# Findings of Fact
# and
# Statement of Overriding Considerations

## Malibu Lagoon Restoration and Enhancement Plan
## Final Environmental Impact Report

**(SCH # 2005101123)**

Findings by

**California Department of Parks and Recreation**

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# Table of Contents

**Introduction** ..... **1**
**Project Description** ..... **5**
Project Goals ..... 5
**Project Location** ..... **5**
**Project Description** ..... **6**
Parking Lot and Staging Lawn ..... 6
Main Channel ..... 6
Eastern Channel ..... 6
West Lagoon Complex ..... 7
**Findings/Potentially Significant Effects and Mitigation Measures** ..... **7**
**Biological Resources** ..... **7**
Significance Criteria ..... 7
Description of Potentially Significant Effect ..... 8
Proposed Mitigation ..... 8
Finding ..... 9
Rationale for Finding ..... 9
Reference ..... 9
Description of Potentially Significant Effect ..... 9
Proposed Mitigation ..... 9
Finding ..... 10
Rationale for Finding ..... 10
Reference ..... 10
Description of Potentially Significant Effect ..... 11
Proposed Mitigation ..... 11
Finding ..... 11
Rationale for Finding ..... 11
Reference ..... 11
Description of Potentially Significant Effect ..... 11
Proposed Mitigation ..... 12
Finding ..... 12
Rationale for Finding ..... 12
Reference ..... 12
Description of Potentially Significant Effect ..... 12
Proposed Mitigation ..... 13
Finding ..... 13
Rationale for Finding ..... 13
Reference ..... 13
Description of Potentially Significant Effect ..... 13
Proposed Mitigation ..... 13
Finding ..... 14
Rationale for Finding ..... 14
Reference ..... 14
Description of Potentially Significant Effect ..... 14
Proposed Mitigation ..... 14
Finding ..... 14

Rationale for Finding ..... 15
Reference ..... 15
Cumulative Impacts ..... 15
**Cultural Resources ..... 16**
Significance Criteria ..... 16
Description of Potentially Significant Effect ..... 17
Proposed Mitigation ..... 18
Finding ..... 20
Rationale for Finding ..... 20
Reference ..... 20
Description of Potentially Significant Effect ..... 20
Proposed Mitigation ..... 20
Finding ..... 21
Rationale for Finding ..... 22
Reference ..... 22
Cumulative Impacts ..... 22
**Hydrology and Water Quality ..... 23**
Significance Criteria ..... 23
Description of Potentially Significant Effect ..... 23
Proposed Mitigation ..... 23
Finding ..... 25
Rationale for Finding ..... 25
Reference ..... 25
Cumulative Impacts ..... 26
**Construction Noise ..... 26**
Significance Criteria ..... 26
Description of Potentially Significant Effect ..... 26
Proposed Mitigation ..... 27
Finding ..... 27
Rationale for Finding ..... 28
Reference ..... 28
Cumulative Impacts ..... 28
**Alternatives to the Proposed Project ..... 28**
No-Project Alternative ..... 28
Alternative 1: Enhancement Alternative ..... 29
Alternative 1.75: Restore/Enhance Modify with the North Channel ..... 31
Alternative 2.0: Restore and Enhance Alternative ..... 32
**Environmentally Superior Alternative ..... 33**
**Statement of Overriding Considerations ..... 34**

# Introduction

Public Resources Code Section 21002 provides that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would *substantially lessen* the significant environmental effects of such projects[.]" (Emphasis added.) The same statute states that the procedures required by CEQA "are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will *avoid* or *substantially lessen* such significant effects." (Emphasis added.) Section 21002 goes on to state that "in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."

Section 21081 of the California Public Resources Code and Section 15091 of the California Environmental Quality Act (CEQA) Guidelines (hereinafter *CEQA Guidelines*) require a public agency, prior to approving a project, to identify significant impacts of the project and make one or more of three written findings for each of the significant impacts. The first possible finding is that "[c]hanges or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR" (*CEQA Guidelines*, Section 15091(a)(1)). The second possible finding is that "[s]uch changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency" (*CEQA Guidelines*, Section 15901(a)(2)). The third possible finding is that "[s]pecific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures or project alternatives identified in the final EIR" (*CEQA Guidelines*, Section 15901(a)(3)).

Public Resources Code Section 21061.1 defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors." *CEQA Guidelines* Section 15364 adds another factor: "legal" considerations. (See also Citizens of Goleta Valley v. Board of Supervisors ("Goleta II") (1990) 52 Cal. 3d 553, 565.)

The concept of "feasibility" also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (City of Del Mar v. City of San Diego (1982) 133 Cal. App. 3d 410, 417.) "'[F]easibility' under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social,

and technological factors." (Id.; see also Sequoyah Hills Homeowners Assn. v. City of Oakland (1993) 23 Cal. App. 4th 704, 715.)

The *CEQA Guidelines* do not define the difference between "avoiding" a significant environmental effect and merely "substantially lessening" such an effect. The California State Department of Parks and Recreation (DPR), as Lead Agency, must therefore glean the meaning of these terms from the other contexts in which the terms are used. Public Resources Code Section 21081, on which *CEQA Guidelines* Section 15091 is based, uses the term "mitigate" rather than "substantially lessen." The *CEQA Guidelines* therefore equate "mitigating" with "substantially lessening." Such an understanding of the statutory term is consistent with the policies underlying CEQA, which include the policy that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." (Public Resources Code Section 21002.)

For purposes of these findings, the term "avoid" refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less-than-significant level. In contrast, the term "substantially lessen" refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce that effect to a less-than-significant level. These interpretations appear to be mandated by the holding in Laurel Hills Homeowners Association v. City Council (1978) 83 Cal. App. 3d 515, 519–521 (Laurel Hills), in which the Court of Appeal held that an agency had satisfied its obligation to substantially lessen or avoid significant effects by adopting numerous mitigation measures, not all of which rendered the significant impacts in question less than significant.

Although *CEQA Guidelines* Section 15091 requires only that approving agencies specify that a particular significant effect is "avoid[ed] *or* substantially lessen[ed]," these findings, for purposes of clarity, in each case will specify whether the effect in question has been reduced to a less than significant level, or has simply been substantially lessened but remains significant.

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility for modifying the project lies with some other agency. (*CEQA Guidelines* Section 15091, subdivisions (a), (b).)

Mitigation measures are referenced in the *Mitigation Monitoring and Reporting Program* adopted concurrently with these findings, and will be effectuated through the process of constructing and implementing the project.

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project's "benefits" rendered "acceptable" its "unavoidable adverse environmental effects." (*CEQA Guidelines*, Sections 15093, 15043, subdivision (b); see also Public Resources Code Section 21081, subdivision (b).) The California Supreme Court has stated that, "[t]he wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced." (Goleta II, 52 Cal. 3d 553, 576.)

Except as otherwise noted, the findings reported in the following pages incorporate the facts and discussions of environmental impacts that are found in the Final Environmental Impact Report (Final EIR) for the Malibu Lagoon Restoration and Enhancement Plan as fully set forth therein. These findings constitute the decision makers' best efforts to set forth the rationales and support for their decision under the requirements of CEQA.

This *Findings and Statement of Overriding Considerations* document is divided into five major sections. Section 1 (Introduction) provides background information as to the purpose of the document. Section 2 (Project Description) provides a brief discussion of the proposed *Malibu Lagoon Restoration and Enhancement Plan*. Section 3 (Findings Regarding Environmental Effects) presents the potentially significant effects associated with the proposed project. Impacts that are less than significant prior to mitigation are omitted. Section 4 (Alternatives to the Proposed Project) provides a brief discussion of other alternatives to the proposed project that were evaluated in less detail in the EIR. Finally, Section 5 (Statement of Overriding Considerations) is provided for those adverse effects that cannot be feasibly mitigated or avoided, even with the adopted mitigation measures.

For each of the significant or potentially significant impacts associated with the project, the following information is provided:

- Significance Criteria – Standards to which the proposed project is subject for determining whether a significant impact would occur.
- Description of Potentially Significant Effect – A specific description of each significant or potentially significant environmental impact identified in the Final EIR.
- Proposed Mitigation – Mitigation measures or actions that are proposed for implementation as part of the project.
- Finding – The findings made are those allowed by Section 21081 of the California Public Resources Code. The findings are made in two

parts. In the first part, a judgment is made regarding the significance of the impact or effect. In the second part, which pertains only to impacts found to be significant, one of three specific findings is made, in accordance with the statement of acceptable findings provided in Section 15091 of the *CEQA Guidelines*.

- Rationale – A summary of the reasons for the decision.
- Cumulative Impacts – A summary of the significance of possible cumulative impacts resulting from the proposed project.
- Reference – A notation on the specific section in the Draft or Final EIR that includes the evidence and discussion of the identified impact.

Pursuant to Section 21081.6 of the California Public Resources Code and Section 15097 of the *CEQA Guidelines*, a *Mitigation Monitoring and Reporting Program* must be adopted in order to ensure the efficacy of proposed mitigation measures. The *Mitigation Monitoring and Reporting Program* for *Malibu Lagoon Restoration and Enhancement Plan* is a separate document presented for adoption together with the *Findings of Fact and Statement of Overriding Considerations.*

The Record of Proceedings for the Lead Agency's decision on the project consists of the following documents, at a minimum:

- the Malibu Lagoon Restoration and Enhancement Plan (Moffatt & Nichol and Heal the Bay, June 2005);
- the Notice of Preparation (NOP) and all other public notices issued by the Lead Agency in conjunction with the project;
- the *Draft Environmental Impact Report* (Draft EIR) for the Malibu Lagoon Restoration and Enhancement Plan, including all technical appendices and all sources and references listed in Chapter 12 (January 2006);
- all comments submitted by agencies or members of the public during the 45-day comment period on the Draft EIR;
- all comments and correspondence submitted to the Lead Agency with respect to the project, in addition to timely comments on the Draft EIR;
- the Final EIR for the Malibu Lagoon Restoration and Enhancement Plan, including comments received on the Draft EIR, responses to those comments, text revisions, and technical appendices;
- the *Mitigation Monitoring and Reporting Program* for the project;
- all findings and resolutions adopted by the Lead Agency in connection with the Malibu Lagoon Restoration and Enhancement Plan and all documents cited or referred to therein;
- all reports, studies, memoranda, maps, staff reports, or other planning documents relating to the project prepared by the Lead

Agency or the Resource Conservation District of the Santa Monica Mountains or the California State Coastal Conservancy, consultants to the Lead Agency, or responsible or trustee agencies with respect to the Lead Agency's compliance with the requirements of CEQA and with respect to the Lead Agency's action on the Malibu Lagoon Restoration and Enhancement Plan;

- matters of common knowledge to the Lead Agency, including, but not limited to, federal, state, and local laws and regulations;
- any documents expressly cited in these findings, in addition to those cited above; and
- any other materials required for the record of proceedings by Public Resources Code Section 21167.6, subdivision (e).

The California Department of Parks and Recreation, located at 1925 Las Virgenes Road, Calabasas, California 91302, is the custodian of record for the proposed project and EIR.

# Project Description

## Project Goals

The goals of the proposed project are to:

- decrease urban runoff from surrounding sources into the lagoon to improve its water quality and decrease eutrophication;
- increase circulation of water during open and closed conditions;
- restore habitat by re-establishing suitable soil conditions and native plant species and removing nonnative species;
- relocate existing parking lot to increase habitat size and utilize permeable surfaces;
- evaluate, record, and analyze existing and changing ecological conditions of the lagoon using physical, chemical, and biological parameters to allow agencies, organizations, and stakeholders to monitor progress toward restoration goals; and
- provide improved visitor and educational amenities.

# Project Location

Malibu Lagoon is a 31-acre shallow-water embayment occurring at the terminus of the Malibu Creek Watershed, the second-largest watershed draining into Santa Monica Bay and within Malibu Lagoon State Beach. The lagoon empties into the Pacific Ocean at Malibu Surfrider Beach. The lagoon is located generally south of the intersection of Pacific Coast Highway (PCH) and Cross Creek Road in the City of Malibu. Existing

land uses on the project site are primarily recreational and supportive of open space and habitat preservation. On-site amenities include a surface parking lot, walking and beach access trails, a picnic area, and portable restroom facilities. The historic Adamson House and associated grounds are immediately adjacent to the project site.

# Project Description

The findings of the *Final Alternatives Analysis for the Malibu Lagoon Restoration Feasibility Study*, and discussions amongst State Parks, the Coastal Conservancy, the Lagoon Restoration Working Group, and Lagoon Technical Advisory Committee, were the basis of the decision to select Alternative 1.5, the Modified Restore and Enhance Alternative, as the proposed project. Alternative 1.5 embodies the lagoon restoration goals with the least amount of impacts to the existing lagoon ecosystem. The *Final Alternatives Analysis* document is available online at http://www.healthebay.org/currentissues/mlhep/default.asp.

Major components of the design are explained below.

## Parking Lot and Staging Lawn

The existing parking lot would be relocated to the north and west to be adjacent to Pacific Coast Highway. The new parking lot and staging areas would be created with runoff treatment controls, including permeable pavement or other similar permeable substances and appropriate native vegetation. They would include a staging area to enhance existing educational and recreational uses of the site. The current number of parking spaces would remain, and new interpretive displays and panels would be installed.

## Main Channel

The main channel would 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 the main lagoon and west channel system.

## Eastern Channel

The existing boathouse 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.

## West Lagoon Complex

The project presents a comprehensive approach to restore and enhance the ecological structure and function of the lagoon, as well as to enhance visitors' experiences through improvements to access and interpretation.

# Findings/Potentially Significant Effects and Mitigation Measures

The Final EIR identified several potentially significant environmental effects (or "impacts") that could result from implementation of the *Malibu Lagoon Restoration and Enhancement Plan*. Several of these significant impacts can be reduced to less-than-significant or insignificant levels through the implementation of feasible mitigation measures. One potentially significant impact (construction-phase noise) cannot be avoided through implementation of feasible mitigation measures or feasible environmentally superior alternatives. However, this impact is outweighed by overriding considerations as identified below. This section sets forth in detail the findings with respect to significant environmental impacts and the mitigation measures of the proposed project.

# Biological Resources

## Significance Criteria

For the purposes of these findings, the proposed *Malibu Lagoon Restoration and Enhancement Plan* would have a significant impact on biological resources if it would:

- have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations or by the CDFG or the USFWS;
- have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFG or USFWS;
- have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the CWA (including, but not limited to, marsh, riparian scrub, etc.) through direct removal, filling, hydrological interruption, or other means;
- interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites;

- conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or
- conflict with the provision of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

# Description of Potentially Significant Effect

Construction activities could result in significant impacts to southern steelhead trout.

# Proposed Mitigation

## Mitigation Measure BIO-1

Construction and lagoon excavation may occur during steelhead migration. In order to avoid direct impacts to steelhead, wetland excavation shall occur such that grading activity and equipment are separated from surface connections to the existing lagoon by earthen berms. Groundwater that may accumulate in these excavated areas shall be returned to the lagoon, via pump, in a manner that eliminates sediment and the potential to disturb lagoon salinity stratification, substrate, and temperature. In certain circumstances, physical or biological constraints may make it infeasible for excavations to be separated by earthen berms from the main body of the existing lagoon. In these situations, impacts shall be avoided by separating construction activity from the main lagoon by the temporary placement of a cofferdam wall, silt curtains, and block nets or a combination of similar tools. In the event that water must be pumped from these areas during construction, it shall be returned to the lagoon, via pump, in a manner that eliminates sediment and the potential to disturb lagoon salinity stratification, substrate, and temperature. Fish salvage efforts shall be conducted for any surface water that must be separated from the main lagoon. After construction, the area shall be reflooded in a manner that minimizes disturbance of the lagoon salinity stratification and substrate and the release of sediment. Reinundation of the western lagoon may provide refuge areas for fish during construction activities in the main lagoon. Block netting and barriers shall be used to exclude adult gobies, migratory steelhead, and other fish from the work areas. On-site monitoring by a USFWS-approved fisheries biologist would be conducted during any channel or bank disturbance. Pages 100 and 101 of the *Final Alternatives Analysis* prepared by Moffatt and Nichol (March 2005) outline a possible construction sequence in more detail that incorporates several of these ideas.

# Finding

**(X) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.**

( ) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

( ) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures or project alternatives identified in the Final EIR.

# Rationale for Finding

Implementation of mitigation measure BIO-1 would ensure that no unavoidable significant adverse impacts to southern steelhead trout would occur.

# Reference

For a full discussion of biological resource impacts, see Chapter 6 of the *Malibu Lagoon Restoration and Enhancement Plan Final Environmental Impact Report.*

# Description of Potentially Significant Effect

Construction activities could result in significant impacts to the tidewater goby.

# Proposed Mitigation

## Mitigation Measure BIO-2

Construction of the restoration project shall be timed to minimize disturbance of the western shoreline of the main lagoon when larval tidewater gobies are using the near-shore habitat. In order to avoid direct impacts to gobies, wetland excavation shall occur such that grading activity and equipment are separated from surface connections to the existing lagoon by earthen berms. Groundwater that may accumulate in these excavated areas shall be returned to the lagoon, via pump, in a manner that eliminates sediment and the potential to disturb lagoon salinity stratification, substrate, and temperature. In certain circumstances, physical or biological constraints may make it infeasible for excavations to be separated by earthen berms from the main body of

the existing lagoon. In these situations, impacts to gobies shall be avoided by separating construction activity from the main lagoon by the temporary placement of a cofferdam wall, silt curtains, and block nets or a combination of similar tools. In the event that water must be removed from these areas during construction, it shall be returned to the lagoon, via pump, in a manner that eliminates sediment and the potential to disturb lagoon salinity stratification, substrate, and temperature. Fish salvage efforts shall be conducted for any surface water that must be separated from the main lagoon. After construction, the area shall be reflooded in a manner that minimizes disturbance of the lagoon salinity stratification and substrate and the release of sediment. Construction in the main lagoon shall occur outside of the May 1 through November 1 breeding season for the tidewater gobies. Reinundation of the western lagoon may provide refuge areas for fish during construction activities in the main lagoon. Block netting shall be used to exclude adult gobies, migratory steelhead, and other fish from the work areas. On-site monitoring by a USFWS-approved fisheries biologist would be conducted during any channel or bank disturbance. Pages 100 and 101 of the *Final Alternatives Analysis* prepared by Moffatt and Nichol (March 2005) outline a possible construction sequence in more detail that incorporates many of these ideas.

# Finding

**(X) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.**

( ) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

( ) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures or project alternatives identified in the Final EIR.

# Rationale for Finding

Implementation of mitigation measure BIO-2 would ensure that no unavoidable significant adverse impacts to the tidewater goby would occur.

# Reference

For a full discussion of biological resource impacts, see Chapter 6 of the *Malibu Lagoon Restoration and Enhancement Plan Final Environmental Impact Report.*

# Description of Potentially Significant Effect

Construction activities could result in disturbance to California brown pelican.

# Proposed Mitigation

### Mitigation Measure BIO-3

On-site monitoring by a USFWS-approved biologist shall be conducted during any disturbance within suitable/occupied habitat for this species.

# Finding

**(X) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.**

( ) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

( ) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures or project alternatives identified in the Final EIR.

# Rationale for Finding

Implementation of mitigation measure BIO-3 would ensure that no unavoidable significant adverse impacts to California brown pelican would occur.

# Reference

For a full discussion of biological resource impacts, see Chapter 6 of the *Malibu Lagoon Restoration and Enhancement Plan Final Environmental Impact Report.*

# Description of Potentially Significant Effect

Construction activities could result in disturbance to western snowy plover.

# Proposed Mitigation

### Mitigation Measure BIO-4

Schedule construction activities and ground disturbance in suitable/occupied habitat to avoid the western snowy plover breeding season from mid-March to August 30. On-site monitoring by a USFWS-approved biologist shall be conducted during any disturbance within suitable/occupied habitat for this species.

# Finding

**(X) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.**

( ) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

( ) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures or project alternatives identified in the Final EIR.

# Rationale for Finding

Implementation of mitigation measure BIO-4 would ensure that no unavoidable significant adverse impacts to western snowy plover would occur.

# Reference

For a full discussion of biological resource impacts, see Chapter 6 of the *Malibu Lagoon Restoration and Enhancement Plan Final Environmental Impact Report.*

# Description of Potentially Significant Effect

Construction activities could result in disturbance to Heermann's Gull.

# Proposed Mitigation

### Mitigation Measure BIO-5

On-site monitoring by a USFWS-approved biologist shall be conducted during any disturbance within suitable/occupied habitat for this species.

# Finding

**(X) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.**

( ) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

( ) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures or project alternatives identified in the Final EIR.

# Rationale for Finding

Implementation of mitigation measure BIO-5 would ensure that no unavoidable significant adverse impacts to Heermann's Gull would occur.

# Reference

For a full discussion of biological resource impacts, see Chapter 6 of the *Malibu Lagoon Restoration and Enhancement Plan Final Environmental Impact Report.*

# Description of Potentially Significant Effect

Construction activities could result in disturbance to elegant tern.

# Proposed Mitigation

### Mitigation Measure BIO-6

On-site monitoring by a USFWS-approved biologist shall be conducted during any disturbance within suitable/occupied habitat for this species.

# Finding

**(X) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.**

( ) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

( ) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures or project alternatives identified in the Final EIR.

# Rationale for Finding

Implementation of mitigation measure BIO-6 would ensure that no unavoidable significant adverse impacts to elegant tern would occur.

# Reference

For a full discussion of biological resource impacts, see Chapter 6 of the *Malibu Lagoon Restoration and Enhancement Plan Final Environmental Impact Report*.

# Description of Potentially Significant Effect

Construction activities could result in disturbance to California Least Tern.

# Proposed Mitigation

## Mitigation Measure BIO-7

Schedule construction activities and ground disturbance to avoid the California least tern breeding season and post-breeding season foraging (July to August). On-site monitoring by a USFWS-approved biologist shall be conducted during any disturbance within suitable/occupied habitat for this species.

# Finding

**(X) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.**

( ) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

( ) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures or project alternatives identified in the Final EIR.

# Rationale for Finding

Implementation of mitigation measure BIO-7 would ensure that no unavoidable significant adverse impacts to California least tern would occur.

# Reference

For a full discussion of biological resource impacts, see Chapter 6 of the *Malibu Lagoon Restoration and Enhancement Plan Final Environmental Impact Report.*

# Cumulative Impacts

When analyzing cumulative impacts to wetlands, waters, and aquatic species it is important to consider impacts within the watershed in which the project is located, as impacts outside of the watershed will be much less relevant. The analysis of cumulative impacts on sensitive species should take into account the distribution of these species and the distribution of the reproducing population.

## Sensitive Habitats

Impacts to sensitive habitats associated with the proposed project include southern willow scrub, atriplex scrub, baccharis scrub, mule fat scrub, Venturan coastal sage scrub, mixed scrub, southern coastal salt marsh, brackish marsh, coastal and valley freshwater marsh, southern sycamore-alder riparian woodland, nonnative grassland, mud flat, sand beach/sand bar, and open water.

While recent and foreseeable projects in the Malibu area may result in significant cumulative impacts to sensitive vegetation communities, including vegetation communities located within the project area (i.e., southern willow scrub, mule fat scrub, mixed chaparral, etc.), implementation of the proposed project would not contribute to any significant cumulative impact as it will result in long-term benefits to vegetation communities located within the project area. In addition, implementation of the project would result in an increase in native

(wetland and upland) vegetation communities and a decrease in disturbed and developed areas.

### Sensitive Plants

The proposed project would not result in impacts to sensitive plant species as none were observed during any of the biological surveys. Therefore, the plan would not contribute to any significant cumulative impact to sensitive plant species.

### Sensitive Wildlife

Malibu Lagoon supports important populations of several sensitive wildlife species, including wandering (salt marsh) skipper, southern steelhead trout, tidewater goby, California brown pelican, western snowy plover, Heermann's gull, elegant tern, and the California least tern. While recent and foreseeable projects in the Malibu area may result in significant cumulative impacts to sensitive wildlife species, including those located within the plan area, implementation of the project would not contribute to any significant cumulative impact as it will result in long-term benefits to sensitive wildlife species and habitat within the plan area.

### Construction Effects

The related projects listed in Table 10-1 of the Final EIR are in various phases of development. It is possible that construction for one or more of the listed projects would overlap with the construction for the proposed project. As a result, there could be short-term noise, air quality, construction traffic, and aesthetic effects. However, given the small scale of construction associated with the proposed project, and the short duration of these impacts, these would not be considered cumulatively significant.

# Cultural Resources

## Significance Criteria

Section 15064.5(b) of the State *CEQA Guidelines*, entitled "Determining the Significance of Impacts on Historical and Unique Archaeological Resources," would apply to historical resources that are found eligible for the National Register of Historic Places (NRHP) or California Register of Historical Resources (CRHR) or meet the other significance criteria in Section 15064.5(a) of the guidelines. Section 15064.5(b) of the guidelines is as follows:

A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

1. Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.
2. The significance of an historical resource is materially impaired when a project:

    a. demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the CRHR; or

    b. demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to Section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of Section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

    c. demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the CRHR as determined by a lead agency for purposes of CEQA.

Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on historical architectural resources.

# Description of Potentially Significant Effect

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.

# Proposed Mitigation

## Mitigation Measure CR-1

Cultural resources, including CA-LAN-264 and the historic Adamson House grounds and ancillary structures, will be avoided to the extent possible. The hydrology of the lagoon will not be changed such that the boathouse or grounds are at greater risk of flood or construction impacts.

Cultural resources excavations will be undertaken prior to any ground-disturbing activities along the eastern bank of the main lagoon channel adjacent to CA-LAN-264 if any project-related earthwork occurs within 100 feet of the known boundary of CA-LAN-264. Test excavations shall not take place within the known boundaries of CA-LAN-264 but adjacent to the boundaries if project construction would require any ground-disturbing activities within 100 feet of the known site boundary.

Because sensitivity is moderate to high for cultural resources, including human remains, to be present along this edge of the project area, a subsurface testing program should be implemented to identify if resources are present and evaluate potential NRHP-eligible resources.

If subsurface testing identifies intact, significant archaeological resources within the project area that cannot be avoided, the project would have an adverse effect. Development of measures to mitigate adverse effects would be necessary and a Memorandum of Agreement would be required to complete Section 106 consultation.

The preconstruction testing program should include, but need not be limited to:

- development of a testing strategy to identify subsurface archaeological deposits, including further research on previous investigations and regarding previous lagoon excavations, in an effort to refine the scope of any field effort;
- evaluation of significance and integrity of exposed archaeological deposits (according to the National Historic Preservation Act [NHPA], NRHP, and CRHR criteria), if present, in consultation with the State Historic Preservation Officer (SHPO); and
- consultation with local Native Americans if prehistoric or ethnohistoric resources are identified.

Upon identification of any significant prehistoric or historical archaeological resources, it will be necessary to avoid these resources during project development, or to formulate a treatment plan to mitigate adverse effects. A treatment plan, adopted within a Memorandum of Agreement, to be negotiated in consultation with the SHPO, would likely include the following:

- an acceptable data recovery plan stating specific research goals and questions that are to be addressed if archaeological deposits are to be recovered,
- postfield artifact processing and analysis,
- report preparation in accordance with the guidelines of DPR, and
- permanent curation of artifacts and documents in a repository consistent with the National Park Service guidelines for the curation of archaeological collections (36 Code of Federal Regulations [CFR] 79).

Feature recovery should employ standard archaeological excavation techniques. The testing and evaluation plan should be designed and implemented by a qualified prehistorical archaeologist and, if discoveries warrant, a qualified historical archaeologist.

Both the testing and evaluation plan and the data recovery strategy shall be developed and implemented in consultation with interested local Native American groups. Plans shall state that Native American human remains will be treated in compliance with Health and Safety Code, Sections 7050.5, 8010, and 8011 and Public Resources Code Section 5097.98.

## Mitigation Measure CR-2

Cultural resources monitoring by State Parks archaeologists or designees shall be conducted during any ground-disturbing activities along the eastern bank of the main lagoon channel adjacent to CA-LAN-264. Monitoring will be conducted if conditions allow for observation of spoils. Monitoring of dredging is probably not feasible given underwater activity would not be visible. However, underwater cultural sites may be present, and the material dredged will be inspected for the presence or absence of cultural material. The remainder of the project area may be monitored if notable cultural materials are discovered, or monitoring may be further limited if the monitoring area appears previously disturbed (as may be the case in areas where the California Department of Transportation (Caltrans) has deposited fill material and riprap). If prehistoric cultural resources are discovered in this area during monitoring or other construction, all work shall be halted in the vicinity of the archaeological discovery until a State Parks archaeologist or designee can visit the site of discovery and assess the significance of the archaeological discovery. Further treatment may be required, including modification of plans to avoid impacts to the site, site recordation, excavation, site evaluation, and data recovery. Avoidance of cultural resources shall be the top priority at all situations.

# Finding

**(X) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.**

( ) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

( ) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures or project alternatives identified in the Final EIR.

# Rationale for Finding

Although there is a potential for encountering archaeological resources during construction, it is not known whether the proposed project would affect unique archaeological resources. Nonetheless, mitigation measures are proposed that will ensure that any resources that may be encountered are handled properly. With implementation of the mitigation measures, the proposed project would not result in significant impacts to archaeological resources.

# Reference

For a full discussion of cultural resources impacts, see Chapter 7 of the *Malibu Lagoon Restoration and Enhancement Plan Final Environmental Impact Report.*

# Description of Potentially Significant Effect

Potential exists for ground-disturbing activities to damage previously unidentified buried cultural resources sites.

# Proposed Mitigation

## Mitigation Measure CR-3

*Stop Work If Cultural Resources Are Discovered during Ground-Disturbing Activities.* If buried cultural resources—such as flaked or ground stone, historic debris, building foundations, shellfish remains or non-human bone—are inadvertently discovered during ground-disturbing activities, work will stop in that area and within 100 feet of the find until a State Parks archaeologist or designee can assess the significance of the find and, if necessary, develop appropriate treatment measures.

Treatment measures typically include development of avoidance strategies, capping with fill material, or mitigation of impacts through data recovery programs, such as excavation or detailed documentation. Avoidance of cultural remains shall be the top priority at all times. If cultural resources are discovered during construction activities, the construction contractor will verify that work is halted until appropriate site-specific treatment measures, such as those listed above, are implemented.

### Mitigation Measure CR-4

*Comply with State Laws Pertaining to the Discovery of Human Remains.* If human remains of Native American origin are discovered during ground-disturbing activities, it is necessary to comply with state laws relating to the disposition of Native American burials that fall within the jurisdiction of the California Native American Heritage Commission (Public Resources Code Section 5097). Construction work shall not continue within 100 feet of a location where human skeletal remains are found. According to California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100), and disturbance of Native American cemeteries is a felony (Section 7052). Section 7050.5 requires that excavation be stopped in the vicinity of discovered human remains until the coroner can determine whether the remains are those of a Native American. If the remains are determined to be Native American, the coroner must contact the California Native American Heritage Commission to determine the most likely living descendant(s). The most likely living descendant shall determine the most appropriate means of treating the human remains and any associated grave artifacts and shall oversee disposition of the human remains and associated artifacts by the project archaeologists. This impact would be significant, but implementation of the mitigation measures above would reduce this impact to a less-than-significant level.

## Finding

**(X) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.**

( ) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

( ) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures or project alternatives identified in the Final EIR.

# Rationale for Finding

Mitigation measures are proposed that will ensure that any paleontological resources that may be encountered are handled properly. With implementation of the mitigation measure, the proposed project would not result in significant impacts to paleontological resources.

# Reference

For a full discussion of cultural resources impacts, see Chapter 7 of the *Malibu Lagoon Restoration and Enhancement Plan Final Environmental Impact Report*.

# Cumulative Impacts

The geographic scope of the area affected by potential cumulative archaeological impacts is defined by the cultural setting and ethnographic territory of the prehistoric and historic peoples who have occupied this area of southern California. As detailed in Chapter 7 of the Final EIR, this region of Los Angeles County was part of the territory of the Chumash Native American people. Related projects in the project area and other development in the county could result in the progressive loss of as yet unrecorded archaeological resources. This loss, without proper mitigation, would be an adverse cumulative impact.

Construction activities associated with related projects could contribute to the progressive loss of archaeological resources and result in significant cumulative impacts under CEQA. The proposed project also has potential to disturb or destroy archaeological resources that may exist in the proposed project area. Thus, the combined effects of the proposed and related projects could result in significant cumulative impacts to archaeological resources. The proposed project includes mitigation that would reduce potential impacts and contributions to cumulative impacts to less-than-significant levels. Similar measures may also be implemented for other related projects that have the potential to affect archaeological resources.

No significant adverse impacts were identified on historical resources, including the Adamson House and its contributing elements; therefore, the proposed project would not add to cumulative impacts caused by other related projects.

# Hydrology and Water Quality

## Significance Criteria

Appendix G of the *CEQA Guidelines* and professional judgment were the basis of the determination that the proposed project would result in a significant impact on hydrology or water quality if it would:

- violate any water quality standards or waste discharge requirements;
- otherwise substantially degrade water quality;
- substantially deplete groundwater supplies or interfere substantially with groundwater recharge, resulting in a net deficit in aquifer volume or a lowering of the local groundwater table level;
- substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site;
- substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate of surface runoff in a manner that causes flooding on- or off-site, creating or contributing to an existing local or regional flooding problem;
- create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff;
- expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam;
- place within a 100-year flood hazard area structures that would impede or redirect floodflows or contribute to inundation by seiche, tsunami, or mudflow.

## Description of Potentially Significant Effect

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.

## Proposed Mitigation

### Mitigation Measure HYDRO-2

*Implement Best Management Practices to Control Discharge of Construction-Related Pollutants to Surface Waters*. Because project

construction will cover an area greater than 1 acre, a Storm Water Pollution Prevention Plan (SWPPP) will be prepared by the Lead Agency or its contractor as required by the regional water quality control board (RWQCB) under the National Pollutant Discharge Elimination System (NPDES) General Construction Permit. The SWPPP shall meet the requirements of the RWQCB as well as any city and county requirements. The SWPPP will identify best management practices (BMPs) to maintain water quality. The final selection and design of erosion and sediment controls shall be subject to approval by the Lead Agency. BMPs in the SWPPP may include, but is not limited to, the following elements.

- Temporary erosion control measures (such as silt fences, staked straw bales/wattles, silt/sediment basins and traps, check dams, geofabric, sandbag dikes, and temporary revegetation or other ground cover) will be employed for disturbed areas.
- Earth dikes, drainage swales, and ditches shall be provided to intercept, divert, and convey surface runoff and sheet flow; prevent erosion; and reduce pollutant loading. Specific areas that may need such measures shall be identified on construction drawings.
- Roads used during construction shall be continuously swept and cleaned of accumulated earth and debris in the construction zone during project construction, particularly before predicted rainfall events.
- Excavated materials deposited or stored on-site temporarily shall not be placed in or adjacent to open water channels and shall be wetted and covered as necessary to prevent runoff and erosion.
- Oils, fuels, and other toxicants spilled or deposited near the project site shall be removed and disposed of according to applicable laws and regulations.
- Establish grass or other vegetative cover over areas that have been disturbed by construction as soon as possible after disturbance to establish vegetative cover. This will reduce erosion by slowing runoff velocities, enhancing infiltration and transpiration, trapping sediment and other particulates, and protecting soil from raindrop impact.

The Lead Agency and/or its contractors shall implement a monitoring program to verify BMP effectiveness. The monitoring program shall begin at the outset of construction and terminate upon completion of the project.

## Mitigation Measure HYDRO-3

*Implement a Hazardous Material Spill Prevention Control and Countermeasure Plan*. A Hazardous Material Spill Prevention Control and Countermeasure Plan would be prepared as part of the NPDES General Construction Permit to minimize the potential for, and effects

from, spills of hazardous, toxic, or petroleum substances during construction of the project. This plan will describe storage procedures and construction site housekeeping practices and identify the parties responsible for monitoring and spill response. Routine inspections and monitoring of best management practices would ensure minimal impacts to the environment occur. Commonly practiced best management practices include use of containment devices for hazardous materials, training of construction staff regarding safety practices to reduce the chance for spills or accidents, and use of nontoxic substances where feasible. The plan also would describe actions required if a reportable spill occurs, such as which authorities to notify and the proper cleanup procedures. The Hazardous Material Spill Prevention Control and Countermeasure Plan would contain standards considered sufficiently protective such that significant adverse impacts on surface and groundwater quality would be avoided. The plan shall be completed before any construction activities begin.

## Finding

**(X) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.**

( ) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

( ) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures or project alternatives identified in the Final EIR.

## Rationale for Finding

With implementation of the mitigation measures, the proposed project would not result in significant impacts related to hydrology and water quality.

## Reference

For a full discussion of hydrology and water quality impacts, see Chapter 5 of the *Malibu Lagoon Restoration and Enhancement Plan Final Environmental Impact Report*.

## Cumulative Impacts

The primary objective of the proposed project is restoration of habitat and improvement of water quality in Malibu Lagoon. Increased water circulation, reduced and redirected stormwater runoff, and restoration of native plant and wildlife habitat from implementation of the proposed project would beneficially affect hydrology and water quality of the lagoon after restoration is complete.

In conjunction with improved treatment and discharge operations at the Tapia Wastewater Treatment Plant and watershed-wide efforts to reduce the nutrient and bacterial load and improve aquatic habitat in the Malibu Creek watershed, it is anticipated that the proposed project would have the potential to significantly improve water quality conditions to a level that would meet Total Maximum Daily Load (TMDL) target requirements.

Additionally, the Army Corps of Engineers plans to remove Ringe Dam, a project that ultimately would contribute to restoration of flow and water quality conditions in the watershed. The storage capacity of the lagoon would increase after completion of the proposed project; thus, removal of the Ringe Dam is not expected to increase the potential for flooding in the vicinity of the lagoon. However, a plug of sediment could be released during dam removal activities. This sediment could transport to and deposit in the lagoon. Consequently, improper handling of sediments during dam removal would threaten the proposed project.

Potential impacts from the dam removal project would be avoided or mitigated through compliance with permit conditions and mitigation measures required as part of environmental impact analysis of the project. These measures would adequately protect against potential impacts to Malibu Lagoon. Overall, the proposed project would contribute to cumulatively beneficial impacts on hydrology and water quality in the watershed and lagoon.

# Construction Noise

## Significance Criteria

A significance criterion for noise is a 5-decibel increase over ambient noise levels.

## Description of Potentially Significant Effect

*Temporary Increases in Noise Levels during Project Construction:* 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.

# Proposed Mitigation

## Mitigation Measure N-1

*Use of Mufflers.* Construction contracts shall specify that all construction equipment shall be equipped with mufflers and other suitable noise attenuation devices.

## Mitigation Measure N-2

*Notice of Construction Schedule and Noise "Hotline."* All residential units located within 500 feet of the construction site shall be sent a notice regarding the construction schedule of the proposed project. A clearly legible sign shall also be posted at the construction site. All notices and the signs shall indicate the expected dates and duration of construction activities, as well as provide a telephone number that residents can call to resolve any concerns about construction noise. The Lead Agency shall be responsible for responding to any local complaints about construction noise. The Lead Agency (or designee) would determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and would be required to implement reasonable measures such that the complaint is resolved.

## Mitigation Measure N-3

*Limits of Hours of Construction.* Pursuant to the Noise Control Ordinance of the City of Malibu, Section 8.24.050G, construction activities shall be prohibited during the hours between 7:00 p.m. and 7:00 a.m. weekdays and any time on Sundays or holidays. All construction related to the proposed project would take place between the hours defined by the ordinance. Additionally, construction activities shall be coordinated with Adamson House staff to ensure that potentially disturbing construction activities do no occur during planned events at the Adamson House, such as Saturday weddings.

# Finding

( ) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

( ) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

**(X ) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures or project alternatives identified in the Final EIR.**

## Rationale for Finding

Construction-period noise impacts, although temporary, intermittent, and only lasting for the period of construction, could potentially remain significant after implementation of mitigation measures N-1 through N-3. No feasible and practicable mitigation measures are available that would reduce the construction noise levels to a less-than-significant level.

## Reference

For a full discussion of construction noise impacts, see Chapter 8 of the *Malibu Lagoon Restoration and Enhancement Plan Final Environmental Impact Report.*

## Cumulative Impacts

Cumulative construction noise impacts could occur if other projects are constructed simultaneously with and in the general vicinity of the proposed project. Projects in the related projects list in Table 10-1 of the Final EIR are in varying stages of development and at varying locations and distances from the project. There is a minor potential that some of these related projects would be under construction at the same time as the project, but due to the distance, unknown construction schedules, terrain, obstacles, and atmospheric conditions, the potential for cumulative construction noise impacts is insignificant. Consequently, significant cumulative noise impacts due to simultaneous construction of the proposed project and related projects are not anticipated.

# Alternatives to the Proposed Project

In addition to the proposed project, other alternatives were evaluated in the *Malibu Lagoon Restoration and Enhancement Plan Final Environmental Impact Report* in less detail (see Chapter 11 of the *Final Environmental Impact Report*) in accordance with CEQA requirements. Provided below is a discussion of the No-Project Alternative and the "Environmentally Superior Alternative" as required by Section 15126.6(e)(2) of the *CEQA Guidelines*.

## No-Project Alternative

Section 15126.6 (e) of the *CEQA Guidelines* requires the analysis of a No-Project Alternative. This No-Project analysis must discuss the existing condition as well as what would be reasonably expected to occur in the foreseeable future if the proposed project were not to be approved based on current plans, site zoning, and consistency with available infrastructure and community services.

Under the No-Project Alternative, implementation of the Restoration and Enhancement Plan would not occur. The parking lot and lagoon would remain and continue to be used by the public in its existing state. As a consequence, the No-Project Alternative would not result in any of the beneficial effects of the proposed project.

**Biological Resources:** The No-Project Alternative would not remove any trees or vegetation or affect any nesting birds (a potentially significant but mitigable effect) as would occur under the proposed project. Biological restoration goals would not be achieved and habitat conditions would likely continue to degrade.

**Cultural Resources:** Since no new construction and no earth moving would occur under this alternative, no impacts would occur to cultural resources.

**Hydrology and Water Quality:** Under the No Project Alternative, water quality would continue to degrade as sediment carried from storm flows is deposited in the lagoon area, thus contributing to aggradation and formation of eutrophic conditions. The No Project Alternative would not contribute to compliance with TMDL targets for nutrients and bacteria; thus, water quality would remain impaired and likely worsen over time.

**Consistency with Local and Regional Plans:** Since no new construction and no changes in land use would occur under this alternative, no land use impacts would occur.

**Construction Effects:** Under the No-Project Alternative, the physical landscape of the area would not be altered. Therefore, there will be no construction effects resulting from implementation of the No-Project Alternative.

# Alternative 1: Enhancement Alternative

The Enhancement Alternative was designed with the intent to improve existing conditions in the western lagoon arms with the least cost and least degree of disturbance to the existing lagoon habitat. The elevations of the channels in the western portion of the lagoon are too high to allow for inundation at ocean tidal elevations below mean sea level when the barrier beach berm is open. In addition, the western channels are too narrow, constricted, and isolated from one another to allow for adequate circulation of lagoon water. The existing topography has resulted in an overabundance of upland habitat.

The Enhancement Alternative would lower the existing channels elevations, thus allowing for increased tide indundation during open conditions. Topography of the channels and islands in the western lagoon would be lowered to accommodate vegetation types typically associated with coastal estuaries. Channel widths and depths would be increased, and channels would be connected to remove existing dead ends.

This alternative intends to:

- improve circulation by expanding and deepening of existing channels in the western arms;
- remove dead ends by connecting the A (north) channel to the C (south) channel;
- establish more appropriate marsh vegetation by lowering the elevation of western channels and islands to minimize upland habitat;
- increase lagoon holding capacity during closed conditions;
- provide additional bird habitat and minimize the need to export soils off-site by expansion of the mid-stream bar in the main lagoon body (no structural engineering is proposed to protect this bar);
- provide unvegetated avian areas through the creation of a salt panne. The salt panne is intended to create an unvegetated area that uses a depression to capture water that will subsequently evaporate, leaving behind higher salts in the soils, which will minimize vegetative growth; and
- minimize cost and disruption to existing lagoon habitats.

**Biological Resources:** Alternative 1 has the least capacity to accomplish desirable changes as it maintains, to a great extent, the existing lagoon platform while providing for slight modifications to site elevation. This alternative would result in some improvements to the circulation and habitat quality within the lagoon. However, it would result in only a minor overall increase of an estimated 0.53-acre of wetland habitat.

Jurisdictional wetland impacts would occur as a result of reworking existing wetlands and uplands to restore or create new wetland and upland habitats. Although the overall footprint of change for Alternative 1 may be less than that occurring for the other alternatives, this alternative includes deepening and expansion of the main lagoon channels and reduction of upland elevations with deposition of material on the central lagoon shoal. As a result, this alternative would also result in extensive construction-period modification to the existing wetland.

Alternative 1 provides a greater opportunity for the development of avian loafing and roosting islands due partly to the incorporation of smaller islands nearer to shorelines. The islands would be been incorporated within an area of the main lagoon to provide for avian nesting opportunities. The islands would be protected from human impacts that threaten the barrier beach avian area during the summer season, and the islands would not be subject to losses in the event of unseasonable summer breaching and barrier breach erosion. As such, the islands are ideally suited to be configured to optimize suitability for nesting by such species as the snowy plover. Alternative 1 provides adequate protected habitat that would meet the requirements for gobies.

**Cultural Resources:** Although the overall footprint of change for Alternative 1 may be less than that occurring for the other alternatives, it would require an extensive construction-period modification to the existing wetland. Earth moving in the project area could encounter buried cultural resources, and construction adjacent to the east side of the lagoon (Adamson House) could affect as yet unknown buried cultural resources associated with Humaliwo, CA-LAN-264, including human remains. However, impacts would be reduced to less than significant through mitigation measures CR-1, CR-2, and CR-3.

**Hydrology and Water Quality:** Alternative 1 would minimally improve hydrology and water conditions in the lagoon. Creation of a mid-stream bar for additional bird habitat could worsen circulation conditions and increase sedimentation in the lagoon area. As a result, the concentration of nutrients could increase, thus promoting formation of eutrophic conditions. Therefore, this alternative could negatively contribute to impaired hydrology and water quality conditions in the lagoon.

**Consistency with Local and Regional Plans:** Alternative 1 would not materially conflict with the Malibu General Plan, Malibu Local Coastal Program (LCP) Land Use Plan, and zoning land uses because (1) the lagoon is currently designated for use as a public park/beach, (2) the project would not require a zoning or land use change, and (3) the restoration plan does not propose expansion outside the existing Malibu Lagoon State Park footprint. Thus, the Alternative 1 is consistent with all applicable land uses and zoning designations.

**Construction Impacts:** Construction impacts for Alternative 1 would be less adverse than the proposed project due to the elimination of the Phase 1 parking lot redevelopment component.

# Alternative 1.75: Restore/Enhance Modify with the North Channel

The Restore/Enhance Modify with the North Channel is a variation of the proposed project that includes the North Channel connection as an adaptive management tool. The North Channel may further improve flushing through the upper western arms and circulation during closed conditions.

Alternative 1.75 was intended to achieve:

- tidal influence created by a single main channel with a naturalized dendritic planform more indicative of natural systems, and
- improved nutrient cycling.

Alternative 1.75 would optimally restore hydrology and water quality in the lagoon.

**Consistency with Local and Regional Plans:** Alternative 1.75 would not materially conflict with the Malibu General Plan, Malibu LCP Land Use Plan, and zoning land uses because (1) the lagoon (project site) is currently designated for use as a public park/beach, (2) the project would not require a zoning or land use change, and (3) the restoration plan does not propose expansion outside the existing Malibu Lagoon State Park footprint. Thus, Alternative 1.75 is consistent with all applicable land uses and zoning designations.

**Construction Effects:** Construction impacts for alternative 1.75 would be similar to those of the proposed project.

# Alternative 2.0: Restore and Enhance Alternative

The Restore and Enhance Alternative intends to restore and enhance those areas that have diminished in function or are in a currently degraded state.

The proposed new North Channel connection is meant to convey an appropriate source of drainage from upstream that could include the Cross Creek storm drain, the main creek, or both. The North Channel would act as a connection between the upper end of the western arm to the Cross Creek storm drain, the main creek, or both under a western bent on the PCH bridge. The purpose is to convey a limited stormflow discharge into the upstream end of the western arms to flush fine sediment from the western lagoon.

Alternative 2.0 was intended to achieve:

- tidal influence created by a single sinuous main channel;
- increased tidal flushing during open conditions by deepening of the west lagoon (no work is proposed in the main lagoon). This would also increase holding capacity (storage volume);
- enhanced and increased salt marsh environment during open conditions;
- maximized wind fetch to enhance wind-driven circulation during closed conditions; and
- unvegetated avian areas through the creation of a salt panne. The salt panne is intended to create an unvegetated area that uses a depression to capture water that would subsequently evaporate, leaving behind higher salts in the soils, which would minimize vegetative growth.

**Biological Resources:** Alternative 2 would result in an estimated 1.22-acre increase in wetland habitat, which is 0.6 acre less than the proposed project. The proposed project and Alternative 2 provide the greatest potential for reworking site conditions to achieve desired vegetation improvements. Alternative 2, in addition to all of the

alternatives, provides adequate protected habitat that would meet the requirements for gobies.

**Cultural Resources:** More excavation (54,139 cubic yards of cut and 15,772 cubic yards of fill) would occur with Alternative 2 as the west channel arm is larger and deeper than other alternatives, and the bar at the main lagoon is removed, thus causing a greater level of impact. Again, this earth moving could encounter buried cultural resources; construction adjacent to the east (Adamson House) side of the lagoon could affect as yet unknown buried cultural resources associated with Humaliwo, CA-LAN-264, including human remains. However, impacts would be reduced to less than significant through mitigation measures CR-1, CR-2, and CR-3.

**Hydrology and Water Quality:** Alternative 2 would maximize circulation and encourage flushing of sediment from the lagoon area during storm events. Water quality benefits from this alternative would involve potential reduction in nutrient concentrations, thus decreasing the formation of eutrophic conditions. When compared to existing conditions, Alternative 2 would improve hydrologic and water quality conditions. In comparison to the proposed project, Alternative 2 would improve conditions when the lagoon is open but have a less beneficial impact on closed lagoon conditions.

**Consistency with Local and Regional Plans:** Alternative 2 would not materially conflict with the Malibu General Plan, Malibu LCP Land Use Plan, and zoning land uses because (1) the lagoon (project site) is currently designated for use as a public park/beach, (2) the project would not require a zoning or land use change, and (3) the restoration plan does not propose expansion outside the existing Malibu Lagoon State Park footprint. Thus, Alternative 2 is consistent with all applicable land uses and zoning designations.

**Construction Effects:** Construction impacts for Alternative 2 would be similar to those of the proposed project.

# Environmentally Superior Alternative

The environmentally superior alternative would be the No-Project Alternative because of the absence of any potential short-term environmental impacts. However, as discussed above, the No-Project Alternative would not fulfill any of the project objectives. Under the No-Project Alternative, the lagoon would not be restored, and consequently, the long term overall health of the habitat would be impaired.

According to the *CEQA Guidelines*, if the environmentally superior alternative is the No-Project Alternative, the EIR shall identify an environmentally superior alternative among the other alternatives. The analysis presented above was the basis of the determination that Alternative 1.75 would be the environmentally superior alternative.

However, there is uncertainty as to whether Alternative 1.75 possesses the magnitude of beneficial effects.

# Statement of Overriding Considerations

The *Malibu Lagoon Restoration and Enhancement Plan* would result in potentially unavoidable and significant construction-period noise impacts. Mitigation measures have been proposed to lessen the severity of these construction-period impacts; however, in some instances these impacts may not be mitigated to a level of less than significant. Because the EIR noise analysis assumes worst-case conditions and does not account for likely attenuation due to existing noise barriers such as walls and earthen berms, it is possible that no significant noise impacts would occur during construction. However, due to the lack of detailed construction scenario data available at this time and the complex topographical nature of the project site and surroundings, less-than-significant noise levels during construction can neither be quantitatively demonstrated, nor guaranteed. Thus, the EIR analysis concludes that significant unavoidable construction noise impacts could occur.

Accordingly, the California State Department of Parks and Recreation adopts the following Statement of Overriding Considerations. The California State Department of Parks and Recreation recognizes that a significant and unavoidable impact may result from the implementation of the Malibu Lagoon Restoration and Enhancement Plan. Having (1) adopted all feasible mitigation measures; (2) rejected the alternatives to the project discussed above; (3) recognized all significant, unavoidable impacts; and (4) balanced the benefits of the proposed project against the significant and unavoidable effects, the California State Department of Parks and Recreation finds that the benefits outweigh and override the potentially significant unavoidable construction phase noise impact.

The purpose of the proposed project is to restore and enhance the ecological conditions of the lagoon and improve public access and education about the lagoon. The project will increase wetland (marsh) habitat at the existing lagoon, enhance tidal influence and improve circulation, remove exotic invasive vegetation species, and increase native vegetation while enhancing the visitor and recreational experience.

Implementation of the Malibu Lagoon Restoration and Enhancement Plan would meet the following objectives: (1) decrease urban runoff from surrounding sources into the lagoon to improve its water quality and decrease eutrophication; (2) increase circulation of water during open and closed conditions; (3) restore habitat by re-establishing suitable soil conditions and native plant species and removing nonnative species; (4) relocate existing parking lot to increase habitat size and utilize permeable surfaces; (5) evaluate, record, and analyze existing and changing ecological conditions of the lagoon using physical, chemical, and biological parameters to allow agencies, organizations, and

stakeholders to monitor progress toward restoration goals; and (6) provide improved visitor and educational amenities.

For the reasons described above, the public benefits of the proposed Malibu Lagoon Restoration and Enhancement Plan outweigh the sole unavoidable adverse environmental effect of short-term and intermittent construction noise nuisances, and consequently, the adverse environmental effects are considered “acceptable” in accordance with Section 15093(c) of the *CEQA Guidelines*.