


Memorandum

To : The Conservancy
The Advisory Committee

Date: July 25, 2011

From : 
Joseph T. Edmiston, FAICP, Executive Director

Subject: **Agenda Item 12: Consideration of resolution authorizing the Executive Director to submit an application to the City of Malibu to the Malibu Local Coastal Program pursuant to Public Resources Code Section 30515.**

Staff Recommendation: That the Conservancy authorize the Executive Director to submit an application to amend the Malibu Local Coastal Program pursuant to Public Resources Code Section 30515.

Legislative Authority: Public Resources Code Section 30515 and implementing sections of the California Code of Regulation, 14 CCR Section 13666.

Any person authorized to undertake a public works project...may request any local government to amend its certified local coastal program, if the purpose of the proposed amendment is to meet public needs of an area greater than that included within such certified program that had not been anticipated by the person making the request at the time the local coastal program was before the commission for certification....If the local government does not amend its local coastal program, such person may file with the commission a request for amendment which shall set forth the reasons why the proposed amendment is necessary and how the amendment is in conformity with the policies of this division.

Background:

On January 22, 2007, the Conservancy and the Advisory Committee adopted a resolution authorizing the Conservancy to submit an application directly to the City of Malibu to amend its local coastal program.

After the Conservancy/MRCA submitted the local coastal program amendment (LCPA) to the City Malibu, the Malibu Planning Commission approved the LCPA on October 9, 2007, subject to a number of conditions and recommendations. However, the final action by the City Council on December 5, 2007 resulted in the adoption of a LCPA that reduces the allowed uses of public parkland, restricts access to parks owned by the Conservancy and the MRCA, and generally fails to fulfill the intent of the LCPA as proposed by the Conservancy.

At the December 28, 2007 Conservancy meeting, the Conservancy authorized the Executive Director to submit a Malibu LCPA pursuant to the local coastal program override procedures of the California Coastal Act to include the various park and access improvements.

The Commission approved the amendment at its June 10, 2009 hearing.

On August 23, 2010, the Conservancy certified an environmental impact report for the Malibu Parks Public Access Enhancement Plan - Public Works Plan and adopted the Plan. This plan is described in the attachment hereto.

The City of Malibu challenged the Commission's decision alleging that the Commission's staff report must be circulated for public comment for a minimum of 30 days and further alleging that the Conservancy was required to submit a specific public works project in order to process an amendment to the local coastal program.

The City and Conservancy filed cross motions last summer on these threshold issues. In July of 2010 the court ruled in favor of the Conservancy on both issues. After preparation of the administrative record the remaining issues were briefed for final hearing. The court at the final hearing reversed itself and ruled:

1. The Commission is ordered to require that specific public works projects be identified in any subsequent application pursuant to Public Resources Code section 30515;
2. The Commission is ordered to provide a minimum 30 days public comment period prior to taking any actions as mandated by the due process requirements of Chapter 2 of the California Environmental Quality Act.

Pursuant to 14 CCR Section 13666, the override procedures are applicable to persons authorized to undertake a public works project or proposing energy facility development that requires LCP amendments provided that the development meets the following two requirements:

- (1) unanticipated by the person proposing the development at the time of LCP was before the Commission for certification.
- (2) meets the public needs of an area greater than that included in the certified LCP.