

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585 - 1800

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Staff Report: 6/25/03
Hearing Date: 7/10/03
Commission Action:



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STAFF REPORT: REGULAR CALENDAR **Revised Findings**

APPLICATION NO.: 4-01-203

APPLICANTS: Howard & Kathy Klein **AGENT:** Don Schmitz, Schmitz and Associates

PROJECT LOCATION: 32248 Pacific Coast Highway, City of Malibu

COMMISSION DECISION: Approved with Five (5) Special Conditions

DATE OF COMMISSION ACTION: January 8, 2003 in Los Angeles

COMMISSIONERS ON PREVAILING SIDE: Commissioners Desser, Dettloff, Hart, Krueger, McClain-Hill, Potter, and Wooley

PROJECT DESCRIPTION: Reconstruct an existing stairway to the beach.

Lot area 2.45 acres

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department, Approval in Concept, June 14, 2002.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu Local Coastal Program; "Limited Geologic Reconnaissance Report" GeoConcepts, Inc., January 15, 2002. Coastal Development Permit No. 4-95-176 (Hackett).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **adopt the following revised findings in support of the Commission's decision on January 8, 2003, to approve the proposed project subject to five (5) special conditions.** The Commission found that the proposed project was consistent with the applicable Malibu LCP.

Because the Commission voted to approve the proposed project, revised findings are necessary to reflect the action taken by the Commission, as the staff report and findings recommended denial of the project. Staff recommends, therefore, that the Commission adopt the following resolution and revised findings in support of its action to approve this coastal permit with conditions.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on January 8, 2003, concerning approval of Coastal Development Permit 4-01-203.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings, as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the January 8, 2003, hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for approval of Coastal Development Permit 4-01-203 on the ground that the findings support the Commission's decision made on January 8, 2003, and accurately reflect the reasons for that decision.

II. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Assumption of Risk/Shoreline Protection

By acceptance of this permit, the applicant acknowledges and agrees to the following:

1. The applicant acknowledges and agrees that the project site may be subject to hazards from storm waves, surges, erosion, landslide, flooding, and wildfire.
2. The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
3. The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
4. The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
5. The applicant agrees that no future shoreline protective device will be approved and constructed to protect the subject stairways approved pursuant to Coastal Development Permit 4-01-203. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code section 30235.

2. Construction Responsibilities and Debris Removal

The applicant shall, by accepting this permit, agree: a) that no stockpiling of dirt shall occur on the beach; b) that all grading shall be properly covered and sand bags and/or ditches shall be used to prevent runoff and siltation; c) that measures to control erosion must be implemented at the end of each day's work; d) no machinery shall be allowed in the intertidal zone at any time; e) all construction debris shall be removed from the beach daily and at the completion of construction.

Prior to the issuance of the coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all debris/excavated material from the site. Should the disposal be located in the Coastal Zone, a Coastal Development Permit shall be required.

3. Generic Deed Restriction

Prior to the Issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the

applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

4. Color Restriction

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of coastal development permit 4-01-203, including the stairways, gate and concrete base permitted. The palette samples shall be presented in a format not to exceed 8½" X 11" X ½" in size. The palette shall include the colors proposed for the stairways, gate and concrete base authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earthen tones) including shades of brown and unpainted natural wood with no white, light shades, or bright tones.

The approved structures shall be colored with only the colors authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing may only be applied to the structures authorized by coastal development permit 4-01-203 if such changes are specifically authorized by the Executive Director as complying with this special condition.

5. Landscape Plan

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a landscape plan, prepared and signed by a licensed landscape architect, a qualified resource specialist, or qualified landscape professional for review and approval by the Executive Director. The revised plans shall incorporate the following criteria:

A) Landscape Plan

- (1) All disturbed areas as a result of the proposed project on the subject site shall be planted and maintained for erosion control purposes within (60) days of completion of the project. To minimize the need for irrigation all landscaping

shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. Invasive, non-indigenous plant species which tend to supplant native species shall not be used. Planting should be of native plant species indigenous to coastal bluff locations along Santa Monica Bay using accepted planting procedures. In areas proposed for planting, such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.

- (2) Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (3) The Plan shall retain and protect the Giant Coreopsis existing on the project site.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and History

The applicants are proposing to reconstruct an existing stairway to the beach (Exhibits 3 and 6). The existing lower stairway is severely damaged, the upper stairway has been partially repaired (Exhibits 4 and 5). The applicants propose to replace both sections of these stairways with new materials (Exhibits 6 – 10). These two sections of the stairway are located within an easement designated for pedestrian ingress and egress from Pacific Coast Highway to the beach. The stairway provides private access to the beach for a total of three neighboring residentially developed properties, including the applicant's residence from the existing shared driveway and along a short dirt pedestrian trail to the first of two sections of the stairway. The stairway consists of two sections separated into upper and lower stairways separated by a dirt trail. The upper stairway is about 22 feet long and three feet wide with guardrails traversing a portion of the bluff from elevation 48 feet above sea level to 68 feet above sea level. A short dirt trail leads from the base of the upper stairway along a slightly sloping ridge to the lower stairway that is about 18 feet long by three feet wide. The lower stairway traverses the portion of the bluff from elevation 34 feet above sea level down to the sandy beach at 5.2-foot elevation level. According the applicant's engineer, the mean high tide is located at the 4.2-foot elevation as surveyed by W. R. Benson in July 2002. The applicant proposes to replace these two sections of the existing stairway, although most of the lower stairway no longer exists, with the same design, size and location, except that a small security gate will be added to the top of the lower stairway to prevent the public from accessing the sloping ridge between the stairways. According to the applicant, this gate was required by the City of Malibu in order to receive City approval under their General Plan on June 14, 2002.

The subject site is a 2.39-acre bluff top parcel located on the seaward side Pacific Coast Highway between La Piedra State Beach and El Matador State Beach in the City

of Malibu (Exhibits 1-2). This parcel is owned by a neighboring property owner and includes a residence and shared driveway from Pacific Coast Highway. This stairway accesses the Robert Meyer Memorial State Beach. The subject parcel extends from Pacific Coast Highway to the sandy beach and includes an existing single family residence owned by Buddy and Sherry Hackett. The applicants have an easement along the northeastern portion and the southwest portion of this parcel providing pedestrian access to the beach from their parcel which is adjacent to Pacific Coast Highway. This paved driveway accesses the applicant's residence and two other residences from Pacific Coast Highway (Exhibit 3).

History

On October 12, 1995, the Executive Director approved an emergency coastal development permit number G4-95-176 (Hackett) to construct a soldier pile wall to provide support for the existing residence where an existing retaining wall was failing at 32232 Pacific Coast Highway, Malibu. The property owners, the Hackett's, received approval in Coastal Permit Application No. 4-95-176 on January 11, 1996 for the soldier pile wall, a patio located seaward of the residence, a drainage system, bluff top fill and the repair and replacement of the subject bluff face stairs and a gang plank ramp structure. However, the Hackett's have not complied with the special conditions necessary prior to the issuance of this coastal permit. Because this coastal permit included the soldier pile wall which was constructed as a result of the emergency coastal permit, it is unknown if this coastal permit number 4-95-176 is vested and has or has not expired. Further, since this coastal permit application was approved, it appears that the lower stairway has further deteriorated to the point of only the two stringers, a few vertical posts that once supported the railings and the concrete base only remain as of January 3, 2002 when viewed by Staff (Exhibit 4, photo received from applicant November 15, 2001). The upper stairway has been partially repaired with 50% replacement steps and four vertical handrail supports (Exhibit 5, photo received from applicant November 15, 2001).

The applicant submitted this subject application on November 15, 2001. Additional information was submitted and the application filed as complete on July 18, 2002. On August 2, 2002 the applicant requested that this application be considered as a disaster replacement permit exemption. On August 30, 2002, the Executive Director declined to approve this replacement project as a disaster replacement as the stairway appeared to have deteriorated over time rather than as a result of a specific natural disaster.

On September 13, 2002, the Commission adopted the Malibu Local Coastal Program (LCP). The subject permit application was filed prior to the date the LCP was adopted and therefore remains under the jurisdiction of the Commission. Prior to the adoption of the LCP the standard of review for permit applications in Malibu were the chapter three policies Coastal Act. After the adoption of the LCP the standard of review for permit applications is the LCP and for development located between the nearest public road paralleling the sea (Pacific Coast Highway) and the sea the development must also be found in conformity with the public access and recreation policies of the Coastal Act.

B. Public Access

The proposed development is located on two bluff faces separated by a relatively flat ridge leading to a small promontory on a bluff top lot which includes sandy beach (Exhibits 3-5). The site is located in the City of Malibu between the first public road paralleling the sea, Pacific Coast Highway, and the sea. Coastal Act Policies related to public access and recreation which are also incorporated as part of the Malibu LCP and include the following applicable policies. The Malibu Local Coastal Program (LCP) also contains the following development policies related to public access and recreation in relation to bluff top development that are applicable to the proposed development.

Sections 30210, 30211, 30212, 30212.5, and 30214 of the Coastal Act, which are incorporated as part of the Malibu LCP, state in pertinent part that:

Section 30210 states that:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 states that:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 states that:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) Adequate access exists nearby, or,

(3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Section 30212.5 states that:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30214 states that:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

The certified City of Malibu LCP includes the following policies related to public access and bluff faced development.

- 2.23 No new structures or reconstruction shall be permitted on a bluff face, except for stairways or accessways to provide public access to the shoreline or beach or routine repair and maintenance or to replace a structure destroyed by natural disaster.
- 2.63 Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.
- 4.29 No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access. Such structures shall be constructed and designed to not contribute to further erosion on the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

The applicants are proposing to reconstruct an existing stairway to the beach; the existing lower stairway is severely damaged, the upper stairway has been partially repaired. The applicants propose to replace both sections of these stairways with new materials. The applicant is not proposing routine repair or maintenance of these stairways but rather complete replacement by first demolishing the stairways and then reconstructing the stairways in the same location. As a result the reconstruction is considered new development.

The stairway provides private access for a total of three neighboring residentially developed properties, including the applicant's residence. The upper stairway is about 22 feet long and three feet wide with guard rails traversing a portion of the bluff from elevation 48 feet above sea level to 68 feet above sea level. A short dirt trail leads from the base of the upper stairway along a slightly sloping ridge along a promontory to the lower stairway that is about 18 feet long by three feet wide. The lower stairway traverses the portion of the bluff from elevation 34 feet above sea level down to the sandy beach at 5.2 foot elevation above sea level. According the applicant's engineer, the mean high tide is located at the 4.2 foot elevation as surveyed by W. R. Benson in July 2002. The applicant proposes to replace these sections of the existing stairway, although most of the lower stairway no longer exists, with the same design, size and location, except that a small security gate will be added to the top of the lower stairway to prevent the public from accessing the sloping ridge between the stairways.

The purpose of the applicants' project is to reconstruct two sections of an existing but damaged stairway for the purpose of providing private vertical access to the public beach at Robert Meyer Memorial State Beach and the subject parcel's narrow private beach located between the base of the bluff and the State's Tidelands located below the mean high tide line.

The applicant's easement included this pre-existing stairway, constructed in the 1960's, on the subject site prior to the effective date of the Coastal Initiative (Proposition 20) on January 1, 1973. Further, the proposed reconstruction of these stairways is the result of a structure destroyed by the March 1995 winter storm. In the staff report – revised findings dated October 31, 1995 for Coastal Permit No. 4-95-176 (Hackett), the Commission found that the repair and replacement of these stairs initially constructed in the 1960's was considered repair and maintenance under the Commission's Administrative Regulation guidelines. Since 1995, the upper and lower stairways, constructed of wood, have further deteriorated now requiring complete replacement.

Therefore, the Commission finds that the proposed project is in need of substantial repair and maintenance and at this time it is necessary to reconstruct both the upper and lower stairways that are pre-existing to the effective date of the Coastal Initiative (Proposition 20) in January 1973. The Commission finds the following Special Conditions discussed below are necessary to ensure compliance with the Malibu LCP. Thus, the Commission finds that the proposed project as conditioned is consistent with the applicable public access policies of the Malibu LCP.

C. Hazards

The proposed development is located on two bluff faces separated by a relatively flat ridge on a bluff top lot which includes sandy beach in the City of Malibu between the first public road paralleling the sea, Pacific Coast Highway, and the sea. Coastal Act Policies related to hazards which are also incorporated as part of the Malibu LCP include the following applicable policies. The Malibu Local Coastal Program (LCP) also contains the following development policy related to development on a bluff face that is applicable to the proposed development.

Coastal Act Section 30253 states in part that:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The certified City of Malibu LCP includes the following policy related to structures permitted on a bluff face.

4.29 No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

10.4 Development Standards

B. New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave run-up) at any time during the full projected 100 year economic life of development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and sited as far landward as possible to the maximum extent practicable. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.

D. All new development located on a bluff top shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or

threatened by slope instability for a projected 100 year economic life of the structure. In no case shall development be set back less than 100 feet. This distance may be reduced to 50 feet if the City geotechnical staff determines that either of the conditions below can be met with a lesser setback. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist and/or Geotechnical Engineer, or a Registered Civil Engineer with experience in soil engineering. ...

13.5 NON-CONFORMING USE OR STRUCTURES.

- A. This section (13.5) shall apply to the following: (1) any existing and lawfully established or lawfully authorized use of land or to any existing and lawfully established or lawfully authorized buildings and other structures that do not conform to the policies and development standards of the certified LCP, or any subsequent amendments thereto and (2) development that is not exempt from the coastal development permit requirements pursuant to Section 13.4 of the Malibu LIP (Exemptions). Development that occurred after the effective date of the Coastal Act or its predecessor, the Coastal Zone Conservation Act, if applicable, that was not authorized in a coastal development permit or otherwise authorized under the Coastal Act, is not lawfully established or lawfully authorized development, is not subject to the provisions of Section 13.5, but is subject to the provisions of Section 13.3 (F) of the Malibu LIP.
- C. Non-conforming structures as defined by 13.5(A) of the Malibu LIP may be repaired and maintained if it does not result in enlargement or expansion of the structure. However, demolition and/or reconstruction that results in replacement of more than 50 percent of non-conforming structures, including all demolition and/or reconstruction that was undertaken after certification of the LCP, is not permitted unless such structures are brought into conformance with the policies and standards of the LCP.

By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. The bluffs along this section of the coast are subject to erosion from wave action, underground water seepage, and the sheet flow from rain.

The applicants are proposing to reconstruct an existing stairway to the beach; the existing lower stairway is severely damaged, the upper stairway has been partially repaired. The Coastal Act and the Malibu LCP requires that new development be sited and designed to minimize risks to life and property from geologic, flood, and fire hazards. The applicants propose to replace both sections of these stairways with new materials. The applicants submitted a geology report titled "Limited Geologic

Reconnaissance Report" dated January 15, 2002 by GeoConcepts, Inc. This report concludes that the orientation of the local bedrock structure is considered geologically favorable from the standpoint of gross stability relative to the replacement stairway. Further, the report concludes that the potential for slope failure in the terrace deposits is considered to be low to moderate and that the bedrock or terrace deposits should possess sufficient strength to support the stairways.

In this case, the stairways are proposed on very steep slopes that are subject to the typical erosional forces associated with a coastal bluff landform. The applicants propose to reconstruct a permanent structure on two sections of a bluff face for the purpose of providing private access to the shoreline. The applicant has provided a geology report that states that the proposed project is located on bedrock or terrace deposits that should possess sufficient strength to support the stairways.

Therefore, the Commission finds that the proposed project is in need of substantial repair and maintenance and at this time it is necessary to reconstruct both the upper and lower stairways that are pre-existing to State Coastal requirements. Special Condition No. One requires the applicant to assume all risks of hazard on the site and a requirement that no future shoreline protective devices will be approved to protect these stairways thereby preventing future impacts to public access and coastal processes. In addition, Special Condition No. Two requires the applicant to agree to construction responsibilities and debris removal thereby protecting coastal resources. Although it appears that these stairways were constructed prior to the effective date of the Coastal Initiative in 1973 they are considered under the Malibu LCP as non-conforming structures.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as condition, is consistent with the applicable hazard policies of the Malibu LCP.

D. Environmentally Sensitive Habitat Area

The proposed development is located on two bluff faces separated by a relatively flat ridge on a bluff top lot with native and non-native vegetation on the bluff top and face. Coastal Act Policies related to the protection of environmentally sensitive habitats are also incorporated as part of the Malibu LCP as the following applicable policies.

Coastal Act Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The certified City of Malibu LCP includes the following policy related to environmentally sensitive habitat areas.

- 3.1 Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments are Environmentally Sensitive Habitat Areas (ESHAs) and are generally shown on the LUP ESHA Map. The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem. Regardless of whether streams and wetlands are designated as ESHA, the policies and standards in the LCP applicable to streams and wetlands shall apply. Existing, legally established agricultural uses, confined animal facilities, and fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA.**
- 3.4 Any area not designated on the LUP ESHA Map that meets the ESHA criteria is ESHA and shall be accorded all the protection provided for ESHA in the LCP. The following areas shall be considered ESHA, unless there is compelling site-specific evidence to the contrary:**
- Any habitat area that is rare or especially valuable from a local, regional, or statewide basis.
 - Areas that contribute to the viability of plant or animal species designated as rare, threatened, or endangered under State or Federal law.
 - Areas that contribute to the viability of species designated as Fully Protected or Species of Special Concern under State law or regulations.
 - Areas that contribute to the viability of plant species for which there is compelling evidence of rarity, for example, those designated 1b (Rare or endangered in California and elsewhere) or 2 (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society.

ESHA Protection

- 3.8 Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.**
- 3.9 Public accessways and trails are considered resource dependent uses. Accessways and trails located within or adjacent to ESHA shall be sited to minimize impacts to ESHA to the maximum extent feasible. Measures, including but not limited to, signage, placement of boardwalks, and limited fencing shall be implemented as necessary to protect ESHA.**

- 3.11 Applications for development of a non-resource dependent use within ESHA or for development that is not consistent with all ESHA policies and standards of the LCP shall demonstrate the extent of ESHA on the property.
- 3.26 Required buffer areas shall extend from the following points:
- The outer edge of the canopy of riparian vegetation for riparian ESHA.
 - The outer edge of the tree canopy for oak or other native woodland ESHA.
 - The top of bluff for coastal bluff ESHA
- 3.30 Protection of ESHA and public access shall take priority over other development standards and where there is any conflict between general development standards and ESHA and/or public access protection, the standards that are most protective of ESHA and public access shall have precedence.

Environmental Review

- 3.38 The Environmental Review Board (ERB) shall be comprised of qualified professionals with technical expertise in biological resources (marine/coastal, wetland/riparian protection and restoration, upland habitats and connectivity), geology (coastal protection devices, slope stability, onsite waste treatment), architecture or civil engineering (siting of structures in hillside areas), and landscape architecture (fuel modification, planting of wildland edges). In addition, ERB members shall be knowledgeable about the City of Malibu and the Santa Monica Mountains.
- 3.39 The ERB, in consultation with the City Biologist, shall review development within or adjacent to designated ESHA or other areas containing ESHA identified through a biological study as required pursuant to Policy 3.37. The ERB shall consider the individual and cumulative impacts of the development on ESHA, define the least environmentally damaging alternative, and recommend modifications or mitigation measures to avoid or minimize impacts. The City may impose a fee on applicants to recover the cost of review of a proposed project by the ERB when required by this policy.

The applicants are proposing to reconstruct an existing stairway to the beach; the existing lower stairway is severely damaged, the upper stairway has been partially repaired. The project involves only a minor amount of excavation to replace existing support posts and limited disturbance surrounding these stairways. The Malibu LCP designates coastal bluffs as environmentally habitat areas. Specifically Policy 3.1 requires that coastal bluff areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities. However, a specific site could be determined not to include ESHA if there is site-specific evidence that

establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem. Policies 3.1 and 3.8 require that ESHA on bluffs be protected against significant disruption of habitat values and that only uses dependent on such resources shall be allowed within such areas. Policy 3.4 requires that any area not designated on the LUP ESHA map that meets the ESHA criteria is ESHA and shall be accorded all the protection provided for ESHA. Policy 3.9 identifies that public accessways and trails are considered resource dependent uses.

This application was submitted in November 2001 at a time when staff did not require the completion of an ESHA study for the project site to identify the specific plant species on site. This application was filed on July 18, 2002 prior to the date of the Commission's certification of the Malibu LCP. In any event, staff observation of the site as identified in photo attached as Exhibit 5 includes giant coreopsis, a rare and endangered plant species, which with other potential plant species possibly including coastal sage scrub, the site is considered to include ESHA.

Therefore, the Commission finds that the proposed project is in need of substantial repair and maintenance and at this time it is necessary to reconstruct both the upper and lower stairways that are pre-existing to the Coastal Act. Because the proposed project will involve a minor amount of excavation and very limited disturbance of the bluff surrounding the stairways, Special Condition No. Five requires a landscape plan to plant the disturbed areas with native plants to maintain the area for erosion control purposes while retaining and protecting the existing Giant Coreopsis on the project site.

Therefore, the Commission finds that the demolition and reconstruction of these stairways located within ESHA is consistent, as condition, with the Malibu LCP.

E. Scenic and Visual Resources

Section 30251 of the Coastal Act set forth below, is incorporated herein as a policy of the Land Use Plan.

Section 30251.

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The certified City of Malibu LCP includes the following policies related to structures permitted on a bluff face and on the beach.

- 6.1 The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.
 - 6.2 Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.
 - 6.4 Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.
2. New Development
- 6.5 New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.
 - 6.6 Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.

The applicants are proposing to demolish and reconstruct an existing stairway to the beach; the existing lower stairway is severely damaged, the upper stairway has been partially repaired. The Malibu LCP designates beaches as public viewing areas containing scenic areas of regional and national importance as noted in Policies 6.1, 6.2, and 6.4. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced as required by the Malibu LCP. Policy 6.5 requires that new development such as these stairways be sited and designed to minimize impacts on scenic areas from public viewing areas to maximum extend feasible, while Policy 6.6

requires the avoidance of impacts to visual resources through site selection and design alternatives.

The location of the proposed reconstruction of these stairways is on a bluff face and on a beach, a scenic coastline area that is required to be protected and where feasible, enhanced. The Commission finds that to protect the scenic and visual quality of this area, Special Condition No. Four is needed to require a color restriction ensuring the color of the stairway and concrete base is compatible with the surrounding environment. Further, Special Condition No. Three requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Thus, the proposed project, as conditioned, is consistent with the scenic and visual resource policies of the Malibu LCP.

F. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect that the activity may have on the environment. The City of Malibu has determined that the proposed project is categorically exempt from CEQA.

The Commission finds that, the proposed project, as conditioned, will not have any significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.