

Agenda Item 14
SMMC
1/7/13

City Council Meeting
01-14-13

**Item
7.B.**

Council Agenda Report

To: The Honorable Members of the City Council

From: Christi Hogin, City Attorney 
On behalf of Mayor La Monte and Mayor Pro Tem House

Date prepared: December 26, 2012 Meeting date: January 14, 2013

Subject: Proposal to Swap Charmlee Wilderness Park for the ~83 acres of Bluffs Park Owned by the State and Operated by the Santa Monica Mountains Conservancy/Mountains Recreation and Conservation Authority (SMMC/MRCA) and Settle SMMC/MRCA v. City of Malibu Los Angeles County Superior Court Case No. SC092212 (Mayor La Monte and Mayor Pro Tem House)

RECOMMENDED ACTION: Direct the City Attorney to negotiate agreements and implementing documents to effect land swap resulting in complete city control over all 93 acres of Bluffs Park and reach resolution in the lawsuit over the uses in Ramirez Park.

FISCAL IMPACT: Unknown fiscal impact, but believed to be no net change to the City's budget. The cost of operating and maintaining Charmlee Park would be saved by the City while the cost to operate and maintain land adjacent to Bluffs work would be incurred. Lawsuit settlement will eliminate future litigation costs.

DISCUSSION: This report discusses two separate proposals, which are offered to the City as a package only. I will describe each component in turn and then what steps will be required should the City wish to proceed. This offer is time-sensitive and some direction is required from the City Council tonight.

Since 1998, the City has owned Charmlee Wilderness Park, which consists of over 532 acres within the Santa Monica Mountains Coastal Slope Environment. Approximately 410 acres of the park are within the incorporated City boundaries. The park includes picnic areas and over 8 miles of hiking trails, native plant displays, and a nature center. The City has a volunteer docent program and offers school and group nature programs, as well as a variety of public hikes and interpretive programs. The City acquired Charmlee from the County in 1998 as part of the settlement of a lawsuit of a major proposed subdivision and residential development in the County adjacent to the City.

The transfer included a restriction that the park be used for passive recreation. Specifically, the restriction reads as follows:

5. **The express condition that the City use, operate and maintain Charmlee Natural Area and the improvements thereon exclusively and in perpetuity for passive public recreation and coastal habitat conservation purposes. "Passive recreation" shall mean resource dependant outdoor recreation, including, but not limited to, nature observation, interpretation and education (including organized or supervised nature walks and astronomy observation), horseback riding, and hiking and picnicking. "Passive recreation," shall be inconsistent with, and shall preclude, any commercial use of Charmlee Natural Area or the improvements thereon (except the existing small gift shop selling items related to the public use of Charmlee Natural Area and the understanding of its resources), and shall further preclude any recreational use depending on structures, including, but not limited to, golf, driving range, tennis, ball fields, volleyball courts, swimming pool, use of powered vehicles of any kind, archery facilities, climbing or repelling towers, or equestrian facilities (except trails). This deed restriction does not preclude those improvements incidental and necessary to the permitted uses, that is, a nature education and interpretation center, a caretaker's residence, public restrooms, public parking, picnicking tables, water supply facilities, and a maintenance facility, provided that any such improvement shall be located in, or in the immediate vicinity of, the entrance area (which encompasses the currently existing parking lots and structures). In the event that ownership or operation of Charmlee Natural Area reverts to the County of Los Angeles, the County shall continue to use, operate and maintain Charmlee Natural Area and the improvements thereon exclusively and in perpetuity for passive public recreation and coastal habitat conservation purposes.**

This deed restriction runs with the land and is in full force and effect regardless of which public entity owns the property.

In 2006, the City acquired from the state 10 of the 93 acres of Bluffs Park. This transaction was a part of a negotiated deal that facilitated the Santa Monica Mountains Conservancy's (SMMC) acquisition of Soka University while allowing the City to acquire the existing turf playing fields at Bluffs. The 10 acres included a deed restriction limited the uses to park uses. The remaining 83 acres are operated by the Santa Monica Mountains Conservancy/Mountains Recreation and Conservation Authority (SMMC/MRCA) and owned by the state.

The current arrangement limits the City's uses of the 10 acres and specifically limits the City's ability to make any changes to the parking lot, which is shared between the City and the SMMC/MRCA. The lack of local control recently frustrated the City's consideration of a plan that would re-configure and increase parking at Bluffs Park; the SMMC rejected the proposal to make any changes to the parking lot.

Recently, Mayor La Monte and Mayor pro Tem House approached Joe Edmiston to see whether SMMC and MRCA had any interest in a swap – Charmlee for the rest of Bluffs. The SMMC and the MRCA are interested in swapping Bluffs Park for Charmlee, if the transaction commences in January, but they also want to resolve the Ramirez Canyon Park lawsuit.

With respect to the land swap, the actual exchange of fee interest will require action by the state of California, which will take time. In order to provide each other immediate benefits of the eventual swap, Mr. Edmiston suggested that the City and the SMMC/MRCA enter into respective \$1-per-year leases which would confer possession of the respective parks while the longer process of transferring title is underway.

With respect to the uses of Ramirez Canyon Park, SMMC proposes to agree to the exact same restrictions that have been in place since 2007, which the City and SMMC negotiated as part of a stipulation to suspend a lawsuit while the SMMC applied for an LCP amendment which would address the uses in the park. The relevant portion of the stipulation reads as follows:

2. That a preliminary injunction (“Preliminary Injunction”) shall issue enjoining and restraining plaintiffs [SMMC/MRCA] from using the property known as Ramirez Canyon Park located at 5750 Ramirez Canyon Road (“Ramirez Canyon Park”) other than for the following ongoing activities (and necessary associated activities) (collectively “Agreed Activities”), which specifically do not include renting out Ramirez Canyon Park for private events and/or parties:
 - A. Administrative and government offices for up to 15 employees
 - B. A residential caretaker and his family
 - C. Two special programs a week for disabled youth and/or for seniors
 - D. Occasional employee training programs
 - E. Ongoing property maintenance

Before these restrictions were in place, the SMMC actively sought to rent the facility for private events, such as weddings. On the occasions that the facility was used for larger events, the neighborhood was overwhelmed and disrupted. Ramirez Canyon Park is 22 acres nestled at the end of a winding, narrow private street exclusively serving a residential neighborhood in a tranquil canyon. The property itself was the former gated estate of Barbra Streisand. There are five homes on the estate and it is accessible by appointment only. The property is bounded on three sides by National Park Service wilderness and includes a section of the regionally significant Coastal Slope Trail.

The restrictions set out above have been in place continuously for the past five years. The SMMC has abided by their terms and the City has not had any complaints from activities at Ramirez since these restrictions have been in place.

For many years the City struggled to find the correct restrictions to ameliorate the adverse impacts of the use of the facility as an event venue and to enforce those restrictions. During the 1990s, the SMMC embarked on an effort to develop a facility rental business for private events. The City requires a Temporary Use Permit for such events and limited their number; further, the Malibu Municipal Code makes violations of the zoning regulations a public nuisance subject to abatement. The SMMC took the position that it was an agency of the state and immune from compliance with the City's laws. A state agency is immune from local regulation unless the Legislature expressly waives immunity in a statute or the California Constitution.

The property is zoned R-1. After the property was donated to the SMMC, it became the headquarters of MRCA and was used for a variety of revenue-raising events to support the Conservancy, including garden tours, weddings, filmings, picnics, banquets, business dinners, receptions, fund raisers, bar mitzvahs, retreats, seminars and conferences. The City filed a lawsuit seeking a judicial declaration that SMMC was subject to the local laws and that an altered streambed on the property violated the California Coastal Act; the lawsuit also sought an injunction to abate the nuisance caused by SMMC's failure to obtain TUPs from the City prior to holding commercial events on the property or a CDP for the streambed alteration. The Court of Appeal held that the Conservancy was subject to the City's zoning. *City of Malibu v. Santa Monica Mountains Conservancy* (2002) 98 Cal.App.4th 460, 1382.

Regrettably, that lawsuit did not resolve the differences between the City and the SMMC/MRCA over the appropriate uses at Ramirez Park. Since the 2002 appellate decision interpreting the statute that created the SMMC as requiring the SMMC to comply with the City's zoning laws, SMMC/MRCA employed two strategies to avoid the City's involvement in determining the appropriate uses. One was to obtain an amendment to the state statute that creates the SMMC and then file a lawsuit against the City claiming that the amendment undid the holding in the 2002 appellate decision. If SMMC were successful in that lawsuit, it could avoid compliance with local laws. The second strategy was to prepare a "Public Works Plan" (PWP) and urge the Coastal Commission to "override" the City's LCP so that the PWP would be consistent with the LCP and the SMMC could avoid having to obtain CDPs from the City for its development implementing a Coastal Commission-approved PWP.

Here is a thumbnail chronology of the highlights these two strategies:

*2005-2006 the SMMC decides it wants to develop a master plan for the development and use of its several park holdings in Malibu (Ramirez, Corral, Escondido, Solstice). The SMMC purports that this plan is a Public Works Plan within the meaning of the Coastal Act. A PWP is subject to approval by the Coastal Commission and avoids the City altogether. Under the Coastal Act, the Coastal Commission may only approve the PWP if it is consistent with the Malibu LCP.

*2006 SMMC sues the City seeking a court order that its uses in Ramirez are permitted, that it is immune from compliance with the City's Municipal Code and that its uses are consistent with the Malibu LCP. The City cross-complains against the SMMC for violations of the Coastal Act (this the Ramirez Canyon Park Lawsuit).

*2006-2007 the City objects to the PWP because the plan is not consistent with the LCP and because the City wants to assure that the development and uses are consistent with the neighboring residential uses. The City and MRCA/SMMC reach agreement in which SMMC applies for an LCP amendment within acceptable parameters.

*2008 SMMC complies with the agreement and applies for an LCP Amendment to accommodate a proposal within the agreed parameters. The City Council approves the SMMC's LCP amendment in part BUT removes all camping and requires a secondary road at Ramirez. These components frustrate the SMMC's goal in part. The City submits the modified LCP Amendment for certification by the Coastal Commission, but the SMMC is no longer satisfied with its content.

*2009 The City is informed that the Coastal Commission, at the SMMC's behest, is considering amending the LCP to accommodate SMMC's plan, whether the City likes it or not, by invoking a previously dormant provision of the Coastal Act that allows the Commission to make such amendments for certain qualifying energy facilities and public work projects. This gave rise to the Override Lawsuit, which the City recently won. The Court of Appeal held that the Coastal Commission exceeded its jurisdiction by purporting to amend the City's certified LCP over its objections to accommodate the SMMC's request. *City of Malibu v. California Coastal Comm'n.* (2012) 206 Cal.App.4th 549.

*2010 Meanwhile, while the Override Lawsuit was pending, the Commission approved the SMMC's PWP, which was consistent with how the Commission changed Malibu's LCP, but not consistent with the unchanged LCP. That action by the Coastal Commission forced us to file another lawsuit to challenge the PWP, in case the courts interpreted the Override provision against the City (which ultimately the court did not do). Due to the statute of limitation and guided by prudence, the City filed the PWP Lawsuit. After the City prevailed in the Override Lawsuit, the Commission agreed to an order revoking the approval of the approval of the PWP. That revocation resolved the PWP Lawsuit in the City's favor.

With the Override and PWP Lawsuits (including the attorneys' fees) resolved in the City's favor, the remaining litigation involves just the second lawsuit over the uses at Ramirez Park.

SMMC and MRCA have indicated that they are interested in proceeding with the land swap (Charmlee for the state-owned portion of Bluffs) on the condition that the City also settle the dispute over the uses at Ramirez Canyon Park. The Ramirez Canyon Park

settlement would include a requirement to restore the riparian habitat disturbed by the unpermitted development at the property and otherwise bring the property into compliance with the Coastal Act.

There are a lot of legal and technical details that need to be worked out to implement this proposal. The proposal requires two leases, an agreement to effectuate the transfer of title, and a settlement agreement, which will need to determine the best way to memorialize the permitted uses.

Tonight the Mayor and Mayor Pro Tem are seeking the Council's direction to proceed with the proposal and general approval of the concept to swap Bluffs (restricted to public park use) for Charmlee (subject to the existing passive recreation restriction) and direct that the final documents be brought back to the City Council for action at the next regular meeting.

ATTACHMENTS:

1. Charmlee Deed (Note the relevant deed restriction is on page 6; Ex. B)
2. Bluffs Park Deed (Note the relevant restriction on Page 8)
3. 2007 Stipulation and MOU reflecting the previously agreed to uses at Ramirez Canyon Park

EXHIBIT C TO QUITCLAIM DEED
MALIBU BLUFFS COMMUNITY PARK
DEED RESTRICTION, COVENANT & CONDITIONS

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These deed restrictions, covenants and conditions are made by and between the State of California (Grantor) and the City of Malibu, a California Municipal Corporation (Grantee) herein.

WHEREAS, Grantor and Grantee for themselves and their successors and assigns agree that the property described in Exhibit "A" is subject to the following restrictions, covenants and conditions;

NOW THEREFORE, the following restrictions, covenants and conditions are imposed for the benefit of the public and have been agreed to by the City freely and voluntarily and for valuable consideration:

City Park Property shall remain open to use by members of the public consistent with general operating rules and regulations established by the City. These rules and regulations shall not substantially differ from the rules and regulations set forth at Malibu Municipal Code Chapter 12.08. The use of the City Park Property is and shall be limited and restricted to those uses that the City Park Property is being used at the time of the transfer of the City Park Property to Grantee including but not limited to youth and adult active and passive recreation, community educational and recreation programs, facility rentals and community events. Grantee agrees that the City Park Property shall also be used by members of the public and by the Santa Monica Mountains Conservancy for the purposes of providing public access to property described in Exhibit "D", including parking on a first come first serve basis, subject only to the provisions of Malibu Municipal Code Chapter 12.08 as enacted as of the date of this conveyance of the City Park Property to the Grantee and consistent with the allowed uses of the City Park Property.

Grantee acknowledges that Grantor may pursue any or all remedies available in law or equity and seek an order of a court of competent jurisdiction to enforce, including enjoining any violation of, this deed restriction. The prevailing party is entitled to reasonable attorney's fees and costs including the costs of appeal.

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Unless specifically modified or terminated in writing by the Grantor, this deed restriction shall remain in full force and effect in perpetuity.

The execution of this deed restriction by Grantor shall constitute an agreement with the Grantee of each provision, term and condition contained herein and shall constitute a covenant running with the land, which shall be binding upon the heirs, devisees, assigns, transferees, and successors in interest of Grantee.

If any sentence, clause, phrase or portion of this deed restriction is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this deed restriction.

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1 process that may lead to a resolution of the matters raised in this case without further
2 litigation, and have entered into a Memorandum of Understanding dated January 23,
3 2007 ("MOU") setting forth their agreement, a true and correct copy of which is attached
4 hereto as Exhibit A and incorporated herein;

5 WHEREAS, that process requires a series of duly noticed public hearings that are
6 anticipated to occur in the next six to twelve months;

7 WHEREAS, while these administrative procedures are pending, the parties wish to
8 stay this action in its entirety ("Pending Action") and preserve the *status quo* as provided
9 in this Stipulation for Entry of Preliminary Injunction and Stay of Litigation;

10 WHEREAS, the parties agree that, during the pendency of the preliminary
11 injunction and stay of litigation sought to be entered through this Stipulation
12 ("Preliminary Injunction and Stay"), plaintiffs' ongoing activities identified below will be
13 treated as if they are in compliance with the City's Local Coastal Plan ("LCP"), the
14 California Coastal Act (Public Resources Code section 30000, *et seq.*) ("Coastal Act"),
15 and other City ordinances;

16 WHEREAS, the parties believe that the interests of justice will be advanced, and
17 that good cause exists for entry of the Preliminary Injunction and Stay, as stipulated
18 below;

19 WHEREAS, the parties have agreed, without waiving any of their respective
20 rights and positions, including, without limitation, those each has asserted in the Pending
21 Action, to stipulate to the entry of Preliminary Injunction and Stay, and have executed
22 this Stipulation on the condition that these be approved by this Court;

23 WHEREFORE, the parties hereby stipulate, through their respective counsel of
24 record, and respectfully request the Court to issue the Preliminary Injunction and Stay, as
25 follows:

26 1. That the Pending Action be stayed pending final action on plaintiffs'
27 application for an amendment to the Malibu Local Coastal Program ("LCP") as set forth
28 in the MOU, or until the MOU is terminated, whichever occurs first (the "Stay").

1 2. That a preliminary injunction (“Preliminary Injunction”) shall issue
2 enjoining and restraining plaintiffs from using the property known as Ramirez Canyon
3 Park, located at 5750 Ramirez Canyon Road (“Ramirez Canyon Park”), other than for the
4 following ongoing activities (and necessary associated activities) (collectively, “Agreed
5 Activities”), which specifically do not include renting out Ramirez Canyon Park for
6 private events and/or parties:

- 7 A. Administrative and government offices for up to 15 employees.
- 8 B. A residential caretaker and his family.
- 9 C. Two special programs a week for disabled youth and/or for seniors.
- 10 D. Occasional employee training programs.
- 11 E. On-going property maintenance.

12 3. That the Preliminary Injunction shall also enjoin and restrain the City from
13 taking any enforcement action or proceeding against plaintiffs, or either of them, other
14 than this Pending Action, on or with respect to the Agreed Activities, or any of them,
15 whether under the LCP, the Coastal Act or City ordinances, except that any of the parties
16 hereto may seek to enforce this stipulated Preliminary Injunction.

17 4. That the Preliminary Injunction shall be dissolved upon the occurrence of
18 the earlier of any of the following events:

- 19 A. The entry of final judgment in the Pending Action.
- 20 B. The dismissal of the Pending Action in its entirety by the parties or this
21 Court.
- 22 C. The approval of plaintiffs’ activities at Ramirez Canyon Park by the
23 California Coastal Commission or the City.
- 24 D. Plaintiffs’ delivery to the City of a written notice that they have abandoned
25 the administrative process through which they were seeking approval by the City of their
26 activities at Ramirez Canyon Park.
- 27 E. The filing with this Court of a written declaration by the City stating that
28 (1) plaintiffs have delivered to the City a written notice that plaintiffs have abandoned the

1 administrative process through which they sought approval by the City of their activities
2 at Ramirez Canyon Park, and (2) the 90-day period following the City's receipt of the
3 notice of abandonment, during which the MOU requires the parties to participate in
4 voluntary mediation before the Hon. Steven J. Stone (Ret.), has expired.

5 5. That no undertaking shall be required of any party in connection with the
6 Stay and Preliminary Injunction, and that during the pendency of the Stay and
7 Preliminary Injunction, no party shall seek to require any other party to provide any such
8 undertaking.

9 6. That the status conference currently set for April 11, 2007, shall be
10 continued to August 10, 2007 at 8:30 a.m. in Department M of the above-entitled court,
11 or to such other date and time as may be convenient to this Court.

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13 Dated: February 8, 2007

RICHARDS, WATSON & GERSHON

14
15 By: 

16 Steven R. Orr

17 Attorneys for SANTA MONICA
18 MOUNTAINS CONSERVANCY

19 Dated: February 8, 2007

PAUL, HASTINGS, JANOFSKY & WALKER, LLP

20
21 By: 

22 A. Catherine Norian

23 Attorneys for MOUNTAINS
24 RECREATION & CONSERVATION
25 AUTHORITY

26 Dated: February 9, 2007

CITY OF MALIBU

27 By: 

28 Christi Hogin
City Attorney

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1 [PROPOSED] ORDER
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3 Upon the Stipulation of the parties, set forth above, and for good cause shown, IT
4 IS HEREBY ORDERED:

5 1. This action is stayed in its entirety ("Pending Action") pending final action
6 on the application submitted by plaintiffs and cross-defendants (collectively, "plaintiffs")
7 to defendant and cross-complainant ("City") for an amendment to the Malibu Local
8 Coastal Program ("LCP") as set forth in the Memorandum of Understanding attached as
9 Exhibit A hereto ("MOU"), or until the MOU is terminated, whichever occurs first.

10 2. Plaintiffs are hereby enjoined and restrained during the pendency of the
11 Pending Action from using the property located at 5750 Ramirez Canyon Road
12 ("Ramirez Canyon Park") other than for the following ongoing activities (and necessary
13 associated activities) ("Agreed Activities"), which specifically do not include renting out
14 Ramirez Canyon Park for private events and/or parties:

- 15 A. Administrative and government offices for up to 15 employees.
16 B. A residential caretaker and his family.
17 C. Two special programs a week for disabled youth and/or for seniors.
18 D. Occasional employee training programs.
19 E. On-going property maintenance.

20 3. The City is hereby enjoined and restrained during the pendency of the
21 Pending Action from taking any enforcement action or proceeding against plaintiffs, or
22 either of them, other than the Pending Action, on or with reference to the Agreed
23 Activities, or any of them, whether under the LCP, Coastal Act or City ordinances.

24 4. Notwithstanding the foregoing, any of the parties may seek to enforce this
25 preliminary injunction in the manner provided by law.

26 5. This preliminary injunction will be dissolved upon the occurrence of the
27 earlier of any of the following events:

- 28 A. The entry of final judgment in this Pending Action.

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B. The dismissal of the Pending Action in its entirety by the parties or this Court.

C. The approval of plaintiffs' activities at Ramirez Canyon Park by the California Coastal Commission or the City.

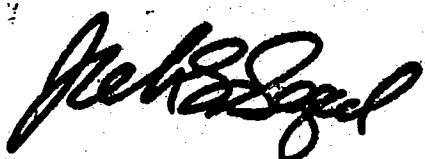
D. Plaintiffs' delivery to the City of a written notice that they have abandoned the administrative process through which they were seeking approval by the City of their activities at Ramirez Canyon Park.

E. The filing with this Court of a written declaration by the City stating that (1) plaintiffs have delivered to the City a written notice that plaintiffs have abandoned the administrative process through which they sought approval by the City of their activities at Ramirez Canyon Park, and (2) the 90-day period following the City's receipt of the notice of abandonment, during which the MOU requires the parties to participate in voluntary mediation before the Hon. Steven J. Stone (Ret.), has expired.

6. No undertaking will be required of any party, and no party shall seek any such undertaking from any other party, at any time during the pendency of the preliminary injunction and stay.

7. The status conference currently set for April 11, 2007, is continued to August 10, 2007 at 8:30 a.m. in Department M of the above-entitled court.

Dated: MAR 08 2007



JOHN J. SEGAL
Judge of the Superior Court

MEMORANDUM OF UNDERSTANDING AGREEMENT

This Memorandum of Understanding Agreement ("MOU") is entered into by and between the CITY OF MALIBU, a California municipal corporation (hereinafter "City"), on the one hand; and the Santa Monica Mountains Conservancy ("SMMC" or the "Conservancy"), a California state agency formed and existing pursuant to the Santa Monica Mountains Conservancy Act, codified as Public Resources Code section 33000 *et seq.*, and the Mountains Recreation and Conservation Authority ("MRCA"), a joint powers authority created pursuant to the Joint Exercise of Power Act, codified as Government Code section 6500 *et seq.*, and composed of the Conservancy and two local recreation and park districts, the Rancho Simi Recreation and Park District and Conejo Recreation and Park District, (collectively referred to as "SMMC/MRCA"), on the other hand. Together the City and the SMMC/MRCA are sometimes referred to herein as "the parties."

RECITALS

- A. In early 2006, the SMMC/MRCA began preparation of a comprehensive development plan for its properties in and around the City of Malibu and for property it does not presently own but wishes to acquire. The SMMC/MRCA titled the document the "Malibu Parks Public Access Enhancement Plan Public Works Plan" ("Public Works Plan"). The Public Works Plan is a comprehensive planning document purporting to regulate and govern future development on property within its "planning area."
- B. The City contends that the Public Works Plan constitutes a discretionary project within the meaning of Public Resources Code section 21080, subd. (a) and, therefore, is subject to the California Environmental Quality Act ("CEQA") and the CEQA Guidelines. The SMMC/MRCA contends, *inter alia*, that the Public Works plan is reviewed in the same manner prescribed for the review of local coastal programs, and is exempt from CEQA under Public Resources Code section 30605 and the same provisions of CEQA and the CEQA guidelines that exempt LCP amendments from CEQA.
- C. The City further contends that the Public Works Plan is inconsistent with the Malibu LCP and therefore invalid and/or uncertifiable. The SMMC/MRCA contends, *inter alia*, that the Public Works Plan is consistent with the Malibu LCP, that the SMMC/MRCA is immune from local land use regulations and that no coastal development permit is required for any of its activities or proposed activities because they are each either within the legal ambit of the Public Works Plan or not development within the meaning of the Coastal Act.
- D. The SMMC/MRCA filed a lawsuit in the Los Angeles County Superior Court seeking declaratory relief regarding its contentions with respect to the use of the Ramirez Canyon Park. That lawsuit is designated LACSC Case No. SC 92212. City has filed an answer and cross complaint in Case No. SC 92212. The City has also filed a petition for writ of mandate and complaint for declaratory relief against the SMMC/MRCA.

challenging its noncompliance with CEQA and use the Public Works Plan for its proposed development. That lawsuit is designated LACSC Case No. BS 106878 Together these cases are referred to as the "Pending Litigation."

- E. The parties have met and discussed their differences. Each party has determined that it is in the best interest of all interested parties to attempt to resolve the differences through employing the provisions of the Coastal Act and the Malibu Local Coastal Program which provide for amendment to the Malibu LCP. The parties further agree that they will enter into and participate in the LCP amendment process in good faith; however, both parties wish to preserve their legal rights and positions and participate without prejudice to those respective rights and positions.
- F. The parties recognize that the LCP amendment process may take many months to complete and will require, inter alia, duly noticed public hearings before the Malibu Planning Commission, the Malibu City Council and the California Coastal Commission. In order to address in the interim certain of the pressing issues that will be addressed by the LCP amendment, the parties agree, without waiving any of their respective rights and positions, including, without limitation, those asserted in the Pending Litigation, that the City and SMMC/MRCA will stipulate to a preliminary injunction ("Preliminary Injunction") which will, pending the conclusion of the procedures contemplated herein, maintain the status quo with respect to the use of Ramirez Park and will otherwise limit the use of the Ramirez Park facility while the LCP amendment process is on-going, and which will stay the proceedings in the Pending Litigation and the City's enforcement against SMMC/MRCA of its LCP and the Coastal Act.
- G. This MOU sets forth the terms and conditions and mutual understanding of the parties relative to the foregoing.

NOW, THEREFORE, in consideration of the foregoing and of the promises and covenants set forth herein, and without waiving any of their respective rights and positions, including, without limitation, those asserted in the Pending Litigation, the parties agree as follows:

- 1. Obligations of the SMMC/MRCA. The SMMC/MRCA shall be responsible for the following:
 - 1.1 Within two weeks of the execution of this MOU, or as soon thereafter as the SMMC can make its quorum, the SMMC shall hold a public hearing to consider rescission of Resolution No. 06-91 adopted November 29, 2006, and any other action it took to approve the Public Works Plan and MRCA shall hold a public hearing to consider rescission of Resolution No. 06-174 and any other action it took to approve the Public Works Plan. If the Conservancy or the MRCA fails to rescind the Resolutions, this

agreement shall be null and void without the necessity of any further action by either party.

- 1.2 Within ninety (90) days of the execution of this MOU the SMMC/MRCA shall submit to the City a complete application for an amendment to the Malibu LCP, which shall be in the nature of a comprehensive, specific, area or public works plan, and which shall include the substantive proposals for planning and development that the SMMC/MRCA wishes to propose.
 - 1.3 The SMMC/MRCA shall amend its Public Works Plan to submit as an LCP amendment with at least the following changes:
 - 1.3.1 Overnight camping in Escondido shall be eliminated if camping is included at Charmlee Wilderness Park;
 - 1.3.2 Overnight camping (in a program run by the SMMC/MRCA) shall be proposed in Charmlee Wilderness Park;
 - 1.3.3 An expansion of the City's shuttle service (currently connecting the Headlands with Zuma beach) shall be proposed to include Charmlee Nature Preserve, Corral Canyon Park as well as the Point Dume Headlands and Zuma Beach. This proposal may include the use of the City's Prop A funds as appropriate and needed, which funds the City will cooperate in making available to SMMC/MRCA.
2. Obligations of the City. The City shall be responsible for the following:
- 2.1 The City shall in good faith make staff from its Planning and Parks & Recreation departments available for pre-application review. The purpose of this obligation is to assure that the SMMC/MRCA's application is complete and avoid unnecessary delays in processing the SMMC/MRCA's LCP amendment application;
 - 2.2 The City shall accept for processing a complete LCP amendment application and shall hold the necessary public hearings and reach a final determination within 180 days receipt of a complete application. The parties agree that a complete

application for the LCP amendment contemplated by this MOU consists of the required processing fee and the following:

- 2.2.1 Summary of Public Notice and Participation;
 - 2.2.2 Policies, plans, standards, objectives, diagrams, drawings, maps, photographs contained in the current PWP as adopted;
 - 2.2.3 Supplementary data (special studies) contained in the current PWP as adopted related to biology, traffic, geology, creek restoration, accessibility, fire protection and emergency evacuation, as revised to reflect project changes;
 - 2.2.4 Public access component of the LCPA, included in chapter 3 of the current PWP as adopted;
 - 2.2.5 Planning Area Map, showing the location of the properties included in the plan, the location of all highways, streets and alleys, public easements or Offers to dedicate Public Easements and all lots and parcels of land within a distance of five hundred feet from the exterior boundaries of the property involved included as figures in the current PWP as adopted and as revised to reflect project changes;
 - 2.2.6 Summary of amendment's relationship to and effect on other sections of the certified LCP and analysis that demonstrates conformity with the requirements of Chapter 6 of the Coastal Act;
 - 2.2.7 Zoning measures/implementation that will be used to carry out the amendment to the land use plan, included as Implementation measures of the current PWP as adopted.
- 2.3 In light of the stipulated preliminary injunction constraining the use of Ramirez Canyon Park as referred to in (paragraph 3.2 below) and the agreement to apply for an LCP amendment (as referred to in paragraph 1.2 above), which, if approved and certified, will resolve any possible inconsistencies with the Malibu LCP or Municipal Code, aside from the cross-complaint and its defense in LACSC case No. SC092212 the City will not

take enforcement action against the SMMC/MRCA, including, without limitation, under the LCP or Coastal Act, during the term of this MOU, except that any of the parties may seek, as necessary, to enforce the Preliminary Injunction.

3. Joint Obligations. The City and the SMMC/MRCA also agree as follows:
 - 3.1 The parties agree to stay the Pending Litigation until final action is taken on the LCP amendment and to cooperate with one another in obtaining the Preliminary Injunction and a stay of the Pending Litigation from the court. The intention of this obligation is to minimize costs associated with the Pending Litigation and avoid the parties' use of resources prosecuting or defending the Pending Litigation.
 - 3.2 The parties agree to stipulate to a preliminary injunction enjoining the SMMC/MRCA's use of Ramirez Canyon Park and further enjoining the City as set forth in the proposed Preliminary Injunction attached hereto as Exhibit A in the form attached hereto as Exhibit A.
 - 3.3 The parties shall cooperate to secure changes, if any required, to the deed restrictions for Charmlee Wilderness Park in order to allow overnight camping in the park.
 - 3.4 The parties agree to defend, and cooperate with one another to defend, any challenge to this MOU, the attached Preliminary Injunction, and the LCP Amendment approved by the City.
 - 3.5 The parties further agree that if any court enjoins, restrains or otherwise prohibits the SMMC/MRCA from conducting the ongoing activities described in the Preliminary Injunction attached hereto as Exhibit A, the SMMC/MRCA can elect to terminate this MOU effective immediately upon giving notice to the City under the notice provisions set forth at Paragraph 6, below, and each party shall bear its own attorneys fees and costs incurred in connection with this MOU and the attached Preliminary Injunction.
4. Not an Impairment of the Police Powers. Nothing in this agreement is meant to nor shall be construed to constrain or impair the City's police powers impermissibly in connection with any decision it shall make in connection with the proposed LCP amendment or any other matters

contemplated by this MOU.

5. Dismissal or Resumption of Pending Litigation.

5.1 If the City Council approves an LCP amendment acceptable to the SMMC/MRCA and the Coastal Commission thereafter certifies that LCP amendment as approved by the City or suggests modifications acceptable to both the City and the SMMC/MRCA, in their sole, independent and respective discretion, the parties shall dismiss the Pending Litigation within two weeks after the issuance by the City of a CDP which applies to Ramirez Canyon Park consistent with and pursuant to the certified LCP amendment. The dismissal shall be without prejudice and all parties shall bear their own costs and attorneys fees. In the event the City dismisses its petition for writ of mandate and complaint for declaratory relief in Case No. BS 106878 following the rescission by the SMMC and MRCA of the resolutions and actions taken to approve the Public Works Plan, as provided in paragraph 1.1 above, the parties agree that each shall bear its own costs and attorneys fees in that action.

5.2 If the City Council fails to approve an LCP amendment acceptable to the SMMC/MRCA or the Coastal Commission fails to certify the LCP amendment approved by the City Council or the Coastal Commission insists on modifications unacceptable to either the SMMC/MRCA or the City, the MOU is terminated and the parties may resume the Pending Litigation and neither party shall use this MOU or any actions taken to implement it as evidence or a defense in the Pending Litigation (except with respect to any claims of laches, waiver, estoppel or the expiration of a statute of limitation that has not expired as of the date this MOU is executed).

6. Notices. All notices of matters under this MOU shall be given in writing by first class mail, personal delivery or facsimile. Mailed notices shall be addressed or transmitted as set forth below, but either party may change its address or facsimile number by giving written notice thereof to the other parties in accordance with the provisions of this paragraph:

CITY: City of Malibu
ATTN: City Manager
23815 Stuart Ranch Road
Malibu, CA 90265

FAX (310) 456-2760

SMMC/MRCA: Mountains Recreation & Conservation Authority
ATTN: Joseph T. Edmiston Executive Officer
570 West Avenue 26, Suite 100
Los Angeles, California 90065
FAX (323) 221-9934

With copy to:

Paul, Hastings, Janofsky and Walker, LLP
ATTN: Robert I. McMurry, Esq.
515 S. Flower Street, 25th Floor
Los Angeles, California 90071

Santa Monica Mountains Conservancy
ATTN: Joseph T. Edmiston, Executive Director
5750 Ramirez Canyon Road
Malibu, California 90265
FAX (310) 589-3207

With copy to:

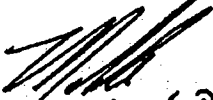
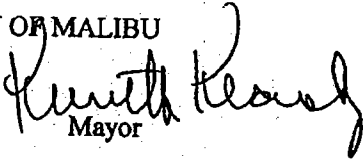
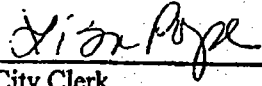
Richards, Watson and Gershon
ATTN: Steven H. Kaufmann, Esq.
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071
FAX (213) 626-0078

7. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this MOU. Any action, suit or proceeding related to or arising from this MOU shall be filed in the Los Angeles County Superior Court.
8. Term. This MOU shall commence upon execution by the parties and shall remain in effect until all obligations hereunder have been performed. A failure to perform any material obligation of this MOU constitutes a material breach. In the event of a material breach of this MOU, the non-breaching party shall give written notice to the other party, pursuant to Paragraph 6 above, specifying the purported material breach. The parties agree to meet and confer within seven calendar days of such written notice in an effort to cure the breach. If the parties are unable to reach agreement

within that seven-day period, the parties agree to mediation before the Hon. Steven J. Stone (Ret.) ("Mediator") at the offices of JAMS and the non-breaching party shall contact the Mediator for that purpose within fourteen calendar days of written notice of the breach. If Justice Stone is not available to act as Mediator the parties agree to use best efforts to mutually agree upon the selection of another JAMS mediator. If the parties are unable to reach agreement within fourteen calendar days of being notified that Justice Stone is not available to act as the Mediator, then, within the next seven calendar days, SMMC/MRCA shall choose a JAMS mediator and the City shall choose a JAMS mediator for the purpose of having those two mediators choose a third JAMS mediator, and the three mediators shall conduct the mediation. The MRCA/SMMC on the one hand and the City on the other agree to share the costs of mediation equally. The parties agree that the Mediator's decision shall be binding upon all parties.

9. No Third Party Beneficiaries. This MOU is made and entered into for the sole benefit of the parties hereto. No other person shall have any right of action based upon any provision of this MOU.
10. Joint Preparation. This MOU shall be deemed to have been prepared jointly and equally by the parties, and none of its terms shall be construed against any party on the ground that the party prepared the MOU or caused it to be prepared.
11. Entire Agreement. This MOU constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings, both written and oral. This MOU may not be modified or amended except in a writing signed by all parties hereto.
12. Authority to Execute. The persons executing this MOU on behalf of each of the parties warrant and represent that they have the authority to execute this MOU on behalf of the party for whom they execute and have the authority to bind the party to the obligations hereunder.
13. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be considered to be an original agreement and all of which together shall be considered to be but one enforceable agreement.

IN WITNESS WHEREOF, the parties have executed this MOU as of the dates set forth below.

<p>MOUNTAINS RECREATION CONSERVATION AUTHORITY</p> <p>By:  Michael D. Berger</p> <p>Dated: January <u>30</u>, 2007</p> <p>CITY OF MALIBU</p> <p>By:  Mayor</p> <p>Dated: January <u>23</u>, 2007</p> <p>ATTEST:</p> <p> City Clerk (seal)</p>	<p>SANTA MONICA MOUNTAINS CONSERVANCY</p> <p>By: Elizabeth A. Cheadle, Chair</p> <p>Dated: January <u>1</u>, 2007 <i>February</i></p>
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