewed the Draft Environmental Impact Report (DEIR) for the Malibu Legacy Park Project. We offer the following comments.

Project Summary

The project consists of the following elements: (1) stormwater detention and treatment (to reduce pathogenic [bacterial] degradation to meet current Total Maximum Daily Load requirements and to protect human health and critical habitat for endangered fish species), (2) habitat restoration (approximately 15 acres), (3) public park (environmental education and passive recreation activities), and (4) wastewater treatment and reuse (to address nutrient loading) (DEIR, pp. s-4, s-7, 2-6, 2-9, 2-10). The wastewater element of this project is still in the planning and early design stages, and is addressed at programmatic level (DEIR, pp. 1-3, 2-5), and the EIR is a program/project EIR (DEIR, p. 1-2).

Habitat restoration would include coastal prairies (7.7 acres), coastal bluffs (~ 3.6 acres), southern California native woodlands (~ 2.2 acres), and riparian/wetland habitat (~ 1.5 acres) (DEIR, p. s-10). The public park improvements include: environmental education center, children's outdoor classroom, outdoor classroom, and overlook; kiosks and markers along pedestrian pathways to educate the public on the stormwater treatment and habitat restoration goals of the project; development of a Linear Park element on the north side of the Civic Center; pedestrian access to/from Lumber Yard development site; total of approximately 6,410 linear feet of trails; benches, waysides, and overlooks; and parking along both sides of Civic Center Way (DEIR, pp. s-12 [Figure s-6], s-5, s-13, 2-8).

The habitat restoration and public park elements of the project would be confined to the 15-acre Legacy Park site (DEIR, p. 5-6). Project activities would also occur along Civic Center Way (e.g., parking, traffic striping, and traffic calming measures), as well the narrow strip of land just north of the Civic Center (i.e., Linear Park, including vegetation and drainage improvements and a pedestrian path network).

Need for maximum public access and amenities for all visitors

As the DEIR states (p. 2-1), millions of visitors come annually to the City of Malibu to take advantage of the popular sandy beaches and mountains and the City is part of the Santa Monica Mountains National Recreation Area. The City is in a unique position to offer a variety of facilities and opportunities for the public as part of the new Malibu Legacy Park. The Conservancy recommends that the project provides maximum public access, and public amenities should be provided for park users beyond the local community.

Specifically, we recommend that one or more picnic areas be provided at the new park such that visitors can bring a low-cost meal and enjoy the wildlife viewing and other amenities of the park. If picnicking is not allowed per a deed restriction, the FEIR must specifically disclose exactly how that restriction affects adding different levels of picnic facilities or activities. The FEIR should clarify the location and numbers of benches that will be installed. The Conservancy also recommends that the project include shade structures, bathrooms, and bike racks. The DEIR states that opportunities for education/interpretation would take place (DEIR, p. 5-13). The FEIR should clarify what educational programs would be offered as part of the project and who the targeted participants would be.

The proposed hours for the park are from 8:00 a.m. to sundown (DEIR, p. 2-36). The Conservancy recommends that the park be open at a minimum from sunrise to sunset, consistent with other public parks in the City.

Per the DEIR (p. 2-37), the proposed park and Civic Center Way improvements would also meet Americans with Disabilities Act (ADA) standards and all pathways will be accessible for disabled persons. The Conservancy supports the implementation of facilities (e.g., pathways, benches, parking spaces, etc.) that are accessible for disabled persons, and compliance with ADA, at Legacy Park.

The public should be assured that the public educational and recreational features proposed in the DEIR will be present at the Legacy Park site in the future in perpetuity. It would be highly unfortunate and misleading to the public, and contrary to the spirit and intent of the California Environmental Quality Act (CEQA), if in the future, the land uses

on the site were changed, to the detriment of the public uses and amenities described in the DEIR. The FEIR must include a mitigation measure that states that these public educational and recreational features will remain and be maintained in the future in perpetuity. Those features and areas must specifically be listed in this mitigation measure. If for some reason, the City is unwilling to incorporate such a mitigation measure, members of the public can only suspect that what is proposed in the DEIR may not in fact be implemented in perpetuity, and can only imagine what alternative land uses may occur at the site at some point in the future.

We concur with the placement of a pedestrian path along the Linear Park, as this would help implement a trail identified in the City's trails plan. This should be clearly shown on Figure s-6, Proposed Park Design.

Restoration and preservation of habitats

The DEIR must guarantee that the habitats that are created are preserved in perpetuity onsite. Otherwise the public can only guess whether what is being proposed in the DEIR will in fact be there in the future. At the very least, the FEIR should include a mitigation measure that states that the 15 acres of habitat to be restored shall be preserved in perpetuity and shall be maintained in its natural and native state and that no additional hardscape or development shall be allowed on the site. If for some reason, the City is unwilling to incorporate such mitigation measure, members of the public can only suspect that what is proposed in the DEIR may not in fact be implemented in perpetuity, and can only imagine what alternative land uses may occur at the site at some point in the future. Ideally a conservation easement should be required as part of the mitigation measure to ensure that in the future other uses are not allowed on the site whereby these restored habitats might be impacted/destroyed. (We question using only a deed restriction as the DEIR [p. 2-42] states it is possible that deed restrictions could be modified in the future.)

The DEIR (p. 2-37) states the Legacy Park and Civic Center improvements would allow activities such as Chili Cook-Off, art shows, and other community events to continue to occur on limited portions of the site and along Civic Center Way. The FEIR must clarify in detail where the civic and cultural events would be held, and how the restored habitats would be affected. Also, the FEIR should clarify if fire truck staging could occur on the restored habitats, as well as the locations and extent of restored habitat where this is proposed to occur. (The DEIR, p. 2-38, states that fire truck and equipment staging would occur along the perimeter of Legacy Park.)

According to the DEIR, it appears that a high level of engineering and maintenance/disturbance will be required to manage the water in the detention pond. The DEIR (p 2-20) states that the stormwater detention basin and swales within the Legacy park site would require periodic maintenance to remove accumulated sediment and debris. Sediment basins/trash traps would be designed and truck-mounted vacuum equipment or small front-end loaders would require periodic access to the sediment basin to remove sediment and debris (DEIR, p. 2-20). The Conservancy encourages the most natural approach, if feasible, consisting of natural treatment wetland (e.g., shallow with natural evaporation and drainage on its own) that would achieve some of the same water quality standards that the City is trying to achieve, and that would provide higher quality habitat. The Conservancy is concerned that this ongoing maintenance would be detrimental to the habitat values (e.g., cause disturbance to wildlife such as birds using the detention basin). Small “upstream” sediment traps would greatly reduce the rate of sedimentation.

It is not clear whether the City is proposing to utilize any non-native vegetation (e.g., non-native trees). Utilizing anything other than 100 percent native species would not be in best public interest, and would not provide full educational and ecological benefit. With respect to the proposed restoration, the development of a vernal pool is a worthwhile endeavor, and we anticipate it will provide valuable and needed habitat for animals such as native amphibians. It is unclear where the vernal pool would be located and whether this is will be implemented. The Conservancy recommends that the City retain the vernal pool as part of its project.

It is unclear how many, and which trees are proposed to be removed onsite as a result of the project. The large, ornamental trees in the project area provide suitable nesting habitat for herons and egrets and (DEIR, p. 3c-9). Historically, herons nested onsite, although those trees have since been cut down (DEIR, p. 3c-9). A mitigation measure should be included in the FEIR stating that no trees should be removed onsite until mature trees are established onsite (i.e., at least 15 years old), which can serve as alternative suitable and similar nesting habitat.

The DEIR identifies numerous bird species that are known or expected to forage onsite, including herons, egrets, white-tailed kite, northern harrier, and falcons (DEIR, pp. 3C-8 to 3C-9). The FEIR should document the amount of loss of foraging habitat for this species. The current plan does not adequately show where these and other species will be able to forage as they currently do, during construction and long-term implementation of the project.

We continue to recommend that one or more areas be specifically designated for wildlife use only. The project site provides a valuable opportunity to restore coastal prairie. A certain portion of the prairie should be designated as true wildlife habitat, with no direct human use (i.e., excluding foot traffic or other disturbances). This should include a minimum of a two-acre contiguous prairie, with an additional one acre of adjacent native habitat buffer (e.g., coastal bluff vegetation, riparian corridor), that is not subject to direct human use. There could be public viewing areas adjacent to this true wildlife habitat or a limited raised boardwalk through it. This approach is necessary to maximize habitat value and the educational experience.

Other comments

Section 3k, Public Services and Recreation (p. 3k-11), should be modified slightly as described below where Ramirez Canyon Park is described in order to accurately describe the current situation. (~~Strike-out~~ means delete text, underlined indicates to add text.)

Santa Monica Mountains Conservancy Facilities Ramirez Canyon Park

Ramirez Canyon Park is located in a canyon off the Malibu coastline and is bordered by a National Park Service wilderness area. Within the site's boundary lie both an exquisitely beautiful designed landscape and a rich coastal wilderness. At the request of local neighbors along Ramirez Canyon Road, ~~the California Coastal Commission has required that this property be accessible to the public by appointment only.~~ the Conservancy voluntarily limited public access to the park while their application is pending before the Coastal Commission. The Conservancy currently conducts only limited organized outreach activities for small groups (e.g., mentally and physically challenged visitors and seniors). The Conservancy has applied to the Coastal Commission for permission to allow greater public use for the park.

In addition, this section should be changed (pp. 3K-10 to 3K-11) to indicate that Solstice Canyon Park is owned by the National Park Service. (It was previously owned by the Conservancy.)

The Conservancy is concerned with the potential for piece-mealing of the project and analysis of environmental impacts, since the wastewater element aspect of project is in the

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planning and early design phase. It appears that some changes to the project could include, but are not limited to, the location of the proposed tertiary treatment facility, type of technology, and size of wastewater system (DEIR, p. 2-38). Specifically, it appears that these other wastewater treatment project elements could potentially affect the other project elements being proposed (e.g., habitat restoration, stormwater treatment, and park improvements), in which case, it may be premature to approve some aspects of the project if they may change later. For example, is the detention basin sized to handle a large treatment plant and other growth needs? If not, opportunities would be lost and habitat potentially impacted.

We reiterate that a mitigation measure is needed in the FEIR that would specify that the specific acreage that is proposed for restoration and open space (approximately 15 acres) shall remain as open space in perpetuity, and that no additional development (including construction of hardscape wastewater treatment project elements) shall be allowed.

The FEIR should define the net increase or decrease in hardscape (or impermeable surfaces). The FEIR should clarify if, for example, the proposed parking areas will be permeable surface and if there will be new impermeable surfaces on the Legacy Park site. If there is an increase in impermeable surface, the FEIR should address how water quality would be affected.

Thank you for your consideration of these comments. Please maintain our agency on the mailing list for this project. If you have any questions, please contact Judi Tamasi of our staff at the above address and by phone at (310) 589-3200, ext. 121.

Sincerely,

RONALD P. SCHAFER
Chairperson