

RESPONSES TO COMMENTS ON THE FINAL EIR

On August 18, 2010 the Conservancy/MRCA published the Final EIR (FEIR) for the Malibu Parks Public Access Enhancement Plan-Public Works Plan, which included responses to all comments received on the Draft EIR (DEIR) pursuant to Section 15088(a) of the CEQA Guidelines. Prior to the publication of the FEIR, public agencies were sent draft responses to their comments on the DEIR in accordance with CEQA Guidelines Section 15088(b). In response to the publication of the Final EIR, the Conservancy/MRCA have received several written comments on the Final EIR. Although there is no provision in the CEQA Guidelines requiring that responses be provided to letters on the FEIR, in continuation of the Conservancy/MRCA's efforts to be as responsive as possible to comments and concerns regarding the project and EIR, the following FEIR comments and responses are made available in advance of the public hearing on the FEIR.

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August 19, 2010

Chair Ronald P. Schafer and the Members of the Board
of the Santa Monica Mountains Conservancy

Submitted electronically to yeramian@smmc.ca.gov

Re: Malibu Parks Public Access Enhancement Plan—Public Works Plan FEIR

Dear Chair Schafer and Board Members:

I write on behalf of the City of Malibu to voice some initial comments on the Final Environmental Impact Report for the Malibu Parks Public Access Enhancement Plan—Public Works Plan. As the complete FEIR was not made publicly available until the afternoon of August 18, 2010 (three business days prior to the August 23rd meeting at which the Conservancy will consider the FEIR), the City has not been afforded adequate time to perform a thorough review and analysis of the document. Consequently, the following comments are preliminary in nature and the City reserves the right to supplement its comments prior to certification of the FEIR.

Wastewater

The project description for the new Modified Redesign Alternative (“MRA”) contains conflicting statements with respect to potential wastewater impacts. On page MRA-82, the document states that “[a]s the proposed project consists only of self-contained restrooms or, in the case of Ramirez Canyon Park, restrooms that would be connected to an existing, on-site advanced wastewater treatment system, none of the proposed park or trail facility improvements or uses require connection to, or service by, new OWTS or any of the five small treatment plants located throughout the City.” However, page MRA-74 states:

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Gray water (sinks & showers) and sewer (toilets) generated at the Camp Host and Park Administration/ Employee Quarters sites would either be stored in a self-contained unit(s) within a Mobile Trailer/RV (and disposed of off-site at an approved wastewater disposal station) and/or be connected to either a 1,500 or 2,000-gallon underground holding tank (approximate dimensions: 10 ft in length by 8 ft in width, and 6 ft in depth). The underground holding tank(s) would be located either in the same general footprint of the nearest restroom facility and equipped with a water-tight lid and all necessary inlet and outlet assemblies. The holding tank would be serviced/pumped at the same time as the other park self-contained restrooms, which would be approximately once per month.

Here, for the first time in the environmental review process for the project, the EIR contemplates permanent staff housing at the Bluffs site together with an underground holding tank for up to 2,000 gallons of untreated wastewater. The FEIR does not address potential environmental impacts associated with storing large amounts of untreated wastewater within an environmentally sensitive area and no mitigation measures are included to guard against potential adverse environmental impacts. The addition of a 1,500 to 2,000 gallon holding tank to store untreated wastewater within an environmentally sensitive habitat area is significant new information warranting recirculation of the EIR. CEQA Guidelines, § 15088.5.

ESHA

As previously mentioned, the FEIR reveals for the first time that permanent park employee residences are contemplated for the Bluffs site and also for Corral. The Draft EIR only analyzed impacts of non-habitable structures on the Bluffs site. Those non-habitable structures were planned to have a 20-foot fuel modification radius around each. Each of the newly-proposed permanent, habitable structures will require a 200-foot fuel modification radius. This will necessitate significant additional removal and thinning of vegetation on the Bluffs site, as well as Corral. Nearly the entire Bluffs site is mapped as ESHA on the certified Local Coastal Program ESHA map and the Conservancy itself has repeatedly stressed the value of the naturally-occurring habitats on the site in comment letters regarding proposed projects and adjacent and other nearby properties. For example, in an October 20, 2008 comment letter regarding a development proposal on the nearby Crummer site (24120 Pacific Coast Highway), the Chair of the Conservancy noted that the Malibu Bluffs contain "a unique assemblage of coastal sage scrub, chaparral, and coastal bluff vegetation elements that is rare in the Santa Monica Mountains." (Exhibit A.) In that same letter, in commenting on the fact that the Crummer site is not designated ESHA on the City's LCP ESHA maps, the Conservancy lamented: "The native bluff habitat onsite is similar quality to the ESHA designated on the Conservancy's Malibu Bluffs open space, and it contributes to habitat connectivity to the north

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and west. If the eastern slope, two south-facing drainages, and southwest corner of the site are ultimately not considered ESHA by the City, the City would set a dangerous precedence on excluding high-quality habitat from ESHA consideration.” Given the Conservancy’s acknowledgement of the “unique” and “high quality” nature of the habitat occurring on the Malibu Bluffs site, the addition of permanent habitable structures that will necessitate greatly increased fuel modification (and attendant destruction of ESHA) most certainly warrants additional analysis and disclosure.¹ The amount of additional ESHA impact on the Bluffs site as a result of the modified design is not quantified in the FEIR and is potentially significant. The total combined area to be encompassed within the two fuel modification zones is approximately 11 acres. The Conservancy must analyze and disclose the additional ESHA impacts on the Bluff site in order to provide the public and decisionmakers with critical information necessary to provide informed commentary and to foster informed decisionmaking.

Although the FEIR describes much of the impacted portion of the Bluffs site as “grass and herb-dominated vegetation,” it is still largely mapped as ESHA on the City’s certified Local Coastal Program ESHA map and still has the potential to provide value habitat for species of special concern. Despite a statement to the contrary in the DEIR on pages 5.4-45 and 5.4-46, the revised project Figure BIO-5j now also includes what appears to be detections of additional special-status wildlife species not addressed in the DEIR, including yellow warbler (*dendroica petechia brewsteri*) and yellow-breasted chat (*Icteria virens*), both California Species of Special Concern. These species would primarily be associated with the riparian habitat on site, but would also utilize the adjacent grass and herb-dominated habitat for foraging. Consequently, the removal of additional vegetation necessitated by the new project components (permanent habitable structures) has the potential to result in significant new environmental impacts without appropriate mitigation. The addition of the two habitable structures on the Malibu Bluffs site, and the attendant impacts to ESHA, amounts to significant new information requiring recirculation of the FEIR. CEQA Guidelines, § 15088.5.

Endangered Species

On page 14-57 of the FEIR, it states in the mitigation measures that “if construction must occur during the breeding season for the California gnatcatcher, the following measures shall be implemented:” A number of mitigation measures are then listed. However, the California gnatcatcher is a federally-listed threatened species and its protection is not limited to the active nesting season. The DEIR states that there have not been historic records of this threatened species in the project area yet goes on to state that they have a potential to occur. Assuming the

¹ See also Exhibit B (September 6, 2001 letter from SMMC to City of Malibu commenting on Tentative Tract Map No. 52487 and stressing the ecological value of the habitat system on the Malibu Bluffs State Park property).

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analysis is correct and there is a realistic potential for this species to occur on the project site, the applicant must perform US Fish and Wildlife Service (USFWS) protocol surveys on the project site, regardless of season, to fully determine presence or absence of this species. Furthermore, with respect to the specific mitigation measures proposed, unless provided in writing from USFWS there is no basis for allowing construction activities to occur if detected CA gnatcatchers are at least 500 feet away. Similarly, the limitations of 60 dB(A) sound levels are not part of the protection requirements documented for this species and could only be considered appropriate if approved in writing by USFWS.

Consistency with the LCP

I am mindful of the fact that we disagree on this point, so I will not belabor it here. Nevertheless, I would be remiss if I did not remind you that the Public Works Plan is inconsistent with the City's certified Local Coastal Program in various respects that have been detailed in prior letters and in the pending lawsuit over the purported "override" amendment to the City's LCP. Those letters and briefs, which previously have been served on the Conservancy, are incorporated herein by this reference.

Conclusion

The City shares many of the goals reflected in the proposed public works plan, especially with respect to developing an interconnected trails system throughout Malibu; indeed, the City has approved a Master Trails Plan. We look forward to coordinating with the Conservancy in realizing these plans. The City also appreciates the aspects of the Modified Redesign Alternative that respond to prior concerns raised by the City. For example, the City is pleased to see that the Modified Redesign Alternative removes all camping from Escondido Canyon, where such uses created unacceptable fire risks and adverse environmental impacts. The water tank in Corral Canyon certainly improves the level of fire safety in that area. The City is encouraged by the discussion of a secondary access road into Ramirez Canyon, although the PWP is not sufficiently specific to fully assure us. We hope that the Board will clarify that.

Very truly yours,



Christi Hogin
City Attorney
City of Malibu

EXHIBIT A

SANTA MONICA MOUNTAINS CONSERVANCY

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October 20, 2008

Stefanie Edmondson, AICP
Principal Planner
City of Malibu
23815 Stuart Ranch Road
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Comments on Notice of Preparation for a Draft Environmental Impact Report No. 08-003 for Crummer Site Subdivision, 24120 Pacific Coast Highway

Dear Ms. Edmondson:

The Santa Monica Mountains Conservancy (Conservancy) offers the following comments on the Notice of Preparation (NOP) for a Draft Environmental Impact Report (DEIR) No. 08-003 for the Crummer Site Subdivision, 24120 Pacific Coast Highway (PCH). The City owns the approximately 10-acre Malibu Bluffs Park, including the baseball fields, the Michael Landon Community Center, turf and paths, and a large shared parking lot. The Conservancy owns an approximately 84-acre portion of Malibu Bluffs open space, largely consisting of native coastal bluff vegetation, adjacent to the subject 24-acre proposed development site. The Conservancy provided comments on earlier versions of projects on the subject site in letters dated September 6, 2001 and September 23, 1999. It is critical that the ecological, viewshed, and topographic constraints are considered when developing the project design.

Overview of Proposed Project

According to the NOP (p. 11), the project consists of subdividing the site into eight individual lots. Lots 1 through 5 would be developed with single family residences. Lot 6 would be developed with a new private street. Lot A, including the slope adjacent to Pacific Coast Highway, would be maintained by the homeowners' association or Caltrans, which has an easement along the north-facing slope. Lot B would be dedicated to the City and would be developed with a baseball field, to expand the City's Malibu Bluffs Park by two acres. Thirty-five parking spaces would be created along Winter Mesa.

Ecological Value of the Site

The Malibu Bluffs in this area contain a unique assemblage of coastal sage scrub, chaparral, and coastal bluff vegetation elements that is rare in the Santa Monica Mountains. The vegetated area on the bluffs is highly accessible for public enjoyment (e.g., via trails and the other aesthetic benefits) and it is integral to the ecological viability of a unique component of the park system in the Malibu area of the Santa Monica Mountains. The property also contains a critical portion of the habitat linkage with the greatest long-term viability between the Conservancy's Malibu Bluffs open space and the nearest large block of habitat located just northeast of the Malibu Canyon Road entrance of Pepperdine University.

The Conservancy's DEIR comment letters on the proposed hotel across PCH addressed this habitat linkage to Pepperdine-owned open space, and its alternative closer to Puerco Canyon. If a contiguous band of native habitat is not provided from just east of Pepperdine University's Malibu Canyon Road entrance, across PCH and around the eastern and southern boundaries of the subject property, all available science points to an inevitable substantial decline in both wildlife species and numbers on the Conservancy's Malibu Bluffs property.

Early morning (1:30 a.m. to 4:30 a.m.) traffic volumes on PCH and Malibu Canyon Road permit successful wildlife crossing of these roadways by mammals, bird species sensitive to human presence, and possibly even reptiles. If future road construction occurs on either concerned section of these two roadways, small pipe culverts (24-36 inch) should be installed for reptiles and small mammals.

According to the NOP (pp. 33-34), "[b]ecause the site is essentially surrounded by urban development, the project site does not serve as a migration or movement corridor..." and this issue will not be further examined in the EIR. We respectfully disagree with this conclusion and strongly recommend that the DEIR include a thorough analysis of impacts to wildlife movement for this project. The DEIR would be deficient if it does not address how wildlife move in and out of the subject property. The NOP fallaciously treats the subject property as if it is a biological vacuum.

Need for a Thorough Ecological Constraints Analysis

Any further project processing must be preceded by an ecological constraints analysis. This analysis must include a thorough study of the onsite coastal bluff vegetation and the potential for vegetation restoration on portions of the site. The analysis must also examine how the onsite coastal bluff vegetation contributes to, and is integral to, the habitat system on the adjoining Conservancy property. Likewise the analysis must examine how the onsite

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habitat contributes to the ecological viability of the entire Malibu bluffs habitat block composed of both public and private land.

The DEIR biological analysis must also specifically identify the contribution of the project site to wildlife movement between the habitat northeast of Pepperdine and the Conservancy's Malibu Bluffs open space. If the DEIR attempts to slough the issue off by saying that the Malibu Hotel will block all wildlife movement, it must justify that conclusion with a detailed mapped figure(s) that unequivocally demonstrates such a conclusion to decision-makers. Any relevant beneficial or detrimental conditions or mitigation measures for the hotel project must be disclosed in full in the DEIR.

Per to the NOP (p. 34), the project site is not designated as Environmentally Sensitive Habitat Area (ESHA) in the maps of ESHA in the Local Coastal Program (LCP), and this issue will not be examined further in the EIR. We recommend that the City reconsider this determination in the EIR. Per the LCP (Local Implementation Plan, 4.3), any area not designated on the ESHA Overlay Map that meets the "environmentally sensitive area" definition is ESHA, and this will be based on a site-specific biological study. The native bluff habitat onsite is similar quality to the ESHA designated on the Conservancy's Malibu Bluffs open space, and it contributes to habitat connectivity to the north and west. If the eastern slope, two south-facing drainages, and southwest corner of the site are ultimately not considered ESHA by the City, the City would set a dangerous precedence on excluding high-quality habitat from ESHA consideration.

According to the NOP (p. 1), the site has been disturbed in the past by weed abatement activities, prior construction, and removal of baseball fields in the northwestern portion of the project site. The ecological constraints analysis, should address when the vegetation was cleared, and whether it was cleared in compliance with the Coastal Act. (Previous coastal development permits [CDPs] for the project site should have been provided to the City as part of the current CDP application.) For example, older photographs of the site show the vegetation covering a larger area than currently shown. (For example, see www.californiacoastline.org, photo No.7948111 from 1979). Also, current aerials of the project site show scattered vegetation in cleared areas of the site, suggesting that the native coastal bluff vegetation would recover if not regularly cleared. It is also not clear why weed abatement is being done and if it is required. If the clearing was unauthorized, that native bluff vegetation that was cleared should be considered ESHA.

Need for Onsite Conservation Easement

As stated above, the site is valuable for wildlife movement and its coastal bluff vegetation, and it is adjacent to the Conservancy's Malibu Bluffs open space. It appears that the currently proposed project would result in development or fuel modification over almost all but one third of an acre of the project site in the southwest corner. Because of potentially significant impacts to biological and park resources and viewshed resulting from the project, the DEIR must include in the project description or mitigation measures an irrevocable offer to dedicate a conservation easement (or a direct grant of a conservation easement) over the eastern, southern, and southwest portions of the site, as described below.

- 1) A minimum of 100-wide contiguous band of open space along the eastern portion of the property would be included in the conservation easement.
- 2) A minimum of 105-foot wide contiguous band of open space along the southern portion of the property would be included in the conservation easement.
- 3) A contiguous band of open space along the southwest portion of the property and the entire western drainage to the top of the slopes would be included in the conservation easement. More specifically, this area would be bordered on the west by the westerly property line, on the north by the top of the slope (northerly end) of the western drainage, on the east by the top of the slope of the western drainage (approximately 80 feet east of the western property line), and on the south by the property boundary.

This conservation easement should be made in favor of both a public park agency and the City of Malibu. The Mountains Recreation and Conservation Authority is an appropriate agency to accept such conservation easement, with an overlapping easement to the City of Malibu. To provide adequate permanent mitigation, this offer or direct easement must be recorded prior to the issuance of any and all permits, vegetation removal, grading, or construction. These steps are fundamental to guarantee that future impacts to biological resources are avoided, and it would preclude any perceived piece-mealing of the analysis of environmental impacts.

The easements should prohibit all development and other uses, including fencing, grading, accessory structures, stables, equestrian facilities, grazing, and vineyards. The easement(s) would allow Fire Department-required fuel modification and irrigation. Only native plants would be allowed to be planted in the conservation easement area. The accepting agency would also have the right to remove non-native plants, with seven days written notice to the homeowners' association. Although much of this conservation easement would contain fuel

modification areas, with the identified permitted and prohibited uses, it could serve to support some wildlife.

Other Impacts to Biological Resources and Malibu Bluffs Park and Open Space Resources

The DEIR should explicitly address the extent of fuel modification necessary for the proposed development, and this must be included in the calculated acres of plant communities to be impacted. Fuel modification must not be allowed on public parkland. The DEIR must address to what extent fuel modification will occur in the native coastal bluff vegetation occurring onsite (especially in the two southward-draining drainages) and offsite. A figure must be included in the DEIR depicting the site plan and fuel modification areas overlain on vegetation communities.

Hawks and other raptors are often observed along PCH in this area and the DEIR prepared for the Civic Center Malibu Bay Company project identified numerous sensitive raptors potentially occurring in this area. The DEIR must address the site's contribution to the network of open space in the downtown Malibu and Malibu Lagoon area and beyond. It must also identify the cumulative loss of foraging and nesting habitat in Malibu and surrounding Santa Monica Mountains for raptors.

The Conservancy is concerned with the anticipated edge effects on the native bluff community of the Conservancy-owned Malibu Bluffs open space. Cats can wreak havoc on native bird communities. The DEIR should consider project elements such as including in the covenants, codes, and restrictions (CC&Rs) the prohibition of cats in the development or only allowing indoor cats, and installing cat impermeable fencing around the immediate development area. This fencing should only be allowed around the immediate development footprint, as it should not serve to impede native wildlife movement through the remaining open spaces onsite.

The Mountains Restoration Trust and others have been actively restoring the habitat at Malibu Bluffs for years. It is critical that the proposed development not contribute to weed problems at the Malibu Bluffs open space. The CC&Rs should prohibit the use of invasive, non-native landscaping. The homeowners' association dues should include fees (which likely would be minimal) for periodic monitoring and weed removal onsite.

The Conservancy requests that the DEIR provide a thorough analysis of the night lighting that will result from the project, and its impacts on the biological resources at the undeveloped areas of Conservancy-owned Malibu Bluffs open space. The DEIR should

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specify if the proposed ballfield will be lit at night. Appropriate measures should be included in the DEIR to avoid and minimize night lighting impacts on Malibu Bluffs open space (e.g., limiting night lighting, screening with native vegetation, etc.). The results of this analysis should be included in the aesthetics and biological resources sections of the DEIR.

View Impacts

Development of the subject property also has the potential to substantially degrade the visual resource value of the Conservancy's Malibu Bluffs open space. The DEIR should include a visual impacts analysis showing before and after views from trails in the Conservancy-owned Malibu Bluffs open space and the City's Malibu Bluffs Park, as well as from PCH, and Malibu Canyon Road. As described above, lighting impacts should also be addressed. For anticipated significant aesthetic impacts to these public viewing areas, avoidance and mitigation measures should be considered (e.g., limiting the height of homes per Local Coastal Plan Policy 6.7).

Geology Impacts

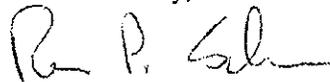
The DEIR should thoroughly address the geological constraints onsite. We are aware of a previous study where "evidence of Holocene surface rupture was exposed in trenches across strands of the Malibu Coast Fault." The DEIR should address how the proposed homes are being set back from this or other faults.

Other Comments

The DEIR should address the project's consistency with policies and implementing measures in the Local Coastal Program pertaining to land division, including those for transfer of development credits (e.g., Local Implementation Plan, 15.2.B.).

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

Site Plan

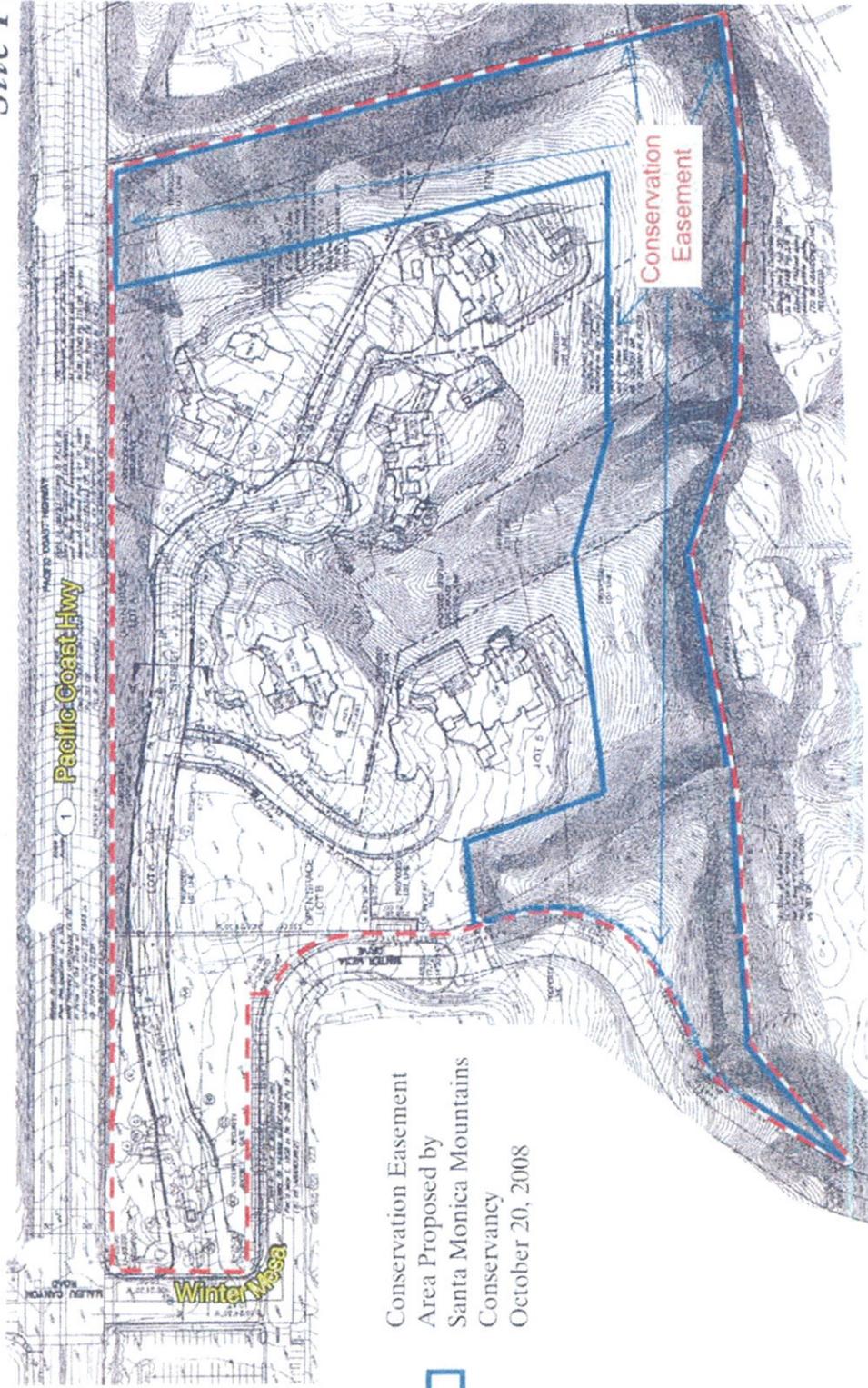


EXHIBIT B

SANTA MONICA MOUNTAINS CONSERVANCY

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September 6, 2001

RECEIVED
SEP 10 2001
PLANNING DEPT.

Ms. Meredith T. Elguira
Associate Planner
Planning Department
City of Malibu
23555 Civic Center Way
Malibu, California 90265-4804

**Tentative Tract Map No. 52487 NOP Comments,
24200 Pacific Coast Highway on Malibu Bluffs.**

Dear Ms. Elguira:

The Santa Monica Mountains Conservancy offers the following comments on the proposed subdivision of 24.28 acres on the Malibu Bluffs into eight separate single-family residential lots and sports fields. The proposed project is not compatible with the existing topographic, ecological, and viewshed constraints of the property. (Please note that Conservancy previously commented in a September 23, 1999, letter on a similar project in the same location.)

The Malibu Bluffs in this area contain a unique assemblage of coastal sage scrub, chaparral, and coastal bluff vegetation elements that is rare in the Santa Monica Mountains. The vegetated area on the bluffs is highly accessible for public enjoyment (e.g., via trails and the other aesthetic benefits) and it is integral to the ecological viability of a unique component of the State Park system. Development of the subject property also has the potential to substantially degrade the visual resource value of the State Park property. The property also contains a critical portion of the habitat linkage with the greatest long-term viability between State Park's Malibu Bluffs open space and the nearest large block of habitat located just northeast of the Malibu Canyon Road entrance of Pepperdine University.

Wildlife Corridor Importance and Need for Project Modifications

The Conservancy's Draft Environmental Impact Report (DEIR) comment letters on the proposed hotel across Pacific Coast Highway (PCH) addressed this habitat linkage to Pepperdine-owned open space, and its alternative closer to Puerco Canyon. If a contiguous band of unaltered (including no fuel modification) native habitat is not provided from just east of Pepperdine University's Malibu Canyon Road entrance, across PCH and around the

eastern and southern boundaries of the subject property, all available science points to a catastrophic loss of wildlife species in the Malibu Bluffs State Park property.

Early morning (1:30 a.m. to 4:30 a.m.) traffic volumes on PCH and Malibu Canyon Road permit successful wildlife crossing of these roadways by mammals, bird species sensitive to human presence, and possibly even reptiles. If future road construction occurs on either concerned section of these two roadways, small pipe culverts (10-16 inch) should be installed for reptiles and small mammals. The only portions of this wildlife corridor between Pepperdine-owned open space and the State Park property that are in dire need of vegetation restoration are the bare area at the southwest corner of Webb Way and Malibu Canyon Road and the slope on the south side of PCH, much of which is contained in lots 5, 7, and 8 of the proposed project.

Although the NOP states that the home sites would be clustered, they in fact appear to be spread out across the site. For the subject 24-acre property to provide an adequate contribution to this wildlife corridor, any approved project must provide the following elements protected under a conservation easement in favor of both a public park agency and the City of Malibu.

1. A minimum 150-foot-wide and 500-foot-long contiguous band of habitat along the northern property boundary. The most exterior (closest to PCH) 100 feet of the 150 feet of corridor width must remain entirely free of fuel modification requirements. The remaining 50 plus feet of width must only contain native plants but with limited fuel modification permitted. No fencing or any manmade structures can be permitted within the conservation easement area.
2. A minimum 200-foot wide contiguous band of habitat along the eastern property boundary. The most easterly 100 feet of the 200 feet of corridor width must remain entirely free of fuel modification requirements. The remaining 100 plus feet of width must only contain native plants but with limited fuel modification permitted. No fencing or any manmade structures can be permitted within the conservation easement area.
3. A minimum 300-foot wide contiguous band of habitat along the southern property boundary. The most southerly 200 feet of the 300 feet of corridor width must remain entirely free of fuel modification requirements. If fuel modification is necessary from existing structures to the south, the zone of unmodified area can be shifted accordingly northward. The remaining 100 plus feet of width must only

contain native plants but with limited fuel modification permitted. No fencing or any manmade structures can be permitted within the conservation easement area.

Incompatibility with Terrain

The property includes two primary, south-facing draws that contain primarily native vegetation. Those two draws provide important habitat, are integral to the described wildlife corridor, and represent an important remnant of coastal bluff topography in Los Angeles County. The project design should work with the existing topographic constraints and preserve, not fill, these draws.

Need for Ecological Analysis

Any further project processing must be preceded by an ecological constraints analysis. This analysis should include a thorough study of the onsite coastal bluff vegetation and the potential for vegetation restoration on portions of the site. The analysis should also examine how the onsite coastal bluff vegetation contributes to, and is integral to, the habitat system on the adjoining State Park property. Likewise the analysis should examine how the onsite habitat contributes to the ecological viability of the habitat system on the adjoining State Park property.

Also, it appears that some of the subject property may have been cleared of vegetation. The DEIR should clarify if the vegetation onsite was cleared for the proposed development, and if so, those impacts should be analyzed in the DEIR.

Recommended Alternative Project Design

In addition to all of the above-referenced critical design changes, we recommend that the DEIR include a design that also includes the following two modifications:

1. Provide a conservation easement (that is dedicated to the City and another public park agency) over the western half of lot 9. The native vegetation should be preserved in this area. This would preserve some of the natural views from the intersection of Malibu Canyon Road and the PCH. In addition to preserving this western half of lot 9, a berm placed at the eastern edge of this western half of lot 9 may also screen views from this intersection. If a berm is installed, native vegetation should be planted.

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2. Eliminate all development in the area which contains the major draws, approximately located in Lots B, 1, and 2.

Cumulative Impacts

The DEIR should include a thorough discussion of past, present, and probable future developments in the area and the cumulative impacts on biological resources. In particular, the DEIR should address the status of the hotel that may be constructed in the open space which is bound by Pacific Coast Highway, Civic Center Way, and Malibu Canyon Road, as well as the four-unit project proposed immediately west of Pepperdine along PCH (on north side of PCH). The DEIR must address how the combined construction of the hotel, the four-unit project, and the subject project would affect wildlife movement between the Malibu Bluffs and the Pepperdine-owned open space and the larger Santa Monica Mountains. Please direct any questions and all future correspondence to me at the above address and by phone at 310-589-3200, ext. 128.

Sincerely,



PAUL EDELMAN
Chief of Natural Resources and Planning

cc: California Department of Parks and Recreation

**RESPONSES TO COMMENTS ON
THE FINAL ENVIRONMENTAL IMPACT REPORT**

Letter	EEE
Commenter:	Christy Hogin, Esq. City of Malibu
Date:	August 19, 2010
<i>Introduction</i>	<p>On August 18, 2010 the Conservancy/MRCA published the Final EIR (FEIR) for the Malibu Parks Public Access Enhancement Plan-Public Works Plan, which included responses to all comments received on the Draft EIR (DEIR) pursuant to Section 15088(a) of the CEQA Guidelines. Prior to the publication of the FEIR, public agencies were sent draft responses to their comments on the DEIR in accordance with CEQA Guidelines Section 15088(b).</p> <p>In response to the publication of the Final EIR (FEIR), the Conservancy/MRCA have received several written comments on the Final EIR. Although there is no provision in the CEQA Guidelines requiring that responses be provided to letters on the FEIR, in continuation of the Conservancy/MRCA's efforts to be as responsive as possible to comments and concerns regarding the project and EIR, the following FEIR comments and responses are made available in advance of the public hearing on the FEIR.</p> <p>Responses to your letter dated <u>August 19, 2010</u> are provided below. Both your letter and these responses will be provided to the Conservancy/MRCA's decision-making body for consideration prior to any action on the FEIR.</p> <p>Further, as indicated in the FEIR, in response to comments on the DEIR, two topical responses have been created (Topical Response #1 – the Modified Redesign Alternative & Topical Response #2 – Fire Concerns). Where a response to a comment can be addressed with one of these topical responses, the commenter is referred to the topical response (see FEIR, Volume IV, Section 16).</p>
COMMENT NO.	RESPONSE
EEE-1	<i>This comment acknowledges receipt by the City of Malibu of the FEIR, provides that the City's comments are preliminary in nature and that additional comments may be offered by the City in advance of certification of the FEIR on August 23, 2010.</i>

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	<p>RESPONSE:</p> <p>CEQA Guidelines Section 15088(a) specifies that the “lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response.” This comment does not address an environmental issue. Your opinion is on the proposed project is important, however, and your comment will be included in the FEIR staff report presented for review and consideration by the Conservancy/MRCA’s decision-making body.</p>
<p>EEE-2</p>	<p><i>This comment expresses concern relative to potential environmental impacts, in particular ESHA, associated with the storage of wastewater associated with permanent staff housing at Malibu Bluffs contemplated within the Modified Redesign Alternative.</i></p> <p>RESPONSE:</p> <p>See Topical Response #1 and #2.</p> <p>To address identified concerns that adequate patrolling and supervision occur at the proposed camp areas 24 hours a day when camping is permitted, the MRA would provide permanent structures both to station, and to provide over-night accommodations for, MRCA rangers and/or wildland fire-trained specialists at the two primary camping sites—Corral Canyon Park and Malibu Bluffs Conservancy Property.</p> <p>One such permanent structure replaces the RV camp hosts site at Corral Canyon Park included in both the Proposed Plan and the Redesign Alternative. At Malibu Bluffs Conservancy Property, the MRA retains two RV camp host sites and adds two permanent structures in the northwest corner of the property close to PCH.</p> <p>The location of the two permanent structures at Malibu Bluffs Parking Lot 1 is within the same general footprint as that of the fire shelters that were originally designated at this location within the Proposed Plan evaluated within the Draft EIR. It should be noted that this area is comprised of California annual grassland, which is not considered ESHA, as the commenter contends. Direct impacts to this non-sensitive vegetation community were evaluated within both the DEIR and FEIR and deemed less than significant.</p>

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It should be noted that holding tanks would be either the same size (1,500 gallons), or 500 gallons greater (2,000 gallons) than the tanks associated with the self-contained restrooms proposed to serve campers and other visitors of the parks; this volume of wastewater is, therefore, not considered “large” when viewed in the context of other proposed restroom facilities.

Further, the underground holding tank(s) would be located in the same general footprint of the nearest restroom facility and equipped with a water-tight lid and all necessary inlet and outlet assemblies. The holding tank would be serviced/pumped at the same time as the other park self-contained restrooms, which would be approximately once per month. Discussion of impacts related to hydrology and traffic associated with restroom facilities would, therefore, have applicability to the holding tanks for the Park Administration/ Employee Quarters.

The underground holding tanks would be double-lined (to prevent leaks) and are located over 150 feet away from all creeks, which is in excess of the requirements of the State Water Resources Control Board for cesspools, where release of wastewater to the environment is permitted, which would NOT be the case for the underground holding tanks.

Finally, the proposed Modified Redesign PWP (see *Appendix MRA-4*, Section 4.5) provides the Public Works Plan Funding, Operations and Maintenance Plan, which includes MRCA’s proposed Coastal Campgrounds Maintenance & Management Plan and Coastal Trails Maintenance Supplemental Plan. The proposed management and maintenance plans provide for regular maintenance and periodic repairs of park and trail improvements utilizing existing agency maintenance and repair databases and incorporation of site-specific management tools.

The underground holding tanks would, therefore, be regularly inspected, serviced, and maintained and would have no greater environmental impact than the other proposed self-contained restroom facilities.

Therefore, based upon the discussion above and the information contained within the Draft EIR, the analysis of the underground holding

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tanks is considered adequate as the MRA's underground holding tanks would not impact ESHA and would have no greater environmental impact than the other proposed self-contained restroom facilities. In addition to other mitigations identified in the FEIR, the following mitigation measures applicable to the campsite restrooms would also be applicable to the underground storage tanks:

MM BIO-I.12 All new public restroom facilities shall consist of self-contained chemical restrooms (except for new restrooms proposed at Ramirez Canyon Park), which shall be sited and designed to ensure that impacts to ESHA and water quality are avoided. Where feasible, self-contained restroom facilities shall be located a minimum of 200 feet from the top of bank of any adjacent stream, and in no case shall they be located less than 100 feet from the top of bank of any adjacent stream or the outer edge of riparian vegetation (except at Ramirez Canyon Park, at a limited (no more than 10 spaces) Latigo trailhead parking and picnic area for Escondido Canyon Park, where restroom facilities shall be located no less than 25 feet from top of stream bank), which ever is the most protective. Minimal grading to create minor berms around the facilities shall be allowed, provided it is not in violation of other LCP or LUP resource protection policies, to ensure run-off is contained in the vicinity and/or is conveyed and filtered through bioswales. Self-contained restroom facilities shall be maintained pursuant to manufacturer specifications at all times.

MM BIO-10.14 Motorized vehicle access by park personnel within parklands shall avoid sensitive habitat areas and shall be limited to existing maintenance routes to the maximum extent feasible, and shall be for the purposes of conducting maintenance, providing emergency services, conducting patrols, implementing habitat restoration, assisting accessibility to camps with fully accessible campsites and facilities, and providing other park services.

MM G-I.7 A CEG shall calculate ground acceleration values within Corral Canyon Park for the maximum credible earthquake produced by the regional fault system, for use in designing improvements located within Corral Canyon Park. A Civil or Structural engineer shall design the proposed improvements upon the requirements of the CBC and thereby address the identified ground acceleration in the code prescribed manner, for the following structures: a) employee residence; b) self-contained restroom facilities; c) the 10,000 gallon water storage tank; d) fire truck shed.

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	<p>MM G-1.8 A CEG shall calculate ground acceleration values within Malibu Bluffs Park for the maximum credible earthquake produced by the regional fault system, for use in designing improvements located within Malibu Bluffs Park. A Civil or Structural engineer shall design the proposed improvements upon the requirements of the CBC and thereby address the identified ground acceleration in the code prescribed manner, for the following structures: a) employee residence; b) self-contained restroom facilities; c) the 10,000 gallon water storage tank; d) fire truck shed; e) vehicular bridges.</p> <p>MM G-3.4 Site-specific soil investigations, including borings and laboratory analysis of soil characteristics, shall be conducted for the following Corral Canyon proposed improvements: the two-stall restroom facility at Camp Area 1 and the 10,000 gallon water storage tank. The soil investigation shall identify site preparation techniques and/or engineering design specifications to address compression, collapse, or lateral spreading potential of the encountered soil materials.</p> <p>MM G-3.5 Site-specific soil investigations, including borings and laboratory analysis of soil characteristics, shall be conducted for the following Malibu Bluffs Park proposed improvements: two (2) Park Administration/ Employee Quarters buildings, eleven (11) self-contained restroom stalls in eight (8) restroom buildings, a fire truck shed, and two (2) 10,000 gallon water storage tanks. The soil investigation shall identify site preparation techniques and/or engineering design specifications to address compression, collapse, or lateral spreading potential of the encountered soil materials.</p> <p>Recirculation of the EIR would, therefore, not be warranted under CEQA Guidelines Section 15088.5.</p> <p>Based upon the above discussion and the analysis contained within the DEIR, no further revisions to the DEIR would be required.</p>
<p>EEE-3</p>	<p><i>This comment expresses concerns that the proposed permanent habitable structures at Corral Canyon Park and Malibu Bluffs Conservancy Property would require significant removal and thinning of vegetation mapped as ESHA on the LCP ESHA map. The comment references a letter prepared by the Conservancy addressing a separate property and concludes that the amount of ESHA impacts should have been quantified in the FEIR.</i></p>

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RESPONSE:

The Redesign Alternative contained within the Draft EIR contemplated a permanent camp host structure in the parking area behind the Fish Market, with a required 100-ft fuel modification buffer. The Redesign Alternative contained within the Draft EIR contemplated two fire shelters in the overflow parking area at Parking Lot 1, which also required a 100-ft fuel modification buffer. At each of these locations, under the Modified Redesign Alternative, these structures would be replaced by Park Administration/ Employee Quarters, which would require the same FPP fuel modification, and would therefore, result in similar impacts to vegetation.

As a result of communications with LACFD, the 100 ft fuel modification buffer for fire shelters and permanent habitable structures was recommended to be increased by 100 ft for a total vegetation buffer of 200 ft. It should be noted that this increase in fuel modification buffer at the Malibu Bluffs Conservancy Property (associated with the Park Administration/ Employee Quarters) would result in impacts to California annual grassland and ruderal vegetation, both of which are considered non-sensitive vegetation types and are not considered ESHA (see FEIR, *Appendix MRA-8*, Figure BIO-5j). The full biological impacts of the implementation of the MRA (including the recommended 200 ft. fuel modification) are described with FEIR, Section 15, pages 15-56 and 15-57. FEIR, Volume IV, Section 15, Table 15-57 provides a comparative analysis of ESHA impacts between the Proposed Plan and the MRA and indicates that ESHA impacts would be reduced by 0.33 acres under the MRA when compared to the Proposed Plan. Within FEIR, Volume IV, Section 14, Table 3.4-6 provides a breakdown of ESHA impacts under the MRA specific to the Malibu Bluffs Conservancy Property by non-trail improvement types.

At Corral Canyon Park, the policy consistency analysis contained in Section 4.0, *Consistency with Plans and Policies*, of the DEIR for the Proposed Plan indicates that implementation of the proposed project would result in minor impacts to sensitive habitats resulting from development at Corral Canyon Park that does not constitute a resource-dependent use, and which is therefore prohibited in environmentally sensitive habitat areas as defined by Section 30240 of the Coastal Act and City of Malibu Local Coastal Program Policies 3.8,

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3.9, and 5.69. These improvements and associated impacts include fuel modification requirements for the Corral Canyon Park camp host and fire truck shed improvement area. As a result, the proposed Plan improvements for Corral Canyon Park would potentially conflict with policies addressing protection of environmentally sensitive habitat areas adopted for the purpose of avoiding or mitigating an environmental effect, resulting in a significant and unavoidable impact.

The Modified Redesign Alternative, however, includes redesigned park and recreation improvements and a detailed policy consistency analysis for the Modified Redesign Alternative-Public Works Plan, which is included in *Appendix MRA-4* of the FEIR, and which incorporates additional analysis based on comments received on the DEIR and the redesigned scope of improvements. Similar to the proposed project, the Modified Redesign Alternative impacts to native vegetation areas would result from fuel modification requirements for Park Administration/ Employee Quarters, and fire truck shed improvements. As identified in the policy consistency analysis for the Modified Redesign Alternative-Public Works Plan, fuel modification associated with employee/camp host quarters and fire truck shed improvements at Corral Canyon Park would be limited to areas already subject to fuel modification requirements associated with the adjacent restaurant and RV facility. City of Malibu Land Use Plan 3.1, ESHA Designation, specifically exempts areas subject to fuel modification activities as follows: *“Existing, legally established agricultural uses, confined animal facilities, and fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA.”*

Although fuel modification associated with the employee/camp host quarters and fire truck shed will result in encroachment into native vegetation areas, these affected areas are already subject to current fuel modification activities and are therefore not considered ESHA under the Malibu LCP. As such, the Modified Redesign Alternative would not conflict with Section 30240 of the Coastal Act or City of Malibu Local Coastal Program Policies 3.8, 3.9, and 5.69. In addition, as the proposed Park Administration/ Employee Quarters and fire truck shed improvements consist of improvements to an existing and disturbed development footprint (an existing, paved parking area) and are located and designed so as not to impact ESHA, and because there

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are no other alternative locations which could accommodate the improvements, with implementation of appropriate mitigation measures identified in the FEIR, the Park Administration/ Employee Quarters and fire truck shed improvements are consistent with applicable LCP policies relative to ESHA buffers (policies 3.23- 3.30).

In addition to other mitigations identified in the FEIR, the following mitigation measures are applicable to the discussion above:

- **MM LUP-2**
- **MM BIO-1** through **BIO-14**
- **MM G-1.1, MM G-1.2, MM G-1.6, MM G-1.7, MM G-1.8, MM G-1.9, MM G-3.1, MM G-3.3, MM G-3.4, MM G-3.5, and MM G-4.1**

The Modified Redesign Alternative addresses and eliminates all potential policy conflicts identified in the Draft EIR for the proposed Plan. As such, potential land use impacts associated with the Modified Redesign Alternative would be reduced to *potentially significant, but mitigable (class II)*. Mitigation Measure **MM LUP-2** is required to address this impact.

It should be noted, in addition, that the LCP Overlay does, in fact, allow for permanent camp host accommodations as provided in the following:

"Land Use Plan Policy 5.71: Trails to and within public parklands, camp facilities, public outreach and educational programs and/or related support facilities (e.g. parking, public restrooms, picnic amenities, ranger/ maintenance supervisor housing, nature centers, administrative personnel facilities related to the daily operation and maintenance of parklands and park programs), and special programs and events conducted at Ramirez Canyon Park, are defined as principal permitted uses in the Malibu Parks Public Access Enhancement Plan Overlay and shall be permitted to be constructed, opened and operated for intended public use or benefit where it is determined feasible to locate, design, and maintain such facilities and uses so as to avoid, or minimize and fully mitigate, potential impacts to ESHA."

Finally, although significant portion of the entire City of Malibu are

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mapped as ESHA by the City of Malibu; this mapping is most often not based on site-specific detailed surveys. LCP policies allow that if a site-specific study contains substantial evidence that an area previously shown as ESHA does not contain the area that meets the definition of environmentally sensitive habitat, then the LCP policies and standards for protection of ESHA and ESHA buffers shall not apply and development may be permitted. Site-specific mapping conducted for the Plan indicates that several portions of the Malibu Bluff are not considered ESHA, including the area proposed for the Park Administration/ Employee Quarters at Malibu Bluffs.

Therefore, based upon the above discussion, the placement of Park Administration/ Employee Quarters at Malibu Bluffs and Corral Canyon would not necessitate significant additional removal and thinning of vegetation within ESHA when compared to that which would be required for either the Proposed Plan or the Redesign Alternative.

With respect to references to the Crummer site, the Conservancy/ MRCA acknowledge that there is ESHA on the Malibu Bluffs property, as mapped by Dudek biologist (see FEIR Appendix MRCA-8, Figure BIO-5j), but as established above, ESHA would not be impacted by placement of Park Administration/ Employee Quarters (including fuel modification buffers) at Malibu Bluffs.

With respect to quantification of ESHA impacts at Malibu Bluffs and Corral Canyon, FEIR Section 14 (Table 3.4.5 and Table 3.4.6) and FEIR Section 15 (Table 15-54 and 15-57) are available to the commenter for review of impacts of the MRA versus the Proposed Plan, as well as the narrative discussion included therein. The FEIR (Volumes I-IV) provides comprehensive descriptions and analyses of the Proposed Plan as well as the alternatives; supporting technical reports, plans, and related documentation are located within the EIR appendices. The FEIR, therefore, provides the public and decision-makers with the critical information, analysis, and commentary necessary in order to foster informed decision-making.

Based upon the discussion above and the information contained within the Draft EIR, no further analysis would be required.

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EEE-4	<p><i>This comment speaks to the Plan's consistency with the City ESHA maps and follows that comment with questions regarding potential impacts to yellow warbler and yellow-breasted chat.</i></p> <p>RESPONSE:</p> <p>For a response related to City-mapped ESHA, please see response to comment EEE-3 above.</p> <p>The commenter provides no scientific basis for assertions that impacts to birds, including the yellow warbler and yellow-breasted chat, would be greater for the MRA than that which would occur with development of the Proposed Plan or other alternatives evaluated in the DEIR.</p> <p>As indicated in the EIR, MM BIO-7 would reduce direct impacts to nesting raptors and songbirds and indirect impacts to nesting birds to a less than significant level.</p> <p>As indicated in the EIR, MM BIO-10.1 through MM BIO-10.14 would reduce long-term indirect impacts to special-status wildlife species and impacts to wildlife corridors and habitat linkages corridors to a less than significant level.</p> <p>As indicated above, the addition of two (2) new Park Administration/ Employee Quarters (including fuel modification buffers) at Malibu Bluffs would occur in locations which were slated for development within the Proposed Plan and the Redesign Alternative requiring the same level of fuel modification as that which would be required for the MRA. It should further be noted that the location of the Park Administration/ Employee Quarters would occur over 700 ft away from the location of a singular siting of the yellow-breasted chat.</p> <p>Although it is not clear that either the yellow warbler and yellow-breasted chat nest at the Malibu Bluffs site or if the siting was that of a transient bird(s), the existing mitigations MM BIO-1 through BIO-14 proposed within the EIR would adequately address any impacts to these species should they be detected again prior to or during construction. Long-term mitigation measures outlined above would ensure that impacts associated with potential foraging habitat for these</p>
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	<p>species would remain less than significant.</p> <p>Therefore, based upon the discussion above and the information contained within the Draft EIR, the analysis of nesting raptors and songbirds (including the yellow warbler and yellow-breasted chat) is considered adequate and the MRA would have no greater environmental impact than the Proposed Plan or other alternatives identified in the DEIR. This information, therefore, would not constitute “significant new information;” recirculation of the EIR would not be warranted under CEQA Guidelines Section 15088.5.</p> <p>Based upon the above discussion and the analysis contained within the DEIR, no further revisions to the DEIR would be required.</p>
<p>EEE-5</p>	<p><i>This comment states that the gnatcatcher’s protection is not limited to the active nesting season and that if there is a potential for presence of this species that a USFWS protocol level survey be conducted and that the mitigation measures with respect to construction activity and noise may not be acceptable unless approved in writing by USFWS.</i></p> <p>RESPONSE:</p> <p>The commenter provides no scientific basis for assertions that impacts to birds, including the California gnatcatcher, would be greater for the MRA than that which would occur with development of the Proposed Plan or other alternatives evaluated in the DEIR.</p> <p>As indicated in the EIR, MM BIO-7 would reduce direct impacts to nesting raptors and songbirds and indirect impacts to nesting birds to a less than significant level.</p> <p>As indicated in the EIR, MM BIO-10.1 through MM BIO-10.14 would reduce long-term indirect impacts to special-status wildlife species and impacts to wildlife corridors and habitat linkages corridors to a less than significant level.</p> <p>In addition, MM BIO-8, would be directly applicable to the California gnatcatcher during construction activities.</p> <p>All surveys and information to date indicate that the California gnatcatcher is not present on-site. Despite the current biological</p>

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conclusions that the California gnatcatcher is not likely to be present on-site, out of an abundance of caution, MM BIO-8 is required for the Proposed Plan and all alternatives, which requires protocol level surveys in advance of construction, which could be years away from the Plan's ultimate approval. If California gnatcatcher are discovered, MM BIO-8 identifies a feasible mitigation strategy to avoid impacts during construction, which could most easily be accomplished by avoiding construction during the nesting season. USFWS will be consulted as appropriate for all protocol level surveys and any necessary construction noise mitigation. It should be noted that Dudek biologists have consulted with USFWS relative to potential impacts on California gnatcatcher as well as mitigation strategies for avoiding impacts to California gnatcatcher on several other projects located throughout southern California. The mitigation strategy identified within the DEIR is based upon past precedent of what has been acceptable to that agency as necessary, appropriate, and feasible mitigation.

Although it appears based on the information to date that the California gnatcatcher does not occur at the Malibu Bluffs site, the existing mitigations proposed within the EIR would adequately address any impacts to these species should they be detected prior to or during construction. Long-term mitigation measures outlined above would ensure that any potential impacts associated with potential foraging habitat for these species would remain less than significant.

See, also, response to comment EEE-4.

Therefore, based upon the discussion above and the information contained within the Draft EIR, the analysis of California gnatcatcher is considered adequate and the MRA would have no greater environmental impact than the Proposed Plan or other alternatives identified in the DEIR. This information, therefore, would not constitute "significant new information;" recirculation of the EIR would not be warranted under CEQA Guidelines Section 15088.5.

Based upon the above discussion and the analysis contained within the DEIR, no further revisions to the DEIR would be required.

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EEE-6	<p><i>This comment reiterates the City’s belief that PWP is inconsistent with the City’s LCP.</i></p> <p>RESPONSE:</p> <p>The Conservancy/ MRCA reiterate their position, as established through earlier responses to comments (see responses to comment YY-2 and YY-5) and legal briefs, that Conservancy/ MRCA is within its right to process the PWP under the CCC-approved LCP Overlay; this information is hereby incorporated by reference.</p> <p>Based upon the above discussion and the analysis contained within the DEIR, no further revisions to the DEIR would be required.</p>
EEE-7	<p><i>This comment states that the City shares many of the goals reflected in the PWP and expresses its support for certain aspects of the Plan and will seek clarity relative to secondary access road into Ramirez Canyon through, what is hoped, Board clarification.</i></p> <p>RESPONSE:</p> <p>Thank you for your comments. CEQA Guidelines Section 15088(a) specifies that the “lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response.” This comment does not address an environmental issue. Your opinion is on the proposed project is important, however, and your comment will be included in the FEIR staff report presented for review and consideration by the Conservancy/MRCA’s decision-making body.</p>

August 20, 2010

Chair Ronald P. Schafer and Members of the Board of the
SANTA MONICA MOUNTAINS CONSERVANCY

Submitted electronically to yeramian@smmc.ca.gov

Re: FEIR for Malibu Parks Public Access Enhancement Plan -- Public Works Plan

Dear Chair Schafer and Board Members:

This office submits the following comments on behalf of the Malibu Road Association in connection with the draft Final Environmental Impact Report ("FEIR") proffered by the Santa Monica Mountains Conservancy/Mountains Recreation and Conservation Authority ("Conservancy/MRCA") vis-a-vis the Malibu Public Works Public Access Enhancement Plan -- Public Works Plan. We reserve the right to augment our comments as we complete our review of the lengthy FEIR materials, which have only been available for public evaluation since late Wednesday afternoon.

For the reasons discussed more fully below, it is submitted that -- notwithstanding hundreds of pages of text and data -- the FEIR fails to fully and fairly suffice as an informational document in accordance with the mandates of applicable law. Such deficiencies include, without limiting the generality of the foregoing: failing to disclose adverse environmental impacts that will not be eliminated or mitigated to a level of insignificance and failing to adequately identify and evaluate feasible project alternatives and mitigation measures, including those suggested by the public, that could significantly reduce prospective adverse environmental consequences. It is further submitted that the instant environmental analysis is also fatally flawed because it relies upon an untenable predicate: that the purported amendment to the City of Malibu Local Coastal Program certified by the California Coastal Commission ("Commission") on June 10, 2009 -- which incorporated Section 3.4.2, the Malibu Parks Public Access Enhancement Plan Overlay (the "Overlay") -- is valid and enforceable. We submit that it is not;^{1/} and as the Overlay falls, so too does the instant environmental analysis.

^{1/}The 1,600+ page staff report (dated May 28, 2009) for such Commission action reviewed issues relevant to the project such as the specific park properties and recreation areas (i.e. Ramirez Canyon Park, Escondido Canyon Park, and Corral Canyon Park) within the City of Malibu that were encompassed by the proposed Overlay, and evaluation of the natural resources and ESHA issues associated with same. However, no mention was made of the Malibu Bluffs Conservancy Property ("Malibu Bluffs Park") as an area falling within the purview of the Overlay. In the case of *Ultramar, Inc. v. South Coast Air Quality Management District* ("*Ultramar*") (1993) 17 Cal.App.4th 689, 699, the Court held that the South Coast Air Quality Management District, a certified regulatory agency under Public Resources Code §21080.5 (as is the Coastal Commission) was bound by Public Resources Code §21091's 30 day review period for its environmental assessment, the functional equivalent to an EIR. It is submitted that the California Coastal Commission is likewise governed by §21091's requirement for a 30 day review period for its staff reports, which serve as the functional equivalent of an EIR. The failure of the Commission to comport with such statutory notice requirement in connection with the Overlay rendered the Staff Report, and subsequent Coastal Commission action, unlawful as a prejudicial abuse of discretion. *Ultramar, supra.*, at 17 Cal.App.4th 701-704.

Failure to Adequately Disclose Adverse Environmental Impacts Associated With the Proposed Development

The FEIR discusses in great detail the proposed modified redesign alternative (“MRA”), which essentially eliminates camping at Ramirez Canyon Park, Latigo Trailhead and Escondido Canyon Park, and increases the number of campsites at Malibu Bluffs Park. The document characterizes the changed camping arrangements as “clustering,” however, when one looks carefully at the configuration of the proposed campsites at Malibu Bluffs Park, it becomes readily apparent that clustering has not occurred. In fact, the campsites have been spread out and consume most of the grassy meadowland natural topography, leaving only the heavily vegetated ravines and watercourses intact. See Exhibit “1” attached hereto and made a part hereof.^{2/}

The landform alteration proposed for the relatively pristine Malibu Bluffs Park area will be dramatic and irreversible, if the MRA or any of the other project alternatives proposed in the FEIR (other than the no project alternative, which obviously will not fulfill any of the goals of the proposed Public Works Plan) were to be implemented. Such adverse impacts are even more evident when one considers the proposed provisions of the Fire Protection Plan, which will require removal of existing vegetation 200 feet around each of the emergency fire shelter areas. The depiction of such zones is likewise shown on Exhibit “1”.

In short, the instant FEIR fails to adequately disclose and address unmitigable adverse environmental impacts associated with the instant development, and for this reason, such document fails to satisfy the mandates of CEQA and its implementing guidelines. The record is wholly inconsistent with the contention that no significant adverse changes to the present environment will occur as a result of the instant project.

Failure to Adequately Evaluate Feasible Project Alternatives and Mitigation Measures

The California Environmental Quality Act (“CEQA”) and its implementing guidelines (Cal. Code Regs, Title 14, §§15000 et seq., “Guidelines”) are replete with references to the need for a discussion of project alternatives. (*Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California* (1988) 47 Cal.3d 376, 400 (“*Laurel Heights*”). The California High Court, in its *Laurel Heights* decision, went on to state:

“[Public Resources Code] Section 21002.1, subdivision (a) provides, ‘The purpose of an environmental impact report is to identify the significant effects of a project on the environment, *to identify alternatives to the project*, and to indicate the manner in which those significant effects can be mitigated or avoided.’ (Italics added.) Section 21061 states that ‘The purpose of an environmental impact report is ... to list ways in which the significant effects of such a project

^{2/}Exhibit “1” is an aerial photograph of the site and a to-scale overlay depicting the camping areas and associated fuel modification zones around each. The downgradient slope will need to be regraded into cut and fill pads for each campsite. As the City of Malibu has indicated in its submission on the instant FEIR (dated August 19, 2010, incorporated herein by this reference), nearly all of the Malibu Bluffs Park site is mapped as ESHA on the certified Local Coastal Program ESHA Map, which was prepared as the culmination of the Coastal Commission’s own staff work following years of careful biotic analysis and consideration. The hypocritical inconsistencies between the Commission’s and Conservancy’s stances over the years regarding ESHA designation vis-a-vis the Malibu Bluffs Park open space is, to say the least, extremely troubling.

might be minimized; *and to indicate alternatives* to such a project.’ (Italics added.) Section 21100 provides that an EIR on a project proposed by a state agency shall include a detailed statement of mitigation measures and ‘*[a]lternatives to the proposed project.*’ (§ 21100, subs. (c) and (d), italics added.) Perhaps most important, the Legislature has expressly declared that ‘... it is the policy of this state to: ... [r]equire governmental agencies at all levels ... *to consider alternatives* to proposed actions affecting the environment.’ (§ 21001, subd. (g), italics added.) The Guidelines require that an EIR ‘[d]escribe a reasonable range of alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives. (Guidelines, § 15126, subd. (d).) These alternatives must be discussed, “even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.’ (Guidelines, § 15126, subd. (d)(3).)

“The foregoing CEQA provisions and Guidelines make clear that ‘One of its [an EIR’s] major functions ... is to ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by the responsible official.’ (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197, 132 Cal.Rptr. 377, 553 P.2d 537, italics added.)”

The instant FEIR purports to evaluate feasible project alternatives, as required under CEQA. The analysis, at least as it relates to Malibu Bluffs, is fatally inadequate and deficient. Three (3) alternatives are offered:

1. A no project alternative;

2. A 2002 LCP Alternative Plan (reduced project), which states it “has been designed to be generally consistent with original 2002 LCP, which was in effect prior to the Malibu Parks Public Access Enhancement Plan Overlay.” The text of this project alternative makes no mention of Malibu Bluffs Park. Indeed, no discussion has occurred within the FEIR with regard to a reduced project/density alternative for the Malibu Bluffs area, notwithstanding the fact that this office, on behalf of the Malibu Road Association, suggested in our written submittal regarding the DEIR that, at the very least, if camping was to go forward at Malibu Bluffs Park, such camping should be clustered in the areas previously characterized as Campgrounds 1 and 2 (essentially Camping Area 1 and 2A/2B in the MRA) so that the affront of the widespread landform alteration in the meadow area in the center of the property would be eliminated. It is submitted that the failure to address such reasonable proposal for significantly reducing impacts associated with the proposed development of Malibu Bluffs Park constitutes a prejudicial abuse of discretion. In addition, with respect to the proffered 2002 LCP Alternative Plan option as it relates to Malibu Bluffs Park, there is no explanation whatsoever in the FEIR as to how camping of the scale described by the diagrams associated with such plan alternative (as compared to the text) could possibly be allowed if the Overlay had not been approved.

3. With respect to the modified redesign alternative plan (Alternative 3 discussed in the FEIR), once again there is no discussion specifically regarding the Malibu Bluffs Park site. Nor is there disclosure that the scope and density of improvements for such site are actually being increased. The contention that “camping would be clustered” is wholly at odds with the actual diagrammatic depiction of the proposed campsites themselves.

It is submitted that the Conservancy/MRCA treatment of alternatives in the DEIR and FEIR has been cursory at best. A reduced density alternative/mitigation measure was suggested by the public for Malibu

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Bluffs Park, but the FEIR provides no response to such suggestion, or any information to enable the public to understand or evaluate why such reduced project alternative/mitigation measure has been ostensibly rejected. For this reason, the discussion in the FEIR of project alternatives is legally inadequate under CEQA.

Conclusion

For all of the foregoing reasons, the Malibu Road Association submits that the instant FEIR should be withdrawn and revised to address the foregoing deficiencies, and the shortcomings pointed out by the City of Malibu and other interested organizations and affected residents.

Very truly yours,

LAW OFFICES OF G. GREG AFTERGOOD
a Professional Corporation

By: 

G. GREG AFTERGOOD

GGA:gm

enclosure

**RESPONSES TO COMMENTS ON
THE FINAL ENVIRONMENTAL IMPACT REPORT**

Letter	FFF
Commenter:	G. Greg Aftergood, Esq. Malibu Road Association
Date:	August 20, 2010
<i>Introduction</i>	<p>On August 18, 2010 the Conservancy/MRCA published the Final EIR (FEIR) for the Malibu Parks Public Access Enhancement Plan-Public Works Plan, which included responses to all comments received on the Draft EIR (DEIR) pursuant to Section 15088(a) of the CEQA Guidelines. Prior to the publication of the FEIR, public agencies were sent draft responses to their comments on the DEIR in accordance with CEQA Guidelines Section 15088(b).</p> <p>In response to the publication of the Final EIR (FEIR), the Conservancy/MRCA have received several written comments on the Final EIR. Although there is no provision in the CEQA Guidelines requiring that responses be provided to letters on the FEIR, in continuation of the Conservancy/MRCA's efforts to be as responsive as possible to comments and concerns regarding the project and EIR, the following FEIR comments and responses are made available in advance of the public hearing on the FEIR.</p> <p>Responses to your letter dated <u>August 20, 2010</u> are provided below. Both your letter and these responses will be provided to the Conservancy/MRCA's decision-making body for consideration prior to any action on the FEIR.</p> <p>Further, as indicated in the FEIR, in response to comments on the DEIR, two topical responses have been created (Topical Response #1 – the Modified Redesign Alternative & Topical Response #2 – Fire Concerns). Where a response to a comment can be addressed with one of these topical responses, the commenter is referred to the topical response (see FEIR, Volume IV, Section 16).</p>
COMMENT NO.	RESPONSE
FFF-1	<i>This comment acknowledges receipt by the Malibu Road Association of the FEIR and provides that the Association may provide additional comments in advance of the FEIR certification hearing on August 23, 2010.</i>

**RESPONSES TO COMMENTS ON
THE FINAL ENVIRONMENTAL IMPACT REPORT**

	<p>RESPONSE:</p> <p>CEQA Guidelines Section 15088(a) specifies that the “lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response.” This comment does not address an environmental issue. Your opinion is on the proposed project is important, however, and your comment will be included in the FEIR staff report presented for review and consideration by the Conservancy/MRCA’s decision-making body.</p>
<p>FFF-2</p>	<p><i>This comment indicates that there are deficiencies in the FEIR, including failing to disclose adverse environmental impacts that will not be eliminated or mitigated to less than significant and failing to evaluate feasible alternatives that could reduce project environmental impacts. The commenter indicates that the EIR is fatally flawed in that is based on LCP Overlay, which is the subject of on-going litigation.</i></p> <p>RESPONSE:</p> <p>See Topical Response #1 and #2.</p> <p>With respect to disclosure of environmental impacts and identification of mitigation measures and Plan alternatives capable of avoiding or reducing identified impacts to a less than significant level, the commenter fails to provide any specific instances of where the EIR is inadequate. The FEIR (Volumes I-IV) provides comprehensive descriptions and analyses of the Proposed Plan as well as the alternatives; supporting technical reports, plans, and related documentation are located within the EIR appendices. The FEIR, therefore, provides the public and decision-makers with the critical information, analysis, and commentary necessary in order to foster informed decision-making, including the disclosure of all Plan environmental impacts and identification of mitigation measures and Plan alternatives capable of avoiding or reducing identified impacts to a less than significant level.</p> <p>The Conservancy/ MRCA reiterate their position, as established through earlier responses to comments (see responses to comments YY-2 and YY-5) and legal briefs, that Conservancy/ MRCA is within its right to process the PWP under the CCC-approved LCP Overlay; this information is hereby incorporated by reference.</p>

**RESPONSES TO COMMENTS ON
THE FINAL ENVIRONMENTAL IMPACT REPORT**

	<p>Based upon the above discussion and the analysis contained within the DEIR, no further revisions to the DEIR would be required.</p>
<p>FFF-3</p>	<p><i>This comment expresses concern that the use of the word clustering may not be an accurate description of the Modified Redesign Alternative (MRA).</i></p> <p>RESPONSE:</p> <p>The FEIR Vol. IV, including Appendices MRA-1, MRA-2, and MRA-3, provide a thorough description of the MRA, including defining how the alternative is “clustered” in contrast to the original Proposed Plan contained within the DEIR.</p> <p>CEQA Guidelines Section 15088(a) specifies that the “lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response.” This comment does not address an environmental issue. Your opinion is on the proposed project is important, however, and your comment will be included in the FEIR staff report presented for review and consideration by the Conservancy/MRCA’s decision-making body.</p>
<p>FFF-4</p>	<p><i>This comment states that the impacts to the “relatively pristine” landform at Malibu Bluffs will be dramatic and irreversible under the Proposed Plan, particularly in light of the fuel modification required for emergency fire shelters.</i></p> <p>RESPONSE:</p> <p>The design of the Proposed Plan and all alternatives have sought to locate recreational facilities to the greatest extent feasible within previously disturbed and/or non-sensitive vegetation areas. Impacts to the landform, including any required fuel modification, have been adequately described within the EIR. Where potentially significant impacts have been identified, mitigation measures are required. It should be noted that the optional fire shelters are not an integral component of the Fire Protection Plan (FPP) at Malibu Bluffs and that the responsible fire agency has the ability to either not require the optional fire shelters or to reduce the recommended 200 ft fuel modification buffer.</p>

**RESPONSES TO COMMENTS ON
THE FINAL ENVIRONMENTAL IMPACT REPORT**

	<p>Based upon the discussion above and the information contained within the Draft EIR, no further analysis would be required.</p>
<p>FFF-5</p>	<p><i>This comment reiterates an earlier statement that the EIR fails to disclose or adequately address environmental impacts.</i></p> <p>RESPONSE:</p> <p>See response to comment FFF-2.</p>
<p>FFF-6</p>	<p><i>This comment expresses a belief that the treatment of alternatives is fatally inadequate. The commenter expresses remorse that comments previously offered relative to clustering at Malibu Bluffs were not incorporated into the analysis and questions how camping at Malibu Bluffs could have been approved under the 2002 LCP. The commenter further indicates the MRA lacks discussion of Malibu Bluffs or disclosure of improvements proposed at this location.</i></p> <p>RESPONSE:</p> <p>Alternatives were crafted in order to eliminate or reduce Class I, significant and unavoidable impacts associated with the Proposed Plan. Although no Class I impacts were identified with respect to camping areas at Malibu Bluffs under the Proposed Plan, several pods of campsites were removed from the southern edge of Malibu Bluffs in a gesture of goodwill to the Malibu Road Association. Camping is a permitted use under the 2002 LCP. Consistent with CEQA, the plan alternatives provide sufficient information in the way of brief comparative project descriptions coupled with detailed alternative project plans; the information is sufficient in order to allow for a meaningful comparison of the Proposed Plan versus the alternatives and is intended to foster informed decision-making.</p> <p>The FEIR Vol. IV, including Appendices MRA-1, MRA-2, and MRA-3, provide a thorough description of the MRA, including defining how the alternative is “clustered” in contrast to the original Proposed Plan contained within the DEIR. In addition, there is an adequate and appropriate discussion of environmental impacts associated with the MRA, including comparative analyses, included within FEIR Vol. IV, Sections 14 and 15.</p> <p>Based upon the above discussion and the analysis contained within the</p>

**RESPONSES TO COMMENTS ON
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	<p>DEIR, no further revisions to the DEIR would be required.</p>
<p>FFF-7</p>	<p><i>This comment expresses a view that the treatment of alternatives within the EIR has been cursory and that the Conservancy/MRCA failed to consider the commenter’s earlier suggestions with respect to a reduced density/ mitigation measure.</i></p> <p>RESPONSE:</p> <p>For discussion of the Conservancy/MRCA’s treatment of alternatives, see responses to comments L-2, N-1, BB-4, II-15, and LL-24. Also, in response to this comment and others, an additional project alternative called the Modified Redesign Alternative (MRA) has been created (see FEIR, Volume IV). This new alternative would include improvements similar to the proposed Plan, but not as extensive, as it would develop fewer campsite and parking spaces. Specifically, camping would be clustered and limited mainly to two locations: Corral Canyon Park and the Malibu Bluffs Conservancy Property. Please see Topical Response #1.</p> <p>Responses to the commenter’s earlier comment letter (dated 03-22-10) are included within Volume IV, Section 16.3 of the FEIR (see Comment Letter II).</p> <p>Based upon the above discussion and the analysis contained within the DEIR, no further revisions to the DEIR would be required.</p>
<p>FFF-8</p>	<p><i>This comment expresses a view that the FEIR should be withdrawn to address the commenter’s identified concerns as well as those raised by the City of Malibu and others.</i></p> <p>RESPONSE:</p> <p>CEQA Guidelines Section 15088(a) specifies that the “lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response.” This comment does not address an environmental issue. Your opinion is on the proposed project is important, however, and your comment will be included in the FEIR staff report presented for review and consideration by the Conservancy/MRCA’s decision-making body.</p>