

ORDINANCE NO. 405

AN ORDINANCE OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT NO. 09-006 AMENDING THE LOCAL IMPLEMENTATION PLAN TO ESTABLISH A TRAIL DEDICATION INCENTIVE PROGRAM AND THE PARKLAND AND TRAILS DEDICATION INCENTIVE PROGRAM MAP; AND REPEALING ORDINANCE NO. 358

The City Council of the City of Malibu does hereby ordain as follows:

SECTION 1. Recitals.

A. On April 25, 2011, the City Council adopted Resolution No. 11-15 approving Local Coastal Program Amendment (LCPA) No. 10-003 and General Plan Amendment (GPA) No. 10-003, amendments to the LCP and General Plan to update the City's Park Land Map, and incorporate it into the LUP and General Plan Open Space and Recreation Element.

B. On May 23, 2011, the City Council adopted Ordinance No. 358, approving LCPA No. 09-006, amendments to the Local Implementation Plan (LIP) to create development incentives for trail dedications.

C. On August 19, 2011, the City submitted the amendments to the California Coastal Commission (CCC) for its review and certification.

D. On September 22, 2014, the CCC determined that the City's amendment submittal, identified by the CCC as MAL-MAJ-2-11-B (Parkland and Trails System Map and Trail Incentive Plan), was in proper order and legally adequate to comply with the submittal requirements of California Coastal Act.

E. On November 13, 2014, the CCC granted a one-year time extension to act on the City request for the LCPA.

F. On December 10, 2015, the CCC held a public hearing and conditionally certified LCPA No. MAL-MAJ-2-11-B with suggested modifications.

G. On March 17, 2016, a Notice of City Council Public Hearing to be held on April 11, 2016, was published in a newspaper of general circulation within the City and was mailed to all interested parties; homeowner's associations on record with the City; regional, state and federal agencies affected by the amendments; and media; and the CCC. A public notification announcement was posted on the City's Channel 3, and published in the Malibu Surfside News and the Malibu Times. The proposed Parkland and Trails Dedication Incentive Program Map, revised LCP Park Lands Map and General Plan Figure OS-2 (Malibu / Santa Monica Mountains Area Trail System) were made available for public review on the City's website, Malibu City Hall, and the Malibu Library.

H. On April 11, 2016, the City Council continued the item to the May 9, 2016 Regular City Council meeting to allow staff additional time to discuss with the California Coastal Commission specific implementation procedures.

SECTION 2. Environmental Review.

In accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This application is for amendments to the LCP, which must be certified by the CCC before it takes effect.

SECTION 3. Local Coastal Program Amendments.

LCPA No. 09-006 includes amendments to the LIP. The corollary amendments to the LUP (LCPA No. 10-003) and to the General Plan (GPA No. 10-003) are included in Resolution No. 16-14. Consistent with the CCC's December 10, 2015 conditional certification of MAL-MAJ-2-11-B, the City Council hereby amends the LIP as follows:

A. Amend LIP Section 12.6.7(A) (Legal Description of an Accessway: Recordation) to read as follows:

A. An access dedication (offer to dedicate or grant of easement) required pursuant to Section 12.4 of the Malibu LIP or offered by a property owner pursuant to Section 13.30 of the Malibu LIP, or otherwise volunteered, shall be described, in the condition of approval of the permit or other authorization for development in a manner that provides the public, the property owner, and the accepting agency with the maximum amount of certainty as to the location of the accessway. As part of the condition of approval, easements shall be described as follows: (1) for lateral access: along the entire width of the property from the mean high tide line landward to a point fixed at the most seaward extent of development (as applicable): the toe of the bluff, the intersection of sand with toe of revetment, the vertical face of seawall, or other appropriate boundary such as dripline of deck. On beachfront property containing dune ESHA the required easement for lateral public access shall be located along the entire width of the property from the mean high tide line landward to the ambulatory seawardmost limit of dune vegetation; (2) for blufftop access or trail access: extending inland from the bluff edge or along the alignment of a recreational trail; (3) for vertical access: extending from the road to the mean high tide line (or bluff edge).

B. Amend Appendix 2 (MAPS) of the LIP to include the "Parkland and Trails Dedication Incentive Program Map" included as Exhibit A to this ordinance.

- C. Add LIP Section 13.30 (Trail Dedication Incentive) to read as follows:

13.30 Trail Dedication Incentive

The purpose of this section is to provide a mechanism for the approving body, in the process of reviewing a coastal development permit, to consider changes to standards or requirements of the LCP as applied to the coastal development permit. In reviewing a coastal development permit, the approving body can process a trail dedication incentive to allow for a deviation from standards required in the LCP for the specific situations listed in LIP Sections 13.30.1(A), (B), and (C).

Application for a trail dedication incentive shall be filed as part of the coastal development permit and shall be processed consistent with provisions of this chapter.

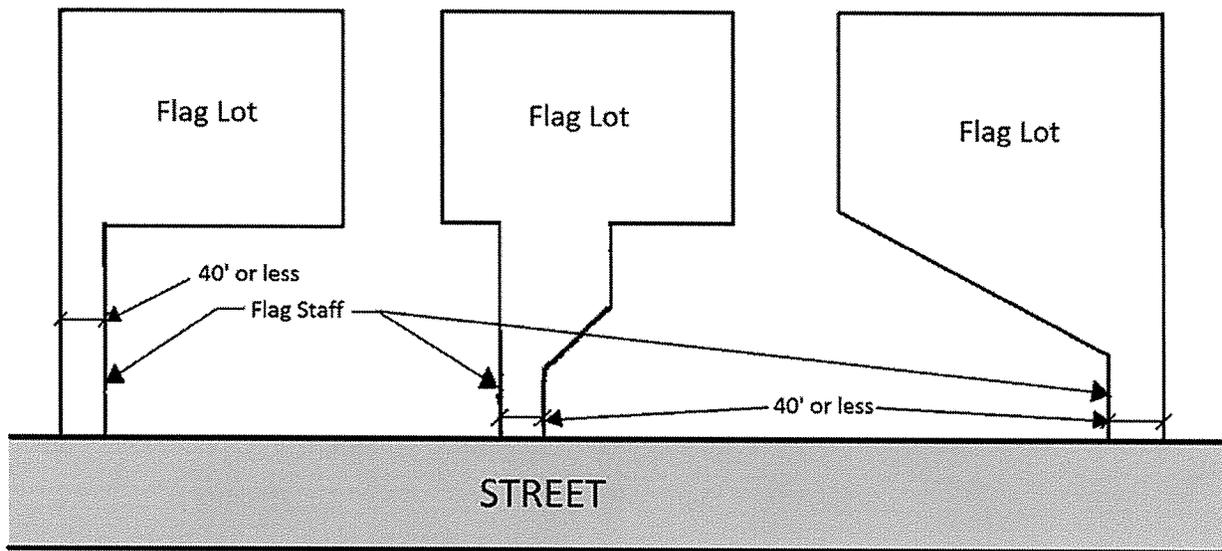
13.30.1 Applicability

- A. When either an offer to dedicate or grant of easement is volunteered by a property owner for a public trail easement on a residentially-zoned property, the approving body may grant a trail dedication incentive subject to the following requirements:
1. A development incentive may be granted for feasible trail alignments identified on the Parkland and Trails Dedication Incentive Program Map located on the landward side of the first public road paralleling the sea. The approving body may also grant a development incentive for a trail not identified on the map if it: 1) provides adequate connectivity in locations determined to link recreational areas to the coast, or provides alternate recreation and access opportunities pursuant to the access and recreation policies of the LCP; 2) can be constructed and used by the public in a feasible manner; and 3) the proposed trail easement area is of a sufficient width for the design of any necessary switchbacks, future trail construction, and maintenance. The proposed trail easement area shall be a minimum of 10 feet in width, unless the approving body finds that it is not feasible to provide a 10 foot wide trail easement area and that the reduced trail easement width will allow for the construction of a safe, useable public trail.
 2. Only one development incentive listed in LIP Section 13.30.1(B) may be granted per offer to dedicate or grant of easement.
 3. The requested development incentive may not: (a) result in an impact to an area defined as an environmentally sensitive habitat area (ESHA); or (b) require the removal of, or encroachment into the root zone of, any protected oak, walnut, sycamore, alder, toyon, or other native trees that are not otherwise protected as ESHA.
 4. Applicable public access provisions contained in Chapter 12 of the LIP shall apply, including that prior to the issuance of the coastal development permit associated with the trail dedication incentive, the property owner must execute and record the trail offer to

dedicate or direct grant of easement that is in a form and content acceptable to the California Coastal Commission. Direct grant of trail easement shall be preferred when an accepting agency is available and willing at the time of processing.

5. For projects approved after September 13, 2002, involving property on which a property owner voluntarily offered to record an irrevocable offer to dedicate a trail easement or to grant a trail easement as part of a prior coastal development permit and the property owner provides evidence that the trail easement has been granted to, or the offer to dedicate accepted by, a public agency or private association approved by the Coastal Commission, one development incentive may be applied to a future project on the same parcel over which the trail easement was offered or granted, subject to the approval of a new coastal development permit, as applicable. In the event a previous offer to dedicate has since expired, a new offer to dedicate or grant of easement shall be required for a development incentive. A trail dedication incentive shall be requested and processed according to the provisions of this section.
- B. The approving body may grant one of the following development incentives for a trail dedication incentive. For flag lots, the development incentive shall be reduced by 50 percent for any offer to dedicate or grant of easement that is 40 feet or less in width across the narrow staff portion of the flag lots where access is taken from.

Figure 1.



1. Front Yard Setback

- a. Seventy-five (75) percent reduction in the front yard setback requirement specified in LIP Section 3.6(F)(1), provided that a minimum five foot setback shall remain.
- b. This incentive may not be used in combination with a minor modification request for a front yard setback reduction specified in LIP Section 13.27.1(B)(1).

2. Side Yard Setback

- a. Forty percent reduction in the side yard setback requirement specified in LIP Section 3.6(F)(2), provided that a minimum five foot setback shall remain.
- b. This incentive may not be used in combination with a minor modification request for a side yard setback reduction specified in LIP Section 13.27.1(B)(1).

3. Rear Yard Setback

- a. Forty percent reduction in the rear yard setback requirement specified in LIP Section 3.6(F)(3), provided that a minimum five foot setback shall remain.
- b. This incentive may not be used in combination with a minor modification request for a rear yard setback reduction specified in LIP Section 13.27.1(B)(1).

4. Grading

- a. Grading amounts may be increased by up to 250 cubic yards over the maximum allowed cubic yardage specified in LIP Section 8.3, not to exceed a maximum of 1,250 cubic yards.

5. Impermeable Coverage

- a. Ten percent increase in the maximum allowed impermeable coverage required by LIP Section 3.6(I), not to exceed a maximum of 27,500 square feet.

6. Total Development Square Footage

- a. Five percent increase in the maximum allowed total development square footage specified in LIP Section 3.6(K).

7. Basement

- a. An additional 1,000 square feet shall not count toward the total development square footage, in addition to the initial 1,000 square feet specified in LIP Section 3.6(K)(3), not to exceed a maximum of 2,000 square feet.
- b. Additional area in excess of 2,000 square feet shall be included in the calculation of total development square footage as specified in LIP Section 3.6(K)(3).

8. Subterranean Garage

- a. An additional 1,000 square feet shall not count toward the total development square footage, in addition to the initial 1,000 square feet specified in LIP Section 3.6(K)(4), not to exceed a maximum of 2,000 square feet.
- b. Additional area in excess of 2,000 square feet shall be included in the calculation of total development square footage as specified in LIP Section 3.6(K)(4).

9. Cellar

- a. An additional 1,000 square feet shall not count toward the total development square footage, in addition to the initial 1,000 square feet specified in LIP Section 3.6(K)(5), not to exceed a maximum of 2,000 square feet.
- b. Additional area in excess of 2,000 square feet shall be included in the calculation of total development square footage as specified in LIP Section 3.6(K)(5).

10. Combinations of Basements, Cellars and/or Subterranean Garages

- a. An additional 1,000 square feet shall not count toward the total development square footage, in addition to the initial 1,000 square feet specified in LIP Section 3.6(K)(6), not to exceed a maximum of 2,000 square feet.
- b. Additional area in excess of 2,000 square feet shall be included in the calculation of total development square footage as specified in LIP Section 3.6(K)(6).

11. Fences and Walls

- a. Two foot increase in the maximum allowed non-view permeable fence or wall height specified in LIP Sections 3.5.3(A)(1 through 3), not to exceed a maximum height of 66 inches in front yards or eight feet in side or rear yards. Fences and walls shall be consistent with the scenic/visual protection policies of the LCP.

- b. Non-view permeable fences or walls exceeding a height of 42 inches in front yards or six feet in side or rear yards shall only be permitted in areas to provide adequate privacy from public views from the trail. For the purpose of providing privacy to the property owner, the fence or wall location shall be oriented near the trail easement only. The remainder of any proposed fencing or walls on the subject property shall be in compliance with the development standards, including height and materials, specified in LIP Sections 3.5.3(A)(1 through 3).
 - c. Fence or wall heights shall be reviewed by the City Biologist for potential impacts to wildlife corridors.
 - d. Fences or walls that are oriented toward a public trail shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape and shall be located outside of the dedicated easement.
 - e. Landscaping in excess of six feet, not to exceed eight feet at full maturity, may be located on the trail-facing side of a fence or wall where there is no possibility of blocking private and public primary views.
 - f. All landscaping plans must receive final approval from the City Biologist.
- C. In addition to the development incentives listed in Section B above, the following provisions shall apply to a trail dedication incentive, as applicable, and subject to approval by the approving body.
- 1. Grading associated with trail construction shall be exempt from the per parcel grading requirements in LIP Section 8.3(B)(1). Trails shall be sited and designed to minimize grading and landform alternation to the maximum extent feasible.
 - 2. Structures considered necessary for trail construction shall be exempt from the slope requirements of LIP Section 3.6(J) if determined to be geologically feasible by City Geotechnical staff. The use of structures shall be minimized to the maximum extent feasible and shall comply with the scenic/visual protection policies of the LCP. Such structures may include but are not limited to stairs, retaining walls, and turnouts necessary for feasible trail construction.
 - 3. The area of square footage comprising a proposed trail easement shall not be included in the 10,000 square foot development area specified in LIP Section 4.7.1.
 - 4. No other discretionary request specified in LIP Sections 13.26 (variance) and 13.27 (site plan review and minor modifications) shall be required to permit the development incentive listed in LIP Section 13.30.1(B) when a trail dedication incentive is applied for.

5. Following recordation of an offer to dedicate or grant of easement, a Letter of Diminishment printed on City letterhead may be prepared for the property owner to provide to the Los Angeles County Assessor's office covering the trail easement area. The letter shall include an exhibit delineating the easement area and the 21 year expiration date for offers to dedicate.

13.30.2 Application Requirements

1. The following information shall be provided for trail dedication incentive applications:
 - a. Trail name as recognized on the LCP Parkland and Trails Dedication Incentive Program Map; unidentified trails shall demonstrate conformance with LIP Section 13.30.1(A)(1);
 - b. Type of public trail easement offered (offer to dedicate, or grant of easement);
 - c. Proposed trail alignment with topography, or boundaries of the proposed trail easement area and/or a floating easement (an offer to dedicate a trail easement recorded over a larger area that would allow for a trail to be designed and constructed within the floating easement area in accordance with an accepting agency's specifications). The alignment must demonstrate feasibility of use and construction. Alignments along a public street right of way or private street easement must demonstrate feasible connectivity with other offers to dedicate, easements, or planned alignments on the same side of the street;
 - d. Current title report and any source documents/instruments and maps fully demonstrating that no easements exist that would significantly conflict with, or preclude, the feasibility of a trail in the subject location;
 - e. Requested development incentive listed in LIP Section 13.30.1(B);
 - f. Deposit as sufficient to perform research on the feasibility of a trail (fully-refundable with an approved trail dedication incentive and recorded instrument evidencing an offer to dedicate or grant of easement has been provided); and
 - g. Summary of communication with any public agencies and/or private associations interested in accepting the offer to dedicate or grant of easement. Public agencies or private association which may be appropriate to accept offer to dedicate or grant of easements include, but shall not be limited to, the National Park Service, the State Coastal Conservancy, the State Department of Parks and Recreation, the State Lands Commission, the County, the City, the Santa Monica Mountains Conservancy, the Mountains Recreation and Conservation Authority, and non-governmental organizations.

13.30.3 Investigation

The approving body shall investigate the trail dedication incentive application including consultation with all appropriate City staff and specialists, including the City Engineer, City Biologist, City Geologist, and/or a qualified Archaeologist, and any other public agencies and/or private associations interested in accepting the offer to dedicate or grant of easement.

13.30.4 Findings

1. The proposed trail easement is identified on the LCP Parkland and Trails Dedication Incentive Program Map. Alternatively, an unidentified trail: 1) shall provide adequate connectivity in locations determined to link recreational areas to the coast, or provide alternate recreation and access opportunities pursuant to the access and recreation policies of the LCP; and 2) can be constructed, and used by the public, in a feasible manner.
2. The proposed trail easement is in conformity with the public access and recreation policies of the certified LCP. Alternatives to the proposed trail easement alignment were analyzed and the proposed trail easement is in conformance with the ESHA, native tree, hazards, and scenic/visual resource protection policies of the LCP.
3. The subject site is physically suitable for the proposed trail easement and can be used by the public in a feasible manner. The proposed trail easement area demonstrates feasible connectivity with other offers to dedicate, easements, and/or planned alignments and is of a sufficient size for design of any necessary switchbacks, future trail construction, and major maintenance.
4. The development incentive provided is listed in LIP Section 13.30.1(B) and is in conformity with the sensitive resource, hazards, and scenic/visual resource protection policies of the LCP.

SECTION 4. Local Coastal Program Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds that the proposed amendments meet the requirements of, and are in conformance with the policies and requirements of Chapter 3 of the California Coastal Act. The Coastal Act requires the protection of upland areas to support coastal recreation, where feasible (Section 30223). An LUP policy is to improve methods and programs to carry out public access impact mitigation measures by coordinating with other public agencies and private associations to ensure that trail easements obtained pursuant to offers to dedicate are accepted, opened, maintained and operated. In accordance with this policy, the proposed LCPA includes a new Trail Dedication Incentive Program and Parkland and Trails Dedication Incentive Program Map to encourage trail easements.

SECTION 5. Adoption of LCPA No. 09-006 and Repealing Ordinance No. 358.

The City Council hereby adopts LCPA No. 09-006 amending the LCP as modified by the CCC. Ordinance No. 358 is hereby repealed and any amendments to the LIP authorized by Ordinance No. 358 are superseded by the amendments set forth in Section 3 of this ordinance.

A. Pursuant to the CCC's Administrative Regulations Section 13544.5, the LCP amendment certification shall not be deemed final and effective until all of the following occur: 1) the City Council: a) acknowledges receipt of the CCC's Resolution of Certification, including any terms or modifications suggested for final certification; b) accepts and agrees to any such terms and modifications and takes whatever formal action is required to satisfy the terms and modifications; and c) agrees to issue coastal development permits for the total area included in the certified LCP; 2) the Executive Director of the CCC determines in writing that the City's action is legally adequate to satisfy any specific requirements set forth in the CCC's certification order and the Director reports the determination to the CCC at its next regularly scheduled meeting; 3) if the Director finds that the City's action does not conform to the CCC's order, the CCC shall review the City action as if it were a resubmittal; and 4) notice of the certification shall be filed with the Secretary of the Resources Agency for posting and inspection.

B. The City Council acknowledges receipt of the CCC's modifications to LCPA No. 09-006. The City Council further accepts and agrees to the modified language suggested by the CCC pertaining to the LIP and approves revisions to LCPA No. 09-006 without further changes.

C. The City of Malibu agrees to issue coastal development permits for the total area included in the certified LCP. The proposed amendments to the LIP meet the requirements of, and are in conformance with the policies and requirements of Chapter 3 of the California Coastal Act to the extent necessary to achieve the basic State goals specified in Public Resources Code Section 30001.

SECTION 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit a copy of this ordinance to the CCC per California Code of Regulation, Title 14, California Code of Regulations Section 13544.5(a).

SECTION 7. Severability.

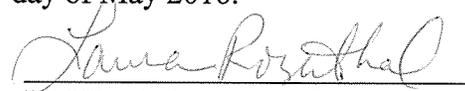
If any section, subsection, sentence, clause, portion, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of this ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8. Effectiveness.

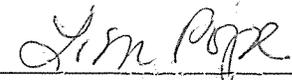
The LCP amendment approved in this ordinance shall become effective only upon certification by the CCC of this amendment to the LCP.

SECTION 9. The City Clerk shall certify to the passage and adoption of this ordinance and enter it into the book of original ordinances.

PASSED, APPROVED AND ADOPTED this 23rd day of May 2016.

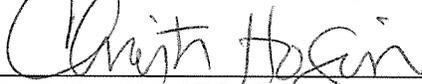

LAURA ROSENTHAL, Mayor

ATTEST:


LISA POPE, City Clerk
(seal)

Date: June 14, 2016

APPROVED AS TO FORM:


CHRISTI HOGIN, City Attorney

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the Malibu Municipal Code and Code of Civil Procedure.

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 405 was passed and adopted at the Regular City Council meeting of May 23, 2016, by the following vote:

AYES: 4 Councilmembers: House, Sibert, La Monte, Rosenthal
NOES: 0
ABSTAIN: 0
ABSENT: 1 Councilmember: Peak

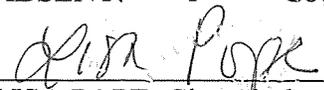

LISA POPE, City Clerk
(seal)

EXHIBIT A

