

## CALIFORNIA COASTAL COMMISSION

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

Filed: 8/26/2006  
Staff: James Johnson  
Findings Report: 6/21/2007  
Action Date: 2/14/2007  
Action: Approval w/ Conditions in  
Part; Denial in Part  
Findings Hearing: 7/9/2007



# M 16 a

## **STAFF REPORT: PERMIT AMENDMENT** **REVISED FINDINGS**

**APPLICATION NO.:** 5-83-703-A1

**APPLICANT:** David Geffen

**AGENTS:** Steve Amerikaner, Hatch & Parent; Richard Sherman; Lynn Heacox, Land & Water Company;

**PROJECT LOCATION:** 22108, 22114, 22126, and 22132 Pacific Coast Highway, City of Malibu, Los Angeles County; Assessor Parcel Numbers 4451-006-031, 4451-006-032, and 4451-006-035

**COMMISSION ACTION:** Approval in Part with Modified Conditions and Denial in Part with Modifications

**DATE OF COMMISSION ACTION:** February 14, 2007

**COMMISSIONERS ON THE PREVAILING SIDE:** Achadjian, Burke, Caldwell, Clark, Kram, Krueger, Wright, Potter, Reilly, Shallenberger and Wan,.

**DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:** Lot line adjustment between two contiguous beachfront parcels, 950 sq. ft. addition expanding an existing garage, guest/maid's quarters and a deck; construction of a swimming pool, spa and a 100' long wood bulkhead with 50' side returns to protect existing single-family residence, and offer to dedicate lateral and vertical access for public use.

**DESCRIPTION OF AMENDMENT:** Request for after-the-fact approval for the following "as built" developments: approximately 18 ft. wide by 56 ft. in length concrete slab/walkway with thickened 12 in concrete edge at southern (seaward) edge; a gate, 9 ft. wide by 6 ft. high, at southern edge of concrete walkway; an approximately 9 ft. by 30.5 ft storage structure totaling 274.5 sq. ft.; an approximately 9 ft. by 26 ft. fenced storage area totaling 234 sq. ft.; two air conditioning units; 5 vent pipes; electrical conduits; one 6 foot high by 26 ft long fence at the eastern edge of the storage area, one 6 foot high by 26 ft. long stucco wall along western property line (western edge of storage area), and one 6 ft high by 9 ft. long fence at the southern edge of the storage area; a 42 foot long by 5 foot wide cantilevered deck on top of the western most bulkhead/seawall, and a private beach access stairway located within a lateral public access easement. In addition, the project also includes an offer to record an

offer to dedicate a lateral easement for public access and passive recreation extending from the mean high tide line to the toe of the seawall/bulkhead (excluding a privacy buffer extending ten ft. seaward from the toe of the existing seawall/bulkhead) and providing an uninterrupted public access easement which connects the existing vertical accessway and the two closest existing lateral accessways on the other portions of the subject property located downcoast; installation of trash receptacles(s) in the existing vertical accessway which will be taken to the curb on trash collection day; and payment to the California Coastal Conservancy for the sum of one hundred twenty-five thousand dollars (\$125,000.00) to be used for the purpose of providing funds to pay for the daily opening and closing of the gates and related maintenance of subject accessways.

|                                    |                |
|------------------------------------|----------------|
| Lot Area:                          | 29,492 sq. ft. |
| Residential Building Coverage:     | 4,897 sq. ft.  |
| Storage Structure/Yard Coverage:   | 508 sq. ft.    |
| Vertical Access Pavement Coverage: | 504 sq. ft.    |

**LOCAL APPROVALS RECEIVED:** City of Malibu, Approval in Concept, dated 7/24/2006.

**SUBSTANTIVE FILE DOCUMENTS:** City of Malibu Local Coastal Program, adopted September 13, 2002; Coastal Hazard & Wave Uprush Study 22108-22126 Pacific Coast Highway, Malibu, CA, dated April 2006 by GeoSoils, Inc.; Coastal Permit No. 5-83-703, Geffen; Coastal Permit No. 4-99-268, Geffen; Coastal Permit No. 4-01-089, Geffen; Coastal Permit No. 5-91-610, Geffen; Coastal Permit Waiver No. 4-93-098W, Geffen; Coastal Permit No. 4-02-198, Coastal Conservancy; Settlement Agreement and Mutual Release dated January 20-24, 2006.

### **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on February 14, 2007 to approve a portion of the proposed development and deny the remaining portion. Adoption of the revised findings as set forth in this staff report requires a majority vote of the members from the prevailing side present at the revised findings 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. In its previous action at the February 14, 2007 meeting, the Commission adopted the following two-part resolution:

#### ***Part A to approve the "after-the-fact" request for the following:***

Approximately 18 ft. by 56 ft. concrete floor/walkway with thickened 12 in concrete edge at southern (seaward) edge; a gate, 9 ft. wide by 6 ft. high, at southern edge of concrete walkway; an approximately 9 ft. by 30.5 ft storage structure totaling 274.5 sq. ft.; an approximately 9 ft. by 26 ft. fenced storage area totaling 234 sq. ft.; two air conditioning units; 5 vent pipes; electrical conduits; one 6 foot high by 26 ft long fence at the eastern edge of the storage area, one 6 foot high by 26 ft. long stucco wall along western property line (western edge of storage area), and one 6 ft high by 9 ft. long fence at the southern

edge of the storage area; a 42 foot long by 5 foot wide cantilevered deck on top of the western most bulkhead/seawall, and a private beach access stairway. In addition, staff recommends that the Commission approve the following additional project provisions that are proposed by the applicant consistent with the provisions of the related Settlement Agreement between the Commission and the applicant:

- (1) The applicant shall record an Offer to Dedicate a lateral easement for public access and passive recreation extending from the mean high tide line to the toe of his seawall/bulkhead (excluding a ten foot privacy buffer adjacent to the seaward line of the seawall/bulkhead consistent with the existing privacy buffer) and providing an uninterrupted public access easement which connects the existing vertical accessway and the two closest existing lateral accessways on the subject property. The applicant will place trash receptacles(s) in the existing vertical accessway which will be taken to the curb by Geffen's employee or agent on trash collection day; and
- (2) The applicant shall pay to the Coastal Conservancy the sum of one hundred twenty-five thousand dollars (\$125,000.00) to be deposited in a separate account with the Coastal Trust Fund established pursuant to Section 31012 of the Public Resources Code and used for the purpose of providing funds to pay for the daily opening and closing of the gate and related maintenance of subject accessways. The Coastal Conservancy may disburse funds from the Coastal Trust Fund account to Access for All to contract with ADT, or other comparable business entity, or person to provide services to Access for All (or successor) in its management of the subject accessways, including but not limited to opening and closing the gate, trash pickup and security services. Upon transfer of the subject property to a party other than Geffen, or upon Geffen's death, whichever occurs first, and notice thereof to Access for All (or successor) and the Coastal Conservancy, Access for All (or successor) in consultation with the Coastal Conservancy, shall have the option for the next twelve (12) months to utilize funds in the Coastal Trust Fund account to replace the existing gates with gates that provide visual access to the coast and include a timed mechanism for automatically unlocking at sunrise and locking at sunset. Upon installation and payment in full for gates including both of these features, any balance of funds remaining in the account shall be returned to Geffen or to his estate.

***Part B to Deny:***

The "after-the-fact" request for all development within the Caltrans right of way easement seaward of the concrete slab (including rocks and landscaping).

In its action on this application, the Commission made two primary changes to the recommended special conditions in order to: (1) modify the provisions of Special Conditions Four and Six to delete the requirement that the applicant remove the as-built private stairway on site and (2) modify the provisions of Special Condition Seven in order to clarify that the proposed offer to dedicate a lateral access easement on the subject site will consist of the

entire width of APN 4451-006-031 from the mean high tide line to the dripline of the existing deck (rather than the toe of the seawall/bulkhead which is located approximately 5 ft. further landward),. In addition, the area ten (10) feet seaward from the dripline of the existing deck shall be identified as a privacy buffer.

The subject site is located along Carbon Beach, an beachfront area developed with single-family residences. The primary issue raised by this application involves potential adverse impacts to public coastal access and public recreational resources resulting from new development along the shoreline and within existing public vertical and lateral access easements.

The Commission's action for **approval** of part of the proposed application includes thirteen (13) new special conditions of approval, including revised project plans, installation/maintenance of public access ramp, removal of unpermitted development within the Caltrans right of way easement (rocks and landscaping), lateral public access, no future shoreline protective device and removal plan, assumption of risk, public sign installation and private sign restriction, construction responsibilities and debris removal, generic deed restriction, condition compliance, payment of monies to the Coastal Conservancy, and Indemnification Condition. The proposed project would grant after-the-fact approval of the as-built development located within the previously recorded public vertical access easement (including the concrete slab), other structures located within the adjacent Caltrans easement (including the storage structures), and the as-built private beach stairway, all on the applicant's beachfront property.

The portions of the proposed development that will be located within the recorded vertical public access easement (including the concrete slab and five vents), as conditioned by this permit, will not result in direct obstacles to public access. As conditioned, the project would also serve to improve the public's ability to utilize the public vertical access easement for public access to the Carbon Beach from Pacific Coast Highway because the proposed project includes the payment to the California Coastal Conservancy of one hundred twenty-five thousand dollars (\$125,000.00) to be used for the purpose of providing funds to pay for the daily opening and closing of the gates and related maintenance of the accessways on the site. As conditioned, the project would also improve the public's ability to utilize Carbon Beach because the recordation of an offer to dedicate an easement for lateral access on this property will provide for a continuous lateral public access across all four of the properties owned by the applicant along this portion of Carbon Beach.

The Commission's action for **denial** of part of the proposed application encompasses all development (rocks and landscaping) within the Caltrans right of way easement seaward of the concrete slab.

This application was previously scheduled for the December 2006 Commission meeting. The applicant exercised their automatic right of postponement to address issues and special conditions in the staff recommendation. At the applicant's request, staff met with the applicant's representatives on December 7, 2006, to discuss the applicant's issues. The applicant's representatives indicated that the applicant objects to Special Conditions Four (4)

and Six (6) which require the removal of the unpermitted private stairway on site that extends seaward of the deck onto the sandy beach and encroaches into a recorded lateral public access easement. The applicant's representatives also indicated that the applicant objects to Special Conditions Four (4) and Five (5) which required the applicant to construct and maintain a pedestrian ramp to provide continued public access from the proposed as-built concrete slab to the sandy beach. The Commission adopted a two part resolution to approve part of this coastal permit amendment application with the conditions listed below and deny part of this coastal permit amendment application at the February 14, 2007 meeting.

In regard to the applicant's previous concerns regarding the requirement to construct and maintain a pedestrian ramp to provide access from the concrete slab to the sandy beach, Special Condition Five (5) was previously revised to delete the requirement for continued maintenance of the ramp by the applicant. However, as discussed in detail in the findings of this report, the ramp is necessitated by the concrete slab proposed by the applicant. The provision of the pedestrian ramp is necessary to ensure that the public will be able to continue to use the recorded vertical public access easement on site as changes in beach profile/sand level elevations result in a grade differential (such as the formation of a steep drop-off) between the proposed concrete slab and the sandy beach seaward of the slab. As an alternative to actual construction of the ramp, the applicant's representatives indicated that the applicant would agree to pay approximately \$3,000 – \$5,000 to *Access for All* so *Access for All* could take responsibility for designing and constructing a ramp for the subject site. However, *Access for All* is not a co-applicant and the applicant's representatives failed to provide any supporting engineering information or analysis regarding the expected cost to purchase or construct such a ramp. Thus, based on the lack of information submitted by the applicant, it is not possible to confirm that \$5,000 is adequate to provide for the cost of the required ramp. Therefore, in order to ensure that the proposed project will not result in adverse impacts to public access, Special Conditions Four (4) and Five (5) specifically require that the applicant provide for the construction of a movable, lightweight, metal (stainless steel or an equivalent material) ramp with non-slip surface and stainless steel handrails on each side which shall provide a transition from the concrete slab to the sandy beach at times when the elevation of the concrete slab/walkway is higher than the sandy beach. The ramp shall be designed by a civil engineer in consultation with *Access for All* or its successor and shall be adequate to provide for safe pedestrian access from the seaward edge of the concrete slab/walkway to the sandy beach whenever the sand level is lower than the top elevation of the concrete slab/walkway and in a manner that will accommodate any future changes in beach profile/sand level elevations over time. The design/plans for the ramp shall be subject to the review and approval of the Executive Director and *Access for All*.

In regard to the unpermitted private stairway which extends, in part, seaward of the existing deck on the sandy beach, the Commission found that, in this unique case, the existing stairway was constructed in a manner and location that is generally consistent with the previously approved plans for Coastal Development Permit (CDP) No. 5-86-061.

## **I. STAFF RECOMMENDATION**

The staff recommends that the Commission adopt the following resolution:

**MOTION:** *I move that the Commission adopt the revised findings in support of the Commission's action on February 14, 2007, concerning Coastal Development Permit Amendment 5-83-703-A1.*

### **STAFF RECOMMENDATION OF APPROVAL IN PART AND DENIAL IN PART:**

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 revised findings 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 IN PART AND DENIAL IN part of** Coastal Development Permit Amendment 5-83-703-A1 on the ground that the findings support the Commission's decision made on February 14, 2007 and accurately reflect the reasons for it.*

## **II. CONDITIONS**

**NOTE:** All standard conditions attached to the previously approved permit (5-83-703) shall remain in effect and are attached in **Exhibit A** and incorporated herein. All special conditions (Special Conditions 1-3) of Permit 5-83-703 shall also remain in effect and the additional special conditions below shall apply to the amended development governed by this Permit Amendment.

This Revised Findings Report revises the original Staff Recommended Special Conditions and Findings, by adding new language and ~~deletes existing language~~ as follows below:

### III. SPECIAL CONDITIONS

#### 4. Revised Project Plans

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit for the review and approval of the Executive Director, a complete set of revised project plans which shall:

1. Provide for the design by the applicant of a movable, lightweight, metal (stainless steel or an equivalent material) ramp with non-slip surface and stainless steel handrails on each side which shall provide a transition from the concrete slab to the sandy beach at times when the elevation of the concrete slab/walkway is higher than the sandy beach. The movable ramp shall be designed and constructed in a manner that it may be secured and locked into place or removed and placed into storage. The ramp shall be designed by a civil engineer in consultation with *Access for All* or its successor and shall be adequate to provide for safe pedestrian access from the seaward edge of the concrete slab/walkway to the sandy beach whenever the sand level is lower than the top elevation of the concrete slab/walkway and in a manner that will accommodate any future changes in beach profile/sand level elevations over time.
2. Include a site plan identifying the concrete slab (and all development or structures on the slab) with a notation that as the seaward side of the concrete walkway erodes, is damaged or becomes undermined, it will be promptly removed by the applicant/landowner in a manner/design to allow safe access to the sandy beach and continued use of the movable metal ramp as described herein.
3. ~~Delete the as-built private stairway located within the lateral public accessway at 22126 Pacific Coast Highway. The revised plans may provide for the reconstruction of a 4 ft. wide private stairway landward of the seaward-most edge of the deck and which, in no case, shall extend more than 1 ft. seaward of the deck as consistent with the location/design shown on the previously approved plans for Coastal Permit No. 5-86-061 or as an alternative the revised plans may provide for a lateral oriented stairway located entirely landward of the seaward-most edge of the deck generally consistent with the approved design shown on previously approved plans for Coastal Permit Waiver No. 4-93-098W (Exhibits 22 and 24 attached).~~
4. Reflect no development within the Caltrans right of way easement seaward of the concrete slab.
5. Include a notation that the applicant/landowner shall in no way obstruct or prevent the use of the vertical public accessway that extends from the Pacific Coast Highway to the mean high tide line and is generally depicted on Exhibit 4.

B. Development shall occur consistent with the approved revised plans. No changes to the approved revised plans shall occur without an approved amendment to this coastal development permit.

## 5. Installation of Public Access Ramp

The permittee/landowner shall construct and initially install the movable ramp required pursuant to Special Condition No. Four (4) within 90 days of the issuance of this Coastal Permit Amendment or within such additional time as the Executive Director may grant for good cause if the applicant is working on a good faith basis to complete the construction and initially install of the ramp. Use, operation, and maintenance of the ramp will be at the sole discretion and control of *Access for All* or its successor.

## 6. Removal of Unpermitted Development Within The ~~Lateral Public Access Easement and Caltrans Right-of Way Easement~~

The permittee/landowner shall remove ~~the existing private stairway located seaward of the bulkhead and within the lateral public access easement within 90 days of the issuance of this permit amendment. The permittee shall also remove~~ all development (including rocks and landscaping) within the Caltrans right of way easement seaward of the concrete slab within 90 days of the issuance of this coastal development permit amendment. The Executive Director may grant additional time for good cause.

## 7. Lateral Public Access

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, which irrevocably offers to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The area of dedication shall consist of the entire width of APN 4451-006-031 from the mean high tide line to the dripline of the existing deck toe of the seawall/bulkhead, as illustrated on Exhibit 4. The area ten (10) feet seaward from the dripline of the existing deck toe of the seawall/bulkhead approved pursuant to Coastal Development Permit 5-83-703, ~~not seaward of the deck~~ as illustrated on Exhibit 4, shall be identified as a privacy buffer. Use of the buffer for lateral public access shall be prohibited except at times when no other dry beach area on the property is available for such use. During such times, use of the buffer for public access shall be restricted to pass and repass only. This designation of a privacy buffer shall be applicable only to the extent to which the buffer is located landward of the line of Mean High Tide.
- B. Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to this coastal development permit. This requirement shall be reflected in the provisions of the recorded document.
- C. The recorded document shall include a formal legal description and graphic depiction, prepared by a licensed surveyor, of both the entire parcel and the area of dedication. The document



shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

**8. No Future Shoreline Protective Device and Removal Plan**

- A. By acceptance of the permit amendment, the permittee/landowner agrees, on behalf of itself and all successors and assignees, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to this coastal development permit amendment (including, but not limited to, the concrete slab/walkway, a gate and two fences, storage structure, fenced storage area, two air conditioning units and electrical conduits, vent pipes, cantilevered deck, and trash receptacle) in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, or any other natural hazards in the future. By acceptance of this permit, the applicant/landowner hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 or any comparable provisions of the City of Malibu certified LCP.
- B. By acceptance of this permit amendment, the permittee/landowner further agrees, on behalf of itself and all successors and assigns, that the permittee/landowner shall remove any portions of the development authorized by this permit amendment (including, but not limited to, the concrete slab/walkway, a gate and storage structure, fenced storage area, two air conditioning units and electrical conduits, and vent pipes)) that becomes damaged or undermined due to wave action, erosion, storm conditions, liquefaction, or earth movement. In the event that portions of the development fall to the beach before they are removed, the permittee/landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site.
- C. By acceptance of this permit amendment, the permittee/landowner further agrees, on behalf of itself and all successors and assigns, that the landowner shall immediately notify the Executive Director, in writing, whether any portion of the development authorized by this permit amendment (including, but not limited to, the concrete slab/walkway, a gate and two fences, storage structure, fenced storage area, two air conditioning units and electrical conduits, and vent pipes) becomes damaged or undermined as a result of wave action, erosion, storm conditions, etc. In addition, within 30 days after such damage occurs, the applicant shall submit a Removal Plan prepared by a licensed civil engineer (which shall be prepared in consultation with Access for All) for the review and approval of the Executive Director, to remove the damaged portions of the development in a manner that will allow for the continued use of the movable public access ramp that is required pursuant to Special Condition No. Four (4) in order to provide adequate public access from the remaining concrete slab/walkway to the sandy beach. Any damaged or undermined portion of the development authorized by this permit amendment shall be removed by the permittee/landowner within 30 days after the approval of the Removal Plan by the Executive Director.

**9. Assumption of Risk**

By acceptance of this permit, the permittee/landowner acknowledges and agrees (i) that the site may be subject to hazards from wave runup, storm waves, liquefaction, and flooding; (ii) 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; (iii) to unconditionally waive any claim of

damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) 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.

#### **10. Public Sign Installation and Private Sign Restriction**

- A. By acceptance of this coastal development permit, the permittee/landowner agrees to allow the installation of Public Access signs by Access for All or its successor within: (1) the public vertical access easement as approved in the Public Access Easement Management Plan originally dated December 30, 2001 and any subsequent amendments; and (2) the Caltrans right of way easement generally depicted on Exhibit 4, if authorized by Caltrans.
- B. No additional signs shall be posted on the property subject to this permit amendment which either: (a) explicitly or implicitly indicate that any portion of the beach on the subject site (Assessor's Parcel Numbers 4451-006-031, -032, and -035) located seaward of either the additions permitted in this application 5-83-703A-1 or any existing structure is private or (b) contain messages that attempt to prohibit public use of the beach. In no instance shall signs be posted which read "*Private Beach*" or "*Private Property*." In order to effectuate the above prohibitions, the permittee/landowner is required to submit all signs to the Executive Director for review and approval prior to posting the content of any proposed signs on the property governed by Coastal Development Permit No. 5-83-703-A1.

#### **11. Construction Responsibilities And Debris Removal**

By acceptance of this permit, the permittee/landowner agrees that during project construction or demolition: (1) No machinery will be allowed in the intertidal zone at any time; and (2) the permittee shall remove from the beach and ocean any and all debris that result from project construction or demolition on a daily basis at the end of each work day.

#### **12. Generic Deed Restriction**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant/landowner 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.

### **13. Condition Compliance**

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit.

### **14. Caltrans Easement**

Approval of this permit does not, in any manner, affect or limit the ability of Caltrans to enforce the provisions of its right-of-way easement.

### **15. Payment of Monies to the Coastal Conservancy**

**PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall pay to the Coastal Conservancy the sum of one hundred twenty-five thousand dollars (\$125,000.00) to be deposited in a separate account with the Coastal Trust Fund established pursuant to Section 31012 of the Public Resources Code and used for the purpose of providing funds to pay for the daily opening and closing of the gate and related maintenance of the public accessways on the subject site. The Coastal Conservancy may disburse such funds from the Coastal Trust Fund account to Access for All to contract with ADT, or other comparable business entity, or person to provide services to Access for All (or successor) in its management of the public accessways on the subject site, including but not limited to opening and closing the gate, trash pickup and security services. Upon transfer of the subject property to a party other than Geffen, or upon Geffen's death, whichever occurs first, and notice thereof to Access for All (or successor) and the Coastal Conservancy, Access for All (or successor) in consultation with the Coastal Conservancy, shall have the option for the next twelve (12) months to utilize funds in the Coastal Trust Fund account to replace the existing gates with gates that provide visual access to the coast and include a timed mechanism for automatically unlocking at sunrise and locking at sunset. Upon installation and payment in full for gates including both of these features, any balance of funds remaining in the account shall be returned to Geffen or to his estate.

### **16. Indemnification Condition**

**Liability for Costs and Attorneys Fees:** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

#### IV. FINDINGS AND DECLARATIONS OF APPROVAL FOR DEVELOPMENT

Note: The findings for approval below do not apply to: ~~(a) the “after-the-fact” request for an as-built private beach access stairway located seaward of the bulkhead and within a lateral public accessway; as well as (b)~~ all development within the Caltrans right of way easement seaward of the concrete slab, ~~both of which~~ is ~~are~~ denied in Section V below.

The Commission hereby finds and declares:

##### A. Project Description

The applicant is requesting after-the-fact approval for the following “as built” developments: approximately 18 ft. by 56 ft. concrete slab/walkway with thickened 12 in concrete edge at southern (seaward) edge; a gate, 9 ft. wide by 6 ft. high, at southern edge of concrete slab/accessway; an approximately 9 ft. by 30.5 ft storage structure totaling 274.5 sq. ft.; an approximately 9 ft. by 26 ft. fenced storage area totaling 234 sq. ft.; two air conditioning units; 5 vent pipes; electrical conduits; one 6 foot high by 26 ft long fence at the eastern edge of the storage area, one 6 foot high by 26 ft. long stucco wall along western property line (western edge of storage area), and one 6 ft high by 9 ft. long fence at the southern edge of the storage area; a 42 foot long by 5 foot wide cantilevered deck on top of the western most bulkhead/seawall, and a private beach access stairway located within a lateral public access easement.

In addition, the project also includes the following provisions that are proposed by the applicant consistent with a Settlement Agreement (Exhibit 19) between the Commission and the applicant:

- (1) The applicant shall record an Offer to Dedicate a lateral easement for public access and passive recreation extending from the mean high tide line to the toe of his seawall/bulkhead (excluding a ten foot privacy buffer adjacent to the seaward line of the seawall/bulkhead consistent with the existing privacy buffer) and providing an uninterrupted public access easement which connects the existing vertical accessway and the two closest existing lateral accessways on the subject property. Geffen will place trash receptacles(s) in the existing vertical accessway which will be taken to the curb by Geffen’s employee or agent on trash collection day; and
- (2) The applicant shall pay to the Coastal Conservancy the sum of one hundred twenty-five thousand dollars (\$125,000.00) to be deposited in a separate account with the Coastal Trust Fund established pursuant to Section 31012 of the Public Resources Code and used for the purpose of providing funds to pay for the daily opening and closing of the gates and related maintenance of subject accessways. The Coastal Conservancy may disburse funds from the Coastal Trust Fund account to Access for All to contract with ADT, or other comparable business entity, or person to provide services to Access for All (or successor) in its management of the subject accessways, including but not limited to opening and closing the gate, trash pickup and security services. Upon transfer of the subject property to a party other than

Geffen, or upon Geffen's death, whichever occurs first, and notice thereof to Access for All (or successor) and the Coastal Conservancy, Access for All (or successor) in consultation with the Coastal Conservancy, shall have the option for the next twelve (12) months to utilize funds in the Coastal Trust Fund account to replace the existing gates with gates that provide visual access to the coast and include a timed mechanism for automatically unlocking at sunrise and locking at sunset. Upon installation and payment in full for gates including both of these features, any balance of funds remaining in the account shall be returned to Geffen or to his estate.

With the exception of the proposed private stairway, the above referenced development is proposed within two adjacent easements located along the western parcel boundary (9 ft. wide public vertical access easement that was required by the Commission as a condition of approval of CDP 5-83-703 and a 9 ft. wide right of way easement held by Caltrans). Both the public vertical and lateral access easements located on the subject property are held by Access for All on behalf of the State of California. Both the vertical public access easement and the Caltrans right of way easement for ingress and egress extend from Pacific Coast Highway but the vertical public access easement extends to the mean high tide line while the Caltrans right of way easement extends to the ordinary high tide line. The right of way easement has been owned by Caltrans since 1962 for the purpose of maintaining a serviceable roadway in the easement in order to maintain certain drainage structures on other properties (Exhibit 8). Pursuant to the easement held by Caltrans, development in the easement would be limited to "[s]uch use by the fee owner [that] shall not unreasonably interfere with the use of the easement by the Division of Highways."

The applicant, David Geffen, acquired fee title to the subject property on November 15, 1976, after Caltrans had obtained its right of way easement in 1962. At the time the prior owner conveyed the right of way easement to Caltrans in 1962, the prior owner reserved the right to construct a cantilevered structure above the easement with a 12 foot high vertical clearance and installation of underground utilities and facilities as the "grantor may deem necessary or desirable subject to approval of such installations or construction and the plans and specifications therefore, by the Division of Highways, such approval not to be withheld unreasonably." The improvements within the Caltrans right of way easement consist of a storage structure, two air conditioning units, electrical conduits, storage area, enclosing fences and two sets of gates, as well as a concrete slab, all of which appear to have been constructed between 2000 and 2004 by the applicant without the required coastal development permit

Caltrans, the successor State Agency for the Division of Highways, sent a letter to Mr. Geffen dated November 3, 2005 by Andrew Nierenberg, District Right of Way Manager, District 7 (Exhibit 7). This letter was submitted by the applicant to Commission staff on June 22, 2006. Notwithstanding the fact that the development in the Caltrans right of way appears to have been constructed between 2002 and 2004, decades after Caltrans acquired its easement in 1962, the letter states that the:

***... Right of Way Office reviewed the easement for ingress and egress that the Department holds on your property in relation to improvements on the site. The***

***improvements to the property predated the Department's acquisition of this easement for access to facilities on other property. Consequently, we determined that there are no physical impediments to our use of said easement. We have been able to access the necessary State facilities when required.***

In addition, the State Lands Commission Staff in a letter dated June 7, 2006 has reviewed the proposed "as-built" developments and determined that they presently assert no claims that the project intrudes onto sovereign lands or that it would lie in an area that is subject to public easements in navigable waters (Exhibit 10).

## **B. Background**

On June 20, 1962, a previous owner of the subject property granted to the California Division of Highways (Caltrans) a 9 ft wide easement (Right of Way Contract – State Highway) for "...public or quasi public utility or public street purposes, if any." The purpose of the right of way is to maintain a serviceable roadway in the easement in order to maintain certain drainage structures on other properties (Exhibit 8).

On September 9, 1983, the Commission approved Coastal Development Permit (CDP) No. 5-83-703 subject to Special Condition 1, which states:

"Lateral and Vertical Access. Prior to the transmittal of a permit, the applicant shall submit evidence of the acceptance of offers to dedicate easements for access along the shoreline from the mean high tide line to the toe of the approved bulkhead for the residence and for access to the shoreline over a vertical access easement coterminous with the existing 9' wide Cal Trans easement on the applicant's property. Said vertical access easement shall be located within an 18' wide corridor paralleling the western most property line of the applicant's property and shall provide for a privacy buffer of at least 9' in width between the access way on developed property to the west of the applicant's holdings."

Access for All, a private non-profit organization, accepted the vertical and lateral public accessways on January 17, 2002.

On July 3, 2002, the City of Malibu and David Geffen filed suit against Access for All, the Coastal Commission, and the Coastal Conservancy. The action challenged efforts by Access for All to allow the public to utilize the public lateral and vertical access easements on the project site. Those easements resulted from the acceptance by Access for All of offers to dedicate public lateral and vertical access easements executed by Mr. Geffen in compliance with conditions of approval of coastal development permits sought and obtained by Geffen from the Commission. Among other things, the City of Malibu and Mr. Geffen alleged that Access for All could not accept the recorded offers or allow members of the public to utilize the recorded access ways until a state access program had been formulated subject to further environmental review.

On October 28, 2004, the Commission filed its response to the applicant's lawsuit and also filed a cross-complaint against Mr. Geffen for various violations of the Coastal Act, including the unpermitted development that is the subject of this permit application and located in both the recorded vertical and lateral public access ways and the Caltrans right of way easement.

On April 13, 2005, Mr. Geffen subsequently provided to the easement holder, Access for All, a key to the unpermitted gates within the vertical access way.

On May 26, 2005, the vertical access way officially was opened for public use.

On January 24, 2006, the applicant, Access for All, and the Commission settled the pending litigation cases, whereby the parties would dismiss their respective suits and Mr. Geffen would pay attorneys' fees and costs to the state and Access for All. The final settlement includes the following elements: (1) Mr. Geffen would formally apply to the Coastal Commission for approval of the unpermitted development and, in support of this application, would offer an additional lateral easement and a fund of \$125,000 to assist Access for All in its operation of the access way; (2) if the Commission issues a permit that Mr. Geffen accepts, Mr. Geffen will pay attorneys fees and the Coastal Commission will dismiss its cross-complaint. If Mr. Geffen fails to comply with all permit conditions or to accept the permit, the settlement will be nullified and litigation may be continued.

The settlement agreement does not, in any manner, predispose the Commission's decision regarding the approval, approval with conditions, or denial of any component of this permit application.

The settlement agreement requires that the applicant submit a permit application for after-the-fact approval of the unpermitted development existing on site as described in the letter dated July 19, 2005, from the City of Malibu to Lynn Heacox of the Land & Water Company (Exhibit 11). In addition, the final settlement agreement specifies that the applicant shall seek "...after-the-fact approval of the deck that rests upon the approved bulkhead and which encroaches into an existing, recorded lateral public access easement."

Upon further review, Commission staff determined that the existing private beach access stairway located seaward of the bulkhead (included in this proposed application), is located within the existing lateral public access easement and is not development authorized by the settlement agreement. Although the underlying coastal permit for the existing residence on this site (CDP 5-83-703 as later revised by the approved plans for Coastal Permit No. 4-86-061) authorized the construction of a private stairway to the beach on site, the approved plans clearly show that the stairway would extend further seaward approximately 1 foot by 4 feet wide. **However, the Commission's previous action did authorize a stairway located approximately 1 foot seaward of the deck and, in this case, the as-built stairs are generally in conformance with the design and location of the stairway as shown on the approved plans for CDP 5-86-061 (Exhibit 22).**

### C. Public Access and Recreation

The Malibu Local Coastal Program (LCP) contains the following development policies related to public access and recreation that are applicable to the proposed development. In addition, Sections 30210, 30211, 30212, 30214, 30220, and 30221 of the Coastal Act, which are incorporated as part of the Malibu LCP pertain to the protection and provision of public access and recreation.

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(a)(2)** 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:*

*...*

*(2) adequate access exists nearby ...*

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.*

Section **30220** states that:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such use.*

Section **30221** states that:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

In addition, the following City of Malibu LCP policies are applicable in this case:

**Land Use Plan Policies**

- 2.7 *Public accessways and trails to the shoreline and public parklands shall be a permitted use in all land use and zoning designations. Where there is an existing, but unaccepted and/or unopened public access Offer-to-Dedicate (OTD), easement, or deed restriction for lateral, vertical or trail access or related support facilities e.g. parking, construction of necessary access improvements shall be permitted to be constructed, opened and operated for its intended public use.*
- 2.8 *Public recreational facilities throughout the City, including parking areas or facilities, shall be distributed, as feasible, to prevent overcrowding and to protect environmentally sensitive habitat areas.*
- 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.*

**Shoreline Access**

- 2.70 *Offers to dedicate public access shall be accepted for the express purpose of opening, operating, and maintaining the accessway for public use. Unless there are unusual circumstances, the accessway shall be opened within 5 years of acceptance. If the accessway is not opened within this period, and if another public agency or qualified private association expressly requests ownership of the easement in order to open it to the public, the easement holder shall transfer the easement to that entity within 6 months of the written request. A Coastal Development Permit that includes an offer to dedicate public access as a term or condition shall require the recorded offer to dedicate to include the requirement that the easement holder shall transfer the easement to another public agency or private association that requests such transfer, if the easement holder has not opened the accessway to the public within 5 years of accepting the offer.*
- 2.71 *Public agencies and private associations which may be appropriate to accept offers of dedication include, but shall not be limited to, the State Coastal Conservancy, the Department of Parks and Recreation, the State Lands Commission, the County, the City, the Santa Monica Mountains Conservancy and non-governmental organizations.*

- 2.72 *A uniform signage program shall be developed and utilized to assist the public in locating and recognizing shoreline access points. In environmentally sensitive habitat areas signs may be posted with a description of the sensitive habitat. Signs shall be posted in English and Spanish.*
- 2.73 *Maximum public access shall be provided in a manner which minimizes conflicts with adjacent uses.*

#### ***Beach and Blufftop Accessway Standards***

- 2.85 *Improvements and/or opening of accessways already in public ownership or accepted pursuant to a Coastal Permit shall be permitted regardless of the distance from the nearest available vertical accessway.*

#### ***Specific Vertical Accessway Standards***

- 2.86 *The following standards shall apply in carrying out the access policies of the LCP relative to requiring and locating vertical accessways to the shoreline. These standards shall not be used as limitations on any access requirements pursuant to the above policies. ...*

##### **Carbon Beach**

- *Requirement for or public acquisition of vertical access every 1,000 feet of the shoreline.*
- *Improve and open 2 existing vertical access OTDs and 4 existing vertical access deed restrictions.*
- *Maintain and operate existing "Zonker Harris" vertical accessway.*

#### ***Shoreline Erosion and Protective Structures***

- 4.30 *In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.*

The Commission's experience in reviewing shoreline projects in Malibu indicates that individual and cumulative impacts on access resulting from new development include, among others, encroachment on lands subject to the public trust thus physically excluding the public; interference with natural shoreline processes which are necessary to maintain publicly-owned tidelands and other beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's ability to use lands subject to the public trust. In past permit decisions, based on the access, recreation and development sections of the Coastal Act and the adopted Malibu LCP, the Commission has

required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

In addition to any formally recorded public access easements, the State also owns tidelands, which are those lands below the Mean High Tide Line as it exists from time to time. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The public trust doctrine restricts uses of sovereign lands to public trust purposes, such as navigation, fisheries, commerce, public access, water oriented recreation, open space, and environmental protection. The public trust doctrine also severely limits the ability of the State to alienate these sovereign lands into private ownership and use free of the public trust.

Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that public access to the sea be provided adequate to allow use of dry sand and rocky coastal beaches. Coastal Act Section 30214 requires that the provision of public access opportunities take into account site geology and other characteristics, protection of natural resources, and 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. Sections 30220 and 30221 of the Coastal Act require that coastal areas suited for coastal recreational activities, that cannot be provided at inland water areas, be protected.

Accordingly, where development is proposed that may impair public use and ownership of tidelands, the Commission must consider where the development will be located in relation to tidelands. The legal boundary between public tidelands and private uplands is described in relation to the ordinary high water mark. In California, where the shoreline has not been affected by fill or artificial accretion, the ordinary high water mark of tidelands is determined by locating the existing "mean high tide line." The mean high tide line is the intersection of the elevation of mean high tide with the shore profile. Where the shore is composed of sandy beach whose profile changes as a result of wave action, the location at which the elevation of mean high tide line intersects the shore is subject to change. The result is that the mean high tide line (and therefore the boundary) is an "ambulatory" or moving line that moves seaward through the process known as accretion and landward through the process known as erosion.

Consequently, the position of the mean high tide line fluctuates seasonally as high wave energy (usually but not necessarily) in the winter months causes the mean high tide line to move landward through erosion, and as milder wave conditions (generally associated with the summer) cause the mean high tide line to move seaward through accretion. In addition to ordinary seasonal changes, the location of the mean high tide line is affected by long term changes such as sea level rise and diminution of sand supply.

The Commission must consider a project's direct and indirect effect on public tidelands. To protect public tidelands when beachfront development is proposed, the Commission must consider (1) whether the development or some portion of it will encroach on public tidelands (i.e., will the development be located seaward of the mean high tide line as it may exist at some point throughout the year) and (2) if not located on public tidelands, whether the development will indirectly affect public tidelands by causing physical impacts to tidelands. In the case of the proposed project, the State Lands Commission (as stated in a letter dated June 7, 2006) does not assert a claim that the project intrudes onto sovereign lands.

Even structures located landward of the mean high tide line, may have an adverse effect on shoreline processes; for example, wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately to the extent and availability of tidelands. That is why the Commission also must consider whether the proposed development will have indirect effects on public ownership and public use of shorelands. The applicant seeks Commission approval of various improvements located within a vertical public accessway, a Caltrans Right of Way, and a lateral public accessway. As discussed in detail elsewhere in this report, although the proposed project will not include the construction of any shoreline protection device, the direct occupation of sandy area by the proposed private beach stairway within the lateral public accessway, will result in significant adverse effects to public access along the sandy beach.

In addition, the Commission must also consider whether the proposed development adversely affects any public right to use shorelands that exists independently of the public's ownership of tidelands. In addition to a new development's effects on tidelands and on public rights protected by the common law public trust doctrine, the Commission must consider whether the project will affect a public right to use beachfront property, independent of who owns the underlying land on which the public use takes place. Generally, there are three additional types of public uses identified as: (1) the public's recreational rights in navigable waters guaranteed to the public under the California Constitution and state common law, (2) any rights that the public might have acquired under the doctrine of implied dedication based on continuous public use over a five-year period; and (3) any additional rights that the public might have acquired through public purchase or offers to dedicate.

These use rights are implicated as the public walks the wet or dry sandy beach below the mean high tide plane. This area of use, in turn moves across the face of the beach as the beach changes in depth on a daily basis. The free movement of sand on the beach is an integral part of this process, and it is here that the effects of structures are of concern.

Based on the access, recreation and development sections of the Coastal Act, the California Coastal Commission has required the dedication of recorded public access easements to and along the shoreline as a condition of approval for several development projects along the coast. In some cases, existing public land and public road easements may either provide: (1) direct public access to the sandy beach or (2) ingress for members of the public to access a recorded easement for beach access that has been previously required by the Commission across private property. The vacation or transfer of ownership/interest in public lands or road easements may result in the direct loss of the public's ability to access the sandy beach

directly where such lands immediately abut the sandy beach or indirectly where such public lands provide ingress to a recorded easement for beach access that has been previously required by the Commission across private property.

Both the Coastal Act and the certified City of Malibu LCP states that any activity defined as "development" within the Coastal Zone requires a coastal development permit. Under the Coastal Act, the vacation or transfer to a private entity of any public land or interest in public land (including a road easement or right of way) that provides public access to the beach/ocean (including pedestrian or vehicular access) is an action that results in a "change in the intensity of use of water, or access thereto" and constitutes "development" as defined by Section 30106 of the Coastal Act and, therefore, requires a coastal development permit.

In past permit actions, the Commission has required that all new development on a beach, including new single family residences, provide for lateral public access along the beach in order to maximize and protect public access. In this case, the subject site includes four separate contiguous beachfront lots located on Carbon Beach between Pacific Coast Highway and the ocean. Easements have been recorded for both public vertical and lateral access across on and across the subject parcels. Easements for lateral public access have been recorded as a condition of approval of the previously approved coastal development permits for development on each of the two downcoast (eastern) lots along the sandy beach between the mean high tide line and the existing bulkhead/seawall. Its important to note that the two former eastern most lots (formerly known as APN 4451-006-033 and 4451-005-006) have been merged together as one lot now known as APN 4451-006-035 as a result of the approval of Coastal Permit No. 4-99-268 (Geffen). The vertical public access easement is located on the westernmost (upcoast) lot and extends from the northern property boundary coinciding with the Caltrans Public Right of Way for Pacific Coast Highway to the mean high tide line to the south. The vertical and the three existing recorded lateral public access easements were accepted by Access for All on January 17, 2002 and opened to the public on May 26, 2005. However, there is currently no recorded easement or offer to dedicate an easement for lateral public access across the third (westernmost) parcel (APN 4451-006-031) where the vertical access easement is located. The applicant is proposing, as part of this application, to offer a dedication for a lateral public easement across the third western most parcel (APN 4451-006-031). The recordation of an offer to dedicate an easement for lateral access on this property will provide for a continuous lateral public access across all four of the properties owned by the applicant along this portion of Carbon Beach.

The Malibu LCP requires that access to the shoreline be maximized. Public accessways are a permitted use in all land use and zoning designations. The LCP allows for accessways to be opened, and for necessary improvements to be constructed. The LCP calls for the provision of vertical access in the Carbon Beach area every 1,000 feet of shoreline including the opening of the subject 9-foot wide vertical access for public use. In this case, the opening of the subject accessway allows for another point of access in the eastern area of Carbon Beach, although the spacing of existing vertical accessways still does not meet the minimum LCP standard of vertical access every 1,000 feet (Exhibit 12). There is a second open vertical public accessway to Carbon Beach located approximately 0.9 miles to the west. It is known as the "Zonker Harris" accessway, located at 22700 Pacific Coast Highway (in

close proximity to the Malibu Pier) and is operated by Los Angeles County Beaches and Harbors (Exhibit 12).

Although other offers to dedicate vertical public accessways have been recorded on other beachfront properties on Carbon Beach, the Commission notes that none of these offered accessways have actually been opened or made available for public use yet. The subject public vertical accessway will help to implement the LUP Policy 2.86 to provide for a vertical access every 1,000 feet of shoreline, although additional vertical public accessways are needed to fully meet Policy 2.86.

The proposed development is located on the western portion of the subject property within two co-terminus easements and immediately seaward of the applicant's residence located at 22126 Pacific Coast Highway. Along the western property boundary is the 9 foot wide Caltrans right of way easement and adjoining it is the 9-foot wide vertical public accessway (Coastal Permit No. 5-83-703). A lateral public accessway (Coastal Permit No. 5-83-703) is located seaward of the residence at 22126 Pacific Coast Highway within which is located the seaward landing of a private stairway. The proposed as-built concrete slab is located entirely within the Caltrans right of way easement and the recorded public vertical access easement. In addition to the unpermitted concrete slab, a gate has also been constructed within the recorded public vertical access way. In addition, other private improvements were constructed within the Caltrans right of way consisting of a storage structure, air conditioning units, electrical conduits, storage area, and enclosing fences and gates. This unpermitted development was constructed by the applicant without the required coastal development permits, between 2002 and 2004 (Exhibit 23).

The proposed beachside gate will be used to control access (e.g. only to prevent night time use of the accessway and to temporarily close the accessway during unsafe conditions such a storm events or damage to the concrete walkway). An existing as-built gate on the seaward side of the walkway will also be used to close the accessway after sunset until sunrise the next day. The existing gate will also be closed when the accessway is closed due to storm conditions to prevent public use during unsafe ocean and beach conditions. Access for All will be responsible for opening and closing the gates daily. Signage will be provided and installed by the accessway operator, Access for All, on both the street side of the gate and on the beach side of the gate. The signs will identify the access way as available for public coastal access and identify the public use areas along the sandy beach. The applicant is proposing, as part of this application (and pursuant to the related settlement agreement) to be responsible for the provision, maintenance, and emptying of the trash receptacle on a weekly basis.

The applicant will also pay to the Coastal Conservancy one hundred twenty-five thousand dollars (\$125,000.00) to be deposited in a separate account with the Coastal Trust Fund established pursuant to Section 31012 of the Public Resources Code and used for the purpose of providing funds to pay for the daily opening and closing of the gates and related maintenance of the accessways on the site. The Coastal Conservancy may disburse funds from the Coastal Trust Fund account to Access for All to contract with ADT, or other comparable business entity, or person to provide services to Access for All (or successor) in

its management of the subject accessways, including but not limited to opening and closing the gate, trash pickup and security services. Upon transfer of the subject property to a party other than Geffen, or upon Geffen's death, whichever occurs first, and notice thereof to Access for All (or successor) and the Coastal Conservancy, Access for All (or successor) in consultation with the Coastal Conservancy, shall have the option for the next twelve (12) months to utilize funds in the Coastal Trust Fund account to replace the existing gates with gates that provide visual access to the coast and include a timed mechanism for automatically unlocking at sunrise and locking at sunset. Upon installation and payment in full for gates including both of these features, any balance of funds remaining in the account shall be returned to Geffen or to his estate.

Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that public access to the sea be provided adequate to allow use of dry sand and rocky coastal beaches. Sections 30220 and 30221 of the Coastal Act require that coastal areas suited for coastal recreational activities, that cannot be provided at inland water areas, be protected. Coastal Act Section 30214 requires that the provision of public access opportunities take into account site geology and other characteristics, protection of natural resources, and 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.

The proposed concrete slab extends approximately 56 ft. seaward from Pacific Coast Highway and terminates approximately 27 feet landward of the seaward most bulkhead located to the immediate east of the access way. The concrete slab slopes down at a gradual gradient from Pacific Coast Highway towards the sandy beach to the south with its highest finished floor elevation on landward side at an elevation of 15.93 feet above Mean Sea Level and dropping to an elevation of 14.64 feet above Mean Sea Level at its seaward edge. Within the seaward side of the vertical public accessway, the sandy beach elevation varies depending upon the season and availability of sand. In the recent two years, the elevation difference between the concrete slab and the adjoining sandy beach has ranged from a few inches to a drop of more than ten feet as a result of seasonal variations, sandy beach elevation levels, and increased erosion of the sandy beach directly seaward of the concrete slab as a result of stormwater runoff from the slab itself. As a result of this grade difference, it is, at times, difficult, if not dangerous, for the public to access Carbon Beach using this vertical accessway due to the potential for a steep dropoff to develop at the seaward side of the concrete walkway. (Exhibits 15 and 16)

There are many alternatives to address this accessway grade differential including a concrete ramp, wooden stairway, imported sand and a portable walking ramp. Of these alternatives, a concrete ramp may cause unnecessary erosion and may become damaged over time by wave uprush; a wooden stairway is easily damaged by wave uprush and may not last very long; importing sand on a regular basis to replace eroded sand would require additions with associated truck deposits and labor intensive efforts to place the sand at the seaward end of the concrete ramp. The least environmentally damaging feasible alternative is a portable lightweight walking ramp that would provide a means to access the grade

differentials between the sandy beach and concrete walkway as the sandy beach erodes and accretes over time. In addition, the ramp could be safely stored to protect it during storm conditions when the accessway is closed for safety purposes.

In this case, the Commission finds that, in order to mitigate for the potential increased erosion of the sandy beach that occurs due to the presence of the as-built concrete slab, the applicant must install a portable ramp that may be securely locked into place at the seaward edge of the concrete slab and that provides safe public access to the beach from the slab itself. Therefore, **Special Condition No. Four (4)** requires the applicant, prior to permit issuance, to submit revised project plans, subject to the review and approval of both the Executive Director and *Access for All*, which provide for the design by the applicant of a movable, lightweight metal ramp (stainless-steel or an equivalent material acceptable to *Access for All*) with non-slip surface and stainless steel handrails on each side. The movable ramp shall be designed and constructed in a manner that it may be secured and locked into place or removed and placed into storage. Once constructed, the ramp shall be utilized at the discretion of *Access for All* or its successor. Operation, use, and maintenance of the ramp will be at the sole discretion and control of *Access for All* or its successor. The ramp shall be designed by a civil engineer in consultation with *Access for All* and shall be adequate to provide for safe pedestrian access from the seaward edge of the concrete slab/walkway to the sandy beach during any expected changes in sand level/beach elevations over time.

Over time, the concrete walkway within the public walkway and concrete floor, fences, storage/yard sheds and air-conditioning units/electrical conduits within the Caltrans easement are expected to be affected by wave uprush during high tides and storm waves, particularly as sea level rises. According to the "Coastal Hazard & Wave Runup Study" dated April 2006 by GeoSoils, Inc., submitted by the applicant, the shoreline fronting the site is relatively stable, however, the bulkhead, fenced storage area and public access walkway may be subject to short term wave attack. It is important to note that the report concludes that during extreme wave events coinciding with an extreme high tide wave, runup on the natural slope beach may reach an elevation of approximately +16 feet above mean sea level (MSL). The seaward most portion of the proposed as-built concrete slab is only at the 14.64 ft. above MSL. The landward most portion of the proposed as-built concrete slab is at an elevation of 15.93 ft. above MSL. Thus, during extreme wave events coinciding with high tides, the applicant's coastal engineering consultant has found that wave runup is expected to extend across the entire length of the proposed as-built concrete slab (ranging from 14.64 – 15.93 feet MSL). Therefore, the Commission, notes that all of the development proposed as part of this application will be subject to wave action at times.

In addition, the Commission further finds that wave uprush and storm waves have the potential to affect and erode the concrete walkway and particularly the area immediately seaward of the seaward edge of the walkway as clearly visible in a photograph of the project site taken during January 2006 and attached as Exhibit 16. In the event that the seaward portions of the concrete walkway become eroded, damaged, or undermined, the damaged concrete slab would become a potential hazard to the public safety and would potentially impact the public's ability to continue to safely use the public access way. Accordingly, other special conditions are also necessary to ensure the proposed development will not interfere



with or obstruct public use of the public accessways. **Special Condition No. Eight C (8C)** requires the applicant to immediately notify the Executive Director, in writing, whether any portion of the development authorized by this permit amendment (including, but not limited to, the concrete slab/walkway, gates and two fences, storage structure, fenced storage area, two air conditioning units and electrical conduits, vent pipes, cantilevered deck, and trash receptacle) becomes damaged or undermined as a result of wave action, erosion, storm conditions, etc. In addition, within 30 days after such damage occurs, the applicant shall submit a Removal Plan prepared by a licensed civil engineer (which shall be prepared in consultation with Access for All or its successor) for the review and approval of the Executive Director, to remove the damaged portions of the development in a manner that will allow for the continued use of the movable public access ramp that is required pursuant to **Special Condition No. Four (4)** in order to provide adequate public access from the remaining concrete slab/walkway to the sandy beach. Removal of the damaged or undermined portion of the development shall be removed by the applicant/landowner within 30 days after the approval of the Removal Plan by the Executive Director.

**Special Condition Nos. Four B (4B) and Eight C (8C)** are needed to ensure that in the event the concrete slab/walkway is damaged or undermined, it will be removed within 30 days of the approval of the Removal Plan by the Executive Director to allow continued public access and use of the metal ramp to provide adequate access from the remaining concrete slab/walkway to the sandy beach. In addition, in order that the ramp is installed and maintained in a timely manner, **Special Condition No. Five (5)** requires the applicant/landowner to construct and initially install the movable ramp required pursuant to Special Condition Four (4) within 90 days of the issuance of this Coastal Permit Amendment or within such additional time as the Executive Director may grant for good cause if the applicant is working on a good faith basis to complete and install the ramp. Once constructed and installed, the ramp shall be utilized at the discretion of Access for All or its successor. Use of the ramp will be at the discretion and control of Access for All or its successor. Only with **Special Condition Nos. Four (4) and Five (5)** can the proposed project be found consistent with the policies of the City of Malibu LCP and the Coastal Act to provide for maximum public access to the coast.

To ensure that the potential for construction or demolition activities to adversely effect the marine environment are minimized, **Special Condition No. Eleven (11)** requires the applicant to ensure that stockpiling of materials shall not occur on the beach area, that no machinery will be allowed in the intertidal zone at any time, all debris resulting from the construction or demolition is promptly removed from the beach area, all grading shall be properly covered, and that sand bags and/or ditches shall be used to prevent runoff and siltation from the property.

In addition, the applicant has constructed an unpermitted private stairway to access the sandy beach immediately seaward of the seawall and deck at 22126 Pacific Coast Highway (Exhibits 4, 18, 22, and 23). The plans submitted by the applicant on July 26, 2006 identify this "as-built" stairway as "proposed as-built". Although a private stairway from the deck to the beach was originally approved by the Commission pursuant to Coastal Development Permit No. 5-86-061; the proposed "as-built" stairway is located in a different

footprint/configuration and extends further seaward than was previously approved by Coastal Permit No. 5-86-061. However, in this case, the Commission finds that the as-built stairs are generally in conformance with the approved plans for Coastal Development Permit No. 5-86-061 and will not result in adverse impacts to public access in relation to the public's use of the recorded lateral public access easement on site. The majority of the stairway that was previously approved by the Commission in Coastal Permit No. 5-86-061 was located almost entirely landward of the deck with only approximately a 4 foot wide by 1 foot section of the stairs extending seaward of the deck. However, as constructed, an approximately 11 foot wide by 3.5 foot section of the unpermitted as-built stairway extends seaward of the deck on site and encroaches significantly further into the recorded lateral public access easement.

~~In comparison to the Commission's prior approval in Coastal Development Permit No. 5-86-061, the unpermitted as-built private stairway extends approximately 2.5 feet further seaward into the lateral access easement and across an approximate wider area of beach by an additional 7 feet, and is; therefore, occupying a portion of the sandy beach that should otherwise be available for lateral public access. Further, the Commission finds that during higher tides, the stairway may effectively block all public pedestrian access along the beach when there are no other dry sand areas seaward of the stairs. As a result, the Commission finds that the unpermitted private stairway is resulting in continuing and ongoing adverse impacts to public access and recreation in contradiction to the public access and resource policies of both the Coastal Act and the certified LCP. Therefore, the Commission finds that the proposed "as built" private beach stairway is not consistent with either the public access and recreation policies of the certified City of Malibu LCP or the Coastal Act as it is located within a recorded easement for lateral public access that has been accepted by Access for All and is now open to public use. Thus, the private beach stairway in its existing location is denied by the Commission.~~

~~In order to ensure that the ongoing adverse impacts to public coastal access and recreation do not continue; Special Condition Nos. Four C (4C) and Six (6) have been required to ensure the complete removal of this existing stairway located seaward of the existing bulkhead. However, Special Condition No. Four (4) will still allow the applicant to submit revised plans which provide for the reconstruction of a private stairway that will be primarily located landward of the bulkhead stringline consistent with the location/design shown on the previously approved plans for Coastal Permit No. 5-86-061. In addition, Special Condition No. Six (6) also requires that the existing unpermitted private stairway shall be removed within 90 days of the issuance of Coastal Permit Amendment No. 5-83-703-A1 or additional time granted by the Executive Director for good cause.~~

In past permit actions, the Commission has required that the construction of new development on a beachfront property provide for lateral public access along the beach and above the mean high tide line. A dedication of a lateral public access easement located between the base of the bulkhead/seawall and the mean high tide, with a ten foot wide privacy buffer, once the responsibilities for maintenance and liability is accepted by a public

agency or private association will allow the public to access laterally along the portion of the applicant's beach area, which is private property. This section of sandy beach proposed for the lateral public accessway is on the western most portion of the applicant's property adjoining the vertical public accessway. There are three other existing recorded lateral public accessways located across the three adjoining lots located immediately to the east of the lot where the applicant is now proposing to offer a new easement for a public lateral accessway. The three adjacent public lateral access easements are also on properties owned by the applicant and the easements on those properties were previously offered by the applicant as part of the coastal development applications that were previously approved by the Commission for residential development on each of those lots. The public lateral access easement that the applicant is offering as part of this application will serve to provide a contiguous set of public lateral access easements across all four of the contiguous beachfront parcels that are owned by the applicant.

In order to conclude with absolute certainty what adverse effects would result from the proposed project in relation to shoreline processes and the adequacy of the lateral public access, a historical shoreline analysis based on site-specific studies would be necessary. Although this level of analysis has not been submitted by the applicant, the Commission finds that because the applicant has proposed as part of the project (and consistent with the terms of the Settlement Agreement) an offer to dedicate a lateral public access easement seaward of the seaward most bulkhead it has not been necessary for Commission staff to engage in an extensive analysis as to the adequacy of the historic public use of this shoreline or whether the imposition of an offer to dedicate would be required here absent the applicant's proposal. As such, **Special Condition No. Seven (7)** has been required in order to ensure that the applicant's offer to dedicate a lateral public access easement is completed prior to the issuance of the coastal development permit. **Special Condition Seven (7) requires that the recorded offer to dedicate a lateral access easement on the subject site will consist of the entire width of APN 4451-006-031 from the mean high tide line to the dripline of the existing deck. In addition, the area ten (10) feet seaward from the dripline of the existing deck shall be identified as a privacy buffer. Use of the buffer for lateral public access shall be prohibited except at times when no other dry beach area on the property is available for such use. During such times, use of the buffer for public access shall be restricted to pass and repass only. This designation of a privacy buffer shall be applicable only to the extent to which the buffer is located landward of the line of Mean High Tide.**

The Commission also finds that any future development that is proposed to be located either in whole or in part within the lateral public accessway area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to this coastal development permit. This requirement shall be reflected in the provisions of the recorded document.

The approved Public Access Easement Management Plan originally dated December 30, 2001 and its amendment dated November 22, 2002 provides for public access across the vertical accessway from Pacific Coast Highway to the sandy beach. The Management Plan provides for three signs to be installed along the vertical public accessway to inform the

public of the hours of operation and details about the vertical and lateral accessways to and along the beach. This Management Plan may be further amended consistent with public access needs. Therefore, to ensure that the development authorized by this permit will not interfere with the public's ability to utilize the recorded public easements on site or the ability of the easement holder to adequately implement the approved Easement Management Plan, **Special Condition No. Ten (10)** requires the applicant to allow the installation of public access signs by Access for All within the vertical public access easement consistent with any approved Management Plan between the Executive Director and Access for All, as well as within the Caltrans right of way easement, if authorized by Caltrans.

In addition, the Commission notes that unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the City of Malibu area. These signs have an adverse effect on the ability of the public to access public trust lands. The Commission has determined, therefore, that to ensure that the applicants clearly understand that such postings are not permitted without a separate coastal development permit, it is necessary to impose **Special Condition No. Ten (10)** to ensure that similar signs are not posted on or near the proposed project site. The Commission finds that if implemented, **Special Condition No. Ten (10)** will protect the public's right of access to the sandy beach across the lateral public accessways and below the mean high tide line.

Therefore, the Commission finds that, only as conditioned, the proposed: (1) various as-built improvements located landward of the concrete slab (including a concrete slab, storage structures, etc.) within the recorded vertical public access and Caltrans easements (2) as-built deck, (3) **as-built private stairway**, (4) recordation of an offer to dedicate lateral public access, and (5) payment to the California Coastal Conservancy of \$125,000.00 to provide for the operation and maintenance of public access on site are consistent with the public access and recreation policies of the adopted Malibu LCP and Chapter 3 of the Coastal Act.

~~However, as discussed in detail below in the Denial portion of the staff report, the Commission also finds that the portion of the proposed amendment consisting of the request for after-the-fact approval of an as-built private stairway within a recorded lateral public access easement is inconsistent with the public access and recreation policies of the adopted Malibu LCP and the Chapter 3 of the Coastal Act.~~

#### **D. Bluff/Shoreline Development and Hazards**

The proposed development is located on a sandy beach front property along the Malibu coastline, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu/Santa Monica Mountains coastal area include storm waves, wave runup, erosion and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. By nature, coastal beach areas are subject to erosion from sheet flow from impervious surfaces on the beach such as residentially related development and from wave action along the sandy beach and particularly the developed landward areas of the sandy beach.

The Malibu Local Coastal Program (LCP) contains the following development policies related to hazards and blufftop/shoreline development that are applicable to the proposed development.

Sections 30235 and 30253 of the Coastal Act, which are incorporated as part of the Malibu LCP, state in pertinent part that new development shall:

**Section 30235:**

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

**Section 30253 states in pertinent part:**

*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, 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.*

In addition, the following LCP policies are applicable in this case:

- 4.2 All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.*
- 4.5 Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.*
- 4.10 New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.*
- 4.16 All applications for new development on a beach, beachfront or blufftop property shall include a wave uprush and impact report and analysis prepared by a licensed civil engineer with expertise in coastal engineering which addresses and demonstrates the effects of said development in relation to the following:*
  - The profile of the beach;*
  - Surveyed locations of mean high tide lines acceptable to the State Lands Commission;*

- *The availability of public access to the beach;*
  - *The area of the project site subject to design wave uprush;*
  - *Foundation design requirements;*
  - *The need for a shoreline protection structure over the life of the project;*
  - *Alternatives for protection of the septic system;*
  - *The long term effects of proposed development on sand supply;*
  - *Future projections in sea level rise; and,*
  - *Project alternatives designed to avoid or minimize impacts to public access.*
- 4.22** *Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered. Development shall be set back a sufficient distance landward and elevated to a sufficient foundation height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.*
- 4.23** *New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected 100-year economic life of the 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 setback as far landward as possible. 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.*
- 4.24** *All proposed development on a beach or along the shoreline, including a shoreline protection structure, 1) must be reviewed and evaluated in writing by the State Lands Commission and 2) may not be permitted if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing.*
- 4.26** *Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:*
- *No stockpiling of dirt or construction materials shall occur on the beach;*
  - *All grading shall be properly covered and sandbags and/or ditches shall be used to prevent runoff and siltation;*
  - *Measures to control erosion shall be implemented at the end of each day's work;*
  - *No machinery shall be allowed in the intertidal zone at any time to the extent feasible;*
  - *All construction debris shall be removed from the beach.*
- 4.30** *In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in*

*development which would require a shoreline protection structure at any time during the life of the project.*

**4.42** *As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.*

**4.37** *Shoreline and bluff protection structures shall not be permitted to protect new development, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel.*

**4.38** *No shoreline protection structure shall be permitted for the sole purpose of protecting an ancillary or accessory structure. Such accessory structures shall be removed if it is determined that the structure is in danger from erosion, flooding or wave uprush...Accessory structures including, but not limited to, cabanas, patios, pools, stairs, landscaping features, and similar design elements shall be constructed and designed to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards.*

The LCP contains numerous development standards applicable to all new development on sites located in or near an area subject to geologic hazards. This includes the requirement to submit geologic, soils, and geotechnical reports addressing the proposed development, and that all recommendations of the geologic consultants are incorporated into the project.

The Malibu LCP policies require that new development minimize risk to life and property in areas of high geologic, flood and fire hazard and assure stability, structural integrity nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Coastal beach areas are unique geomorphic features that are characteristically unstable. By nature, coastal beaches are subject to erosion from the sheet flow runoff of landward areas and developments located on the beach and from the wave action along the beach. The Commission, through permit actions, has typically prohibited new development directly on a beach, with the exception of developed beach properties and improvements needed to provide public access from a roadway to the beach below. It is recognized that in many areas of the coast, there would be no other means of providing access to the beach and public tidelands. Additionally, the area of the coast along Carbon Beach is developed with single-family residences that extend from Pacific Coast Highway and across the sandy beach.

In past permit actions, the Commission has found that the construction of a shoreline protection device, such as a seawall, results in significant adverse effects to shoreline sand supply and public access. The certified LCP, in recognition of the adverse effects to beach areas that results from the use of shoreline protection devices to protect development, includes several policies that limit the use of such devices. Policy 4.37 of the LCP, consistent with Section 30235 of the Coastal Act, which has been included in the certified LCP as a policy, provides that the construction of shoreline protection devices for existing development may be allowed only when no feasible less environmentally damaging

alternative exists. Further, Policy 4.38 of the LCP prohibits the construction of shoreline protective devices for the purpose of protecting ancillary development. Further, in order to eliminate the potential necessity for the construction of a shoreline protective device, Policy 4.38 also requires that new ancillary structures on a beachfront lot be designed in a manner that they may be removed or relocated in the event of threat from erosion or wave hazard.

In the case of the proposed project, although no new shoreline protective device is proposed, past Commission review of shoreline residential projects in Malibu has shown that such development results in potential individual and cumulative adverse effects to coastal processes, shoreline sand supply, and public access. Shoreline development, if not properly designed to minimize such adverse effects, may result in encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use public tideland areas. In order to accurately determine what adverse effects to coastal processes will result from the proposed project, it is necessary to analyze the proposed project in relation to characteristics of the project site shoreline, location of the development on the beach, and wave action.

## **1. Site Shoreline Characteristics**

The proposed project site is located on Carbon Beach in the City of Malibu. Carbon Beach is characterized as a relatively narrow beach which has been developed with numerous single family residences located to the east and west of the subject site. The Malibu/Los Angeles County Coastline Reconnaissance Study by the United States Army Corp of Engineers dated April 1994 indicates that residential development on Carbon Beach is exposed to recurring storm damage because of the absence of a sufficiently wide protective beach.

## **2. Seaward Encroachment**

As a means of controlling seaward encroachment of beachfront residential structures, LUP Policy 4.30 provides a stringline standard for the siting of infill development. Policy 4.30 states:

*In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.*

The intent of the stringline standard is to limit infill development to only existing developed shoreline areas and limit the encroachment of new structures out onto the beach in order to



ensure maximum public access, and minimize wave hazards and impacts to coastal processes, shoreline sand supply, and public views.

In the case of the proposed project, the development stringline on site is consistent with the dripline of the adjacent seawall on the adjacent lots located downcoast of the vertical public easement. All proposed development, with the exception of the proposed “as-built” private stairway, will be located landward of the development stringline. The as-built private stairway extends approximately 3.5 feet seaward of the stringline and **is thus inconsistent with LUP Policy 4.30. Further Although, the as-built private stairway encroaches approximately 3.5 feet into a recorded lateral public access easement, the Commission finds that, in this unique case, the as-built stairs are generally in conformance with the approved plans for Coastal Development Permit No. 5-86-061 and will not result in adverse impacts to public access in relation to the public’s use of the recorded lateral public access easement on site** and is inconsistent with the terms of the easement as well. Therefore, the Commission finds that the proposed development, ~~with the exception of the proposed as-built private stairway~~, is consistent with the relevant sections of the LCP and Coastal Act regarding seaward encroachment, including LUP Policy 4.30 and Coastal Act Policies 30210-30214, 30220-30221 and 30250.

~~Although a private stairway from the deck to the beach was originally approved by the Commission pursuant to Coastal Development Permit No. 5-86-061; the proposed “as-built” stairway is located in a different footprint/configuration and extends further seaward than was previously approved by Coastal Permit No. 5-86-061. The majority of the stairway that was previously approved by the Commission in Coastal Permit No. 5-86-061 was located almost entirely landward of the deck with only approximately a 4 foot wide by 1 foot section of the stairs extending seaward of the deck. In comparison, as constructed, an approximately 11 foot wide by 3.5 foot section of the unpermitted as-built stairway extends seaward of the deck on site and encroaches significantly further into the recorded lateral public access easement than.~~

~~As built, the unpermitted private stairway extends approximately 2.5 feet further seaward than the previously approved stairway into the lateral access easement and across an approximate wider area of beach by an additional 7 feet, and is; therefore, occupying a portion of the sandy beach that should otherwise be available for lateral public access. Further, the Commission finds that during higher tides, the stairway may effectively block all public pedestrian access along the beach when there are no other dry sand areas seaward of the stairs. As a result, the Commission finds that the unpermitted private stairway is resulting in continuing and ongoing adverse impacts to public access and recreation in contradiction to the public access and resource policies of both the Coastal Act and the certified LCP. Therefore, the Commission finds that the proposed “as built” private beach stairway is not consistent with either the public access and recreation policies of the certified City of Malibu LCP or the Coastal Act as it is located within a recorded easement for lateral public access that has been accepted by Access for All and is now open to public use.~~

~~Thus, the private beach stairway in its existing location is denied by the Commission. In order to ensure that the ongoing adverse impacts to public coastal access and recreation do not continue; Special Condition Nos. Four C (4C) and Six (6) have been required to ensure the complete removal of this existing stairway located seaward of the existing bulkhead. However, Special Condition No. Four (4) will still allow the applicant to submit revised plans which provide for the reconstruction of a private stairway that will be primarily located landward of the bulkhead stringline consistent with the location/design shown on the previously approved plans for Coastal Permit No. 5-86-061. In addition, Special Condition No. Six (6) also requires that the existing unpermitted private stairway shall be removed within 90 days of the issuance of Coastal Permit Amendment No. 5-83-703-A1 or additional time granted by the Executive Director for good cause. Further, pursuant to Special Condition No. Four C (4C), the applicant may submit revised plans, for the review and approval of the Executive Director, that provide for the reconstruction of the private stairway landward of the seawall stringline as consistent with the location/design shown on the previously approved plans for Coastal Permit No. 5-86-061.~~

As such, the Commission finds that the proposed project, only as conditioned, ~~to delete the proposed private stairway, will not result in the seaward encroachment of development on Carbon Beach and~~ will serve to minimize adverse effects to coastal processes consistent with the certified LCP.

### **3. Mean High Tide Line and Wave Uprush**

The applicant has submitted information prepared by a coastal engineering consultant regarding the location of the mean high tide line on the subject in the report titled: *Coastal Hazard & Wave Runup Study, 22108-22126 Pacific Coast Highway, Malibu, CA, dated April 2006 by GeoSoils, Inc.* The applicant's coastal engineering consultant has asserted that the Mean Sea Level (MSL) is about +0.2 feet North Geodetic Vertical Datum 1929 (NGVD29) and, therefore, the MSL elevations are approximately equal to NGVD29 in the vicinity of the project site. Additionally, the National Oceanographic and Atmospheric National Ocean Survey tidal data (1999) was reviewed from the closest station at Santa Monica station which identified the Mean High Water line as 1.94 feet above MSL. The site plan elevations prepared by Bedrock Engineering dated April 4, 2006 used the NGVD29 datum and the NOAA data to identify NGVD29 datum and the Mean High Tide Line (MHTL). As identified on Exhibit 4, the MHTL is located about 80 feet seaward of the seaward most bulkhead adjacent to the public accessway. In addition, a review of the Coastal Engineering Report submitted by the applicant in Coastal Permit No. 4-99-268 indicates there are three surveyed Mean High Tides Lines (MHTL) along the subject shoreline. This report titled: *Coastal Engineering Report dated July 5, 1999 by David Weiss, Structural Engineer & Associates* identifies the 1928, 1961, and July 18, 1991 MHTLs. The 1928 MHTL is located about 30 feet seaward of the existing bulkhead located on the subject property. The 1961 and July 18, 1991 MHTLs are both located about 75 feet seaward of the existing bulkhead. As a result, the applicant's coastal engineering consultant used the NGVD29 and NOAA data to locate the MHTL about 80 feet seaward of the seaward most bulkhead adjacent to the public accessway.

Although the proposed development will be located landward of the mean high tide line that was identified by the applicant's Coastal Engineering consultant in Coastal Permit No. 5-83-703, the Commission previously found that the subject property is susceptible to flooding and wave damage from storm waves and storm surge conditions (the permit authorized a lot line adjustment, addition to garage, guest/maid quarters, deck, swimming pool, spa and 100 foot long wood bulkhead with 50 foot side return walls to protect the existing single family residence on the subject site.) The Commission further finds that the location of the mean high tide line is ambulatory in nature and the proposed development may, at times, be subject to wave run-up that exceeds the most landward location of the proposed development.

Further, the Commission finds that development located along the shoreline, such as the proposed project, is subject to inherent potential hazard from storm generated wave damage and wave-caused erosion over time. The El Nino storms recorded in 1982-1983 caused high tides of over 7 feet, which were combined with storm waves of up to 15 feet. The severity of the 1982-1983 El Nino storm events are often used to illustrate the extreme storm event potential for the California coast.

The applicant's report titled: *Coastal Hazard & Wave Runup Study* noted above addresses the wave and water level conditions expected at the site as a result of extreme storm and wave action and provides conclusions and recommendations regarding the susceptibility of the property, the bulkhead, fenced storage area and the public access walkway to wave attacks. The report indicates that the landward most portion of the accessway is at the approximately +15 foot elevation above mean sea level. The report concludes that the shoreline fronting the site is relatively stable, however, the bulkhead, fenced storage area and public accessway may be subject to short-term wave attack. The report also notes that the US Army Corps of Engineers 1994 study (USACOE, 1994) characterized this reach of shoreline between Malibu Creek and Big Rock as subject to "stable to slow erosion". The report states that seawalls or bulkheads are needed to protect the sanitary leach fields for the homes and the roadway, Pacific Coast Highway, on the landward side of the homes.

The report concludes that during extreme wave events coinciding with an extreme high tide wave runup on the natural slope beach can reach as high as +16 feet Mean Sea Level. The existing "as-built" concrete pad is located between +14.64 feet MSL at the seaward edge to +15.93 feet MSL at the landward edge. In effect, during such extreme high tide wave runup the walkway would be inundated with wave runup up to 1.36 feet deep extending landward and beyond the walkway to Pacific Coast Highway as noted by the US Army Corps of Engineers 1994 Study noted above. Thus, the Commission finds ample evidence exists that beachfront development located on the subject site is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding.

#### **4. Sea Level Rise**

It is important to note that Coastal Act Section 30253 requires that new development minimize risks of hazards and that LCP Policy 4.22 requires the siting and design of new

shoreline development take into account anticipated future changes in sea level, particularly an acceleration of historic rate of sea level rise by setting back development a sufficient distance and elevating it to a sufficient height to minimize hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.

Sea level has been rising slightly for many years. In the Santa Monica Bay area, the historic rate of sea level rise has been 1.8 mm/yr. or about 7 inches per century<sup>1</sup>. Sea level rise is expected to increase by 8 to 12 inches in the 21<sup>st</sup> century.<sup>2</sup> There is a growing body of evidence that there has been a slight increase in global temperature and that an accelerated rate of sea level rise can be expected to accompany this increase in temperature. Mean water level affects shoreline erosion in several ways and an increase in the average sea level will exacerbate all these conditions.

On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore. On a relatively flat beach, with a slope of 40:1, every inch of sea level rise will result in a 40-inch landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as a single family residence, pilings, or seawalls, an increase in sea level will increase the inundation of the structure. More of the structure will be inundated or underwater than is inundated now and the portions of the structure that are now underwater part of the time will be underwater more frequently.

Accompanying this rise in sea level will be increased wave heights and wave energy. Along much of the California coast, the bottom depth controls the nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with the physical increase in water elevation, a small rise in sea level can expose previously protected backshore development to both inundation and wave attack, and those areas that are already exposed to wave attack will be exposed to more frequent wave attack with higher wave forces. Structures that are adequate for current storm conditions may not provide as much protection in the future.

A second concern with global warming and sea level rise is that the climatic changes could cause changes to the storm patterns and wave climate for the entire coast. As water elevations change, the transformation of waves from deep water will be altered and points of energy convergence and divergence could shift. The new locations of energy convergence would become the new erosion "hot spots" while the divergence points may experience accretion or stability. It is highly likely that portions of the coast will experience more frequent storms and the historic "100-year storm" may occur every 10 to 25 years. For most of California the 1982/83 El Niño event has been considered the "100-year storm." Certain areas may be exposed to storms comparable to the 1982/83 El Niño storms every few decades. In an attempt to ensure stability under such conditions, the Commission has required that all new shoreline structures be designed to withstand either a 100-year storm

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<sup>1</sup> Lyles, S.D., L.E. Hickman and H.A. Debaugh (1988) Sea Level Variations for the United States 1855 – 1986. Rockville, MD: National Ocean Service.

<sup>2</sup> Field et. al., Union of Concerned Scientists and the Ecological Society of America (November 1999) Confronting Climate Change in California, [www.ucsusa.org](http://www.ucsusa.org).

event, or a storm event comparable to the 1982/83 El Niño. Also, since it is possible that storm conditions may worsen in the future, the Commission has required that structures be inspected and maintained on a regular basis. The coast can be altered significantly during a major storm and coastal structures need to be inspected on a regular basis to make sure they continue to function as designed. If storm conditions worsen in future years, the structures may require changes or modifications to remain effective. In some rare situations, storm conditions may change so dramatically that existing protective structures may no longer be able to provide any significant protection, even with routine maintenance.

Therefore, if new development along the shoreline is to be found consistent with the Coastal Act and certified LCP, the most landward location of such development must be examined to minimize wave attack with higher wave forces as the level of the sea rises over time. Shoreline protective devices must also be located as far landward as feasible to minimize impacts on coastal processes and to protect public access along the beach. In the case of this project, the applicant's coastal engineer considered the anticipated sea level rise as calculated by the EPA (Titus & Narayanan 1995) and estimated a potential rise in sea level on site of 8 inches over the next 75 years. Although the applicant's coastal engineer asserts that wave runup will not exert enough force to substantially damage the improvements that are proposed as part of this application, the consultant's report does state that the fenced storage area and public access walkway are expected to be subject to short term, periodic wave attack.

## **5. Shoreline Protective Devices**

Shoreline protective devices individually and cumulatively affect coastal processes, shoreline sand supply, and public access by causing accelerated and increased erosion on the adjacent public beach. Adverse impacts resulting from shoreline protective devices may not become clear until such devices are constructed individually along a shoreline and they eventually affect the profile of an entire beach. Changes in the shoreline profile, particularly changes in the slope of the profile, caused by increased beach scour, erosion, and a reduced beach width, alter usable beach area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the physical area of public property available for public beach use. Additionally, through the progressive loss of sand caused by increased scour and erosion, shore material is no longer available to nourish the beach and seasonal beach accretion occurs at a much slower rate. As set forth in earlier discussion, Carbon Beach is currently characterized as a relatively narrow beach. The Commission notes that if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. As the natural process of beach accretion slows the beach fails to establish a sufficient beach width, which normally functions as a buffer area absorbing wave energy. The lack of an effective beach width can allow such high wave energy on the shoreline that beach material may be further eroded by wave action and lost far offshore where it is no longer available to nourish the beach. The effect of this on public access along the beach is again a loss of beach area between the mean high water line and the actual water.

Shoreline protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature of the mean high tide line (the boundary between public and private lands) during high tide and severe storm events, and potentially throughout the entire winter season. The impact of a shoreline protective device on public access is most evident on a beach where wave run-up and the mean high tide line are frequently observed in an extreme landward position during storm events and the winter season. As the shoreline retreats landward due to the natural process of erosion, the boundary between public and private land also retreats landward. Construction of rock revetments and seawalls to protect private property fixes a boundary on the beach and prevents any current or future migration of the shoreline and mean high tide line landward, thus narrowing the distance between the high water mark and low water mark. As the distance between the high water mark and low water mark becomes smaller, the lateral access opportunities along the beach are reduced or eliminated as the entire area seaward of the fixed high tideline is inundated. If a bulkhead/seawall were not constructed, the tideline boundary would normally migrate and retreat landward, while maintaining a passable distance between the high water mark and low water mark overtime. When the bulkhead/seawall is constructed, the fixed backshore results in a reallocation of tideland ownership from the public to the private property owner. Thus, for the reasons stated above, the Commission finds that the construction of shoreline protective devices result in adverse impacts to shoreline processes, sand supply, and public access and recreation.

An existing seawall/bulkhead is located on each of the three contiguous lots owned by the applicant to protect the existing residences and accessory development located on those properties. However, no seawall or bulkhead is located within either the recorded vertical public access easement or the Caltrans right of way easement where the majority of the development proposed by this amendment would be located. Further, in the case of the proposed project, the Commission notes that the applicant is not proposing the construction of any shoreline protective device to protect the proposed development. The Commission further notes recent winter storms, including the El Nino Event of 1998 resulted in severe erosion of the beach and caused damage to several residences located along the Malibu shoreline. It is not possible to completely predict what conditions the proposed improvements may be subject to in the future.

In addition, the Commission notes that Section 30235 of the Coastal Act, as incorporated in the City of Malibu LCP, allows for the construction of a shoreline protective device only when necessary to protect existing development or to protect a coastal dependent use. The Commission further notes that the approval of a shoreline protective device to protect new residential development or ancillary development at the subject site, would not be required by Section 30235 of the Coastal Act or by Policies 4.37 or 4.38 of the LCP. In addition, the construction of a shoreline protective device to protect new residential development would also conflict with Section 30251 of the Coastal Act, as incorporated in the LCP, which states that permitted development shall minimize the alteration of natural land forms, including sandy beach areas which would be subject to increased erosion from such a device.

As described in detail above, any new shoreline protective device constructed along the sandy beach at the project site would have the potential to adversely impact shoreline processes and public access. Additionally, construction of a shoreline protective device to protect any of the proposed development would be inconsistent with Sections 30235, 30253, and 30251 of the Coastal Act, as incorporated in the LCP and specifically with Policies 4.37 and 4.38 of the LCP.

In this case, the applicant is requesting after-the-fact approval for the as-built construction of an at-grade concrete slab located on the sandy beach within both the recorded vertical public easement and the adjacent vertical Caltrans easement. The applicant is also requesting after-the-fact approval for various ancillary development including a storage yard, a storage shed, gates, and mechanical equipment to service the adjacent existing residence (Exhibit 17). As discussed in detail above, due to its location on the sandy beach within the identified wave uprush zone, ample evidence exists that the proposed development will be subject to periodic inundation and wave action. The applicant's Coastal Engineering Consultant has asserted that the proposed development should be adequate to withstand wave action.

However, the Commission finds that in the event that the proposed ancillary development has not been adequately designed or located to withstand wave action, then construction of a new shoreline protective device to protect new development would not be consistent with Section 30235 of the Coastal Act, as included in the LCP. Additionally, Policy 4.37 of the LCP only allows for the construction of a shoreline protective device when necessary to protect existing development, not new proposed development. Further, Policy 4.38 of the LCP, specifically prohibits the construction of any form of shoreline protection device to protect ancillary or accessory development, such as the development proposed as part of this application. Policy 4.38 further mandates that accessory structures, such as the structures proposed as part of this application, shall be removed if it is determined that the structure is in danger from erosion, flooding or wave uprush and that such structures including, but not limited to, cabanas, patios, pools, stairs, landscaping features, and similar design elements shall be constructed and designed to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards.

A portion of the proposed development, although landward of the stringline, will be located within an easement held by the California Department of Transportation (Caltrans).. Therefore, **Special Condition No. Fourteen (14)** has been required to provide notice to the property owner and any prospective purchaser of the site that approval of this permit does not, in any manner, supersede or limit the ability of Caltrans to enforce the provisions of its easement.

The Commission notes that although an existing seawall/bulkhead was previously approved pursuant to the underlying permit to protect the primary use on the subject site (the existing residences); all development proposed by this pending amendment application constitutes ancillary or accessory development. Thus, for the reasons stated above, the Commission finds that construction of a future shoreline protective device to protect ancillary or accessory developments, including all the new development proposed as part of this amendment application, would not be consistent with Section 30235 of the Coastal Act or Policies 4.37

and 4.38 of the Malibu LCP. Therefore, to ensure that the proposed project is consistent with the relevant policies of the Coastal Act and the LCP, and to ensure that the proposed project does not result in future adverse effects to coastal processes and public access, **Special Condition No. Eight (8)** prohibits the applicant or future land owner from constructing a shoreline protective device for the purpose of protecting any of the development approved as part of this application including, but not limited to, the concrete slab, storage area storage shed, and gate.

In past permit actions in the Malibu area, the Commission has required that new structures located on beachfront lots be designed using a caisson/grade beam foundation that extends to bedrock to ensure stability of the structure regardless of whether the soils on the site are subject to erosion or washout. Existing structures that have been built at-grade, rather than on a caisson grade-beam foundation, often require the construction of a seawall in order to protect the existing structure from becoming undermined and damaged from wave action. In this case, although the adjacent residences are protected by an existing bulkhead/seawall, the proposed as-built concrete slab (and the storage structures/mechanical equipment on top of the slab) is neither protected by a seawall nor was the slab constructed using a caisson/grade-beam foundation. Further, despite the claims by the applicant's Coastal Engineering Consultant that the concrete slab is safe, in the event of severe beach erosion caused by winter storm activity, the proposed at-grade concrete slab and all structures on the slab would likely be undermined by storm waves and wave uprush eroding the sand in front of and below the concrete walkway, thereby removing the sand base supporting the concrete such that it would be unsupported, crack and fall onto the eroded sand area below it.

The Commission further finds that in the event that any portion of the proposed concrete slab and the related structures on top of the pad become undermined or damaged, the recorded vertical public access way would become potentially unsafe for public use. Therefore, to ensure that the proposed concrete slab and related accessory structures are designed in a manner that ensures that all development proposed as part of this amendment may be readily removed in the event that they become damaged or undermined, **Special Condition Nos. Four (4) and Eight (8)** require that the applicant submit revised plans, for the review and approval of the Executive Director, identifying the concrete slab (and any development or structures on the slab) with a notation that as the seaward side of the concrete slab erodes, is damaged, or becomes undermined, it will be promptly removed by the applicant/landowner in a manner/design to allow continued use of the movable metal ramp and provide adequate access from the remaining portions of the concrete walkway to the sandy beach.

In addition, to ensure that the damaged or undermined portions of the concrete slab are promptly removed, **Special Condition No. Eight (8)** also requires the applicant and all future landowners to immediately notify the Executive Director, in writing, when any portion of the development authorized by this permit amendment (including, but not limited to, the concrete slab/walkway, gate and two fences, storage structure, fenced storage area, two air conditioning units and electrical conduits, vent pipes) becomes damaged or undermined as a result of wave action, erosion, storm conditions, etc. In addition, within 30 days after such damage occurs, the applicant shall submit a Removal Plan prepared by a licensed civil engineer (which shall be prepared in consultation with Access for All) for the review and



approval of the Executive Director, to remove the damaged portions of the development in a manner that will allow for the continued use of the movable public access ramp that is required pursuant to **Special Condition No. Four (4)** in order to provide adequate public access from the remaining concrete slab/walkway to the sandy beach. Removal of the damaged or undermined portion of the development shall be completed by the applicant/landowner within 30 days after the approval of the Removal Plan by the Executive Director.

In addition, in order to ensure that the ramp can be installed by Access for All or its successor agency in a timely manner that maintains adequate public access across the site, **Special Condition No. Five (5)** requires the applicant/landowner to construct and initially install the movable ramp required pursuant to **Special Condition No. Four (4)** within 90 days of the issuance of this Coastal Permit Amendment or within such additional time as the Executive Director may grant for good cause if the applicant is working on a good faith basis to complete and install the ramp. Only with **Special Condition Nos. Four (4) and Five (5)** can the proposed project be found consistent with the policies of the City of Malibu LCP and the Coastal Act to provide for maximum public access to the coast.

## **6. Shoreline Development**

In addition, because the project includes the after-the-fact request for the installation of a concrete slab at-grade within the vertical public accessway and adjoining Caltrans easement, it is important to consider that the sandy beach area seaward of the concrete slab/walkway will be subject to periodic erosion over time due to both: (1) short term wave attack and (2) increased erosion due to surface drainage and storm water runoff from the concrete slab itself which drains to the beach. Drainage from the adjoining residence to the east and covered shed to the west within the right of way both drain to the concrete slab/walkway. Water falling on the walkway and diverted from these adjoining structures flows seaward, since the elevation gradient of the concrete slab was designed to drain water to the seaward edge onto the sandy beach, thus resulting in potentially greater erosion of the sandy beach area located immediately seaward of the pad. A photograph showing the increased erosion and lower sand level that occurred on site during the 2005-2006 winter season, taken in January 2006, is attached as Exhibit 16 and can be compared to the higher sand level in 2005 after the construction of the concrete walkway and prior to the opening of the accessway as identified in Exhibit 15.

As such, the Commission finds that, over time, the sandy beach will be subject to potential increased erosion as a result of the installation of the concrete pad, as noted above, creating a grade differential between the concrete pad and the sandy beach such that it will be difficult and/or dangerous for the public to cross between the proposed concrete pad located in the vertical public access way to the sandy beach. In addition, regardless of increased erosion of the beach resulting from the concrete pad, the Commission also finds that natural or seasonal erosion of the beach seaward of the concrete pad is expected to occur on a periodic basis and that the concrete pad will serve to "fix" the elevation within the vertical access easement, also resulting in a potential grade differential between the accessway and the sandy beach. Therefore, in order to ensure that the public is able to continue safe use of

the recorded vertical public access easement on site, **Special Condition No. Four A (4A)** requires that the applicant, prior to permit issuance, provide revised project plans to construct/install a lightweight metal (stainless steel or equivalent material acceptable to *Access for All*) ramp to facilitate public access across the grade differential between the concrete pad/accessway to the sandy beach. The ramp shall be designed by a civil engineer in consultation with Access for All with a non-slip surface with stainless steel handrails on two sides, designed to be secured and lockable in place on the concrete walkway and stowed in temporary storage. The ramp shall also be designed in a manner that it can be moved and stowed during storm wave conditions when the gates to the accessway are closed or when a ramp is not needed to provide access to the beach. In addition, in order to ensure that public access is not interrupted or impacted as a result of the as-built concrete pad, **Special Condition No. Five (5)** also requires the applicant/landowner to construct and initially install the movable ramp required pursuant to **Special Condition No. Four (4)** within 90 days of the issuance of this Coastal Permit Amendment or within such additional time as the Executive Director may grant for good cause if the applicant is working on a good faith basis to complete and install the ramp. Once designed, constructed, and initially installed by the applicant, the ramp shall be utilized at the discretion of Access for All or its successor.

In addition, the Commission finds that because there remains some inherent risk in building on properties on beachfront lots which are subject to the unforeseen possibility of wave attack, erosion, and flooding, such as the subject site, that the Commission can only approve the project if the applicant assumes the liability from the associated risks. Therefore, the Commission finds it necessary to require the applicant to agree to assume the risks of development as approved by this amendment. Therefore, **Special Condition No. Nine (9)** requires the applicant to assume the liability from the associated risks of developing the subject site as noted above. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

In addition, the Commission finds that construction/demolition activity on a sandy beach, such as the proposed project, will result in the potential generation of debris and or presence of equipment and materials that could be subject to tidal action. The presence of construction equipment, building materials, and excavated materials on the subject site could pose hazards to beachgoers or swimmers if construction/demolition site materials were discharged into the marine environment or left inappropriately/unsafely exposed on the project site. In addition, such discharge to the marine environment would result in adverse effects to offshore habitat from increased turbidity caused by erosion and siltation of coastal waters. To ensure that adverse effects to the marine environment are minimized, **Special Condition No. Eleven (11)** requires the applicant to ensure that stockpiling of construction materials shall not occur on the beach, no machinery will be allowed in the intertidal zone at any time, all debris resulting from the construction period is promptly removed from the sandy beach area, all grading shall be properly covered, and sand bags and/or ditches shall be used to prevent runoff and siltation.

Finally, **Special Condition No. Twelve (12)** 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.

Therefore, the Commission finds that the portion of the proposed amendment for: (1) various as-built improvements landward of the concrete slab (including a concrete slab, storage structures, etc.) within the recorded vertical public access and Caltrans easements, (2) an as-built deck, (3) recordation of an offer to dedicate lateral public access, and (4) payment to the California Coastal Conservancy of \$125,000.00 to provide for the operation and maintenance of public access on site, as conditioned, is consistent with the shoreline development and hazards policies of the adopted Malibu LCP and Chapter 3 of the Coastal Act.

However, the Commission also finds that the portion of the proposed amendment consisting of the request for after-the-fact approval of an as-built private stairway within a recorded lateral public access easement and development seaward of the concrete slab within the Caltrans right of way easement is inconsistent with the shoreline development and hazards policies of the adopted Malibu LCP and the Chapter 3 of the Coastal Act. These issues are discussed separately below in the findings and declarations for denial

## **E. Visual Resources**

The Malibu LCP and the Coastal Act provide for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LCP identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality, that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The LCP policies require that new development not be visible from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and design measures. In addition, development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site.

Section 30251 of the Coastal Act, as incorporated in the LCP, requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. Section 30251 of the Coastal Act, as incorporated as part of the Malibu LCP, states that:

***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 subordinated to the character of its setting.***

In addition, the following LCP policies are applicable in this case:

- 4.30** *In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.*
- 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.*
- 6.15** *Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.*
- 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.*
- 6.3** *Roadways traversing or providing views of areas of outstanding scenic quality, containing striking views of natural vegetation, geology, and other unique natural features, including the ocean shall be considered Scenic Roads. The following roads within the City are considered Scenic Roads:*
- Pacific Coast Highway*
  - Decker Canyon Road*
  - Encinal Canyon Road*
  - Kanan Dume Road*
  - Latigo Canyon Road*
  - Corral Canyon Road*
  - Malibu Canyon Road*
  - Tuna Canyon Road*
- 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.*

- 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.*

As a means of controlling seaward encroachment of beachfront residential structures and minimizing adverse impacts to public views to and along the shoreline, LUP Policy 4.30 provides a stringline standard for the siting of infill development. Policy 4.30 states:

*In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.*

The intent of the stringline standard is to limit infill development to only existing developed shoreline areas and limit the encroachment of new structures out onto the beach in order to ensure maximum public access and minimize adverse impacts to public views to and along the shoreline.

In the case of the proposed project, the development stringline on site is drawn from the dripline of the adjacent seawall on the adjacent lots located downcoast of the vertical public easement. All development, with the exception of the proposed private stairway, will be located landward of the development stringline. Although the private stairway will extend approximately 3.5 feet seaward of the stringline, **in this case, the Commission finds that the as-built stairs are generally in conformance with the approved plans for Coastal Development Permit No. 5-86-061 and will not result in adverse impacts to public access in relation to the public's use of the recorded lateral public access easement on site.** ~~seaward of the stringline and is thus inconsistent with LUP Policy 4.30. Further, the private stairway encroaches approximately 3.5 feet into a recorded lateral~~

~~public access easement and is also inconsistent with the terms of the easement. The existing unpermitted private stairway encroaches onto the beach resulting in a significant adverse impact to public views inconsistent with both the surrounding development and the sections of the LCP and Coastal Act regarding the protection of visual resources. Thus, to ensure that adverse impacts to public views are minimized, Special Condition No. Four (4) requires the applicant to submit revised project plans deleting the proposed "as-built" private stairway, as shown on Exhibit 18. The Commission notes that this restriction will still allow the applicant to submit revised plans which provide for the reconstruction of a private stairway that will be primarily located landward of the bulkhead stringline consistent with the location/design shown on the previously approved plans for Coastal Permit No. 5-86-061. In addition, Special Condition No. Six (6) also requires that the existing unpermitted private stairway shall be removed within 90 days of the issuance of Coastal Permit Amendment No. 5-83-703-A1 or additional time granted by the Executive Director for good cause. Reconstruction of the stairway landward of the toe of the existing seawall/bulkhead will be consistent with both the surrounding development and with the preservation of visual resources consistent with the policies of both the Coastal Act and the LCP. In addition, in order to minimize wave hazards from new development and minimize ongoing and continuing impacts to coastal processes, shoreline sand supply, and public views, Special Condition No. Six (6) requires the applicant/landowner to remove the existing private stairway within 90 days of the issuance of the issuance of this permit amendment. The Executive Director may grant additional time for good cause. As such, the Commission finds that the proposed project, only as conditioned to delete the proposed private stairway, will not result in the seaward encroachment of development on Carbon Beach and will serve to minimize adverse effects to coastal processes.~~

In addition, some portions of the proposed development will be located within the recorded vertical public access easement (including the concrete slab and five vents). These developments, as conditioned by this permit, will not result in direct obstacles to public access. However, the Commission finds that the development proposed in the vertical access easement (including the solid wood gate and concrete pad) will still result in potential adverse impacts due to the apparent privatization of the easement area as viewed from Pacific Coast Highway. Therefore, to ensure that the development authorized by this permit will not result in adverse impacts to public views or interfere with the public's ability to utilize the recorded public easements on site, **Special Condition No. Ten (10)** requires the applicant to allow the installation of public access signs within the vertical public access easement by Access for All.

Therefore, the Commission finds that, only as conditioned, the proposed: (1) as-built improvements located landward of the concrete slab (including a concrete slab, storage structures, etc.) within the recorded vertical public access and Caltrans easements, (2) as-built deck and private stairway, (3) recordation of an offer to dedicate lateral public access, and (4) payment to the California Coastal Conservancy of \$125,000.00 to provide for the operation and maintenance of public access on site are consistent with the visual resources policies of the adopted Malibu LCP and Chapter 3 of the Coastal Act.

~~However, the Commission also finds that the portion of the proposed amendment consisting of the request for after-the-fact approval of an as-built private stairway within a recorded lateral public access easement is inconsistent with the visual resources policies of the adopted Malibu LCP and the Chapter 3 of the Coastal Act and as discussed in Section V below, must be denied.~~

## F. Violation

Development has occurred on the subject site without the required coastal development permit including, but not limited to: an approximately 18 ft. by 56 ft. concrete floor/walkway with thickened 12 in concrete edge at southern (seaward) edge; gate 9 ft. wide by 6 ft. high at southern edge of the concrete vertical public access walkway; an approximately 9 ft. by 30.5 ft storage structure totaling 274.5 sq. ft.; an approximately 9 ft. by 26 ft. fenced storage area totaling 234 sq. ft.; two air conditioning units; 5 vent pipes; electrical conduits; one 6 foot high by 26 ft long fence at the eastern edge of the storage area; a 42 foot long by 5 foot wide cantilevered deck/planter on top of the western most bulkhead/seawall; a private beach access stairway located partially within a recorded lateral public access easement; and development such as rocks and landscaping within the Caltrans right of way easement seaward of the concrete slab. All of the above-mentioned development requires a coastal development permit.

~~The existing “as-built” private beach access stairway descends from the existing deck area and seawall and encroaches approximately 3.5 ft. into the recorded lateral public easement located seaward of the approved deck. Such stairway is inconsistent with the stairway approved by Coastal Permit No. 5-86-061 which did not extend further than approximately 1 ft. seaward of the deck.~~

Although this application addresses all of the above referenced development, staff is recommending that the Commission require **Special Condition Nos. Four C (4C) and Six (6)** to delete the above referenced “as-built” stairway, as well as all development within the Caltrans right of way seaward of the concrete slab.

In order to ensure that the components of this application involving unpermitted development are resolved in a timely manner, the Commission finds it necessary to require the applicant to satisfy all conditions of this permit that are prerequisite to the issuance of the permit within 60 days of Commission action, as required by **Special Condition No Thirteen (13)**. Only as conditioned, is the proposed development consistent with the Coastal Act.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act.

## **G. California Environmental Quality Act**

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified 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 which the activity may have on the environment.

The Commission incorporates its findings on Coastal Act and Certified Local Coastal Program consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, as conditioned, is consistent with the policies of the Coastal Act and the Certified Local Coastal Program. Feasible mitigation measures which will minimize all adverse environmental impacts have been required as special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed development, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.



**V. FINDINGS AND DECLARATIONS OF DENIAL: ~~(A) THE “AFTER-THE-FACT” REQUEST FOR AN AS-BUILT PRIVATE BEACH ACCESS STAIRWAY LOCATED SEAWARD OF THE BULKHEAD AND WITHIN A LATERAL PUBLIC ACCESSWAY; AS WELL AS (B) ALL DEVELOPMENT WITHIN THE CALTRANS RIGHT OF WAY EASEMENT SEAWARD OF THE CONCRETE SLAB~~**

**A. Public Access and Recreation**

The Malibu Local Coastal Program (LCP) contains the following development policies related to public access and recreation that are applicable to the proposed development. In addition, Sections 30210, 30211, 30212, 30214, 30220, and 30221 of the Coastal Act, which are incorporated as part of the Malibu LCP pertain to the protection and provision of public access and recreation.

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(a)(2)** 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:*

*...*

*(2) adequate access exists nearby ...*

Section **30214** states that:

*(d) 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:*

- (5) Topographic and geologic site characteristics.*
- (6) The capacity of the site to sustain use and at what level of intensity.*
- (7) 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.*

- (8) *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.*
- (e) *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.*
- (f) *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.*

Section **30220** states that:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such use.*

Section **30221** states that:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

In addition, the following City of Malibu LCP policies are applicable in this case:

**Land Use Plan Policies**

- 2.87 *Public accessways and trails to the shoreline and public parklands shall be a permitted use in all land use and zoning designations. Where there is an existing, but unaccepted and/or unopened public access Offer-to-Dedicate (OTD), easement, or deed restriction for lateral, vertical or trail access or related support facilities e.g. parking, construction of necessary access improvements shall be permitted to be constructed, opened and operated for its intended public use.*
- 2.88 *Public recreational facilities throughout the City, including parking areas or facilities, shall be distributed, as feasible, to prevent overcrowding and to protect environmentally sensitive habitat areas.*
- 2.89 *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.*

**Shoreline Access**

- 2.90 *Offers to dedicate public access shall be accepted for the express purpose of opening, operating, and maintaining the accessway for public use. Unless there are unusual circumstances, the accessway shall be opened within 5 years of acceptance. If the accessway is not opened within this period, and if another public agency or qualified private association expressly requests ownership of the easement in order to open it to the public, the easement holder shall transfer the easement to that entity within 6*

*months of the written request. A Coastal Development Permit that includes an offer to dedicate public access as a term or condition shall require the recorded offer to dedicate to include the requirement that the easement holder shall transfer the easement to another public agency or private association that requests such transfer, if the easement holder has not opened the accessway to the public within 5 years of accepting the offer.*

- 2.91 *Public agencies and private associations which may be appropriate to accept offers of dedication include, but shall not be limited to, the State Coastal Conservancy, the Department of Parks and Recreation, the State Lands Commission, the County, the City, the Santa Monica Mountains Conservancy and non-governmental organizations.*
- 2.92 *A uniform signage program shall be developed and utilized to assist the public in locating and recognizing shoreline access points. In environmentally sensitive habitat areas signs may be posted with a description of the sensitive habitat. Signs shall be posted in English and Spanish.*
- 2.93 *Maximum public access shall be provided in a manner which minimizes conflicts with adjacent uses.*

#### ***Beach and Blufftop Accessway Standards***

- 2.94 *Improvements and/or opening of accessways already in public ownership or accepted pursuant to a Coastal Permit shall be permitted regardless of the distance from the nearest available vertical accessway.*

#### ***Specific Vertical Accessway Standards***

- 2.95 *The following standards shall apply in carrying out the access policies of the LCP relative to requiring and locating vertical accessways to the shoreline. These standards shall not be used as limitations on any access requirements pursuant to the above policies. ...*

##### **Carbon Beach**

- *Requirement for or public acquisition of vertical access every 1,000 feet of the shoreline.*
- *Improve and open 2 existing vertical access OTDs and 4 existing vertical access deed restrictions.*
- *Maintain and operate existing "Zonker Harris" vertical accessway.*

#### ***Shoreline Erosion and Protective Structures***

- 4.30 *In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.*

Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that public access to the sea be provided adequate to allow use of dry sand and rocky coastal beaches. Section 30220 of the Coastal Act requires coastal areas suited for coastal recreational activities, that cannot be provided at inland water areas, be protected.

~~The applicant has Unpermitted development, including rocks and landscaping, has occurred within the Caltrans right of way/easement constructed an unpermitted private stairway to access the sandy beach immediately seaward of the concrete slab seawall and deck at 22126 Pacific Coast Highway (Exhibits 15 4, 18, 22, and 23). The landscaping and rock extends approximately 15 feet seaward of the unpermitted storage shed within the Caltrans right of way easement and are; therefore, occupying a portion of the sandy beach that should otherwise be available for lateral public access. The plans submitted by the applicant on July 26, 2006 identify this "as-built" stairway as "proposed as-built". Although a private stairway from the deck to the beach was originally approved by the Commission pursuant to Coastal Development Permit No. 5-86-061, the proposed "as-built" stairway is located in a different footprint/configuration and extends further seaward than was previously approved by Coastal Permit No. 5-86-061. The majority of the stairway that was previously approved by the Commission in Coastal Permit No. 5-86-061 was located almost entirely landward of the deck with only approximately a 4 foot wide by 1 foot section of the stairs extending seaward of the deck. In comparison, as proposed and constructed, an approximately 11 foot wide by 3.5 foot section of the unpermitted as-built stairway extends seaward of the deck on site and encroaches significantly further into the recorded lateral public access easement than previously approved.~~

~~As built, the unpermitted private stairway extends approximately an additional 2.5 feet seaward lateral access easement than the previously approved stairway and is; therefore, occupying a portion of the sandy beach that should otherwise be available for lateral public access. Further, the Commission finds that during higher tides, the stairway may effectively block all public pedestrian access along the beach when there are no other dry sand areas seaward of the stairs. As a result, the Commission finds that the unpermitted private stairway is rocks and landscaping are resulting in continuing and ongoing adverse impacts to public access and recreation in contradiction to the public access and recreation policies of both the Coastal Act and the certified LCP. Therefore, the Commission finds that the rocks and landscaping are proposed "as built" private beach stairway is not consistent with either the public access and recreation policies of the certified City of Malibu LCP or the Coastal Act as it is located within the Caltrans right of way recorded easement which should be available for lateral public access. Thus, the rocks and landscaping are that has been accepted by Access for All and is now open to public use. Thus, the private beach stairway in it existing location is denied by the Commission because it is they are inconsistent with the Coastal Act and LCP access and recreation policies.~~

## **B. Bluff/Shoreline Development and Hazards**

The proposed development is located on a sandy beach front property along the Malibu coastline, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu/Santa Monica Mountains coastal area include storm waves, wave runup, erosion and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. By nature, coastal beach areas are subject to erosion from sheet flow from impervious surfaces on the beach such as residentially related development and from wave action along the sandy beach and particularly the developed landward areas of the sandy beach.

The Malibu Local Coastal Program (LCP) contains the following development policies related to hazards and blufftop/shoreline development that are applicable to the proposed development.

Sections 30235 and 30253 of the Coastal Act, which are incorporated as part of the Malibu LCP, state in pertinent part that new development shall:

**Section 30235:**

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

**Section 30253 states in pertinent part:**

***New development shall:***

- (3) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (4) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, 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.***

In addition, the following LCP policies are applicable in this case:

- 4.2 All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.***
- 4.5 Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.***

- 4.10 New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.**
- 4.17 All applications for new development on a beach, beachfront or blufftop property shall include a wave uprush and impact report and analysis prepared by a licensed civil engineer with expertise in coastal engineering which addresses and demonstrates the effects of said development in relation to the following:**
- **The profile of the beach;**
  - **Surveyed locations of mean high tide lines acceptable to the State Lands Commission;**
  - **The availability of public access to the beach;**
  - **The area of the project site subject to design wave uprush;**
  - **Foundation design requirements;**
  - **The need for a shoreline protection structure over the life of the project;**
  - **Alternatives for protection of the septic system;**
  - **The long term effects of proposed development on sand supply;**
  - **Future projections in sea level rise; and,**
  - **Project alternatives designed to avoid or minimize impacts to public access.**
- 4.22 Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered. Development shall be set back a sufficient distance landward and elevated to a sufficient foundation height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.**
- 4.23 New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected 100-year economic life of the 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 setback as far landward as possible. 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.**
- 4.24 All proposed development on a beach or along the shoreline, including a shoreline protection structure, 1) must be reviewed and evaluated in writing by the State Lands Commission and 2) may not be permitted if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing.**
- 4.26 Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:**
- **No stockpiling of dirt or construction materials shall occur on the beach;**
  - **All grading shall be properly covered and sandbags and/or ditches shall be used to prevent runoff and siltation;**
  - **Measures to control erosion shall be implemented at the end of each day's work;**
  - **No machinery shall be allowed in the intertidal zone at any time to the extent feasible;**
  - **All construction debris shall be removed from the beach.**

- 4.30 In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.**
- 4.42 As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.**
- 4.39 Shoreline and bluff protection structures shall not be permitted to protect new development, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel.**
- 4.40 No shoreline protection structure shall be permitted for the sole purpose of protecting an ancillary or accessory structure. Such accessory structures shall be removed if it is determined that the structure is in danger from erosion, flooding or wave uprush...Accessory structures including, but not limited to, cabanas, patios, pools, stairs, landscaping features, and similar design elements shall be constructed and designed to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards.**

The LCP contains numerous development standards applicable to all new development on sites located in or near an area subject to geologic hazards. This includes the requirement to submit geologic, soils, and geotechnical reports addressing the proposed development, and that all recommendations of the geologic consultants are incorporated into the project.

The Malibu LCP policies require that new development minimize risk to life and property in areas of high geologic, flood and fire hazard and assure stability, structural integrity nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Coastal beach areas are unique geomorphic features that are characteristically unstable. By nature, coastal beaches are subject to erosion from the sheet flow runoff of landward areas and developments located on the beach and from the wave action along the beach. The Commission, through permit actions, has typically prohibited new development directly on a beach, with the exception of developed beach properties and improvements needed to provide public access from a roadway to the beach below. It is recognized that in many areas of the coast, there would be no other means of providing access to the beach and public tidelands. Additionally, the area of the coast along

Carbon Beach is developed with single-family residences that extend from Pacific Coast Highway and across the sandy beach.

In past permit actions, the Commission has found that the construction of a shoreline protection device, such as a seawall, results in significant adverse effects to shoreline sand supply and public access. The certified LCP, in recognition of the adverse effects to beach areas that results from the use of shoreline protection devices to protect development, includes several policies that limit the use of such devices. Policy 4.37 of the LCP, consistent with Section 30235 of the Coastal Act, which has been included in the certified LCP as a policy, provides that the construction of shoreline protection devices for existing development may be required only when no feasible less environmentally damaging alternative exists. Further, Policy 4.38 of the LCP prohibits the construction of shoreline protective devices for the purpose of protecting ancillary development. Further, in order to eliminate the potential necessity for the construction of a shoreline protective device, Policy 4.38 also requires that new ancillary structures on a beachfront lot be designed in a manner that they may be removed or relocated in the event of threat from erosion or wave hazard.

In the case of the proposed project, although no new shoreline protective device is proposed, past Commission review of shoreline residential projects in Malibu has shown that such development results in potential individual and cumulative adverse effects to coastal processes, shoreline sand supply, and public access. Shoreline development, if not properly designed to avoid and minimize such adverse effects, may result in encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use public tideland areas. In order to accurately determine what adverse effects to coastal processes will result from the proposed project, it is necessary to analyze the proposed project in relation to characteristics of the project site shoreline, location of the development on the beach, and wave action.

As a means of controlling seaward encroachment of beachfront residential structures, LUP Policy 4.30 provides a stringline standard for the siting of infill development. Policy 4.30 states:

***In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.***



The intent of the stringline standard is to limit infill development to only existing developed shoreline areas and limit the encroachment of new structures out onto the beach in order to ensure maximum public access, and minimize wave hazards and impacts to coastal processes, shoreline sand supply, and public views.

**The rocks and landscaping are located on a portion of the sandy beach that, at times, would be located seaward of the mean high tide lines, and thus, on public land, as well as within a portion of the public (Caltrans) easement that would otherwise be available for public access. Therefore, the Commission finds that the existing rocks and landscaping are inconsistent with the access provisions of the LCP and Coastal Act.**

### **C. Visual Resources**

The Malibu LCP and the Coastal Act provide for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LCP identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality, that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The LCP policies require that new development not be visible from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and design measures. In addition, development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site.

Section 30251 of the Coastal Act, as incorporated in the LCP, requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. Section 30251 of the Coastal Act, as incorporated as part of the Malibu LCP, states that:

***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 subordinated to the character of its setting.***

In addition, the following LCP policies are applicable in this case:

- 4.30** ***In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot.***

*Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.*

- 6.7 *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.*
- 6.16 *Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.*
- 6.8 *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.*
- 6.9 *Roadways traversing or providing views of areas of outstanding scenic quality, containing striking views of natural vegetation, geology, and other unique natural features, including the ocean shall be considered Scenic Roads. The following roads within the City are considered Scenic Roads:*
- *Pacific Coast Highway*
  - *Decker Canyon Road*
  - *Encinal Canyon Road*
  - *Kanan Dume Road*
  - *Latigo Canyon Road*
  - *Corral Canyon Road*
  - *Malibu Canyon Road*
  - *Tuna Canyon Road*
- 6.10 *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.*
- 6.11 *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.*

- 6.12 *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.*

As a means of controlling seaward encroachment of beachfront residential structures and minimizing adverse impacts to public views to and along the shoreline, LUP Policy 4.30 provides a stringline standard for the siting of infill development. Policy 4.30 states:

*In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.*

The intent of the stringline standard is to limit infill development to only existing developed shoreline areas and limit the encroachment of new structures out onto the beach in order to ensure maximum public access and minimize adverse impacts to public views to and along the shoreline.

In the case of the proposed project, the development stringline on site is drawn from the driplines of the decks on the adjacent lots located downcoast of the vertical public easement. All other proposed development ~~(with the exception of the proposed private stairway)~~ will be located landward of the development stringline. ~~The private stairway will extend approximately 3.5 feet seaward of the stringline and 2.5 feet further seaward than the stairway that was approved in Coastal Permit No. 5-86-061, and is thus inconsistent with LUP Policy 4.30. As a result, the Commission finds that the unpermitted private stairway is resulting in continuing and ongoing adverse impacts to public views to and along the shoreline in contradiction to the visual resource policies of the certified LCP. Further, as discussed above, the private stairway encroaches approximately 3.5 feet, and 2.5 feet further seaward than previously approved, into a recorded lateral public access easement, inconsistent with the access and shoreline policies of the Coastal Act and the LCP as well as terms of the easement itself. The existing landscaping and rocks in the Caltrans easement unpermitted private stairway encroaches onto the beach resulting in a significant adverse impact to public views inconsistent with both the surrounding development and the sections of the LCP and Coastal Act regarding the protection of visual resources. Therefore, the proposed rock and landscaping in the Caltrans easement private stairway must be denied.~~

#### D. Cumulative Impacts of Development

Section **30250(a)** of the Coastal Act, which has been expressly incorporated into the City of Malibu LCP, states:

***New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of the surrounding parcels.***

Section **30105.5** of the Coastal Act defines the term "cumulatively" as it is used in Section 30250(a), to mean that:

***the incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and effects of probable future projects.***

As incorporated into the City of Malibu LCP, Section 30250 requires that new development be permitted only where public access and coastal resources will not be cumulatively affected by such development. In addition, as large stretches of the Malibu coastline have been committed to development over the past 70 years. This intense development has cumulatively degraded the environmental quality of significant portions of this coastline. The placement of development over the sandy and rocky beach areas of Malibu have resulted in a direct loss of sandy and rocky intertidal habitat areas which are a critical component of the marine ecosystem. The construction of numerous shoreline protective devices has interrupted the natural shoreline processes and has contributed to the erosion of the shoreline in many areas. The physical occupation of the beaches by development and the erosional impacts of shoreline protective devices have prevented or impeded public access to and along the coastline. In addition, the placement of structures in areas subject to high tides and storm waves has resulted in public costs (through low interest loans and infrastructure repair) in the millions of dollars in the Malibu area. It is clear that the cumulative effects of development along the Malibu coast has adversely impacted coastal resources of the Malibu shoreline.

The incremental effects of ~~both: (1) the proposed stairway located seaward of the deck and within the existing lateral public access easement as well as (2)~~ the development (rocks and landscaping) located seaward of the concrete slab within the Caltrans right of way easement, in conjunction with the effects of the other shoreline development mentioned above, will translate into significant adverse impacts and degradation of coastal resources on the Malibu coastline and would cumulatively adversely impact the coastal resources associated with the Malibu shoreline.

The previous sections of these findings contain documentation of the adverse individual and cumulative impacts the proposed development would have on coastal resources and access. Therefore, the Commission finds that the proposed ~~stairway located within the lateral public easement and the~~ rocks and landscaping located seaward of the concrete slab within the Caltrans right-of-way are not consistent with section 30250(a) of the Coastal Act, as it has been incorporated into the City of Malibu certified LCP, and must therefore be denied.

## E. Violation Findings

Development has occurred on the subject site without the required coastal development permit including, but not limited to: an approximately 18 ft. by 56 ft. concrete floor/walkway with thickened 12 in concrete edge at southern (seaward) edge; gate 9 ft. wide by 6 ft. high at southern edge of the concrete vertical public access walkway; an approximately 9 ft. by 30.5 ft storage structure totaling 274.5 sq. ft.; an approximately 9 ft. by 26 ft. fenced storage area totaling 234 sq. ft.; two air conditioning units; 5 vent pipes; electrical conduits; one 6 foot high by 26 ft long fence at the eastern edge of the storage area; a 42 foot long by 5 foot wide cantilevered deck/planter on top of the western most bulkhead/seawall; a private beach access stairway located partially within an existing lateral public access easement; and development such as rocks and landscaping within the Caltrans right of way easement seaward of the concrete slab. All of the above-mentioned development requires a coastal development permit.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and the applicable provisions of the certified City of 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)(i) 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 impact which the activity may have on the environment.

Furthermore, Section **15042** of the CEQA Guidelines provides in relevant part that:

A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.

Previous sections of these findings contain documentation of the adverse impacts of both: (1) the proposed stairway located within the existing lateral public access easement as well as (2) the development (including landscaping and rocks) located seaward of the concrete slab would have on the environment of the Malibu portion of the California coastline.

There are feasible alternatives to the proposed project which would lessen the impact on the environment.

Therefore, for reasons previously cited in the findings above, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform with CEQA.

CDP  
STANDARD CONDITIONS: 5-83-703

1. Notice of Receipt and Acknowledgement. The permit is not valid and construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Construction 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. Compliance. All construction must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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.

#### SPECIAL CONDITIONS

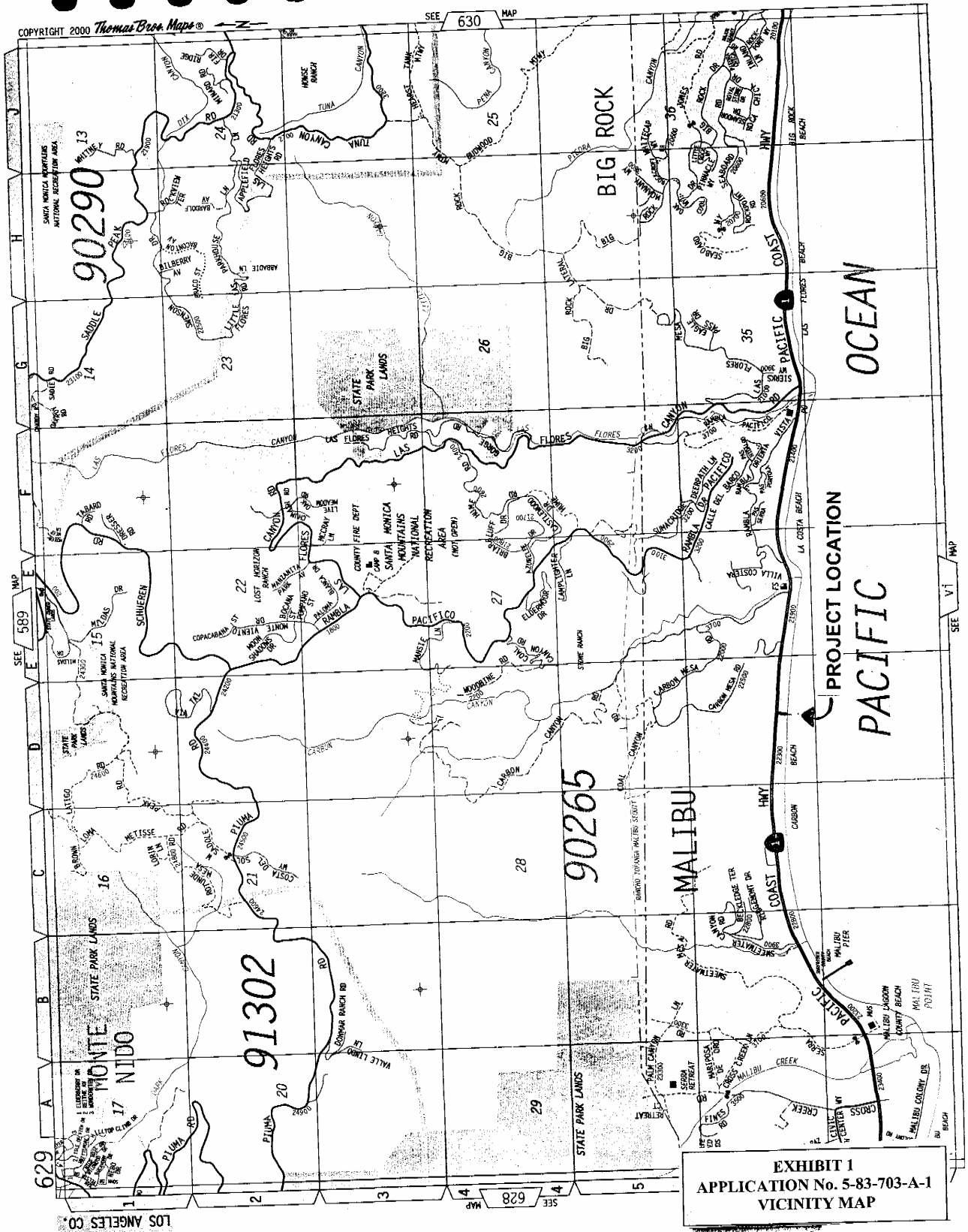
This permit is subject to the following special conditions:

1. Lateral and Vertical Access. Prior to the transmittal of a permit, the applicant shall submit evidence of the acceptance of offers to dedicate easements for access along the shoreline from the mean high tide line to the toe of the approved bulkhead for the residence and for access to the shoreline over a vertical access easement co-terminous with an existing 9' wide Cal Trans easement on the applicant's property. Said vertical access easement shall be located within an 18' wide corridor paralleling the western most property line of the applicant's property and shall provide for a privacy buffer of at least 9' in width between the access way on developed property to the west of the applicant's holdings.

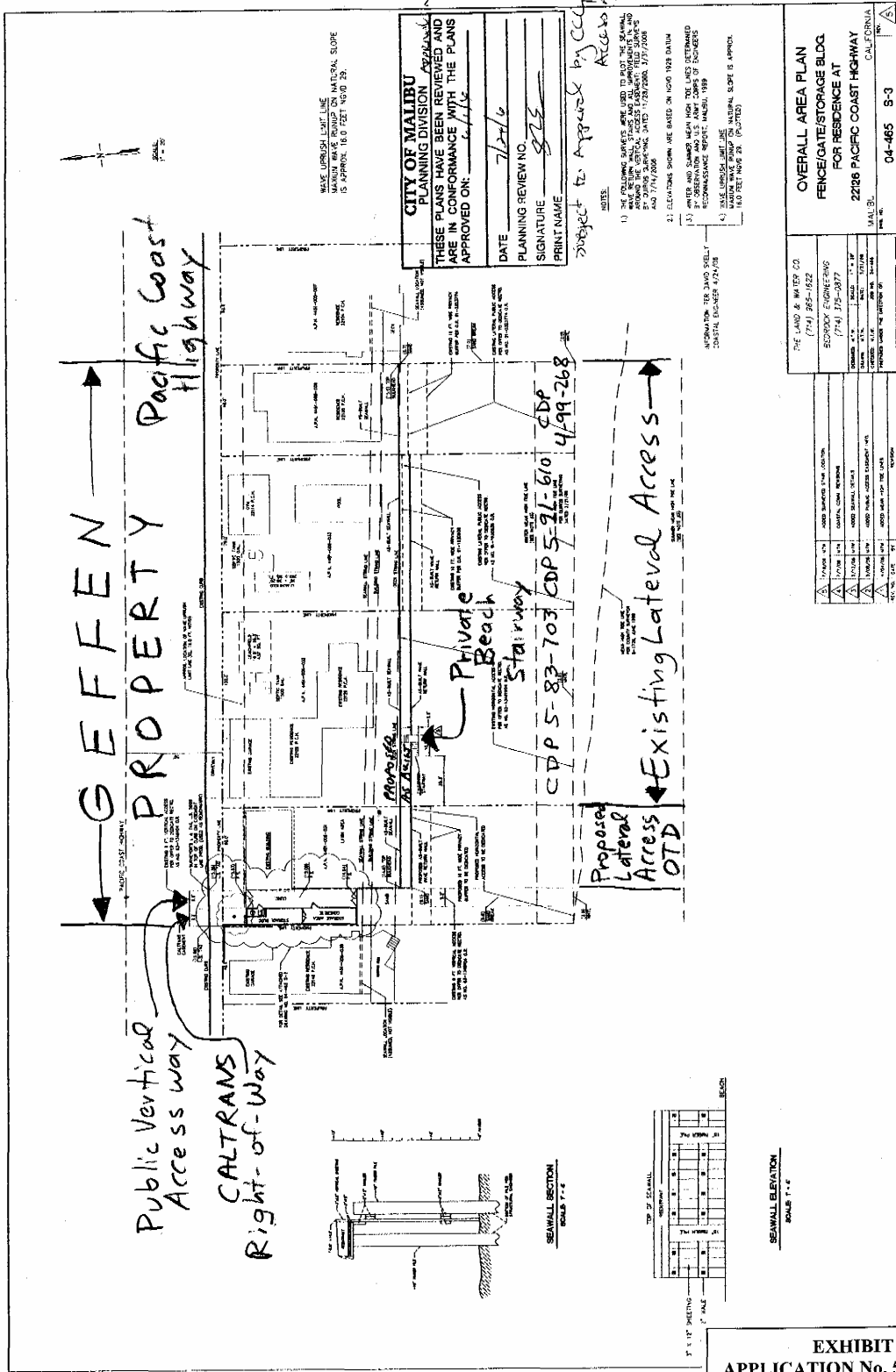
2. Applicant's Assumption of Risk. Prior to transmittal of the permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens except for tax liens, that bind the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from erosion, flooding or wave damage, and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other public agency for any damage from such hazards; and (c) the applicants understand construction in the face of these possible known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of erosion, flooding, or wave damage.

3. Revised Plans. Prior to the transmittal of a permit, the applicant shall submit revised plans, subject to the review and approval of the Executive Director, which indicate that the bulkhead pile tips are either anchored in bedrock or are placed a minimum of six feet below the scour level of the Carbon Beach wave uprush/beach profile illustrating that scour level. The plans shall also indicate that the bulkhead shall be located adjacent within 5' to of the most seaward existing pilings (see Exhibit 5).

EXHIBIT A  
APPL. No. 5-83-703-A-1  
Standard and Special  
Conditions for CDP 5-83-703







**CITY OF MALIBU**  
PLANNING DIVISION  
THESE PLANS HAVE BEEN REVIEWED AND  
APPROVED ON: 7/1/83

DATE: 7/24/83  
SIGNATURE: [Signature]  
PRINT NAME: [Name]  
Subject to Approval by C.C. Callahan  
Access for All

NOTES:  
1) THE FOLLOWING SURVEYS ARE USED TO LOCATE THE SEAWALL AND TO LOCATE THE EXISTING LATERAL ACCESS AT THE PROPOSED LATERAL ACCESS.  
2) ELEVATIONS SHOWN ARE BASED ON 1988 DATUM.  
3) NOTES AND DIMENSIONS ARE NOT TO BE USED FOR CONSTRUCTION OF THE SEAWALL.  
4) THE SEAWALL SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE RECOMMENDATION REPORT, JANUARY, 1988.  
5) THE SEAWALL SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE RECOMMENDATION REPORT, JANUARY, 1988.  
6) THE SEAWALL SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE RECOMMENDATION REPORT, JANUARY, 1988.  
7) THE SEAWALL SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE RECOMMENDATION REPORT, JANUARY, 1988.  
8) THE SEAWALL SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE RECOMMENDATION REPORT, JANUARY, 1988.  
9) THE SEAWALL SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE RECOMMENDATION REPORT, JANUARY, 1988.  
10) THE SEAWALL SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE RECOMMENDATION REPORT, JANUARY, 1988.

**OVERALL AREA PLAN**  
FENCE/GATE/STORAGE BLDG  
FOR RESIDENCE AT  
2228 PACIFIC COAST HIGHWAY  
MALIBU, CALIFORNIA

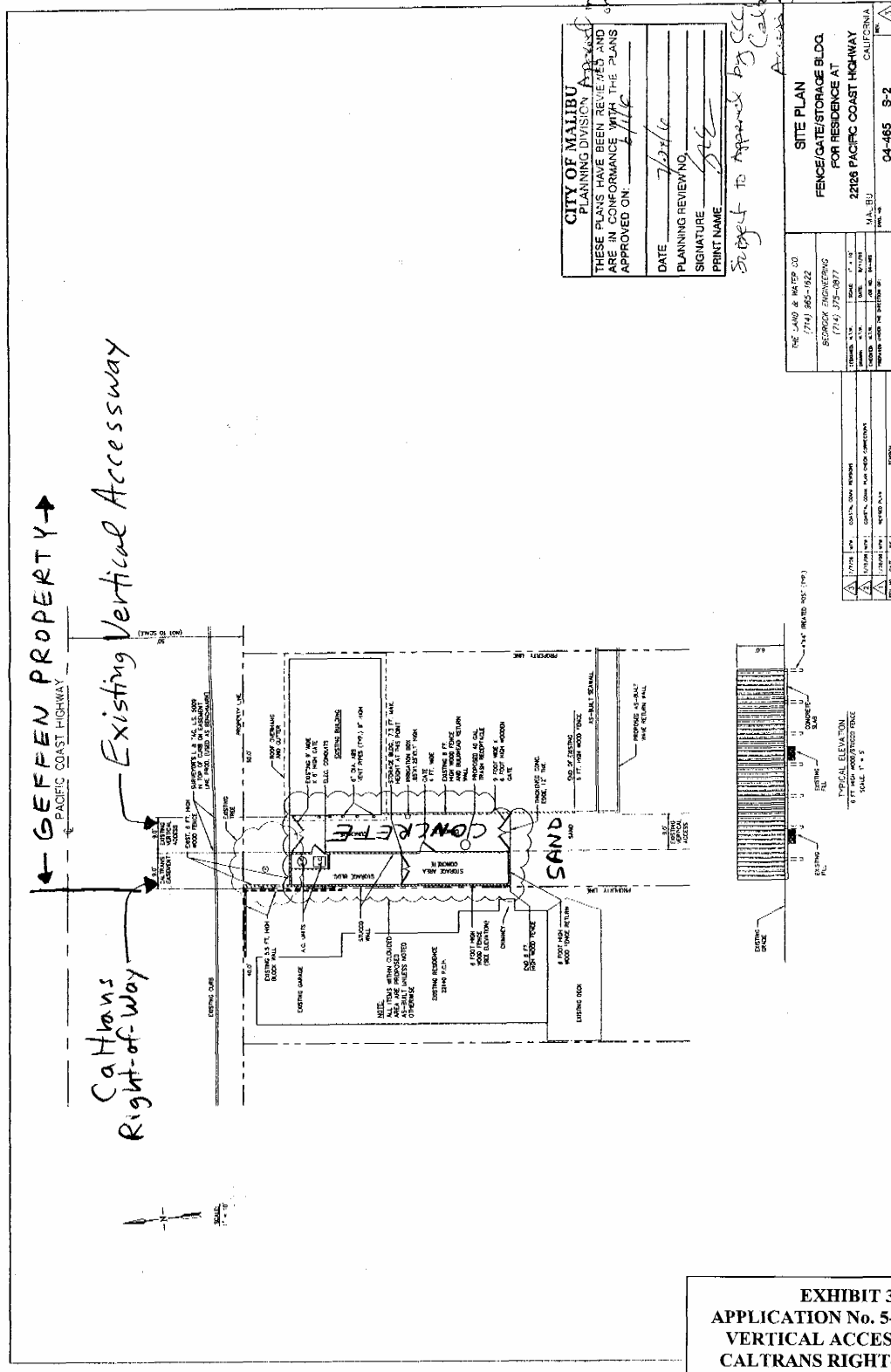
DATE: 04-85 8-3

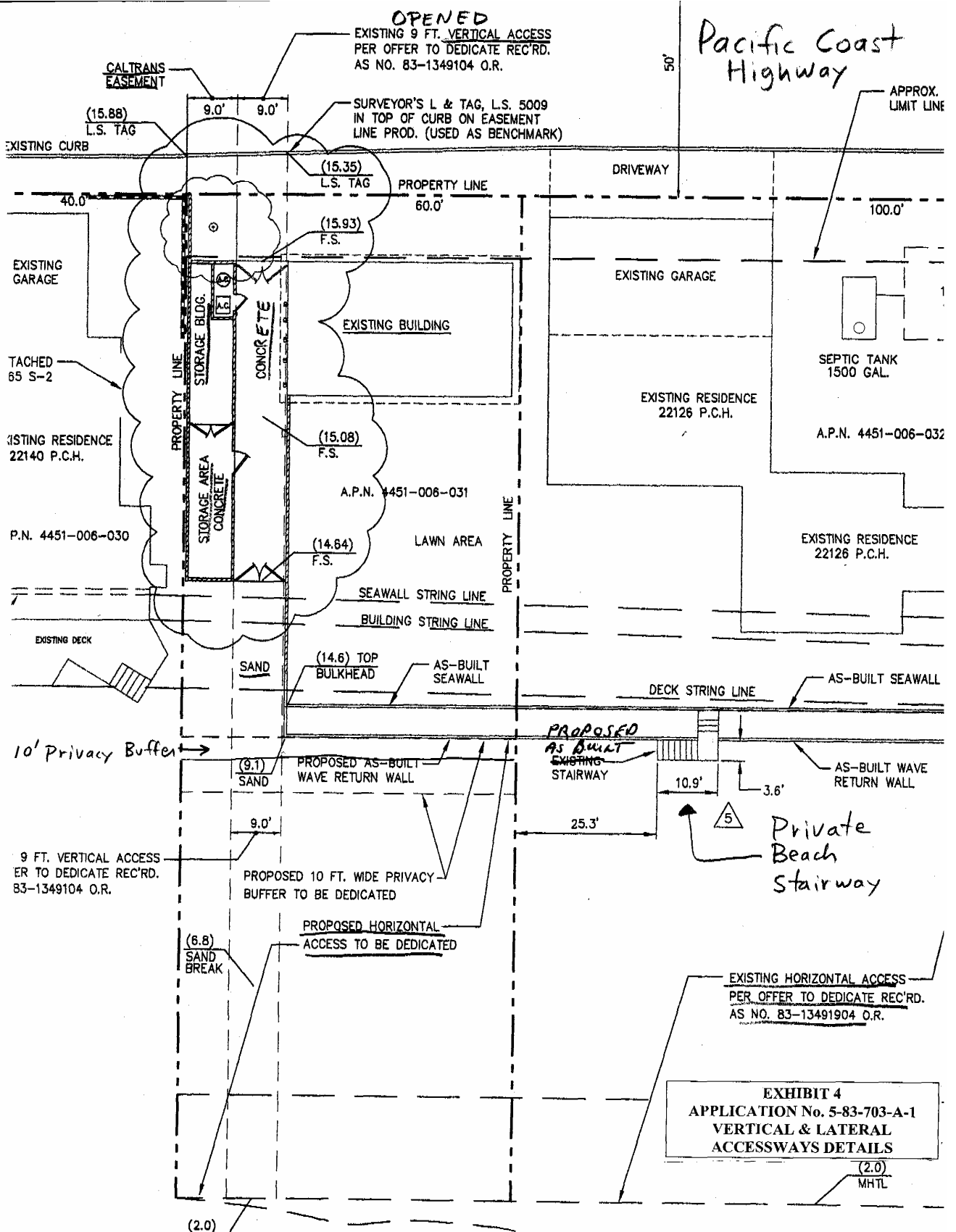
THE LAND & WATER CO.  
(714) 255-1622  
ECONOMY ENGINEERS  
(714) 315-2871

DATE: 7/1/83  
SCALE: 1" = 4'

PROJECT: 5-83-703  
SHEET: 65 OF 65

**EXHIBIT 2**  
**APPLICATION No. 5-83-703-A-1**  
**APPLICANT'S PROPERTY**





GEFFEN IMPROVEMENTS LOCATED IN CALTRANS EASEMENT  
 $\frac{1}{4}" = 1'0"$



# PACIFIC COAST HIGHWAY

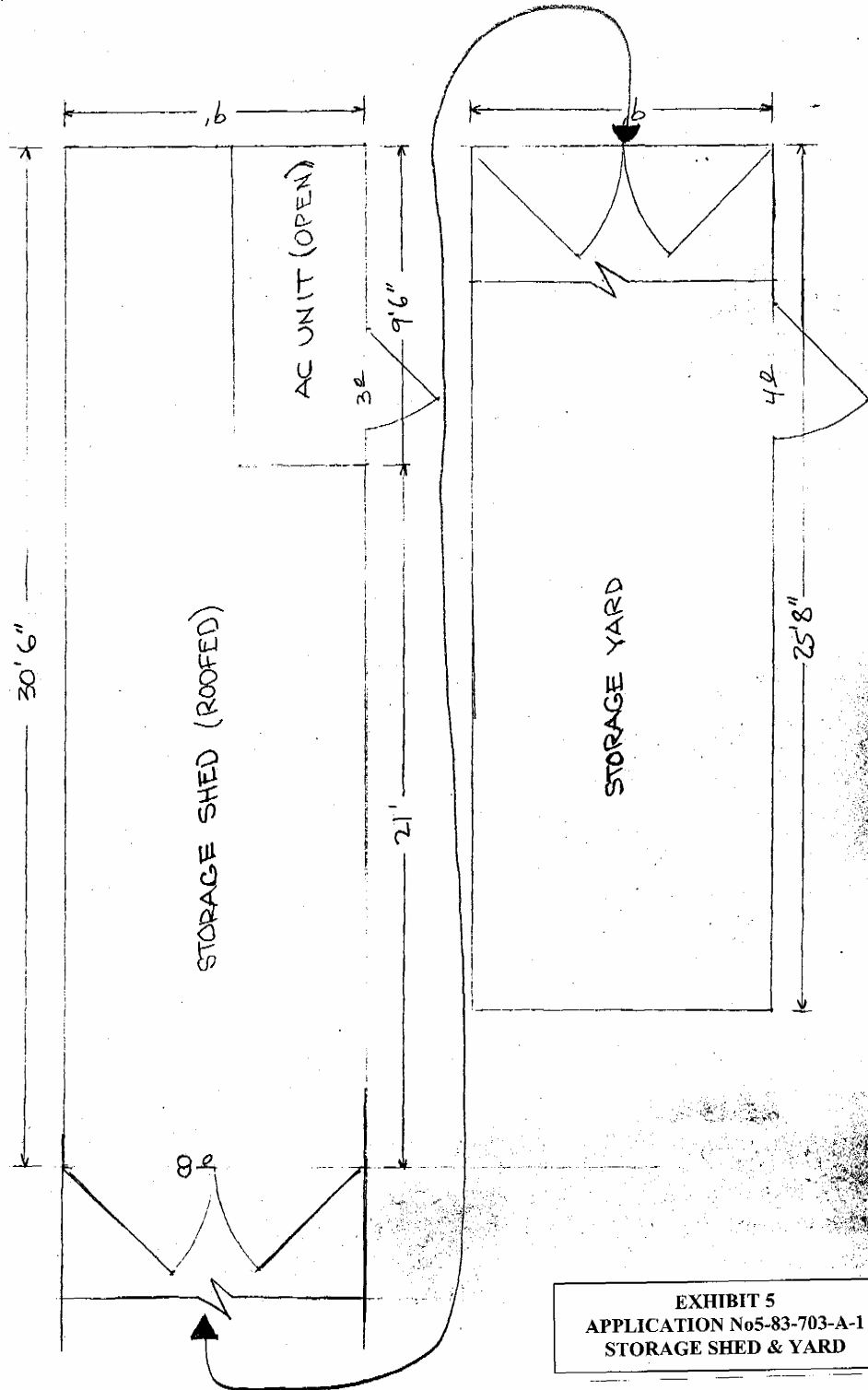
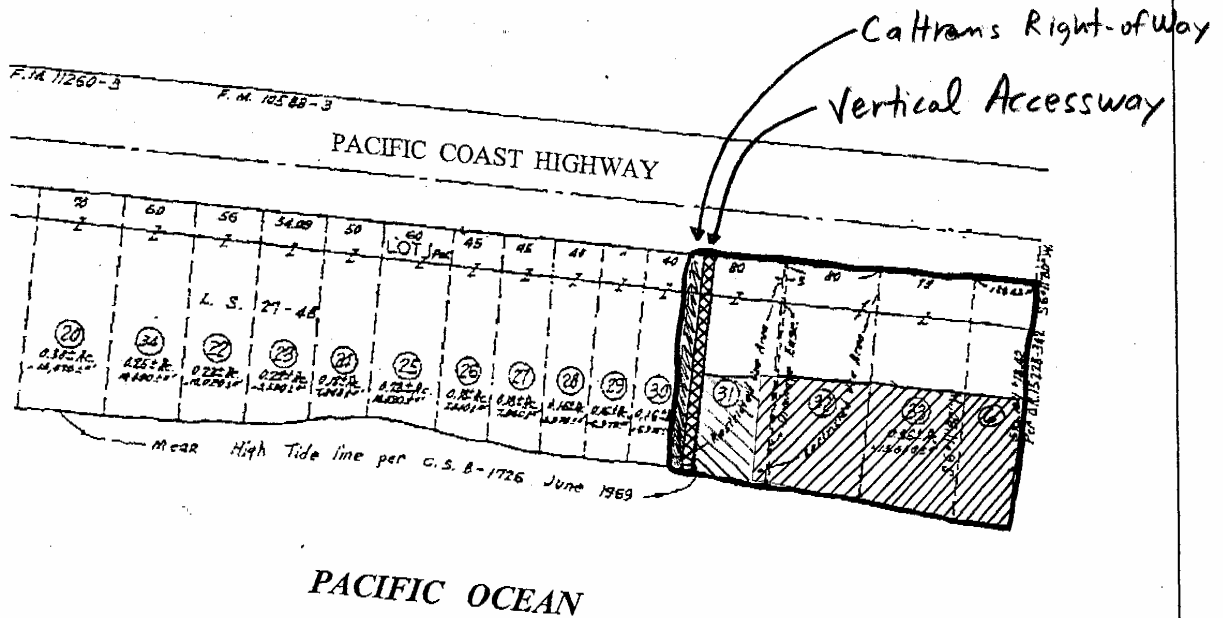






EXHIBIT 5  
 APPLICATION No 5-83-703-A-1  
 STORAGE SHED & YARD

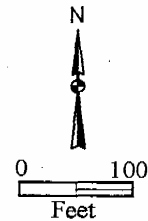
# Offer to Dedicate Public Access

GEFFEN CDP# 5-83-703, 5-91-610, 4-99-268

Malibu, Los Angeles County



-  9 ft. wide Vertical Caltrans Easement (MHTL to PCH)
-  9 ft. wide Vertical Access Easement (MHTL to PCH) **OPENED 2002**
-  275 ft. long Lateral Access Easement  
(MHTL to seawall, including a 10. ft. wide privacy buffer on parcels 33 & 6, a total of 125 linear feet.)
-  Proposed Lateral Access OTD



 California Coastal Commission  
Technical Services Division

Source: California Coastal Commission  
Access Program

**EXHIBIT 6**  
**APPLICATION No. 5-83-703-A-1**  
**EXISTING & PROPOSED PUBLIC**  
**ACCESSWAYS ON APPLICANT'S**  
**PROPERTY**

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF TRANSPORTATION**

**DISTRICT 7**

LOS ANGELES FIELD OFFICE, MS-6

100 SOUTH MAIN STREET

LOS ANGELES, CA 90012

PHONE (213) 897-1901

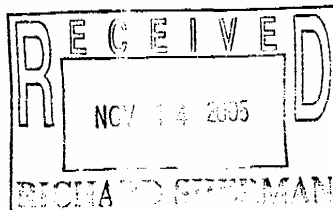
FAX (213) 897-8902

TDD (213) 897-4937



November 3, 2005

David Geffen  
C/O Andy Spahn  
331 N. Maple Drive  
Beverly Hills, CA 90210



NOV 08 2005

Dear Mr. Geffen:

Pursuant to your request, our Right Of Way Office reviewed the easement for ingress and egress that the Department holds on your property in relation to improvements on the site. The improvements to the property predated the Department's acquisition of this easement for access to facilities on other property. Consequently, we determined that there are no physical impediments to our use of said easement. We have been able to access the necessary State facilities when required.

Should you have any further questions please contact me at (213) 897-1901

Sincerely,

Signature on file

ANDREW P. NIERENBERG  
District Right of Way Manager  
District 7

RECEIVED  
JUN 22 2006

COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

"Caltrans improves mobility across California"

EXHIBIT 7  
APPLICATION No. 5-83-703-A-1  
CALTRANS NOVEMBER 3, 2005  
LETTER

Peo. vs. Horace Heidt, et al

786856

Par. No. 1

FORM RW-2-MET (7-61)

Los Angeles, California

June 20, 1962

| ACCT.  | DIST. | COUNTY | ROUTE | SECTION | ALLOT.   |
|--------|-------|--------|-------|---------|----------|
| 900.11 | VII   | LA     | 60    | A       | 7V11H458 |

THE DOUBLE H. REALTY COMPANY, INC.,

Station \_\_\_\_\_ to station \_\_\_\_\_

a Delaware Corporation

Side of Highway

STRICT VII ORIGINAL

Grantor

6-14-62  
eo-1

### RIGHT OF WAY CONTRACT-STATE HIGHWAY

Document No. B7416 in the form of an EASEMENT DEED

covering the property particularly described in the above instrument

APPROVED

has been executed and delivered to W. E. JONES

Right of Way Agent for the State of California.

BY

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the State of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

2. The State shall:

(A) Pay the undersigned grantor(s) the sum of \$5,533.16 for the property or interest therein as conveyed by above document No. B7416 within ninety (90) days after date title to said property vests in the State free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:

a. Taxes for the fiscal year in which this escrow closes shall be cleared and paid in the manner required by Section 4986 of the Revenue and Taxation Code.

From the amount shown in Clause 2(A) above, the State is authorized to pay any delinquent taxes due in any fiscal year except the fiscal year in which this escrow closes, together with penalties and interest thereon, delinquent or non-delinquent assessments or bonds except those which title is to be taken subject to in accordance with the terms of this contract.

b. Covenants, conditions, restrictions and reservations of record, if any.

c. Easements or rights of way over said land for public or quasi-public utility or public street purposes, if any.

EXHIBIT 8  
APPLICATION No. 5-83-703-A-1  
CALTRANS 1962 RIGHT OF WAY

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

Mailing Address:

c/o Horace Heidt  
14155 Magnolia Boulevard  
Van Nuys, California

Phone: ST 4-8211

✓ The Double H Realty Company, Inc.

Signature on file

President

Secretary

Grantor...

Recommended for Approval.

Signature on file

By

Right of Way Agent

Recommended for Approval

Signature on file

By

Supervising Right of Way Agent

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
DIVISION OF HIGHWAYS

By

Signature on file

District Engineer

000114

No Obligation Other Than Those Set Forth Herein Will Be Recognized

PAGE 2 OF 5



W-VII-LA-60-A  
No. B7416 - Double J. Realty Co.

6-14-62  
eo-1

Form A

(B) Pay all escrow and recording fees incurred in this transaction, and, if title insurance is desired by the State, the premium charged therefor, and documentary stamp tax, if required. Said escrow and recording charges shall not, however, include reconveyance fees, trustee's fees, or forwarding fees for any full reconveyance or full release of mortgage.

3. Any or all moneys payable under this contract, up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, together with penalty (if any) for payment in full in advance of maturity, and all other amounts due and payable in accordance with the terms and conditions of said trust deed(s) or mortgage(s), shall, upon demand(s) be made payable to the mortgagee(s) or beneficiary(s) entitled thereunder; said mortgagee(s) or beneficiary(s) to furnish grantor with good and sufficient receipt showing said moneys credited against the indebtedness secured by said mortgage(s) or deed(s) of trust.

4. The grantor(s) shall retain possession of the property conveyed up to and including the date of recording of the deed conveying title to State upon compliance by the grantor(s) with the conditions of this contract.

All rents shall be prorated as of the day following the date of recordation of the deed conveying title to State. All rents from the property up to and including this day shall be paid to the grantor(s). All rents collected by grantor(s) applicable to any period thereafter shall be paid to the State. Either party hereto collecting rents to which the other party is entitled shall forthwith pay such amount to the other as is necessary to comply with the provisions of this clause.

5. Grantor(s) warrant(s) that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the grantor(s) further agree(s) to hold the State harmless and reimburse the State for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of grantor(s) for a period exceeding one month.

6. The undersigned grantor(s) hereby agree(s) and consent(s) to the dismissal of any eminent domain action in the Superior Court wherein the herein described land is included and also waive(s) any and all claims to any money that may now be on deposit in the Superior Court or with the State Treasurer in said action.

7. It is understood and agreed by and between the parties hereto that the State shall have the right to extend slopes on grantor's adjoining property as necessary to maintain a serviceable roadway in the easement area and prevent erosion thereto until such time as the adjoining property is improved in such a manner as to eliminate the need for such slopes.

8. It is further agreed and understood that the use of such easement shall be limited to the owner of fee title and personnel of the Division of Highways in performance of their duties. Such use by the fee owner shall not unreasonably interfere with the use of the easement by the Division of Highways.

9. At no expense to grantor, the State shall install and maintain in a good and workmanlike manner a chain link gate approximately six feet in height across the easement along the existing wall line adjoining the Pacific Coast Highway. Such gate will serve both the easement being acquired by the State in this transaction and that being acquired from the adjoining owner to the east. The gate shall be kept locked when not in use insofar as Division of Highways personnel is concerned and duplicate keys shall be furnished to the grantor.

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PAGE 3 of 5

HN-VII-LA-60-A

No. B7416 - Double H. Realty Co.

6-14-62

eo-1

10. It is further agreed that the undersigned grantor shall have the right to construct and maintain a cantilevered structure above the easement so long as a 12-foot vertical clearance remains; to install and maintain such underground utilities and facilities including but not limited to underground power lines, water lines, drains, drainage fields, sewer lines, septic tanks, cesspools and such other underground installations as the grantor may deem necessary or desirable subject to the approval of such installations or construction and the plans and specifications therefor, by the Division of Highways, such approval not to be withheld unreasonably.

11. It is further understood and agreed that the payment in Clause 2(A) above includes, but is not limited to payment to grantor for cost to support and reface the remaining block walls at the point where they are cut and to remove and reinstall approximately 20 LF board fencing.

12. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the State, including the right to remove and dispose of improvements, commenced February 5, 1962 and that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

000116

Page 4 of 5

RW-VII-LA-60-A

No. B7416 - Doubtless H. Realty Co.

6-14-62

eo-1

- d. Any adverse claim to any portion of said land which has been created by artificial means or has accreted to such portion so created.
- e. The right to maintain existing excavations or embankment slopes beyond the limits of the State Highway adjoining said land, as granted to the State of California, by deed recorded in book 15228 page 342, Official Records.
- f. An easement over such part of the northerly end of the easterly 80 feet of said land, as may be necessary for pole lines, power lines, conduits and incidental purposes, as reserved by Marblehead Land Company, in deed recorded prior to February 15, 1950, in book 21712 page 39, Official Records.
- g. State's action to condemn commenced January 4, 1962 entitled State of California vs. Horace Heidt, et al., Los Angeles County Superior Court Case No. 786856, designated as Parcel 1.

000117

Page 5 of 5

Malibu, California 90265

## **PUBLIC ACCESS EASEMENT MANAGEMENT PLAN**

By this agreement, Access for All, a California nonprofit corporation, undertakes to manage one vertical and three lateral public access easements offered for dedication within the City of Malibu, Los Angeles County. The easements are located on Carbon Beach at:

22126-22132 Pacific Coast Highway, Malibu, 90265, APN 4451-006-31 and 32,  
22114 Pacific Coast Highway, Malibu, 90265, APN 4451-006-33, and  
22108 Pacific Coast Highway, Malibu, 90265, APN 4451-006-33 and  
APN 4451-005-06.

These easements were required pursuant to Coastal Development Permits issued to David Geffen:

CDP #5-83-703,  
CDP #5-91-610, and  
CDP #4-99-268.

### ***Purpose:***

To permanently protect the public's right to access State Tidelands, to allow for public pedestrian vertical and lateral access and passive recreational use along the shoreline, and to mitigate the impact of private development upon public access, the California Coastal Commission required that offer to dedicate public access easements be recorded on these parcels.

### ***Configuration of Easements:***

These OTDs, recorded pursuant to three coastal development permits, cover four contiguous parcels. Going from west to east, these parcels are numbered 31, 32, 33 and 6. The following describes the geographical area on each parcel subject to an OTD.

**Parcel 31:** This is a vertical OTD, 9 feet in width, running from Pacific Coast Highway to the Mean High Tide Line. This OTD is on the western property line and is located 51 feet west of the lateral OTD.

1 of 5

EXHIBIT 9  
APPLICATION No5-83-703-A-1  
PUBLIC ACCESS MANAGEMENT  
PLAN 2002

**Parcel 33:** This is a lateral OTD, running the length of the parcel (79 feet), from the Mean High Tide Line landward to the top of the outer face of the sea wall. The OTD provides for a "privacy buffer 10 feet seaward from the outer edge of the seawall, restricted to pass and repass only, and available when no other dry beach area is available."

**Parcel 6:** This is a lateral OTD, running the length of the parcel (46 feet), from the ambulatory Mean High Tide Line landward to the face of the bulkhead. The OTD provides for a "privacy buffer 10 feet seaward from the outer edge of the seawall, restricted to pass and repass only, and available when no other dry beach area is available."

This 9-foot vertical and 225 foot long lateral easement area generally consists of sandy beach all year long, and provides an excellent opportunity for public recreational use. As the nearest open vertical public accessway, Zonker Harris, operated by Los Angeles County is located 1000 feet to the west, opening this new accessway will significantly contribute to improved public access to Carbon Beach.

### ***Operation***

#### **Vertical**

Access for All intends to operate this vertical easement from sunrise to sunset, consistent with Los Angeles County beach opening hours, as soon as possible. There is currently a wooden gate at the PCH sidewalk, presumably built by the property owner, which could in theory be opened immediately. However, Access for All intends to work with the property owner to develop an access plan for sunrise to sunset access. This may include a re-design with new gates, hopefully with a time lock mechanism. Due to the layout of the required access to the properties, signage is essential. Since the vertical easement is not contiguous with the lateral easements, the public's use area must be made clear, and the property owner's 10-foot privacy buffer must be explained. Signs will be installed and a schematic of the location and wording are attached; final wording will be submitted for review prior to installation.

#### **Lateral**

The lateral easements need no construction and are therefore already open and being used by the general public 24 hours a day. Access for All will visit the site on a weekly basis and will pick up any trash found on the lateral and vertical easement areas.

easement to the general public. Should permits be required and should Access For All not be successful in obtaining such permits within one year of this plan approval, Access For All shall work with the Commission and Conservancy staffs to develop a strategy to ensure the opening of the vertical accessway.

**Amendment**

This plan may be amended, as needed, with concurrence of all three signators.

**Agreement**

The forgoing is agreed to by and between Access for All, the California Coastal Commission and the State Coastal Conservancy.

\_\_\_\_\_  
Signature on file

Steve Hoyer  
Executive Director  
Access for All

1/10/02

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature on file

Peter M. Douglas  
Executive Director  
California Coastal Commission

1/16/02

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature on file

Sam Schuchat  
Executive Officer  
State Coastal Conservancy

1/14/02

\_\_\_\_\_  
Date

Access for All will place signage at the following three points:

One sign at Pacific Coast Highway, on the accessway gate, which is marked on the diagram by an X.

The sign will say:

## **COASTAL ACCESS**

**Open sunrise to sunset.**

**Owned and operated by Access for All (310) 456-5644**

**Thanks to California Coastal Commission and State Coastal Conservancy  
(Coastal Access logo to be included)**

Two signs on the easements. These are designated by the stars (\*) in the drawing. One will be halfway down the vertical (at the seaward end of the house) saying:

**Public vertical accessway 9 feet in width from PCH to the Mean High Tide Line. Public lateral accessway begins 51 feet east from this point and runs for 225 linear feet, measured from seawall to the mean high tide line.  
Please respect homeowner 10-foot privacy buffer.**

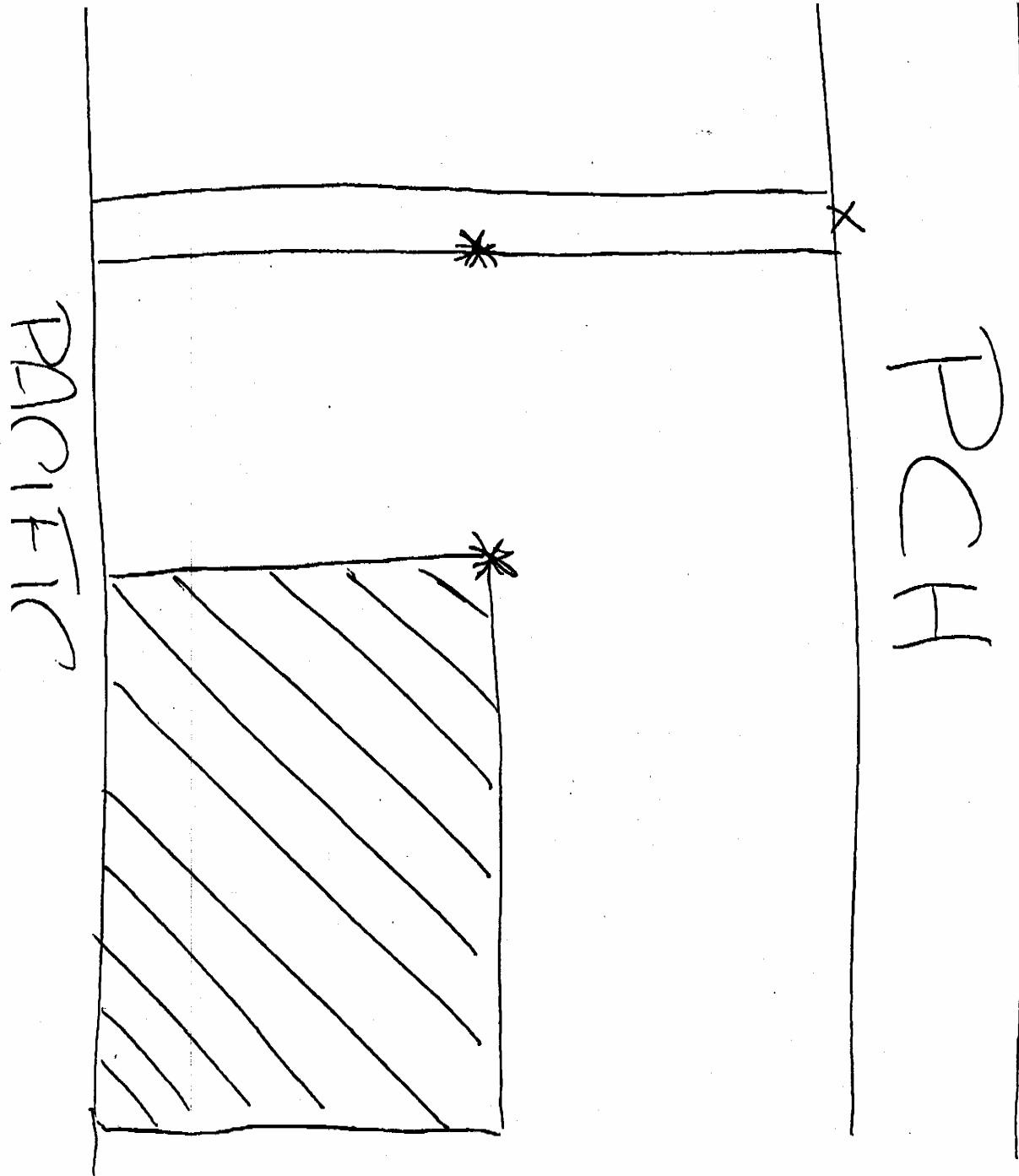
This sign will also portray a map of the easements.

A second sign where the lateral easements begin stating:

**Public lateral accessway runs from this point for 225 linear feet, measured from seawall to the mean high tide line.  
Please respect homeowner 10-foot privacy buffer.**

This sign will also portray a map of the easements.

4





STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA STATE LANDS COMMISSION  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

RECEIVED  
JUN 22 2006

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT



June 7, 2006

PAUL D. THAYER, Executive Officer

(916) 574-1800 FAX (916) 574-1810

California Relay Service From TDD Phone 1-800-735-2922  
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1879

Contact FAX: (916) 574-1925

File Ref: SD 2006-03-17.5

Mr. Lynn J. Heacox  
The Land & Water Company  
18822 Beach Blvd. Suite 209  
Huntington Beach, CA 92646

Dear Mr. Heacox:

SUBJECT: Coastal Development Project Review for the Existing Fence, Gate  
and Concrete Walkway for Public Access Adjacent to the  
Residence at 22126 PCH, Malibu, Los Angeles County

This is in response to your request on behalf of your client, David Geffen, for a determination by the California State Lands Commission (CSLC) whether it asserts a sovereign title interest in the property that the subject project will occupy and whether it asserts that the project will intrude into an area that is subject to the public easement in navigable waters or within the ten foot setback set forth in Section 3.6 Residential Development Standards, Paragraph G, 3 (c) of the City of Malibu's LCP Local Implementation Plan.

The facts pertaining to your client's project, as we understand them, are these:

Your client has installed a fence, gate and concrete walkway for a vertical public access easement adjacent to a single family residence located at 22126 PCH in the Carbon Beach area of Malibu. On May 9, 2006, Bedrock Engineering provided to CSLC staff, a copy of the site's draft Overall Area Plan, dated April 4, 2006, depicting the location of the existing improvements adjacent to the easement and which also depicts an existing wooden seawall and a mean high tide line survey dated March 31, 2006, per Quiros Surveying. You have indicated to staff that your client has applied for a Coastal Development Permit for the existing seawall, including a planter, on the beachfront portion of the parcel. It appears that the existing improvements including the walkway, fence, gate and storage building (adjacent to the public access) are in conformance with the deck/building stringlines established by the residences on either side. As noted in your letter, the existing beachfront seawall, approved by the Coastal Commission under Permit NO. CDP 5-83-703 in 1983, was constructed three feet further seaward

EXHIBIT 10  
APPLICATION No. 5-83-703-A-1  
STATE LANDS COMMISSION  
LETTER

page 1 of 2

The Land & Water Company  
Geffen Project  
Page 2

SD 2006-03-17.5

than the original approved plans provided. This is a well-developed stretch of beach with numerous residences both up and down coast.


We do not at this time have sufficient information to determine whether this project will intrude upon state sovereign lands. Development of information sufficient to make such a determination would be expensive and time-consuming. We do not think such an expenditure of time, effort and money is warranted in this situation, given the limited resources of this agency and the circumstances set forth above. This conclusion is based on the location of the property, the character and history of the adjacent development, and the minimal potential benefit to the public, even if such an inquiry were to reveal the basis for the assertion of public claims and those claims were to be pursued to an ultimate resolution in the state's favor through litigation or otherwise.

Accordingly, the CSLC presently asserts no claims that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters or that it falls within the LCP's ten-foot setback requirement. This conclusion is without prejudice to any future assertion of state ownership or public rights, should circumstances change, or should additional information come to our attention.

If you have any questions, please contact, Susan Young, Public Land Management Specialist, at (916) 574-1879.

Sincerely,

**Signature on file**

 Michael R. Valentine, Chief  
Division of Land Management

cc: City of Malibu  
Susan Young - CSLC

page 2 of 2

Jul-19-05 01:07pm From:  
Jul-19-05 08:44am From: City of Malibu

T-933 P.003/005 F-455



## City of Malibu

23815 Stuart Ranch Rd. - Malibu, California • 90265-4816  
(310) 456-2489 • fax (310) 456-7650

July 19, 2005

Lynn Heacox  
The Land & Water Company  
18822 Beach Boulevard, Suite 209  
Huntington Beach, CA 92648

**Reference:** OC No. 04-040  
22126 Pacific Coast Highway  
APN 4451-006-032

Dear Mr. Heacox:

On March 25, 2004, the application listed above was submitted to the City of Malibu Planning Division for processing. The proposal was for the construction of a six-foot high wooden fence with wooden posts extending into the sand on the side yard property line of the subject property. On May 12, 2005, you provided "as-built" plans showing that the fence had actually been lengthened and that a gate had been added. It has come to the City's attention, (and verified by a site visit) that the scope of work on the site far exceeds a wooden fence and gate and that the actual "improvements" at the site consist of the following:

- A concrete pad approximately one foot thick, nine feet wide and 70 feet long has been installed without benefit of permit.
- Six-foot high wooden fence constructed on the side yard property line but with a permanent concrete foundation.
- A six-foot high wooden gate across the Access for All easement.
- An eight-foot by 12-foot, approximately 8 feet in height mobile trailer has been installed in a Caltrans easement and converted to a permanent structure without benefit of permit.
- A six-foot high wall extending approximately 57 feet seaward from the unpermitted structure has been constructed without benefit of permit. This has created a 500 square-foot storage yard without benefit of permit.
- Four exhaust hoods and associated mechanical work has been constructed and installed in the concrete slab adjacent to the residence without benefit of permit.

P:\Projects\Pacific Coast Highway\22126 PCH\Letter Rescinding Approval3.doc

EXHIBIT 11  
APPLICATION No. 5-83-703-A-1  
CITY OF MALIBU NOTICE OF  
VIOLATION LETTER  
JULY 19, 2005

page 1 of 3

Jul-19-05 01:07pm From:  
Jul-19-05 01:07pm

T-933 P 004/005 F-455

July 19, 2005

Lynn Heacox  
The Land & Water Company  
OC No. 04-040

As demonstrated, the scope of the work far exceeds what was approved. In addition, the approval for the construction of the gate was granted in error as the property is subject to easements (which were not identified on submitted plans) and construction within an easement requires written consent from all easement holders.

The City rescinds approval of OC No. 04-040 and requires the property owner to apply for a Coastal Development Permit for all the unpermitted site improvements.

Attached please find a Notice of Intent to Record a Notice of Violation. This Notice of Intent provides the required 45 days notice that the City of Malibu will file a Notice of Violation against title to the subject property with respect to the Building, Municipal Code and/or Coastal violations that exist on the subject property.

If you have any questions regarding this matter, please contact me at (310) 456-2486 ext. 233 or by email at [sedmondson@ci.malibu.ca.us](mailto:sedmondson@ci.malibu.ca.us).

Sincerely,

Signature on file  
Stefanie Edmondson  
Associate Planner

enc: Notice of Intent

cc: City Manager  
City Attorney  
Environmental and Community Development Director  
Planning Division Manager  
Permit Services Manager  
Environmental & Building and Safety Manager  
Code Enforcement Officer  
California Coastal Commission

JUL-19-05 01:08pm From:  
JUL-19-05 06:44am

T-933 P 005/005 F-455



## City of Malibu

23815 Stuart Ranch Road • Malibu, California • 90265-4861  
(310) 456-2489 • fax (310) 456-3356

*Building Safety Department, Victor Peterson, Building Official*

### NOTICE OF INTENT TO RECORD A NOTICE OF VIOLATION

Re: The property located at 22126 Pacific Coast Highway

The following violations of the Malibu Building Code (MBC) and/or the Malibu Municipal Code (MMC) have been identified in connection with the above parcel and/or structure(s) thereon:

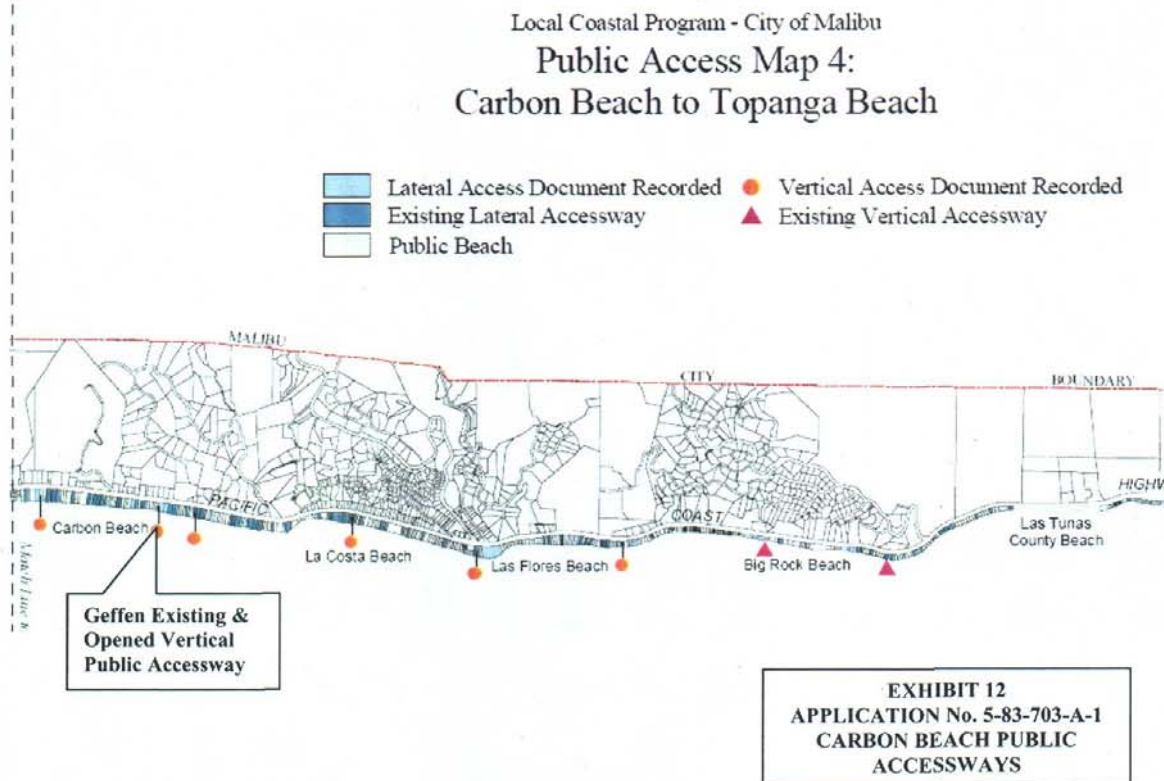
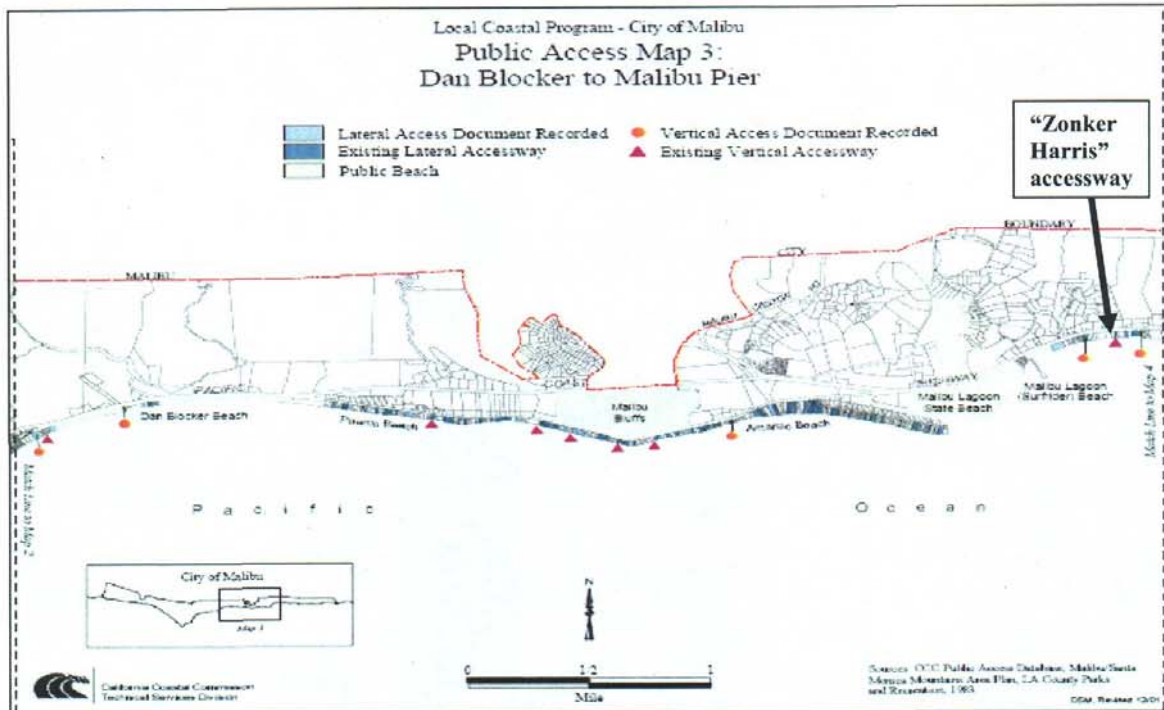
- ☒ MBC §106.4.1: Failure to file an application for permit and submit plans, specifications, calculations and other data to the Department of Building Safety to determine conformity with the requirements of the MBC.
- ☒ MBC §106.1, 107.1: Failure to obtain required permits and pay necessary fees prior to commencement of construction.
- ☒ MBC §106.2: Own, use or maintain a structure for all or part of which permits have not been obtained.
- ☒ MMC §17.62.020 Development and/or Intensification of use without required permits or approvals.
- ☒ MBC §108.1 Failure to have work inspected to assure compliance with requirements of the MBC.
- ☐ MBC §109.1 Unlawful completion, use and/or occupancy of a building
- ☐ MBC §§7003.1, 7003.2 Failure to obtain permits prior to grading; own, use or maintain graded property with unpermitted grading
- ☐ Other: CA Plumbing Code 101.4.1.2 Maintenance. The plumbing and drainage system of any premises shall be maintained in a sanitary and safe operating condition.

This office intends to seek compliance with the law through legal process, including recording a Notice of Violation against the above property with the County Recorder. Pursuant to provisions of Section 103.4.3 of the Malibu Building Code, a NOTICE OF VIOLATION WILL BE RECORDED on or after 09/01/05 unless the aforementioned violations have been corrected or removed by that date and other applicable requirements, if any, have been satisfied.

**Signature on file**

Victor Peterson  
Environmental and Community Development Director

7/19/05  
Date

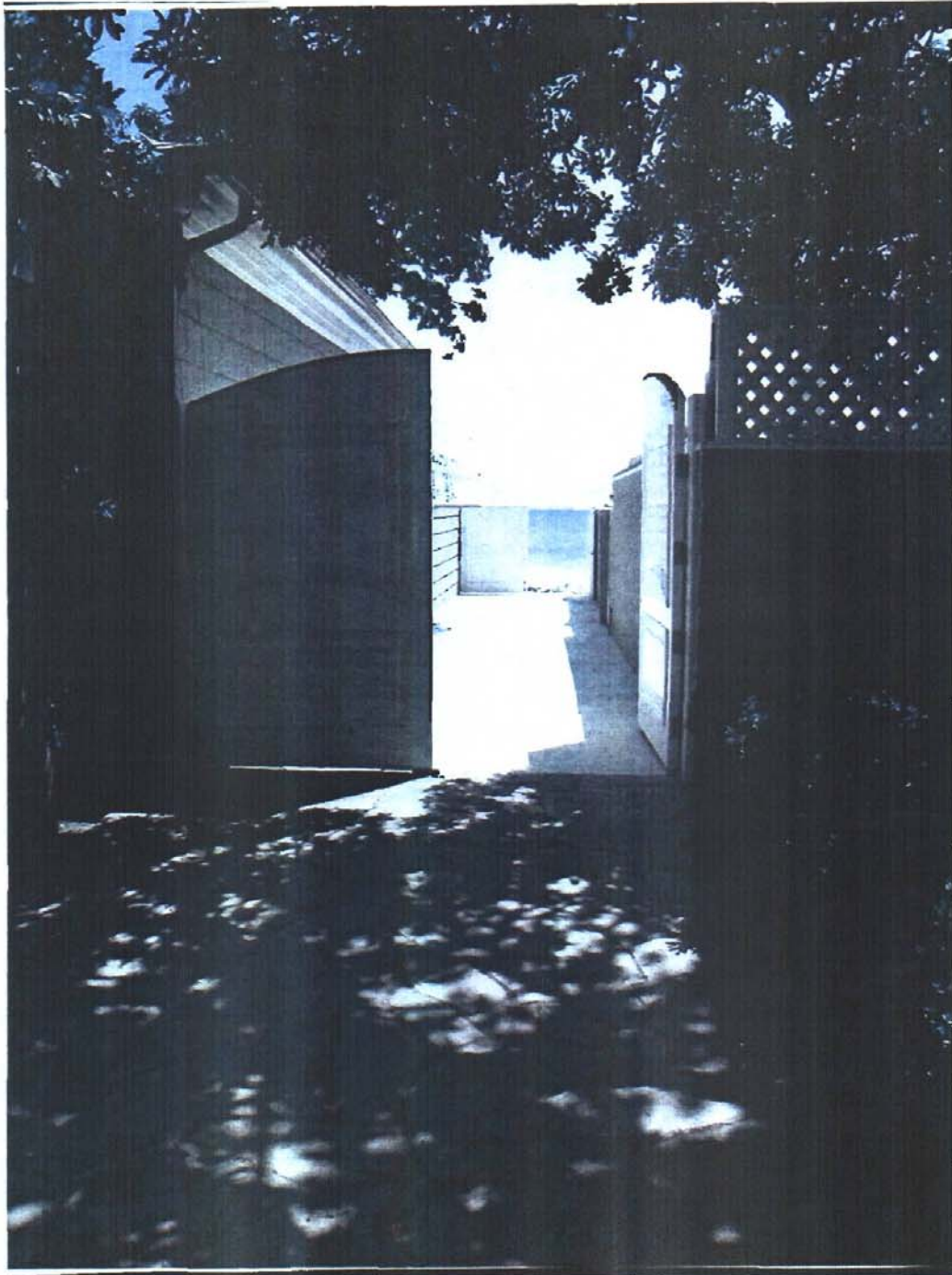




CARBON BEACH – SOURCE: CALIFORNIA COASTAL RECORDS PROJECT 2006

EXHIBIT 13  
APPLICATION No. 5-83-703-A-1  
AERIAL CARBON BEACH &  
PROJECT SITE





OPENED VERTICAL ACCESSWAY 2005

EXHIBIT 14  
APPLICATION No. 5-83-703-A-1  
VIEW FROM PCH





**PUBLIC ACCESSWAY AT 2005 OPENING**



**PUBLIC ACCESSWAY – NOTE UNPERMITTED VEGETATION & ROCKS ON CALTRANS RIGHT-OF -WAY**

EXHIBIT 15  
APPLICATION No. 5-83-703-A-1  
PUBLIC ACCESSWAY

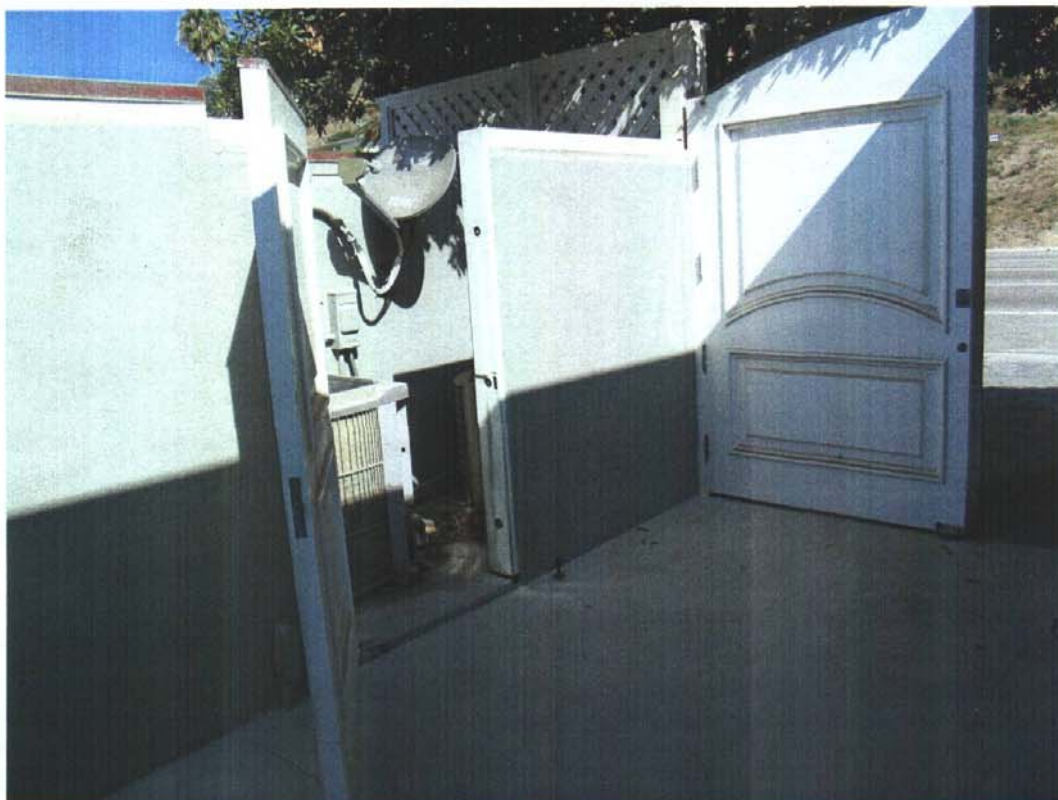
**PUBLIC ACCESSWAY  
EROSION OF SAND IN FRONT OF CONCRETE WALKWAY – JANUARY 2006**



EXHIBIT 16  
APPLICATION No. 5-83-  
703-A-1  
PUBLIC ACCESSWAY  
SAND EROSION



**CALTRANS RIGHT OF WAY – APPLICANT’S IMPROVEMENTS**



**STORAGE SHED, AIR CONDITIONING UNITS WITH ELECTRICAL CONDUITS NEAR PCH  
PUBLIC ACCESSWAY TO RIGHT WITH ONE OF TWO ACCESSWAY GATES**



**STORAGE YARD IN FOREGROUND  
STORAGE SHED IN BACKGROUND  
PUBLIC ACCESSWAY TO RIGHT**



**INSIDE STORAGE SHED**

**EXHIBIT 17  
APPLICATION No. 5-83-703-A-1  
CALTRANS RIGHT OF WAY –  
APPLICANTS IMPROVEMENTS**



Looking East From Area Near Public Accessway

EXHIBIT 18  
APPLICATION No. 5-83-703-A-1  
PRIVATE BEACH STAIRWAY  
LOCATED WITHIN  
ACCEPTED LATERAL PUBLIC  
ACCESSWAY



SETTLEMENT AGREEMENT AND MUTUAL RELEASE

1. PARTIES:

The parties to this Settlement Agreement and Mutual Release ("Agreement") are: David Geffen (hereinafter "Geffen") and the California Coastal Commission ("Coastal Commission"), State Coastal Conservancy ("Coastal Conservancy"), Peter Douglas, Sam Schuchat and Access for All (collectively "Respondents" unless referred to individually).

2. RECITALS:

This Agreement is made with reference to:

(a) The petition/complaint filed by Geffen on July 3, 2002, in the Los Angeles Superior Court, Case Number BC277034 ("Main Action");

(b) The cross-complaint filed by the Coastal Commission on October 28, 2004, in the same litigation ("Coastal Commission Cross-Action");

(c) Geffen's cross-complaint filed on March 25, 2005, in response to the Coastal Commission's cross-complaint ("Geffen Cross-Action");

(d) The following subject property: APN Nos. 4451-006-31 and 4451-006-32 (22126-22132 Pacific Coast Highway); APN No. 4451-006-33 (22114 Pacific Coast Highway); and APN No. 4451-005-06 (22108 Pacific Coast Highway) (collectively "Property"); and

(e) The vertical and lateral access easements that Geffen was required to dedicate pursuant to conditions of coastal development permits issued in 1983, 1991 and 2000 with respect to the subject property and which are designated by the following numbers: 5-83-703 ("1983 permit"); 5-91-610 ("1991 permit"); and 4-99-268 ("2000 permit"), and the accessways thereby established.

3. CONSIDERATION AND AGREEMENT:

In consideration for the respective and mutually conditional promises set forth in this Agreement, the parties agree as follows:

3.1 The Agreement shall be effective only if executed by all parties on or before January 31, 2006.

3.2 By signing of this Agreement, Geffen represents and assures as follows:

(a) Within twenty (20) days of the full execution of this Agreement, Geffen shall submit to the Coastal Commission one complete after-the-fact permit

SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 2

application ("Application") for the development currently in place on the subject property that is described generally in the letter dated July 19, 2005, from the City of Malibu to Lynn Heacox of the Land & Water Company a copy of which is attached to this Agreement as Exhibit A ("Improvements"). The Application shall also include a request for after-the-fact approval of the deck that rests upon the approved bulkhead but that the Coastal Commission staff has determined encroaches into one or more of the subject lateral access easements. Geffen shall not include any other proposed development in the Application, except with advance permission of the Coastal Commission staff. Geffen and Coastal Commission staff shall cooperate to assure that the Application addresses each item of existing development. To support approval of the Application, Geffen shall offer the following as part of the proposed development:

(1) Geffen shall record an Offer to Dedicate a lateral easement for public access and passive recreation extending from the mean high tide line to the toe of his seawall/bulkhead (excluding a ten foot privacy buffer adjacent to the seaward line of the seawall/bulkhead consistent with the existing privacy buffer) and providing an uninterrupted public access easement which connects the existing vertical accessway and the two closest existing lateral accessways on the subject property. Geffen will place trash receptacle(s) in the existing vertical accessway which will be taken to the curb by Geffen's employee or agent on trash collection day; and

(2) Geffen shall pay to the Coastal Conservancy the sum of one hundred twenty-five thousand dollars (\$125,000.00) to be deposited in a separate account within the Coastal Trust Fund established pursuant to section 31012 of the Public Resources Code and used for the purpose of providing funds to pay for the daily opening and closing of the gates and related maintenance of the subject accessways. The Coastal Conservancy may disburse funds from the Coastal Trust Fund account to Access for All to contract with ADT, or other comparable business entity, or person to provide services to Access for All (or successor) in its management of the subject accessways, including but not limited to opening and closing the gate, trash pickup and security services. Upon transfer of the subject property to a party other than Geffen, or upon Geffen's death, whichever occurs first, and notice thereof to Access for All (or successor) and the Coastal Conservancy, Access for All (or successor) in consultation with the Coastal Conservancy shall have the option for the next twelve (12) months to utilize funds in the Coastal Trust Fund account to replace the existing gates with gates that provide visual access to the coast and include a timed mechanism for automatically unlocking at sunrise and locking at sunset. Upon installation and payment in full for gates including both of these features, any balance of funds remaining in the account shall be returned to Geffen or to his estate.

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SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 3

(b) The parties do not in any way intend this Agreement to require that the Coastal Commission grant or otherwise take certain action on the Application. The Coastal Commission retains full discretion as allowed by law to grant, condition or deny the Application after full public hearing. The parties acknowledge and in no manner seek to limit any protections and immunities granted by law for any injuries to third parties who utilize any of the accessways including in particular those protections and immunities granted by California Code of Civil Procedure sections 846 and 846.1. If the Coastal Commission grants an after-the-fact permit that Geffen accepts, Geffen shall comply with such permit and pay Respondents their attorneys' fees and costs in the amount of three hundred ten thousand dollars (\$310,000.00) as follows:

(1) Geffen shall pay to Access for All the amount of eighty-five thousand dollars (\$85,000.00). Payment shall be made not later than seventy (70) days after the Coastal Commission's final action on the permit application, by means of a single payment made payable to "ACCESS FOR ALL." The payment shall be made by delivery of a certified check to counsel for Access for All; and

(2) Geffen shall pay to the Coastal Commission and Coastal Conservancy the amount of two hundred twenty-five thousand dollars (\$225,000.00). Payment shall be made not later than seventy (70) days after the Coastal Commission's final action on the permit application, by means of a single payment made payable to the "CALIFORNIA DEPARTMENT OF JUSTICE." The payment shall be made by delivery of a certified check to counsel for the Coastal Commission and Coastal Conservancy. The California Department of Justice shall be responsible for allocating the payment.

(c) Geffen has already provided the key to the gates at the vertical accessway to Access for All to allow public access to the beach pursuant to the 1983 permit; Geffen shall not seek a return of the key, change the locks or otherwise impede public use of the vertical accessway.

3.3 After Geffen accepts the after-the-fact permit, complies with all prior-to-issuance conditions of such permit, and complies with paragraph 3.2 of this Agreement, the Coastal Commission shall dismiss with prejudice its cross-complaint within ten (10) days of compliance as delineated in this sentence. If Geffen accepts the after-the-fact permit, Geffen shall comply with all prior-to-issuance conditions within ninety (90) days after Coastal Commission approval of such permit.

3.4 If the Coastal Commission denies the requested after-the-fact permit or if Geffen rejects the after-the-fact permit issued by the Coastal Commission, the Coastal

SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 4

Commission shall not dismiss its cross-complaint and the parties shall return to litigation of the cross-complaint. In such event, this Agreement shall be rendered null and void.

3.5 If the Coastal Commission approves the requested after-the-fact permit and that approval is challenged in court by a third party, the Coastal Commission shall not dismiss its cross-complaint and the monies previously paid by Geffen pursuant to paragraph 3.2(b) of this Agreement shall be refunded to Geffen within thirty (30) days of the service of the lawsuit on the Coastal Commission. During the pendency of such a challenge, the parties to this Agreement shall stipulate to a stay of the Coastal Commission's cross-complaint or a dismissal without prejudice. During the pendency of such a challenge, Geffen shall comply with all terms and conditions of the after-the-fact permit unless a court of competent jurisdiction issues an order prohibiting or otherwise modifying such compliance. If the challenge to the after-the-fact permit is successful and results in a final Coastal Commission action denying a coastal development permit for the Improvements, this Agreement shall be rendered null and void. If this Agreement is rendered null and void, the monies paid by Geffen pursuant to the after-the-fact permit conditions shall be refunded to Geffen within thirty (30) days less any amounts used by Access for All consistent with the after-the-fact permit. If the challenge to the after-the-fact permit results in a final judgment or settlement upholding the permit, the Coastal Commission shall within ten (10) days dismiss its cross-complaint and Geffen shall concurrently make all payments required by this Agreement.

4. MUTUAL RELEASE OF CLAIMS:

For and in consideration of the above terms, the parties agree as follows:

4.1 Geffen for himself and his employees and agents, fully and forever releases Respondents, their officers, employees, governing members, agents and attorneys from any and all liability, claims, demands, damages, punitive damages, disputes, suits, claims for relief and causes of action, whether known or unknown, foreseen or unforeseen, which directly or indirectly relate to any claims, facts or circumstances arising out of or alleged in the Main Action, the Coastal Commission Cross-Action and the Geffen Cross-Action or any amended versions thereof.

4.2 Respondents for themselves and their officers, governing members, employees and agents, fully and forever release Geffen, his agents and/or attorneys from any and all liability, claims, demands, damages, punitive damages, disputes, suits, claims for relief and causes of action, whether known or unknown, foreseen or unforeseen, which directly or indirectly related to any claims, facts or circumstances arising out of or alleged in the Main Action, the Coastal Commission Cross-Action and the Geffen Cross-Action or any amended versions thereof subject to paragraph 4.3 below.

4.3 The parties do not waive their respective rights and interests to any future enforcement of the California Coastal Act of 1976, Public Resources Code section 30000



SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 5

et seq. ("Coastal Act") or of terms and conditions of the public access easements with respect to the subject property relating to acts or conditions that occur after the execution of this Agreement.

5. ENFORCEMENT OF SETTLEMENT AGREEMENT:

5.1 Geffen and Respondents stipulate, covenant and agree that the Agreement shall be enforceable by any judge of the Superior Court of the County of Los Angeles as if the Agreement is a judgment enforceable pursuant to California Code of Civil Procedure sections 128(4) and 664.6.

5.2 Should Geffen violate any term set by the Agreement, Geffen shall be liable for a penalty in the amount of five hundred dollars (\$500.00) for each day Geffen is in violation. Before any such penalty is imposed, the Coastal Commission shall give Geffen ten (10) days written notice (by certified mail, return receipt requested) of the Coastal Commission's intent to enforce this penalty provision. If at the end of such ten (10) days Geffen is still in violation of the Agreement, the Coastal Commission may enforce this penalty provision for the entire period of noncompliance and regardless of whether Geffen has subsequently complied. Geffen shall pay the Coastal Commission such penalty within seven (7) days of receipt of the Coastal Commission's written notice (by certified mail, return receipt requested) to enforce this penalty provision. Payment of the penalty shall be made in the manner directed by the Coastal Commission and shall be computed from the first day Geffen stood in violation of the Agreement. Payment of such penalty shall not relieve Geffen of his duties under the Agreement. Geffen may seek an extension of any deadline and the Coastal Commission's Executive Director may grant the extension for good cause, in which case Geffen would not be liable for a penalty for violation of any such extended deadline.

6. NO WAIVER OF CLAIMS IF AGREEMENT TERMINATES:

In the event this Agreement terminates pursuant to Section 3.4 or Section 3.5, no provision of this Agreement or any documents related thereto ("Settlement Documents") shall be admissible or referenced in any administrative or judicial proceeding, nor shall any provision of the Settlement Documents or the after-the-fact permit application be deemed to be an admission of fact by any party or a relinquishment of any claim, cause of action or defense a party may be entitled to assert against any other party. Without limiting the generality of the foregoing, it is expressly agreed among the parties that, in the event the Agreement terminates, no provision of the Settlement Documents or the after-the-fact permit application shall be deemed to be an admission of fact or relinquishment of a claim, cause of action or defense related to the following claims that Geffen has or might assert: (i) a claim that the 2002 Acceptances are void and unenforceable; (ii) a claim that no Coastal Development Permit or other permit is required for one or more of the improvements; (iii) a claim that permits previously issued for existing improvements on the Property were validly issued and unlawfully revoked.

SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 6

7. WAIVER OF THE BENEFITS OF CIVIL CODE SECTION 1542:

Having been fully apprised of the nature and effect of the provisions of section 1542 of the California Civil Code, the parties waive all rights which they may have against the other, both known and unknown with regard to the subject matter of this Agreement, which might otherwise exist by virtue of the provisions of Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

8. REPRESENTATIONS:

All parties to this Agreement represent and warrant that they have been afforded adequate opportunity to and have in fact reviewed the contents of this Agreement with counsel of their own choosing and accept the terms and conditions hereof based upon such advice of counsel.

9. REMEDIES FOR BREACH OF AGREEMENT:

Should any party to this Agreement violate any term or condition herein, the non-breaching party shall retain all rights and remedies available under the law including, but not limited to, the Coastal Act, remedies arising under contract law, or relief pursuant to paragraph 5 of this Agreement. The breaching party shall retain the right to raise all applicable defenses in response to any claim brought by the non-breaching party.

10. INTERPRETATION:

All parties acknowledge and agree that this Agreement shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

11. MERGER AND INTEGRATION:

This Agreement constitutes the entire agreement of the parties pertaining to the dispute which gave rise to the filing of the Main Action, the Coastal Commission Cross-Action and the Geffen Cross-Action and it supersedes all prior or contemporaneous understandings, representations, warranties and agreements made by the parties hereto or their representatives pertaining to the subject matter hereof. This

SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 7

Agreement is entire in and of itself and may not be modified or amended except by an instrument in writing signed by all the parties. The terms of this Agreement may not be contradicted by evidence of any prior or contemporaneous agreement. The parties hereto further intend and agree that no extrinsic evidence whatsoever may be introduced in any judicial proceeding or quasi-judicial proceeding, if any, in connection with the enforcement or interpretation of this Agreement.

12. EXECUTION IN COUNTERPARTS:

In order to more expeditiously implement the compromise and settlement terms set forth herein, the parties to this Agreement agree that the Agreement may be executed in two or more counterparts as if all parties signed one document and each executed counterpart shall be regarded as if it is an original document. The original executed counterparts shall be kept in the custody of the California Department of Justice. Execution may be by facsimile copy.

13. WARRANTY OF NON-ASSIGNMENT:

The parties warrant that they have not assigned or transferred, nor will they in the future attempt to assign or transfer, any claim for relief or cause of action released herein.

14. BINDING ON SUCCESSORS-IN-INTEREST:

This Agreement is binding upon the parties, and their successors-in-interest, transferees and assignees. Geffen shall provide notice to all successors-in-interest of any remaining obligations under this Agreement.

15. SUBMITTED MATERIALS:

A copy of all materials submitted by Geffen pursuant to this Agreement (including copies of all checks, permit plans and other submittals), shall be sent to the Coastal Commission at the following address: California Coastal Commission, Attention: Pat Veasart, 89 South California St., Suite 200 Ventura, CA 93001-2801; Facsimile: (805) 641-1732.

///

///

///

///

SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 8

IN WITNESS WHEREFORE the parties have caused this Agreement to  
be executed.

THE PARTIES:

Date: January 23, 2006

ACCESS FOR ALL

Signature on file

\_\_\_\_\_  
Steve Hoyer  
Director

Date: \_\_\_\_\_

CALIFORNIA COASTAL COMMISSION and  
PETER DOUGLAS

\_\_\_\_\_  
Peter Douglas  
Executive Director

Date: \_\_\_\_\_

STATE COASTAL CONSERVANCY and  
SAM SCHUCHAT

\_\_\_\_\_  
Sam Schuchat  
Executive Director

Date: \_\_\_\_\_

DAVID GEFFEN

\_\_\_\_\_  
David Geffen

(Continued...)

SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 8

IN WITNESS WHEREFORE the parties have caused this Agreement to  
be executed.

THE PARTIES:

Date: \_\_\_\_\_

ACCESS FOR ALL

\_\_\_\_\_  
Steve Hoye  
Director

Date: 1/24/06

CALIFORNIA COASTAL COMMISSION and  
PETER DOUGLAS

\_\_\_\_\_  
**Signature on file**  
Peter Douglas  
Executive Director

Date: \_\_\_\_\_

STATE COASTAL CONSERVANCY and  
SAM SCHUCHAT

\_\_\_\_\_  
Sam Schuchat  
Executive Director

Date: \_\_\_\_\_

DAVID GEFFEN

\_\_\_\_\_  
David Geffen

(Continued...)

SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 8

IN WITNESS WHEREFORE the parties have caused this Agreement to  
be executed.

THE PARTIES:

Date: \_\_\_\_\_

ACCESS FOR ALL

\_\_\_\_\_  
Steve Hoye  
Director

Date: \_\_\_\_\_

CALIFORNIA COASTAL COMMISSION and  
PETER DOUGLAS

\_\_\_\_\_  
Peter Douglas  
Executive Director

Date: 1/20/06

STATE COASTAL CONSERVANCY and  
SAM SCHUCHAT

**Signature on file**

\_\_\_\_\_  
Sam Schuchat  
Executive Director

Date: \_\_\_\_\_

DAVID GEFFEN

\_\_\_\_\_  
David Geffen

(Continued...)

SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 8

IN WITNESS WHEREFORE the parties have caused this Agreement to  
be executed.

THE PARTIES:

Date: \_\_\_\_\_

ACCESS FOR ALL

\_\_\_\_\_  
Steve Hoyer  
Director

Date: \_\_\_\_\_

CALIFORNIA COASTAL COMMISSION and  
PETER DOUGLAS

\_\_\_\_\_  
Peter Douglas  
Executive Director

Date: \_\_\_\_\_

STATE COASTAL CONSERVANCY and  
SAM SCHUCHAT

\_\_\_\_\_  
Sam Schuchat  
Executive Director

Date: 1/20/06

DAVID GEFFEN

**Signature on file**

\_\_\_\_\_  
David Geffen

(Continued...)

SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 9

APPROVED AS TO FORM:

Date: 1/23/06

ATTORNEY GENERAL OF THE STATE  
OF CALIFORNIA

Signature on file

Si

Daniel A. Olivas  
Deputy Attorney General  
Attorneys for California Coastal Commission,  
State Coastal Conservancy, Peter Douglas  
and Sam Schuchat

Date: \_\_\_\_\_

JEFFREY BERNSTEIN, ESQ.

\_\_\_\_\_  
Jeffrey Bernstein, Esq.  
Attorney for Access for All

Date: \_\_\_\_\_

ERIC BERG, ESQ.  
HATCH & PARENT

\_\_\_\_\_  
Eric Berg, Esq.  
Attorney for David Geffen



SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 9

APPROVED AS TO FORM:

Date: \_\_\_\_\_

ATTORNEY GENERAL OF THE STATE  
OF CALIFORNIA

\_\_\_\_\_  
Daniel A. Olivas  
Deputy Attorney General  
Attorneys for California Coastal Commission,  
State Coastal Conservancy, Peter Douglas  
and Sam Schuchat

Date: 4/23/06

JEFFREY BERNSTEIN, ESQ.

Signature on file

\_\_\_\_\_  
Jeffrey Bernstein, Esq.  
Attorney for Access for All

Date: \_\_\_\_\_

ERIC BERG, ESQ.  
HATCH & PARENT

\_\_\_\_\_  
Eric Berg, Esq.  
Attorney for David Geffen

SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE  
PAGE 9

APPROVED AS TO FORM:

Date: \_\_\_\_\_

ATTORNEY GENERAL OF THE STATE  
OF CALIFORNIA

\_\_\_\_\_  
Daniel A. Olivas  
Deputy Attorney General  
Attorneys for California Coastal Commission,  
State Coastal Conservancy, Peter Douglas  
and Sam Schuchat

Date: \_\_\_\_\_

JEFFREY BERNSTEIN, ESQ.

\_\_\_\_\_  
Jeffrey Bernstein, Esq.  
Attorney for Access for All

Date: 1/24/06

ERIC BERG, ESQ.  
HATCH & PARENT

\_\_\_\_\_  
Signature on file  
Eric Berg, Esq.  
Attorney for David Geffen

EXHIBIT "A" TO SETTLEMENT

JUL-19-05 01:07pm From:  
JUL-19-05 08:44am FROM: CITY OF MALIBU

T-933 P.003/005 F-455



## City of Malibu

23815 Stuart Ranch Rd. • Malibu, California • 90265-4816  
(310) 456-2489 • fax (310) 456-7650

July 19, 2005

Lynn Heacox  
The Land & Water Company  
18822 Beach Boulevard, Suite 209  
Huntington Beach, CA 92648

**Reference: OC No. 04-040  
22126 Pacific Coast Highway  
APN 4451-006-032**

Dear Mr. Heacox:

On March 25, 2004, the application listed above was submitted to the City of Malibu Planning Division for processing. The proposal was for the construction of a six-foot high wooden fence with wooden posts extending into the sand on the side yard property line of the subject property. On May 12, 2005, you provided "as-built" plans showing that the fence had actually been lengthened and that a gate had been added. It has come to the City's attention, (and verified by a site visit) that the scope of work on the site far exceeds a wooden fence and gate and that the actual "improvements" at the site consist of the following:

- A concrete pad approximately one foot thick, nine feet wide and 70 feet long has been installed without benefit of permit.
- Six-foot high wooden fence constructed on the side yard property line but with a permanent concrete foundation.
- A six-foot high wooden gate across the Access for All easement.
- An eight-foot by 12-foot, approximately 8 feet in height mobile trailer has been installed in a Caltrans easement and converted to a permanent structure without benefit of permit.
- A six-foot high wall extending approximately 57 feet seaward from the unpermitted structure has been constructed without benefit of permit. This has created a 500 square-foot storage yard without benefit of permit.
- Four exhaust hoods and associated mechanical work has been constructed and installed in the concrete slab adjacent to the residence without benefit of permit.

P:\Projects\Pacific Coast Highway\22126 PCN\Letter Rescindng Approval3.doc

Jul-19-05 01:07pm From:  
Jul-19-05 01:07pm

T-933 P.004/005 F-455

July 19, 2005

Lynn Heacox  
The Land & Water Company  
OC No. 04-040

As demonstrated, the scope of the work far exceeds what was approved. In addition, the approval for the construction of the gate was granted in error as the property is subject to easements (which were not identified on submitted plans) and construction within an easement requires written consent from all easement holders.

The City rescinds approval of OC No. 04-040 and requires the property owner to apply for a Coastal Development Permit for all the unpermitted site improvements.

Attached please find a Notice of Intent to Record a Notice of Violation. This Notice of Intent provides the required 45 days notice that the City of Malibu will file a Notice of Violation against title to the subject property with respect to the Building, Municipal Code and/or Coastal violations that exist on the subject property.

If you have any questions regarding this matter, please contact me at (310) 456-2486 ext. 233 or by email at [sedmondson@ci.malibu.ca.us](mailto:sedmondson@ci.malibu.ca.us).

Sincerely,

Signature on file  
Stearnie Edmondson  
Associate Planner

enc: Notice of Intent

cc: City Manager  
City Attorney  
Environmental and Community Development Director  
Planning Division Manager  
Permit Services Manager  
Environmental & Building and Safety Manager  
Code Enforcement Officer  
California Coastal Commission

Jul-19-05 01:08pm From-  
JUL-19-05 01:08pm

T-933 P 005/005 F-455



## City of Malibu

23815 Stuart Ranch Road • Malibu, California • 90265-4861  
(310) 456-3489 • fax (310) 456-3356

*Building Safety Department, Victor Peterson, Building Official*

### NOTICE OF INTENT TO RECORD A NOTICE OF VIOLATION

Re: The property located at 22126 Pacific Coast Highway

The following violations of the Malibu Building Code (MBC) and/or the Malibu Municipal Code (MMC) have been identified in connection with the above parcel and/or structure(s) thereon:

- ☒ MBC §106.4.1: Failure to file an application for permit and submit plans, specifications, calculations and other data to the Department of Building Safety to determine conformity with the requirements of the MBC.
- ☒ MBC §106.1, 107.1: Failure to obtain required permits and pay necessary fees prior to commencement of construction.
- ☒ MBC §106.2: Own, use or maintain a structure for all or part of which permits have not been obtained.
- ☒ MMC §17.62.020 Development and/or Intensification of use without required permits or approvals.
- ☒ MBC §108.1 Failure to have work inspected to assure compliance with requirements of the MBC.
- ☐ MBC §109.1 Unlawful completion, use and/or occupancy of a building
- ☐ MBC §§7003.1, 7003.2 Failure to obtain permits prior to grading; own, use or maintain graded property with unpermitted grading
- ☐ Other: CA Plumbing Code 101.4.1.2 Maintenance. The plumbing and drainage system of any premises shall be maintained in a sanitary and safe operating condition.

This office intends to seek compliance with the law through legal process, including recording a Notice of Violation against the above property with the County Recorder. Pursuant to provisions of Section 103.4.3 of the Malibu Building Code, a NOTICE OF VIOLATION WILL BE RECORDED on or after 09/01/05 unless the aforementioned violations have been corrected or removed by that date and other applicable requirements, if any, have been satisfied.

Signature on file

Victor Peterson  
Environmental and Community Development Director

Date

7/19/05

21 East Carrillo Street  
Santa Barbara, CA 93101  
Telephone: (805) 963-7000  
Fax: (805) 965-4333

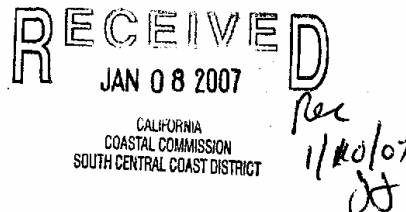


Steven A. Amerikaner  
(805) 882-1407  
SAmerikaner@HatchParent.com

January 5, 2007

By Fax (641-1732) and E-mail

Mr. James Johnson  
California Coastal Commission  
89 South California Street, Suite 200  
Ventura, California 93001



Re: 22126 Pacific Coast Highway, Malibu (Geffen)

Dear James:

I am following up on the meeting held in your office on December 7, 2006. Since that meeting, we have exhaustively examined the Coastal Commission's files concerning the property and have developed additional information that may be helpful to you in completing your staff report.

It is our hope that this matter can be taken up at the Commission meeting scheduled for February 13-16 in San Diego. If that is not possible, then we will ask that it be considered at the April meeting inasmuch as I will be out of the country at the time of the March meeting.

#### Stairs from Deck to Beach

Our research discloses that there have been stairs from the deck to the beach for at least 25 years, and probably a good deal longer, as shown on a 1981 survey of the property provided to the Commission with the 1983 permit application. Mr. Geffen reports (and the plans state) that these pre-existing stairs were destroyed on March 1, 1983 due to storm activity.

In 1986, Mr. Geffen sought and received a CDP for replacement stairs (No. 5-86-061). The plans approved with the 1986 permit plainly show stairs extending beyond the edge of the deck drip line, but do not specify the exact dimensions of the approved stairs. From the absence of any limiting condition, it is fair to conclude that the Commission intended that the applicant build "typical" stairs (usual width, run, and rise) from the deck to the beach. According to our calculations, the stairs built pursuant to this permit are "typical" and occupy approximately the same amount of sandy beach seaward of the deck drip line as the permit allows.

At our meeting, you pointed out that a Coastal Exemption application submitted in 1993 showed the stairs to the beach at a different location. That application pertained to the proposed construction of a trellis only. The project description submitted with that application did not

SB 415131 v5.010140 0001

Los Angeles • Sacramento • San Diego • Santa Barbara • San Francisco

www.HatchParent.com

EXHIBIT 20  
APPLICATION No.  
5-83-703-A-1  
Applicant's January 8, 2007  
Response

page 1 of 3

Mr. James Johnson  
January 5, 2007  
Page 2

include construction of stairs, nor did the permit authorize any such construction. In any event, the stairs shown on the 1993 plans have never existed.

Our conclusions are not affected by Pat Veesart's memo dated September 26, 2005 to Dan Olivas and Lisa Haage describing the results of his inspection of the existing improvements. His memo analyzes the extent to which the existing deck overlaps with the recorded lateral easements. Our analysis shows that the deck on three of the four Geffen parcels was built within a few inches of its permitted location. At the same time, for unexplained reasons the lateral easements accepted by AFA in 2002 extend below the deck to the seaward face of the bulkhead. So, the fact that there is existing development within the lateral easements results from the fact that the Commission made the determination to allow that to occur.

Whether it is good policy for a lateral easement to extend beneath a permitted deck is a different question. We think it makes sense to relocate the landward boundary of the lateral access easements from the seaward face of the bulkhead to the edge of the deck to avoid inviting the public underneath the deck. We discussed this issue at our December 7 meeting, and Commission staff recommended that Mr. Geffen present this proposal to the Commission by means of a separate application.

Given these facts, Mr. Geffen strongly believes that the existing stairs are lawful and appropriate and the staff report should include a recommendation that they be approved in their as-built location.

We recognize that these facts are at variance with the information included in the first draft of the staff report. Accordingly, we think it is essential that we meet within the next few days to show you our calculations and the factual basis for our conclusions.

#### **Landscaping Near CalTrans Easement**

Mr. Geffen has no objection to removing the landscaping placed on his property within the CalTrans easement.

#### **Public Access Pedestrian Ramp**

Mr. Geffen has investigated the cost to manufacture and install a pedestrian ramp, and believes that the cost will be in the \$3000 to \$4000 range. Based on this information, Mr. Geffen will accept a condition requiring that he cover the cost of manufacturing and installing the ramp at a not-to-exceed cost of \$5000.

However, Mr. Geffen is not prepared to accept the obligation to maintain or replace the pedestrian ramp should it be damaged. The use of the 9' public access easement is controlled by the State and AFA, as is every other public access easement along the California coast. Thus, AFA and the State are in the best position to ensure that this public facility is properly used and maintained to avoid damage to the ramp and other facilities. By contrast, Mr. Geffen has no ability to control the way in which the facilities are used, and thus cannot accept any responsibility for maintenance, repair or replacement.



Mr. James Johnson  
January 5, 2007  
Page 3

**Conclusion**

In our opinion, the December 7 meeting was very productive in avoiding the presentation of factual errors and needless disagreements to the Commission. Those goals are still worthwhile, and we strongly urge that your staff meet with us to review its conclusions and recommendations before they are finalized in a staff report and submitted to the Commission. We will make ourselves available to meet with you at your convenience.

Thank you for your ongoing courtesy and cooperation.

Sincerely,  
**Signature on file**

-----  
Steven A. Amerikaner  
For HATCH & PARENT  
A Law Corporation

cc Richard Sherman

21 East Carrillo Street  
Santa Barbara, CA 93101  
Telephone: (805) 963-7000  
Fax: (805) 965-4333



Steven A. Amerikaner  
(805) 882-1407  
SAmerikaner@HatchParent.com

RECEIVED  
JAN 17 2007

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

January 17, 2007

**CORRECTED VERSION**

**Via E-Mail ([jjohnson@coastal.ca.gov](mailto:jjohnson@coastal.ca.gov))**

Mr. James Johnson, Staff Analyst  
California Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA 93101

Re: Stairs from the Deck to Beach; Building Permit Records; Amendment to Coastal Development Permit 5-83-703; Project address: 22126-22114-22108 Pacific Coast Highway, Malibu; Owner - David Geffen; APN's 4451-006-031, 032 & 035

Dear Mr. Johnson:

Pursuant to your telephone conversation with Mr. Heacox last Thursday, I am sending to you building permit records for the improvements authorized by the Coastal Commission in CDP 5-86-061. The following brief chronology puts these records into perspective and is intended to supplement the letter you received from me dated January 5, 2007:

October 15, 1981 – The stairs to the beach are depicted on a 1981 survey of the property provided to the Commission with CDP 5-86-061 (see below). Plans on file in the Commission office (CDP 5-83-703) indicate the stairs to the beach and other improvements were destroyed in a severe storm on March 1, 1983. The replacement of these stairs would normally be exempt under the Coastal Act.

February 18, 1986 – The Commission issued CDP 5-86-061 for a 42' extension of an existing bulkhead, stairs from the existing deck to the beach, a one-story addition to the residence and other improvements. This permit was approved on March 13, 1986 with no special conditions.

April 16, 1986 - A building permit application was submitted for the one-story addition and other improvements (copy attached).

EXHIBIT 21  
APPLICATION No.  
5-83-703-A-1  
Applicant's January 17, 2007  
Response

SB 416535 v3:010140 0001

Mr. James Johnson, Staff Analyst  
January 17, 2007  
Page 2

April 23, 1986 - A building permit application was submitted for the bulkhead extension (copy attached).

September 11, 1986 - The seawall and stairs to the beach were completed in substantial conformance with CDP 5-86-061 and given final approval by the L.A. County Building Department.

September 14, 1987 - The one story addition and other improvements were completed in substantial conformance with CDP 5-86-061 and given final approval by the L.A. County Building Department.

As you can see from this brief chronology, a stairway to the beach existed in 1981. It was destroyed by natural disaster in 1983. A Coastal Permit was issued for the replacement of the stair in the same general location in 1986. The stairway was reconstructed and completed the end of that same year.

I hope this brief summary helps to clarify that the stairway that currently exists was constructed and has been maintained since 1986.

Finally, with regard to the proposed ramp from the end of the concrete pad to the beach, the \$5000 cap was proposed because of information Mr. Geffen's office received from a building contractor familiar with this type of improvement that the cost to fabricate and install such a ramp would be in the \$2000 to \$3000 range.

If you have any questions or need supplemental information, please don't hesitate to call. Please try to have this matter scheduled before the Coastal Commission at your February hearing. Thank you for your time in this matter.

Very truly yours,  
**Signature on file**

\_\_\_\_\_  
Steven A. Amerikaner  
For HATCH & PARENT  
A Law Corporation

Enclosures

cc: Richard Sherman  
Lynn Heacox

Page 3 of 4

WORKERS' COMPENSATION DECLARATION

I hereby affirm that I have a certificate of consent to sell, insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C.)

Policy No. 711-42185 Company STATE FARM

☐ Certified copy is hereby furnished:  
☒ Certified copy is filed with the County Building Inspection department. Unsubstantiated

Date 4/23/86 Applicant For Hill Construction

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

(This section need not be completed if the permit is for one hundred dollars (\$100) or less.)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws.

Applicant

☐ **CE TO APPLICANT:** If, after making this Certificate of Exemption, you should become subject to the Workers' Compensation provisions of the Labor Code, you must forthwith comply with such provisions or this permit shall be deemed revoked.

LICENSED CONTRACTORS DECLARATION

I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Number 44492 Lic. Class 13  
For Hill Construction  
Contractor For Hill Construction Date 4/23/86

☐ I am exempt under Sec. \_\_\_\_\_  
B, A.P.C. for this reason \_\_\_\_\_ Date: \_\_\_\_\_

Signature \_\_\_\_\_  
I hereby affirm that I am exempt from the Contractor's License Law for the following reason (Section 7031.5, Business and Professions Code):  
I, as owner of the property, or my employees, will do the work and the structure is not intended or offered for sale (Section 7044, Business and Professions Code).  
☐ I, as owner of the property, am exclusively controlling the project with licensed contractors to construct the project (Section 7044, Business and Professions Code).

☐ **CONSTRUCTION LENDING AGENCY**  
I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

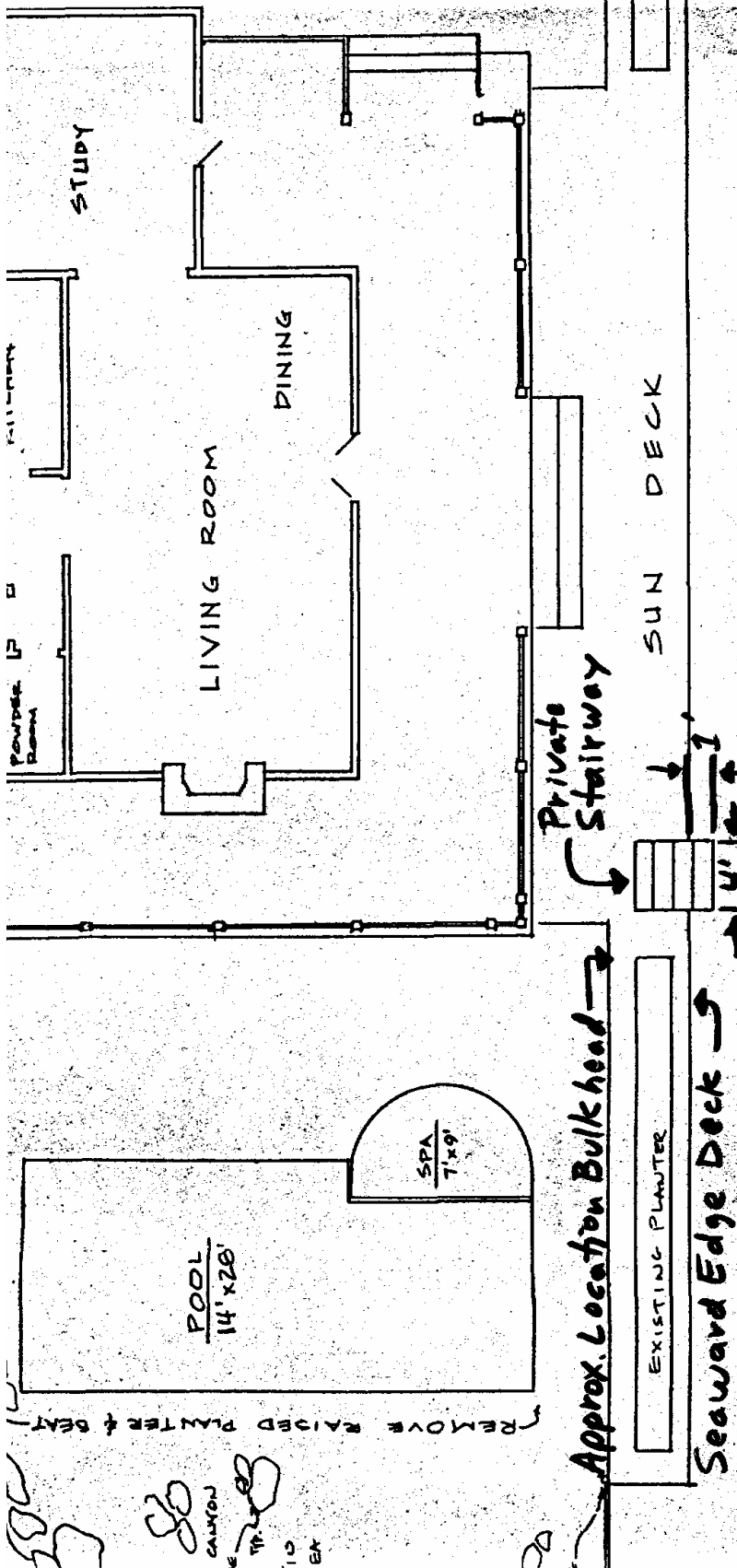
Lender's Name \_\_\_\_\_  
Lender's Address \_\_\_\_\_  
I certify that I have read this application and state that the above information is correct. I agree to comply with all County ordinances and State laws relating to building construction, and hereby authorize representatives of this County to enter upon the above-mentioned property for inspection purposes.

Unsubstantiated 4/23/86  
Signature of Applicant or Agent \_\_\_\_\_ Date \_\_\_\_\_

APPLICATION FOR BUILDING PERMIT  
COUNTY OF LOS ANGELES  
BUILDING AND SAFETY

FOR APPLICANT TO FILL IN

|                       |                                  |              |                |              |              |
|-----------------------|----------------------------------|--------------|----------------|--------------|--------------|
| BUILDING ADDRESS      | <u>22126 Pacificant Hwy</u>      |              |                | ZIP          | <u>90245</u> |
| CITY                  | <u>Malibu</u>                    | NO. OF BLDG. | <u>1</u>       | NO. ON LOT   | <u>1</u>     |
| SIZE OF LOT           | <u>160' x 100'</u>               | NO. OF BLDG. | <u>1</u>       | NO. ON LOT   | <u>1</u>     |
| TRACT                 | <u>BLOCK</u>                     | LOT NO.      | <u>4704215</u> | NO. OF BLDG. | <u>1</u>     |
| OWNER                 | <u>DAVID GREENE</u>              |              |                |              |              |
| ADDRESS               | <u>22126 Pacificant Hwy</u>      |              |                |              |              |
| CITY                  | <u>Malibu</u>                    | ZIP          | <u>90245</u>   | NO. OF BLDG. | <u>1</u>     |
| ARCHITECT OR ENGINEER | <u>KEVIN KELLY</u>               |              |                |              |              |
| ADDRESS               | <u>2216 W. Hillcrest Blvd</u>    |              |                |              |              |
| CITY                  | <u>Malibu</u>                    | ZIP          | <u>90245</u>   | NO. OF BLDG. | <u>1</u>     |
| CONTRACTOR            | <u>For Hill Construction</u>     |              |                |              |              |
| ADDRESS               | <u>8190 Hollywood Blvd</u>       |              |                |              |              |
| CITY                  | <u>Los Angeles</u>               | ZIP          | <u>90046</u>   | NO. OF BLDG. | <u>1</u>     |
| DESCRIPTION OF WORK   | <u>Extend Wooded</u>             |              |                |              |              |
| SIZE                  | <u>42' x 100'</u>                | NO. OF BLDG. | <u>1</u>       | NO. ON LOT   | <u>1</u>     |
| USE OF EXISTING BLDG. | <u>Residence - Single Family</u> |              |                |              |              |
| APPLICANT             | <u>For Hill Construction</u>     |              |                |              |              |
| ADDRESS               | <u>8190 Hollywood Blvd</u>       |              |                |              |              |
| CITY                  | <u>Los Angeles</u>               | ZIP          | <u>90046</u>   | NO. OF BLDG. | <u>1</u>     |
| CONTRACTOR            | <u>For Hill Construction</u>     |              |                |              |              |
| ADDRESS               | <u>8190 Hollywood Blvd</u>       |              |                |              |              |
| CITY                  | <u>Los Angeles</u>               | ZIP          | <u>90046</u>   | NO. OF BLDG. | <u>1</u>     |
| CONTRACTOR            | <u>For Hill Construction</u>     |              |                |              |              |
| ADDRESS               | <u>8190 Hollywood Blvd</u>       |              |                |              |              |
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1st Coast District Office  
At VAL 5-86-061  
Permit No. 5-86-061  
By P. F. Xand...

RECEIVED  
FEB 13 1986  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH COAST DISTRICT

PACIFIC OCEAN

DAVID GEEFFEN  
BEACH HOUSE DESIGN  
MALIBU, CALIFORNIA

|       |                      |
|-------|----------------------|
| Date  | 1-24-86              |
| Scale | 1/8" = 1'-0"         |
| Drawn | WBM                  |
| Job   | DEVELOP<br>EMPTY LOT |
| Sheet | 1                    |

EXHIBIT 22  
APPLICATION No.  
5-83-703-A-1  
Private Stairway Approved by  
Coastal Permit No. 5-86-061



Geffen Residence September 2006

Source: Coastline.org



Geffen Residence September 2002

Source: Coastline.org

EXHIBIT 23  
APPLICATION  
No. 5-83-703-A-1  
Aerial Photographs  
2006 and 2002  
Note Stairway



CALIFORNIA COASTAL COMMISSION

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



January 25, 2007

Andrew Nierenberg  
District Right of Way Manager  
Department of Transportation, District 7  
Los Angeles Field Office, MS-6  
100 South Main Street  
Los Angeles, CA 90012

RE: Coastal Development Permit Amendment Application No. 5-83-703-A1, Geffen 22108, 22114, 22126 and 22132 Pacific Coast Highway, City of Malibu

Dear Mr. Nierenberg,

This office has received an request to process Coastal Permit Amendment Application Number 5-83-701-A1 from David Geffen requesting after-the-fact approval for the following "as built" developments: approximately 18 ft. wide by 56 ft. in length concrete slab/walkway with thickened 12 in concrete edge at southern (seaward) edge; a gate, 9 ft. wide by 6 ft. high, at southern edge of concrete walkway; an approximately 9 ft. by 30.5 ft storage structure totaling 274.5 sq. ft.; an approximately 9 ft. by 26 ft. fenced storage area totaling 234 sq. ft.; two air conditioning units; 5 vent pipes; electrical conduits; one 6 foot high by 26 ft long fence at the eastern edge of the storage area, one 6 foot high by 26 ft. long stucco wall along western property line (western edge of storage area), and one 6 ft high by 9 ft. long fence at the southern edge of the storage area; a 42 foot long by 5 foot wide cantilevered deck on top of the western most bulkhead/seawall, and a private beach access stairway located within a lateral public access easement. In addition, the project also includes an offer to record an offer to dedicate a lateral easement for public access and passive recreation extending from the mean high tide line to the toe of the seawall/bulkhead (excluding a privacy buffer extending ten ft. seaward from the toe of the existing seawall/bulkhead) and providing an uninterrupted public access easement which connects the existing vertical accessway and the two closest existing lateral accessways on the other portions of the subject property located downcoast; installation of trash receptacles(s) in the existing vertical accessway which will be taken to the curb on trash collection day; and payment to the California Coastal Conservancy for the sum of one hundred twenty-five thousand dollars (\$125,000.00) to be used for the purpose of providing funds to pay for the daily opening and closing of the gates and related maintenance of subject accessways within a Caltrans easement located at 22108, 22114, 22126 and 22132 Pacific Coast Highway, City of Malibu

The application is filed and scheduled for a public hearing at the Coastal Commission's February 14, 2007 meeting at Catamaran Resort Hotel, 3999 Mission Blvd., San Diego, CA 92109.

Coastal Act Section 30601.5 states as follows:

All holders or owners of any interests of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant.

Because our records in the application file indicate that you are the owner of an easement or right of Way Contract - State Highway interest in the property across which the various improvements noted above are proposed, the Commission is notifying you of the application pursuant to Section 30601.5. With this letter, staff are inviting you to join this application as a co-applicant if you so choose. If you

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Staff Correspondence  
to Caltrans



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wish to join as a co-applicant, you may indicate your agreement by signing and returning a copy of this letter. If you have any questions or need further information about this application or the proposed project before you sign and return this letter, please call me or Steve Hudson at the number above. A copy of the staff report may be found at the Commission's website at [www.coastal.ca.gov](http://www.coastal.ca.gov)

Sincerely,



James Johnson  
Coastal Program Analyst

AGREED:

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Property Address

\_\_\_\_\_  
Phone Number

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**EXHIBIT 25**  
**APP. No. 5-83-703-A-1**  
**Public Access Easements**  
**Managed by Access For All**