

COASTAL CONSERVANCY

Staff Recommendation

June 29, 2006

MALIBU LAGOON RESTORATION

File No. 02-027

Project Manager: Kara Kemmler

RECOMMENDED ACTION: Authorization to accept \$3,000,000 in funds from the State Water Resources Control Board and to disburse up to \$3,600,900 to the California Department of Parks and Recreation and up to \$548,900 to the Resource Conservation District of the Santa Monica Mountains to implement the Malibu Lagoon Restoration and Enhancement Plan, Malibu, Los Angeles County.

LOCATION: Malibu Lagoon State Park, City of Malibu, Los Angeles County (Exhibit 1)

PROGRAM CATEGORY: Resource Enhancement

EXHIBITS

Exhibit 1: Regional Location and Watershed Map

Exhibit 2: Aerial Photo

Exhibit 3: Plans

Exhibit 4: 2004 Staff Recommendation

Exhibit 5: Final Environmental Impact Report

Exhibit 6: DPR's Findings of Fact and Statement of Overriding Considerations, March 2006

Exhibit 7: Letters of Support

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following Resolution pursuant to Sections 31251-31270 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes: 1) the acceptance of three million dollars (\$3,000,000) from the State Water Resources Control Board (SWRCB) for implementation of Phase 2 of the Malibu Lagoon Restoration and Enhancement Plan; 2) the disbursement of an amount not to exceed three million six hundred thousand nine hundred dollars (\$3,600,900) to

California Department of Parks and Recreation (DPR) for implementation of Phases 1 and 2 of the Malibu Lagoon Restoration and Enhancement Plan; and 3) the disbursement of an amount not to exceed five hundred forty-eight thousand nine hundred dollars (\$548,900) to the Resource Conservation District of the Santa Monica Mountains (RCDSMM) for monitoring, final design and permitting of the Malibu Lagoon Restoration and Enhancement Plan. This authorization is subject to the condition that prior to the disbursement of any funds to either DPR or RCDSMM, the Executive Officer of the Conservancy shall review and approve each entity's work program, including scope of work, budget and schedule, and the names of any contractors to be used to conduct its project."

Staff further recommends that the Conservancy adopt the following findings:

"Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed project is consistent with Chapter 6 of Division 21 of the Public Resources Code Sections 31251-31270.
2. The proposed project is consistent with the Project Selection Criteria and Guidelines adopted by the Conservancy on January 24, 2001.
3. The Conservancy, as a responsible agency, has independently reviewed and considered the Final Environmental Impact Report (EIR) (Exhibit 5) and finding of overriding considerations (Exhibit 6) adopted by DPR on April 4, 2006 and finds that the project, as mitigated, avoids, reduces or mitigates all but one of the potential significant environmental effects of the project, possible temporary noise impacts. The Conservancy further finds that there are overriding considerations of great public benefit from the project as fully described in the attached and incorporated by reference Exhibit 6 to the accompanying staff recommendation which make this unmitigable possible temporary noise impact "acceptable" pursuant to 14 California Code of Regulations Section 15093(c)."

PROJECT SUMMARY:

Staff recommends the Conservancy authorize the acceptance of a grant of \$3,000,000 from the State Water Resources Control Board for implementation of Phase 2 of the Malibu Lagoon Restoration and Enhancement Plan and the disbursement of up to \$3,600,900 to California Department of Parks and Recreation (DPR) and \$548,900 to the Resource Conservation District of the Santa Monica Mountains (RCDSMM) to implement the Malibu Lagoon Restoration and Enhancement Plan (Plan).

Two grants, including the \$3 million grant being accepted under this authorization, were awarded to the Conservancy by the State Water Resources Control Board and provide the bulk of the funding for the disbursements under this authorization. The remaining funds (\$680,000) to be disbursed are Conservancy funds. (See "Project Funding", below).

When implemented, the Malibu Lagoon Restoration and Enhancement Plan will restore and enhance the ecological structure and function of Malibu Lagoon as well as improve visitor experience through access and interpretive improvements. Restoring wetland functions and improving circulation will increase the capacity of the system to assimilate pollutants, resulting in improved water quality within the Lagoon, and protecting beneficial uses for wildlife within the Lagoon and in adjacent nearshore coastal waters.

The Plan has two phases. Phase 1 includes relocation and redesign of the existing Malibu State Park parking lot to maximize available wetland habitat area and provide water quality benefits through the implementation of Best Management Practices (BMPs) at a new parking lot location. Biological and water quality monitoring will be conducted as part of Phase I to ascertain effects of the project on water quality. The existing parking lot, which is located at the northern portion of the project site, will be demolished and relocated closer to the park entrance and adjacent to Pacific Coast Highway (PCH) in the northwestern portion of the project site. The parking lot relocation will allow for more ground surface area, approximately 2 acres, for wetland habitat restoration. The new parking lot design incorporates runoff treatment controls, including permeable surfaces and a low impact stormwater treatment system, and the design includes a staging area to enhance existing educational and recreational uses of the site (see Exhibit 3). The current number of parking spaces will be maintained and new interpretive displays and panels will be installed. Phase 1 construction is planned occur between November 2006 and January 2007.

Phase 2 of the Plan will occur at the Lagoon and includes additional biological and water quality monitoring, final restoration construction drawings, permitting, and construction of public access and resource enhancements to increase circulation and improve habitat in the Lagoon. Phase 2 encompasses two primary components: Salt Marsh Enhancement (the western arms) and East Lagoon Restoration (adjacent to the Adamson House). The goals of the Salt Marsh Enhancement are increased tidal flushing, improved water circulation, increased holding capacity and reduced predator encroachment. The East Lagoon Restoration goals are regrading the lagoon to restore typical salt marsh hydrology, creating nesting islands for sensitive bird species and creating channel connections to the lagoon. Construction activities at the Lagoon would primarily involve earthwork to be coupled with non-native species removal and enhancement of native/wetland vegetation.

The existing boathouse channel (eastern channel) would be deepened and recontoured to create a new avian island along the bank of the Adamson House grounds. This would create additional mudflat habitat and promote additional water circulation around the new island. The main channel will remain substantially “as is.” The western edge of the main lagoon at the interface with the western arms complex would be reconfigured in the form of a naturalized slope to provide a degree of separation between main lagoon and west channel system. Within the western arms complex, a new channel would be created along the southern edge of the west lagoon to replace the three existing channels and create a single main entrance and exit for water conveyed into and out of the west lagoon. This channel may be optimized to overlie an existing channel to minimize the impact to existing habitat and will be designed to enable a future

connection to the “golf course” parcel.¹ The new single channel would be located at the south end of the Lagoon and aligned to maximize tidal circulation and minimize sediment laden storm flows in the west portion of the Lagoon.

In addition, the Plan proposes to enhance visitor experience through improvements to access and interpretation. The existing trail along the perimeter of the western arms complex would be improved for use as the primary beach access trail. Some of the additional features of the plan include interpretive nodes located near the parking area, restroom facilities near entry parking circle, enhanced access to the Lagoon with interpretive signage and graphics and a combination viewing and interpretive area near the southwest perimeter to enable passive interaction without disturbance.

Final design, construction drawings, and permitting for Phase 1 is currently underway, supported by a combination of Coastal Conservancy funds (\$250,000) authorized on October 31, 2002 and a Proposition 13 grant from the SWRCB in the amount of \$825,000 (see Exhibit 4). SWRCB has also awarded a grant in the amount of \$3,000,000 to the Coastal Conservancy to implement Phase 2 of the Plan. The development of the Plan has been a collaborative process among the Conservancy and its partners. The development of the Final Malibu Lagoon Restoration and Enhancement Plan, which included very comprehensive stakeholder involvement, was managed by our nonprofit partner, Heal the Bay. The environmental review, permitting and biological and water quality monitoring are being managed by the RCDSMM. The RCDSMM will continue work during Phase 2 managing the biological and water quality monitoring and the development of the final restoration plans and construction drawings. DPR, as the landowner, will manage the implementation of the parking lot relocation and the Lagoon restoration and enhancement.

Southern California has lost more than 90% of its historic coastal wetlands. The highly urban setting of Southern California significantly limits coastal wetland creation, restoration and enhancement opportunities. Malibu Lagoon is the largest coastal wetland in the Santa Monica Bay region and it presents a unique coastal wetland restoration opportunity. The restoration of this habitat is invaluable due to the overwhelming loss of coastal wetlands in southern California to date. As discussed below, restoration of Malibu Lagoon has long been a priority of the Coastal Conservancy. This project is specifically identified in the Southern California Wetland Recovery Project’s (WRP) Regional Strategy and is on the WRP’s Work Plan as a Tier 1 priority project.

Site Description: Malibu Lagoon lies at the end of the 110-square mile Malibu Creek watershed, the second largest watershed draining to Santa Monica Bay. The lagoon is a coastal estuary with a direct link to a very heavily used public swimming and surfing beach. Malibu Lagoon State Beach is immediately adjacent to the Lagoon, and just downcoast is Surfrider Beach, one of the most popular surfing beaches in Southern California (Exhibit 2). Surfrider

¹ The “Golf Course Parcel is located adjacent and to the west of the Lagoon. It will be transferred into state ownership some time in the future as a result of a settlement between the California Coastal Commission and the property owner.

Beach is world renowned as a surfing and recreational destination, and receives approximately 1.5 million visitors every year.

Existing land uses on the project site are primarily recreational and supportive of open space and habitat preservation. Onsite amenities include a parking lot, which drains directly into the lagoon, walking and beach access trails through the lagoon, a grass picnic area, and portable restroom facilities. This project will improve the recreational and educational amenities onsite and enhance the visitor's experience while restoring and protecting the sensitive Lagoon habitat.

Malibu Lagoon occupies approximately 31 acres and provides habitat for two federally listed endangered species, the tidewater goby and steelhead trout. The Lagoon also plays host to an abundance of avian species and is a critical stop-over for migrating birds along the Pacific flyway. Water within the Lagoon needs to circulate to remain of suitable quality for use as aquatic habitat. The project will serve to improve circulation within the Lagoon and promote habitat suitability for threatened and endangered species by increasing the available slough channel refugia habitat with sandy bottom for tidewater gobies and providing increased isolation of island habitats for seasonal snowy plovers and least tern use.

Under Section 303(d) of the 1972 Clean Water Act, states are required to develop a list of water quality-limited segments for waters that do not meet water quality standards, establish priority rankings for waters on the list and develop action plans to improve water quality. The SWRCB has developed a list of the State's impaired waters called the 303(d) list. Malibu Lagoon is currently 303(d) listed as impaired for benthic impacts, pathogens, nutrients/eutrophication, swimming restriction, and shellfish harvesting advisory. The enhanced circulation and water quality at the Lagoon will improve these conditions over the existing situation. For example, increased circulation and water exchange will improve temporal and spatial frequency of oxygenated water contact with surface sediments, thus increasing organic matter decomposition and increasing the transformation of ammonia to nitrate. This, in turn, will facilitate the permanent loss of nitrogen, the limiting nutrient, from the Lagoon through denitrification and reduce its supply to the primary producer communities.

Project History: The Malibu Lagoon Restoration effort has a history of collaboration and extensive stakeholder participation. For the past decade the staff of the Coastal Conservancy has been working closely with local stakeholders and partners to develop plans for restoring Malibu Lagoon. The Coastal Conservancy funded the *Lower Malibu Creek and Lagoon Resource Enhancement and Management Report*, completed in 2000, and supported a subsequent process for identifying implementation options.

In October 2002, the Conservancy funded the first phase of a restoration feasibility analysis. Subsequently, Conservancy staff, working with its project partners, successfully sought grant funds from the State Water Resources Control Board (SWRCB) for Coastal NPS funds for final Malibu Lagoon Restoration planning and partial implementation. A portion of the SWRCB Coastal NPS funds, in addition to Conservancy funds, resulted in development of a preferred alternative with the benefit of comprehensive stakeholder participation and a technical advisory panel evaluation, the Plan and final environmental review. The Plan was prepared by Moffatt & Nichol in association with Heal the Bay (June 2005) for DPR and the Coastal Conservancy. The

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Final EIR was completed and certified by DPR in early April of this year (Exhibit 5). Currently, final design, construction drawings and permitting for Phase 1 are underway, using a combination of Conservancy and SWRCB funds. If approved Phase 1 implementation is scheduled to commence November 2006. The Coastal Conservancy secured Prop 50 funds in April 2005 for Phase 2 of the Plan. The second phase of construction would begin after completion of the Phase 1 parking lot construction in 2007 and be completed by March 2008.

In addition to the participation of the Conservancy in establishing a restoration plan for Malibu Lagoon, the Conservancy is a project partner in several important coastal resource protection projects in the Malibu Creek Watershed, including the eradication of non-native invasive plant species, the restoration and enhancement of riparian resources, and the elimination of barriers to fish passage to support the re-establishment of southern steelhead in the Malibu Creek Watershed.

PROJECT FINANCING:

Phase 1	
SWRCB Prop. 13 Grant to SCC	\$825,000
California Dept. of Parks and Rec (in-kind)	\$100,000
Coastal Conservancy	<u>\$780,000</u>
Total	\$1,305,000

Previous Authorization	
SWRCB Prop. 13	\$300,000
Coastal Conservancy	\$150,000

<i>Recommended Authorization</i>	
<i>SWRCB Prop. 13 Grant to SCC</i>	<i>\$505,000</i>
<i>Coastal Conservancy</i>	<i><u>\$630,000</u></i>
<i>Total</i>	<i>\$1,135,000</i>

Phase 2	
SWRCB Prop. 50 Grant to SCC	\$3,000,000
California Dept. of Parks and Rec (in-kind)	\$100,000
Coastal Conservancy	\$50,000
Wildlife Conservation Board (pending)	<u>\$1,561,000</u>
Total	\$4,711,000

No Previous Authorization

<i>Recommended Authorization</i>	
<i>SWRCB Prop. 50 Grant to SCC</i>	<i>\$2,964,800</i>
<i>Coastal Conservancy</i>	<i><u>\$50,000</u></i>
<i>Total</i>	<i>\$3,014,800</i>

The SWRCB has provided a grant to the Conservancy for Phase 1 using funds from the Safe Drinking Water, Clean Air, Watershed Protection and Flood Control Protection Act of 2000 (Proposition 13) for projects that protect and restore the water quality and environment of coastal nearshore waters, consistent with the state's Non-Point Source Pollution Control Plan.

The SWRCB has provided a grant to the Conservancy for Phase 2 using funds derived from the Water Security, Clean Drinking Water, Coastal And Beach Protection Act of 2002 (Proposition 50) for water quality and water protection programs, specifically for restoration and protection of Santa Monica Bay.

The anticipated source of Conservancy funds is an appropriation to the Conservancy from the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Proposition 50). Consistent with the purposes of this funding source, the proposed project would be carried out in accordance with the provisions of the Conservancy's enabling legislation and would involve the protection and restoration of coastal wetlands and enhancement of water quality at public beaches.

As indicated, the Wildlife Conservation Board (WCB) is expected to fund the balance of Phase 2 of the Plan. The WCB funding request will be considered at a public meeting Fall 2006.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

Chapter 6 of Division 21 of the Public Resources Code (Sections 31251-31270) authorizes the Conservancy to award grants to public agencies for the enhancement of significant coastal natural resources. Protecting wetland and related riparian resources within Malibu Lagoon is essential to ensuring the sustainability of the coastal ecosystem of the Malibu Creek Watershed.

Consistent with Public Resources Code Section 31252, the area proposed for resource enhancement has been included in the Malibu Local Coastal Plan and the Santa Monica Bay Plan, as well as the Malibu Creek Watershed Action Plan as an area requiring public action to address a resource problem, in this case coastal water quality and habitat degradation. Consistent with Public Resources Code Section 31253, the Conservancy may provide up to the total cost of any coastal resource enhancement project. The Conservancy funds are leveraged with funds provided by the SWRCB and Wildlife Conservation Board, as well as the in-kind services of the DPR.

CONSISTENCY WITH CONSERVANCY'S STRATEGIC PLAN GOALS & OBJECTIVES:

Consistent with **Goal 5 Objective A**, the proposed project will increase Coastal Resource Conservation by the restoration of wetland and riparian lands that will protect, restore, and enhance biological diversity in coastal areas. Objective A directs staff to preserve, restore, and enhance important coastal habitats including coastal wetlands and coastal stream corridors. The proposed project contains significant natural resources.

Consistent with **Goal 6 Objective A**, the proposed project will improve water quality, habitat, and related coastal habitats within a priority coastal watershed, developing projects that preserve and restore coastal watersheds.

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines adopted January 24, 2001, in the following respects:

Required Criteria

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.
3. **Support of the Public:** The proposed project has widespread community and agency support. The Plan has multiple agency involvement, including federal, state, regional, and local. In addition, the project is supported by community nonprofit organizations and members of the general public. Letters of support are attached as Exhibit 7. Additional letters will be hand-carried to the meeting.
4. **Location:** The proposed project would benefit wetland habitat resources and water quality within the coastal zone of the Malibu/Santa Monica Mountains area. The Malibu State Park parking lot lies in the City of Malibu's LCP area. The Malibu Lagoon lies entirely within Coastal Commission retained jurisdiction.
5. **Greater-Than-Local Interest:** The location of the Lagoon at the terminus of a priority watershed is significant both locally and statewide. The Lagoon represents an important coastal wetland resource hosting both avian and aquatic species of important statewide and regional ecological significance, including two federally listed endangered species, the tidewater goby and steelhead trout, and it is a critical stop-over for migrating birds along the Pacific flyway. In addition, world-renowned as a surfing and recreational destination, adjacent Surfrider Beach receives approximately 1.5 million visitors every year.

Additional Criteria

7. **Urgency:** Malibu Lagoon is currently 303(d) listed (State's list of impaired water bodies pursuant to Section 303(d) of the Clean Water Act) as impaired for benthic impacts, pathogens, nutrients/eutrophication, swimming restriction, and shellfish harvesting advisory. The enhanced circulation and water quality at the Lagoon will improve these conditions over the existing situation. Further, the SWRCB funding for the implementation of this project expires March 2007 and March 2008 for Phases 1 and 2 respectively; thus, approving the grant now is essential to allow for completion of the restoration project before the expiration of the funding source.
8. **Resolution of more than one issue:** The Plan addresses coastal resource protection, habitat quality and species protection, water quality, watershed resource protection, and also will enhance the visitor's recreational and educational experience.

9. **Leverage:** See the “Project Financing” section above.
12. **Readiness:** The Coastal Conservancy along with DPR and its partners have been working since 2002 on the development of the Plan, completing environmental review, securing permits and preparing final design plans. If approved, Phase 1 will be constructed this fall. With these aspects in place, once the proposed funds are approved, the project partners are ready to begin monitoring and implementation of the both phases of the Plan.
13. **Realization of prior Conservancy goals:** See the “Project History” section above.
15. **Cooperation:** The Plan involves the cooperation of federal, state, local, regional agencies, as well as interested stakeholders and members of the general public.

CONSISTENCY WITH COASTAL ACT & LOCAL COASTAL PROGRAM POLICIES:

The Commission certified the Malibu LCP on September 13, 2002 and adopted a map of the post-LCP certification jurisdiction as part of that action. The Malibu Lagoon is entirely within the area designated as permanent jurisdiction of the Coastal Commission. Therefore, the Coastal Act is the standard of review for permits and plans in this area and the Commission is the decision making body. The Malibu State Park parking lot lies within the LCP jurisdiction, therefore the City of Malibu will issue a coastal permit for Phase 1, the relocation of the lot. The LCP contains specific policies for Malibu Lagoon. The Commission treats LCPs as guidance for its decision-making within its area of permanent jurisdiction. Both phases of the project must be reviewed and approved by the City and Commission for consistency with the LCP and Coastal Act, respectively. This process additionally assures LCP and Coastal Act conformity.

Policy 2.17 states that “recreation and access opportunities at existing public beaches and parks shall be protected, and where feasible, enhanced as an important coastal resource.” The Plan includes improvements to access onsite and enhances the visitor’s experience with the addition of interpretive nodes. Policy 3.45 addresses the effects of new development. Consistent with this policy, the project is designed to minimize landform alteration, reduce polluted runoff into the lagoon and ocean, and improve plant and animal life at the Lagoon.

In addition, policy 3.91 states that “new development within or adjacent to wetlands shall include evidence of preliminary approval from California Department of Fish and Game, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and other resources management agencies, as applicable.” Consistent with this policy, all relevant resource agencies were invited to participate and some participated in the stakeholder process to develop the Plan. In addition, the RCDSMM has consulted all of the named agencies directly on the Plan, including onsite meetings. Phase 1 does not require approvals from those agencies as the parking lot does not lie within an area containing sensitive resources. All required approvals will be obtained prior to implementation of Phase 2.

The LCP maps specifically identify Malibu Lagoon as an Environmentally Sensitive Habitat Area (ESHA) and a Marine Resource. The Land Use Plan (LUP) also includes two specific policies for lagoon protection.

Policy 3.92 states that a “lagoon management plan should be developed for Malibu Lagoon, in consultation with all applicable resource management agencies.” The Plan goes far toward

contributing to such a plan. The Plan includes a detailed monitoring plan, which defines a program of field observations and monitoring to be undertaken prior to, during and following implementation. Specific monitoring tasks and decision-points are specified to feed into an adaptive management framework to ensure long-term restoration integrity and success. The monitoring plan will be used to assess floral and faunal assemblages, protect existing habitat, minimize impacts during restoration activities and document resource changes for application in future adaptive management programs. The monitoring to be undertaken will provide a substantial amount of the data needed for a lagoon management plan, including the following six of the ten study topics specifically identified by LUP Policy 3.93:

- Biological study of the Lagoon habitat, including identification of all rare, threatened, and endangered species.
- Lagoon hydrology;
- Water quality sampling study;
- Measures to protect endangered species;
- Water quality protection and enhancement measures;
- Monitoring plan to monitor the management area to evaluate the health of the wetland, assess adverse impacts resulting from breaching or water level management, and identify project corrections.

The Plan is therefore consistent with that policy.

The project area is immediately adjacent to a historic site and could potentially contain archaeological or paleontological resources. Policies 5.61 and 5.62 mandate mitigation for potential adverse impacts, coordination with appropriate agencies to identify archeologically sensitive areas and data protection. All applicable mitigation and monitoring measures are proposed in the EIR and will be incorporated during construction activities.

The Plan is consistent with the planning and management policies contained in Sections 30230, 30231, and 30233(a)(7) of the Public Resources Code. Section 30230 states “Marine resources shall be maintained, enhanced, and where feasible, restored. . . . Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.” Section 30231 states “The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored. . . .” Section 30233(a)(7) states, “The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and shall be limited to the following: . . . (7) Restoration purposes. . . .” Consistent with these policies, this project would restore and enhance the resources of Malibu Lagoon, sustain its biological productivity. In addition, the Plan includes a water management component that would implement Best Management Practices for the drainage from the parking lot and public use areas which will enhance water quality in the lagoon. Circulation within the lagoon would be closely monitored and evaluated to ensure sustained optimum populations of marine organisms subsist in the Lagoon and surrounding waters. Consistent with Section 30233, the EIR has identified the least environmentally

damaging feasible alternative and feasible mitigation measures to minimize adverse environmental effects. Restoration of the lagoon, is a specifically permitted use under Section 30233(a)(7). For these reasons, the Plan is consistent with the policies of the Coastal Act.

Further, the Plan is consistent with Section 30240, which speaks to protection of Environmentally Sensitive Habitat areas (ESHAs), as its direct aim is to improve the habitat area overall. The Plan will have a beneficial effect on the existing LCP-designated ESHA onsite and sensitive areas surrounding the lagoon.

COMPLIANCE WITH CEQA:

The DPR, as the lead agency under the California Environmental Quality Act (CEQA), adopted the Final EIR for the Malibu Lagoon Restoration and Enhancement Plan on April 3, 2006. The DPR filed its Notice of Determination (NOD) on April 4, 2006. No challenges to the DPR's determination of the project's environmental effects were made. The Final EIR, including the NOD, is attached as Exhibit 5.

The Conservancy acts as a responsible agency under CEQA for this project pursuant to 14 Cal. Code of Regulations §15096.

The EIR identifies the project's possible significant impacts, which are:

- Construction activities could result in significant impacts to southern steelhead trout and tidewater goby;
- Construction activities could result in disturbance to California brown pelican, western snowy plover, Heermann's Gull, elegant tern and California Least Tern;
- Construction of the proposed project could result in impacts to prehistoric site Humaliwo (CA-LAN-264) or the historic Adamson House grounds and ancillary structures;
- Potential exists for ground-disturbing activities to damage previously unidentified buried cultural resources sites;
- Release of construction-related sediment from access roads, staging areas, ground-disturbing activities, and stock piling during Phase I and Phase II construction into the lagoon could affect water quality.

The EIR finds that these potential significant impacts are reduced to a less-than-significant or insignificant level through the implementation of feasible mitigation measures, such as, separation of construction activities from the portion of the lagoon where sensitive fish species would occur; fish salvage efforts for any water disturbances or movement; reflooding of the lagoon in a manner that minimizes disturbance of the lagoon salinity stratification and substrate and the release of sediment; use of block netting and barriers to exclude adult gobies, migratory steelhead, and other fish from the work areas; on-site monitoring by a USFWS-approved fisheries biologist during any construction or habitat disturbance activities; timing of construction activities to avoid the breeding season of sensitive species; cultural resources excavations undertaken prior to any ground-disturbing activities; cultural resources monitoring during any ground disturbing activities adjacent to identified cultural resource areas; and implementation of Best Management Practices (BMPs) to control discharge of construction-related pollutants to surface waters. (See

Table 2-1 *Summary of Environmental Effects*, page 2-8 of the EIR for a full summary of mitigation measures.)

The EIR finds that one potentially significant impact cannot be avoided through implementation of feasible mitigation measures or feasible environmentally superior alternatives. The construction of the proposed project would result in temporary increases in ambient noise levels on the project site and its vicinity on an intermittent basis. However, the DPR determined that this impact is outweighed by the public benefits of the proposed Malibu Lagoon Restoration and Enhancement Plan. Consequently, the DPR made a statement of overriding considerations that there is substantial evidence in the record that the project's one unmitigable adverse environmental effect is "acceptable" in light of the many public benefits of the project, pursuant to Section 15093(c) of the California Code of Regulations (see Exhibit 6).

Pursuant to its responsibilities under 14 California Code of Regulations, Section 15091, Conservancy staff has independently reviewed the DPR's Final EIR, concurs in the DPR's finding and therefore recommends that the Conservancy, as a responsible agency, find that the project, as mitigated, will not have a significant effect on the environment, with the exception of the project's potential significant effect of temporary increases in ambient noise levels. With respect to the project's potentially significant and unmitigable effect of temporary increases in noise levels, Conservancy staff recommends that the Conservancy concur with the DPR's statement of overriding considerations as fully described in the attached Exhibit 6, pp 32-34 and find that this potential impact is outweighed by the public benefits of the proposed restoration project. Upon approval, staff will file a Notice of Determination for the project.