

Standard of Review and Process
Malibu Parks Public Access Enhancement Plan and Overlay District
April 14, 2008

Standard of Review and Permitting Process

Section 30114 of the California Coastal Act states in part,

"Public works" means the following:

(c) All publicly financed recreational facilities, all projects of the State Coastal Conservancy, and any development by a special district.

Furthermore, the City of Malibu certified Local Coastal Program defines "Major Public Works and Major Energy Facilities" as follows:

- facilities that cost more than one hundred thousand dollars (\$100,000) with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of Public Resources Code Sections 30610, 30610.5, 30611 or 30624. Notwithstanding the criteria above, "major public works" also means publicly financed recreational facilities that serve, affect, or otherwise impact regional or statewide use of the coast by increasing or decreasing public recreational opportunities or facilities.

The Malibu Parks Public Access Enhancement Plan encompasses land area and involves public access and recreation improvements located within three jurisdictions; the City of Malibu, unincorporated Los Angeles County, and the National Park Service. The Plan is proposed by the Conservancy and MRCA to enhance public access and recreational opportunities of regional significance and will include use of public funds for Plan implementation. Therefore, the proposed Plan and all project components meet the definition of a public works project.

Local Coastal Program Amendment

The City of Malibu LCP contains numerous policies encouraging and addressing the development of new public access and recreational facilities in the City. The proposed Plan expands on existing LCP policies to further identify and define improvements for trail development, support facilities, and public use programs for specific trail corridors and parks in the Plan area, as well as the maintenance requirements, development constraints and use limitations necessary to ensure public access and recreation improvements are implemented consistent with the need to protect sensitive resources. The Plan's policies and implementation measures therefore provide the foundation for establishing a Malibu Parks Public Access Enhancement Plan Overlay District, to be applied to the specific trail corridors and parklands of the Plan area as part of the Malibu LCP.

The proposed Overlay is being submitted as a Local Coastal Program Amendment to the Coastal Commission for incorporation into the Malibu LCP. Pursuant to Section 30515 of the Coastal Act, as implemented by Section 13666 of the Code of Regulations, the Conservancy/MRCA are authorized to file the LCP Amendment with the Coastal Commission to incorporate the proposed Overlay into the Malibu

LCP, which will provide the planning mechanism for implementing the specific public improvement projects proposed pursuant to the Plan. The proposed Overlay involves an amendment to the Malibu Land Use Plan and Implementation Plan to incorporate map changes, land use policies and development standards proposed per the Malibu Parks Public Access Enhancement Plan. The standard of review for proposed changes to the land use plan of the certified LCP (land use plan map and policy amendments) is the Chapter 3 policies of the Coastal Act. The standard of review for the proposed changes to the implementation plan of the certified LCP (zoning map, zoning designation and development standard amendments), is that the proposed amendment conforms with and is adequate to implement the provisions of the land use plan of the certified LCP.

Public Works Plan

Implementation of the proposed Plan improvements (i.e. specific public works projects) will require review and approval pursuant to the coastal development permit process, as applicable, or, alternatively, implementation of the proposed Plan improvements may be achieved pursuant to the public works plan process. The Plan improvements are proposed by the Conservancy and MRCA to enhance public access and recreational opportunities of regional significance and will include use of public funds for Plan implementation. Therefore, the proposed Plan and all project components meet the definition of a public works project and therefore are subject to all provisions of Coastal Act Section 30605 governing development of a public works plan for submittal to the Coastal Commission.

Section 30605 of the Coastal Act states, in part:

To promote greater efficiency for the planning of any public works or state university or college or private university development projects and as an alternative to project-by-project review, plans for public works or state university or college or private university long-range land use development plans may be submitted to the commission for review in the same manner prescribed for the review of local coastal programs set forth in Chapter 6 (commencing with Section 30500).

The proposed Plan addresses an area and includes improvements that occur within two jurisdictions (unincorporated Los Angeles County and the City of Malibu), as well as National Park Service property. The proposed improvements (trail and park-specific camp facility improvements, etc.) are not likely to occur simultaneously, but will be implemented within different portions of the Plan area as funds and/or additional trail easements and land purchase opportunities become available. The public works plan process allows for an efficient and expeditious process for planning and implementation of public works projects, and in the case of the proposed the Plan, will eliminate the need to coordinate permit processing through separate jurisdictions and/or processing numerous permits for individual, and potentially non-contiguous properties of the Plan area. In place of processing an undetermined number of coastal development permits in separate jurisdictions to implement projects identified in the Plan, proposed improvements are instead subject to the public works plan process that provides consistency in processing and implementation.

The public works plan process does not relieve the proposed Plan improvements from a stringent consistency review with the City's certified Local Coastal Program or the policies of the Coastal Act, as applicable. In fact, the policies, implementation measures, and specific project improvements identified in the Plan must be found consistent with all applicable coastal land use policies, and the Plan is subject to suggested modifications to ensure policy consistency as part of the public works plan process.

Section 30605 of the Coastal Act and Title 14, Section 13356 of California Code of Regulations provides that where a public works plan is submitted prior to certification of the Local Coastal Program for the jurisdiction affected by the public works plan the Commission's standard of review for certification is Chapter 3 of the Coastal Act. Section 30605 and Section 13357 of the Code of Regulations also state that where a public works plan or plan amendment is submitted after the certification of the LCP any such public works plan shall be approved by the Commission only if it finds, after full consultation with the affected local government(s), that it is in conformity with the certified LCP. Therefore, pursuant to Section 30605 of the Coastal Act, upon review of a public works plan for the proposed Plan, the standard of review for the portion of the Plan area within the City is that the proposed Plan is in conformance with the certified Local Coastal Program for the City of Malibu, and the standard of review for the portion of the Plan area within Los Angeles County, is that the proposed Plan is consistent with the Chapter 3 policies of the Coastal Act.

As projects are implemented pursuant to the Plan, once certified as a public works plan by the Commission, project proposals may further be subject to special conditions to ensure project consistency with the approved plan. These consistency determinations are made by the Coastal Commission and are subject to public review and comment. Sections 30605 & 30606 of the Coastal Act and Title 14, Section 13359 of the California Code of Regulations govern the Coastal Commission's review process for development proposed pursuant to a certified public works plan. Section 30606 of the Coastal Act requires the public agency proposing the public works project to provide notice [notice of impending development (NOID)] to the Coastal Commission and other interested parties, organizations and governmental agencies, and to provide data demonstrating that it is consistent with the certified public works plan. Once a NOID is deemed complete it is scheduled for public hearing and the Coastal Commission determines whether the development is consistent with the certified public works plan and whether conditions are required to bring the development into conformance with the approved plan. No construction is permitted to commence until after the Coastal Commission finds the proposed development is consistent with the certified plan. In the event that a proposed project is found inconsistent with the certified public works plan, the agency may choose to submit a coastal development permit application to the appropriate permitting agency, or to amend the public works plan for inclusion of the specific project proposal.

Coastal Development Permit

Absent adoption of a public works plan for the proposed Plan, individual project improvements requiring a coastal development permit would be subject to standard coastal development permit review procedures. As mentioned above, the Plan involves land and development located within the City of Malibu, unincorporated Los Angeles County, and National Park Service land. On September 13, 2002, the Coastal Commission adopted the City of Malibu Local Coastal Program which is the standard of review for all projects requiring a coastal development permit in the City. The Santa Monica Mountains Land Use Plan was adopted by the Coastal Commission in 1986 for the unincorporated Los Angeles County lands of the Santa Monica Mountains; however, the Implementation Plan for the Land Use Plan was never completed and adopted. Therefore, the County does not have coastal development permit jurisdiction for the unincorporated Santa Monica Mountains land area surrounding the City and projects requiring a coastal development permit are thus subject to review for consistency with Chapter 3 policies of the Coastal Act.

Environmental Review

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report in connection with its local coastal program. The

CEQA responsibilities are alternatively assigned to the Coastal Commission's local coastal program review and approval program which has been found by the Resources Agency to be functionally equivalent to the CEQA process. Thus, pursuant to Section 21080.9 of the California Environmental Quality Act, the Coastal Commission is the lead agency responsible for reviewing local coastal programs and local coastal program amendments for compliance with CEQA.

Upon certification by the Coastal Commission of the proposed Overlay pursuant to the local coastal program amendment process, the approved park and recreation improvements will be subject to the coastal development permit review and approval process, or the review and approval process for a public works plan, and associated CEQA requirements, as applicable.