

**CALIFORNIA COASTAL COMMISSION**

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



# Th18a&b

## ADDENDUM

**DATE:** September 10, 2012  
**TO:** Commissioners and Interested Parties  
**FROM:** South Central Coast District Staff  
**SUBJECT:** Agenda Item Th18a&b, Application No. 4-00-057-A3 & 4-01-100-A4 (HMG Carbon Beach Development, LLC), Thurs., September 13, 2012

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The purpose of this addendum is to include a change to the Motion and Resolution section; correct an inadvertent error; and make changes to Special Condition No. 12 of CDP 4-00-057 and Special Condition 6 of CDP 4-01-100 of the August 23, 2012 staff report to include the requirement to dedicate a specific parcel as an off-site view corridor parcel and to revise the project description and findings to reflect these changes.

1.)The following changes shall be made to the “Motion and Resolution,” section found on page 4 of the August 23, 2012 staff report to separate the previous motion into two separate motions to reflect the recommended action for each amendment.

Note: ~~Strikethrough~~ indicates text to be deleted from the August 23, 2012 staff report and underline indicates text to be added to the staff report.

## I. MOTION AND RESOLUTION

~~The staff recommends that the Commission adopt the following resolution:~~

**Motion:**

*Move that the Commission ~~approve~~ approve the proposed amendments to Coastal Development Permit Nos. 4-00-057 and 4-01-100 pursuant to the staff recommendation.*

~~Staff recommends a YES vote. Passage of this motion will result in approval of the amendments as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.~~

**Resolution:**

*The Commission hereby approves the coastal development permit amendments on the grounds that the development, as amended and subject to conditions, will be in conformity with the policies of the City of Malibu Local Coastal Program. Approval of the permits complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

The staff recommends that the Commission adopt the following resolutions:

**Motion 1:**

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. 4-00-057 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution:**

*The Commission hereby approves the coastal development permit amendment on the grounds that the development, as amended and subject to conditions, will be in conformity with the policies of the City of Malibu Local Coastal Program. Approval of the permits complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

**Motion 2:**

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. 4-01-100 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution:**

*The Commission hereby approves the coastal development permit amendment on the grounds that the development, as amended and subject to conditions, will be in conformity with the policies of the City of Malibu Local Coastal Program. Approval of the permits complies with the California Environmental Quality Act because either 1)*

feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

- 2.) An inadvertent typographical error on Pages 3 and 7 of the staff report refers to CDP “4-01-101.” Those references should be and hereby are changed to refer to CDP “4-01-100”.
- 3.) Revise the staff recommendation for the revised language for Special Condition No. 12 of CDP 4-00-057 as follows, in order to include the requirement to dedicate a specific parcel (19862 Pacific Coast Highway, Malibu) as an off-site view corridor and correct an inadvertent error on Pages 5 and 6. Appendix 2 (Pages 30-32) showing all of the conditions of CDP 4-00-057 shall also be revised to show the replacement of the existing Special Condition No. 12 with the following revised condition. Note: **Bold** indicates text to supersede the previous staff recommendation for the revised language for Special Condition No. 12 of CDP 4-00-057 of the August 23, 2012 staff report.

**12. The following Special Condition No. 12 of CDP No. 4-00-057 (entitled “Public View Corridor”) shall be modified as shown below (deletions shown as ~~strikethrough~~ and additions shown as underline):**

**12. Public View Corridor**

**A. By acceptance of this coastal development permit amendment (4-00-057-A3), the applicant agrees, on behalf of itself and its successors and assigns, that to provide and dedicate the parcel of real property located at 19862 Pacific Coast Highway in the City of Malibu (also known as APN: 4450-001-040) as an off-site view corridor parcel (the “View Parcel”) that allows the following uses and on which the following restrictions apply:**

- (a) ~~No less than 20 percent of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.~~**
- (b) ~~No structures, vegetation, or obstacles which result in an obstruction of public views of the Pacific Ocean from Pacific Coast Highway shall be permitted within the public view corridor as shown on Exhibit 5.~~**
- (c) ~~Fencing within the public view corridor shall be limited to visually permeable designs and materials, such as wrought iron or non-tinted glass materials. Fencing shall be limited to no more than six feet in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than one inch in thickness/width and shall be placed no less than 12 inches apart in distance. Alternative designs may be allowed only if~~**

~~the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.~~

- ~~(d) Vegetation within the public view corridor, as consistent with Special Condition Two (2), shall be limited to low-lying vegetation of no more than two feet in height.~~

Public viewing, public beach access, and accessways shall be permitted uses on the dedicated View Parcel. Any physical development of facilities or structures to enhance public views or public access shall conform to the applicable standards, provisions, and requirements of the Malibu LCP.

~~B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction setting forth the above restriction. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.~~

B. PRIOR TO ISSUANCE OF THIS PERMIT AMENDMENT (4-00-057-A3), the applicant must provide evidence that the applicant has effectuated the provision of the off-site view corridor on the View Parcel through completion of both of the following:

1) The recordation, with the Los Angeles County Recorder's Office, of an open space deed restriction, in a form and content acceptable to the Commission's Executive Director, against the View Parcel that restricts development on the entire parcel, in an enforceable manner, to: improvements necessary to provide for public view enhancement, public beach access, and public beach accessways consistent with Malibu LIP section 6.5(E)(2)(g)(1); maintenance of roads, public accessways, and utilities consistent with existing easements; and shoreline protection if necessary to protect existing development. The deed restriction document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed, and shall run with the land on behalf of the people of the State of California, binding all successors and assigns.

2) The dedication of the entire View Parcel, in fee title, to a public agency acceptable to the Executive Director after recordation of the deed restriction required by section B.1 above, and the provision of evidence, satisfactory to the Commission's Executive Director, that the document effectuating the dedication has been recorded with the Los Angeles County Recorder.

- 4.) Revise the staff recommendation for the revised language for Special Condition No. 6 of CDP 4-01-100 as follows, in order to include the requirement to dedicate a specific parcel (19862 Pacific Coast Highway, Malibu) as an off-site view corridor and correct an inadvertent error on Pages 7 and 8. Appendix 2 (Pages 35-37) showing all of the conditions of CDP 4-01-

100 shall also be revised to show the replacement of the existing Special Condition No. 6 with the following revised condition. Note: **Bold** indicates text to supersede the previous staff recommendation for the revised language for Special Condition No. 6 of CDP 4-01-100 of the August 23, 2012 staff report.

**6. The following Special Condition No. 6 of CDP No. 4-01-100 (entitled “Public View Corridor”) shall be modified as shown below (deletions shown as ~~strikethrough~~ and additions shown as underline):**

**A. By acceptance of this coastal development permit amendment (4-01-100-A4), the applicant agrees, on behalf of itself and its successors and assigns, that to provide and dedicate the parcel of real property located at 19862 Pacific Coast Highway in the City of Malibu (also known as APN: 4450-001-040) as an off-site view corridor parcel (the “View Parcel”) that allows the following uses and on which the following restrictions apply:**

- (1) ~~No less than 20 percent of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.~~**
- (2) ~~No structures, vegetation, or obstacles which result in an obstruction of public views of the Pacific Ocean from Pacific Coast Highway shall be permitted within the public view corridor as shown on Exhibit 3.~~**
- (3) ~~Fencing within the public view corridor shall be limited to visually permeable designs and materials, such as wrought iron or non-tinted glass materials. Fencing shall be limited to no more than six feet in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than one inch in thickness/width and shall be placed no less than 12 inches apart in distance. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.~~**
- (4) ~~Vegetation within the public view corridor, as consistent with Special Condition Three (3), shall be limited to low-lying vegetation of no more than two feet in height.~~**

**Public viewing, public beach access, and accessways shall be permitted uses on the dedicated View Parcel. Any physical development of facilities or structures to enhance public views or public access shall conform to the applicable standards, provisions, and requirements of the Malibu LCP.**

**B. ~~PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction setting forth the above restriction. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the~~**

~~enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.~~

**B. PRIOR TO ISSUANCE OF THIS PERMIT AMENDMENT (4-01-100-A4), the applicant must provide evidence that the applicant has effectuated the provision of the off-site view corridor on the View Parcel through completion of both of the following:**

**1) The recordation, with the Los Angeles County Recorder's Office, of an open space deed restriction, in a form and content acceptable to the Commission's Executive Director, against the View Parcel that restricts development on the entire parcel, in an enforceable manner, to: improvements necessary to provide for public view enhancement, public beach access, and public beach accessways consistent with Malibu LIP section 6.5(E)(2)(g)(1); maintenance of roads, public accessways, and utilities consistent with existing easements; and shoreline protection if necessary to protect existing development. The deed restriction document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed, and shall run with the land on behalf of the people of the State of California, binding all successors and assigns.**

**2) The dedication of the entire View Parcel, in fee title, to a public agency acceptable to the Executive Director after recordation of the deed restriction required by section B.1 above, and the provision of evidence, satisfactory to the Commission's Executive Director, that the document effectuating the dedication has been recorded with the Los Angeles County Recorder.**

5.) The following changes shall be made to the "Amendment Description and Background" section within Section "IV. Findings and Declarations," found on pages 9-11 of the August 23, 2012 staff report to reflect the changes made to Special Condition Nos. 12 and 6.

Note: ~~Strikethrough~~ indicates text to be deleted from the August 23, 2012 staff report and underline indicates text to be added to the staff report.

#### **A. Amendment Description and Background**

The applicant requests modifications to Special Condition 12 (Public View Corridor) of Coastal Development Permit No. 4-00-057 and Special Condition 6 (Public View Corridor) of Coastal Development Permit No. 4-01-100 to delete the requirements imposed by each of those conditions that the permittees maintain twenty percent of the width of the sites covered by those permits as view corridors, and substitute the requirement for the dedication in fee of a pre-selected, single, combined, off-site view corridor parcel that is ~~at least~~ more than twenty-five percent wider and ~~subject to~~ meets the additional requirements provided for in Section 6.5(E)(2) of the Malibu Local Implementation Plan. This off-site view corridor is proposed to mitigate the

loss of public views resulting from the deletion of the on-site public view corridors by providing a greater public benefit in the form of coastal views and potential public access than what would otherwise be provided through the on-site view corridors. To ensure that the applicant's offer to provide for public views across the entire mitigation site is implemented, these amendments involve changes to the permit condition language to require the applicant to take specific steps and to provide evidence that the applicant has established the off-site view corridor through the recordation of the open space deed restriction and transfer of fee title to a public agency prior to the issuance of these permit amendments. In addition, the applicant is also proposing to make a monetary contribution in the amount of (\$1,000,000) over three years to the City's redevelopment of Legacy Park to assist in providing additional off-site public visual resource, public access, and recreational benefits.

#### Off-Site View Corridor Parcel

The applicant will dedicate a ~~has already identified a possible~~ 60-foot wide off-site view corridor mitigation parcel located at 19862 Pacific Coast Highway, Malibu that ~~the applicant asserts can meet~~ meets all of the requirements of an off-site view corridor parcel in the Malibu LIP Section 6.5(E)(2). This ~~proposed~~ off-site view corridor parcel is currently owned by the applicant and is currently developed with an existing single family residence. The applicant has submitted a separate CDP application to the City of Malibu for the demolition of the residence and removal of all existing development on the off-site view corridor parcel. In this way, the site can be cleared before the open space deed restriction is recorded and the site is dedicated in fee title to a public agency.

~~The proposed~~ This off-site view corridor would provide 60 feet of contiguous coastal views through the demolition of an existing residence that obstructs all views of the ocean. This off-site parcel ~~would be~~ is immediately adjacent to a 65-foot wide parcel owned by the State of California and is utilized by the California Department of Transportation (Caltrans) as an ocean-front public viewing platform known as Vista Point. The applicant has approached the Mountains Recreation and Conservation Authority (MRCA) about accepting the fee title dedication of this off-site view corridor parcel once all approvals are obtained, the site is cleared and an open space deed restriction has been recorded against the property's title. At its August 7, 2012 meeting, the MRCA governing board authorized its staff to accept the fee title dedication.

- 6.) The following changes shall be made to the "Visual Resources" section within Section "IV. Findings and Declarations," found on pages 18 and 19 of the August 23, 2012 staff report, to reflect the changes made to Special Condition Nos. 12 and 6.

Note: ~~Strikethrough~~ indicates text to be deleted from the August 23, 2012 staff report and underline indicates text to be added to the staff report.

Today, the City of Malibu has its own certified Local Coastal Program and although the project sites are located in the City of Malibu, the Commission retains authority over these coastal development permits issued by the Commission, however the standard of review for

the proposed amendments is the policies and provision of the certified Malibu LCP. The Malibu LCP, as amended by LCP Amendment 2-10, now specifically allows for the substitution of an off-site view corridor and public benefits in lieu of the LCP required on-site view corridor. As such, the Commission finds that the proposed amendments to delete the requirement for twenty percent of the width of each site to be maintained as a view corridor, and substitute the requirement for the dedication in fee of 19862 Pacific Coast Highway (APN: 4450-001-040) as an off-site view corridor parcel ~~that is at least twenty-five percent wider~~ and monetary contribution to the City of Malibu development of Legacy Park will be consistent with the LCP. However, these amendments will result in the loss of public views of the Pacific Ocean from Pacific Coast Highway at the project sites.

## **2. Off-Site Mitigation**

The applicant proposes to mitigate the loss of public views resulting from the deletion of the public view corridors on-site by providing a separate off-site view corridor parcel that will provide for greater public benefit in the forms of coastal views and potential public access than what would otherwise be provided through the on-site view corridors. The applicant will dedicate a ~~has already identified a possible~~ 60-foot wide off-site view corridor mitigation parcel located at 19862 Pacific Coast Highway, Malibu ~~and asserts that the parcel~~ meets all of the requirements of an off-site view corridor parcel in the Malibu LIP Section 6.5(E)(2). This ~~proposed~~ off-site view corridor parcel is currently owned by the applicant and is currently developed with an existing single family residence. The applicant has submitted a separate CDP application to the City of Malibu for the demolition of the residence and removal of all existing development on the off-site view corridor parcel. In this way, the site can be cleared before the open space deed restriction is recorded and the site is dedicated in fee title to a public agency. The ~~proposed~~ off-site view corridor would provide 60 feet of contiguous coastal views through the demolition of an existing residence that obstructs all views of the ocean. This off-site parcel would be immediately adjacent to a 65-foot wide parcel owned by the State of California and is utilized by the California Department of Transportation (Caltrans) as an ocean-front public viewing platform known as Vista Point.

The applicant ~~plans to~~ will dedicate this 60-foot wide off-site view corridor in lieu of the on-site view corridor requirements of both CDPs 4-00-057 and 4-01-100 located at 22310 and 22258 Pacific Coast Highway. These two coastal development permits required three non-contiguous on-site view corridors spanning over the two lots and requiring a total of 31 linear feet be maintained as public view corridors (exhibit 9). The replacement of the on-site 31 linear feet of view corridor with a 60 foot off-site view corridor would result in a view corridor nearly twice as wide (94% percent wider) than the on-site view corridors. The development of the contiguous 60 foot view corridor furthers the LCP policy of protecting Malibu's scenic and visual qualities to a much greater degree than the existing three non-contiguous on-site view corridors across the project sites that are currently required by the underlying permits. Therefore, to ensure that adverse effects to public views on the project site are adequately mitigated, the revised Public View Corridor conditions requires that, prior to issuance of the permits as amended, the applicant must provide evidence that the

applicant has effectuated the off-site view corridor through the recordation of the open space deed restriction and transfer of fee title to a public agency. The open space deed restriction recordation and fee title dedication will be completed as part of the City of Malibu CDP 07-029. The applicant has approached the Mountains Recreation and Conservation Authority (MRCA) about accepting the fee title dedication of this off-site view corridor parcel. At its August 7, 2012 meeting, the MRCA governing board authorized its staff to accept the fee title dedication. After the applicant has completed the recordation of the open space deed restriction and the fee title dedication of the off-site view corridor parcel, and the subject CDP Amendments have been issued, Commission staff will cooperate with the applicant to remove the deed restrictions on the subject properties that relate to the on-site view corridor requirements.

In addition, the applicant is also proposing to contribute a monetary contribution in the amount of (\$1,000,000) over three years to the City's development of Legacy Park to assist in providing additional off-site public visual resource benefits. The applicant's one million dollar contribution would fund a significant portion of Legacy Park's development. Legacy Park is located two miles west of the project site along Pacific Coast Highway. The enhancements would significantly improve views for passing motorists, pedestrians, and bicyclists on Pacific Coast Highway and other coastal roads. Additionally, park visitors would enjoy expansive views of the Santa Monica Mountains and the coast. The Malibu LCP, as amended by LCP Amendment 2-10, allows for the funding of a portion of an off-site measure that provides additional public visual resource benefits along with providing an off-site view corridor. As such, the applicant's monetary contribution to Legacy Park and the applicant's dedication of an off-site view corridor mitigation parcel together would provide a significantly greater public benefit than the on-site view corridor requirements.

As described above, the applicant's recordation of the open space deed restriction over the entire off-site view corridor parcel located at 19862 Pacific Coast Highway and the subsequent dedication in fee title of the property to a public agency will be completed as a condition of the City of Malibu's CDP. In order to ensure that the off-site view corridor has been so restricted and dedicated before the on-site view corridor restrictions are removed, the Commission finds it necessary to require the applicant to provide evidence that the off-site view corridor has been effectuated. For the reasons set forth above, the Commission finds that the proposed amendments, as conditioned, would further the Malibu LCP and Coastal Act's goal of siting and designing structures to minimize impacts on scenic areas visible from scenic roads and public viewing areas. Additionally, as conditioned, the Commission finds that the subject coastal development permit amendments to modify their Public View Corridor special condition is consistent with the visual/scenic resource protection policies of the Malibu LCP.

7.) The following changes shall be made to the "Unpermitted Development" section within Section "IV. Findings and Declarations," found on page 23 of the August 23, 2012 staff report:

Note: ~~Strikethrough~~ indicates text to be deleted from the August 23, 2012 staff report and underline indicates text to be added to the staff report.

Development has occurred on the subject sites without the required coastal development permit and inconsistent with the existing permits and the deed restrictions recorded pursuant thereto. The ~~unpermitted~~ aforementioned development includes a front yard concrete wall topped with wood screening, two side yard gates and landscaping and ~~are currently obstructing~~ which collectively obstructs all three of the public view corridors that were required by both underlying coastal development permits. As previously mentioned in this staff report, the applicant has sought to retain this ~~unpermitted~~ development through a two step process. First, the applicant by applying applied for a local government coastal development permit from the City of Malibu (CDP No. 07-029) for after-the fact approval of the as-built development. However, although the City approved the permit, this local permit was appealed on January 15, 2009 (Appeal No. A-4-MAL-09-006). The applicant has submitted a CDP amendment application to the City of Malibu in order to modify CDP 07-029 to bring the development into conformance with the certified LCP. Second, the applicant has filed these CDP amendment applications with the Commission. Although development has taken place prior to submission of these permit amendment applications, consideration of these applications by the Commission has been based solely upon the policies and provisions of the certified City of Malibu Local Coastal Program. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit. The Commission's enforcement division will pursue further actions to address this matter.

**CALIFORNIA COASTAL COMMISSION**

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



# Th18a&b

CDP No. **4-00-057-A3**  
CDP No. **4-01-100-A4**  
Filed: 6/26/12  
180th Day: 12/23/12  
Staff: D. Venegas-V  
Staff Report: 8/23/12  
Hearing Date: 9/13/12

## STAFF REPORT: PERMIT AMENDMENT

**Application Nos.:** **4-00-057-A3 & 4-01-100-A4**

**Applicant:** **HMG Carbon Beach Development, LLC (Peter Morton, Member)**

**Agent:** Rick Zbur, Latham & Watkins LLP

**Location:** 22306, 22310 & 22258 Pacific Coast Highway, Malibu, Los Angeles County (APNs: 4452-001-021 & 4451-006-012)

**Description of Amendments:** Amend Special Condition 12 (Public View Corridor) of CDP No. 4-00-057 and amend Special Condition 6 (Public View Corridor) of CDP No. 4-01-100 to delete their requirements that twenty percent of the width of the site covered by each permit be maintained as a view corridor, and substitute requirement for the dedication in fee of an off-site view corridor parcel that is at least twenty-five percent wider and for a monetary contribution to the City of Malibu towards the development of Legacy Park.

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## SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed amendments with **two (2) special conditions**.

The standard of review for the proposed amendments is the policies and provisions of the certified City of Malibu Local Coastal Program (LCP). As conditioned, the proposed amendments are consistent with all applicable policies of the Malibu certified LCP, as amended by LCP Amendment No. 2-10, approved by the Commission, with suggested modifications, on July 14, 2011, and effectively certified on January 11, 2012, prior to the Commission's review of

these amendment requests. Following is a summary of the main issues raised by the amendments and how they are resolved by staff's recommendations:

- **Visual Resources.** The proposed amendments to delete the requirement for twenty percent of the width of the project site to be maintained as a view corridor and to substitute the requirement for the dedication in fee of an off-site view corridor parcel would eliminate the requirement for the provision of public views of the Pacific Ocean from Pacific Coast Highway across the two project sites. To mitigate the loss of public views, the amended permits would collectively require creation of one off-site view corridor parcel that will provide for greater public benefit in the form of a wider coastal view than the aggregate of what would otherwise have to be provided through the on-site view corridors on the two subject project sites.
- **Public Access and Recreation.** The proposed amendments to allow for an off-site view corridor also require that public access be allowed as a permitted use on the parcel, thus providing a greater public access benefit than what would otherwise be provided through the on-site view corridor. Further, the proposed monetary contribution would fund a significant portion of the development of Legacy Park to expand and enhance recreational opportunities and coastal access.

**STAFF NOTE REGARDING JURSDICTION:** Although the project sites are located in the City of Malibu, an area with a certified LCP, the Commission retains authority over coastal development permits issued by the Commission and is processing the subject amendment requests because the proposed amendment involves modifying a specific permit condition of the Commission-issued permits. Jurisdiction over consideration of CDP amendments is set forth in Malibu LIP Section 13.12.2 (B)(2). However, the standard of review for the proposed amendment is the policies and provisions of the certified Malibu Local Coastal Program (LCP).

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## APPENDICES

Appendix 1	Substantive File Documents
Appendix 2	Standard and Special Conditions of Permit Nos. 4-00-057 and 4-01-100, and Subsequential Amendments

## EXHIBITS

Exhibit 1.	Vicinity Map
Exhibit 2.	Parcel Map APN: 4452-001-021
Exhibit 3.	Parcel Map APN: 4451-006-012
Exhibit 4.	Aerial Photo
Exhibit 5.	Site Plan
Exhibit 6.	CDP 4-00-057 Permit
Exhibit 7.	CDP 4-01-100 Permit
Exhibit 8.	City of Malibu LCP Amendment No. MAL-MAJ-2-10 Staff Report
Exhibit 9.	Original Public View Corridors of CDP Nos. 4-00-057 & 4-01-100
Exhibit 10.	Proposed Off-site View Corridor
Exhibit 11.	CDP No. 4-00-057 Recorded Public View Corridor
Exhibit 12.	CDP No. 4-01-100 Recorded Public View Corridor

**PROCEDURAL NOTE:** The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the Executive Director determines that a proposed amendment is immaterial, but the applicant or an objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Code of Regulations Section 13166. In this case, the Executive Director has determined that the proposed amendment is a material change to the project and has the potential to affect conditions required for the purpose of protecting a coastal resource.

## **I. MOTION AND RESOLUTION**

The staff recommends that the Commission adopt the following resolution:

### **Motion:**

*I move that the Commission **approve** the proposed amendments to Coastal Development Permit Nos. 4-00-057 and 4-01-100 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendments as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **Resolution:**

*The Commission hereby approves the coastal development permit amendments on the grounds that the development, as amended and subject to conditions, will be in conformity with the policies of the City of Malibu Local Coastal Program. Approval of the permits complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## **II. STANDARD CONDITIONS**

**NOTE:** All standard conditions attached to the previously approved permits 4-00-057 and 4-01-100, as shown in the attached Appendix 2, shall remain in effect.

### III. SPECIAL CONDITIONS

**NOTE:** Appendix 2, attached, includes all standard and special conditions that apply to coastal development permits 4-00-057 and 4-01-100, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including the subject amendments number 4-00-057-A3 and 4-01-100-A4. All of the Commission’s adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action are shown in the following section. Within Appendix A, changes to the previously approved special conditions are also shown in bold. This will result in one set of adopted special conditions for each permit.

**12. Special Condition No. 12 of CDP No. 4-00-057 (entitled “Public View Corridor”), shall be modified as shown below (deletions shown as ~~strikethrough~~ and additions shown as underline):**

**12. Public View Corridor**

A. By acceptance of this coastal development permit amendment (4-00-057-A3), the applicant agrees, on behalf of itself and its successors and assigns, to provide an off-site view corridor parcel (the “View Parcel”) that the decision-maker finds to meet the following criteria (see City of Malibu Local Implementation Plan Section 6.5(E)(2)(f)):

~~(a) — No less than 20 percent of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.~~

1. The proposed View Parcel is a beachfront parcel that affords public views of the ocean and will provide public visual resource benefits that are greater than what would otherwise be provided through an on-site view corridor;
2. The View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views, which parcel was publicly owned as of January 11, 2012, and, to the extent feasible, be located in the same geographic portion of the City as the project site;
3. The off-site view corridor shall be provided across the entirety of the View Parcel and shall be at least twenty-five (25) percent wider than the view corridor(s) that otherwise would be required on the project site;
4. There are no geotechnical hazards or other constraints present on or near the View Parcel that could otherwise render the View Parcel unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that the proposed view corridor parcel is not suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other

constraints, the proposed view corridor parcel shall be rejected as inadequate and inconsistent with the intent of this provision.

5. Public viewing, public beach access and accessways shall be permitted uses on the dedicated View Parcel. Any physical development of facilities or structures to enhance public views or public access shall conform to the applicable standards, provisions, and requirements of the Malibu LCP.

~~(b) No structures, vegetation, or obstacles which result in an obstruction of public views of the Pacific Ocean from Pacific Coast Highway shall be permitted within the public view corridor as shown on Exhibit 5.~~

~~(c) Fencing within the public view corridor shall be limited to visually permeable designs and materials, such as wrought iron or non-tinted glass materials. Fencing shall be limited to no more than six feet in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than one inch in thickness/width and shall be placed no less than 12 inches apart in distance. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.~~

~~(d) Vegetation within the public view corridor, as consistent with Special Condition Two (2), shall be limited to low-lying vegetation of no more than two feet in height.~~

~~B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction setting forth the above restriction. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.~~

B. PRIOR TO ISSUANCE OF THIS PERMIT AMENDMENT (4-00-057-A3), the applicant must provide evidence that the applicant has effectuated the provision of the off-site view corridor on the View Parcel through completion of both of the following:

1) The recordation of an open space deed restriction, in a form and content acceptable to the Commission's Executive Director, across the entire View Parcel that restricts uses on the parcel, in an enforceable manner, to: improvements necessary to provide for public view enhancement, public beach access, and public beach accessway consistent with Malibu LIP section 6.5(E)(2)(g)(1); construction and maintenance of roads, public accessways, and utilities consistent with existing easements; and shoreline protection if necessary to protect existing development. The deed restriction document shall be recorded free of prior liens and encumbrances (other than existing easements for roads, trails, and utilities) which the Executive Director determines may affect the interest being conveyed, and shall run with the land on behalf of the people of the State of California, binding all successors and assigns.

2) The dedication of the entire property, in fee title, to a public agency acceptable to the Executive Director after recordation of a deed restriction, which dedication has been recorded with the Los Angeles County Recorder.

**6. Special Condition No. 6 of CDP 4-01-101 (entitled “Public View Corridor”), shall be modified as shown below (deletions shown as ~~strikethrough~~ and additions shown as underline):**

**6. Public View Corridor**

A. By acceptance of this coastal development permit amendment (4-01-100-A4), the applicant agrees, on behalf of itself and its successors and assigns, to provide an off-site view corridor parcel (the “View Parcel”) that the decision-maker finds to meet the following criteria (see City of Malibu Local Implementation Plan Section 6.5(E)(2)(f)):

~~(1) No less than 20 percent of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.~~

1. The proposed off-site view corridor parcel (the “View Parcel”) is a beachfront parcel that affords public views of the ocean and will provided public visual resource benefits that are greater than what would otherwise be provided through an on-site view corridor;
2. The View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views, which parcel was publicly owned as of the effective date of the Local Implementation Plan amendment that added Section 6.5(E)(2)(f), and, to the extent feasible, be located in the same geographic portion of the City as the project site;
3. The off-site view corridor shall be provided across the entirety of the View Parcel and shall be at least twenty-five (25) percent wider that the view corridor(s) that otherwise would be required on the project site;
4. There are no geotechnical hazards or other constraints present on or near the View Parcel unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that the proposed view corridor parcel is not suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel shall be rejected as inadequate and inconsistent with the intent of this provision.
5. Public viewing, public beach access and accessways shall be permitted uses on the dedicated View Parcel. Any physical development of facilities or structures to enhance public views or public access shall conform to the applicable standards, provisions, and requirements of the Malibu LCP.

- ~~(2) No structures, vegetation, or obstacles which result in an obstruction of public views of the Pacific Ocean from Pacific Coast Highway shall be permitted within the public view corridor as shown on Exhibit 3.~~
- ~~(3) Fencing within the public view corridor shall be limited to visually permeable designs and materials, such as wrought iron or non-tinted glass materials. Fencing shall be limited to no more than six feet in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than one inch in thickness/width and shall be placed no less than 12 inches apart in distance. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.~~
- ~~(4) Vegetation within the public view corridor, as consistent with Special Condition Three (3), shall be limited to low-lying vegetation of no more than two feet in height.~~

~~B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction setting forth the above restriction. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.~~

B. PRIOR TO ISSUANCE OF THIS PERMIT AMENDMENT (4-01-100-A4), the applicant must provide evidence that the applicant has effectuated the provision of the off-site view corridor through completion of both of the following:

1) The recordation of an open space deed restriction, in a form and content acceptable to the Commission's Executive Director, across the entire View Parcel that restricts uses on the parcel, in an enforceable manner, to: improvements necessary to provide for public view enhancement, public beach access, and public beach accessway consistent with Malibu LIP section 6.5(E)(2)(g)(1); construction and maintenance of roads, public accessways, and utilities consistent with existing easements; and shoreline protection if necessary to protect existing development. The deed restriction document shall be recorded free of prior liens and encumbrances (other than existing easements for roads, trails, and utilities) which the Executive Director determines may affect the interest being conveyed, and shall run with the land on behalf of the people of the State of California, binding all successors and assigns.

2) The dedication of the entire property, in fee title, to a public agency acceptable to the Executive Director after recordation of a deed restriction, which dedication has been recorded with the Los Angeles County Recorder.

## **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. AMENDMENT DESCRIPTION AND BACKGROUND**

The applicant requests modifications to Special Condition 12 (Public View Corridor) of Coastal Development Permit No. 4-00-057 and Special Condition 6 (Public View Corridor) of Coastal Development Permit No. 4-01-100 to delete the requirements imposed by each of those conditions that the permittees maintain twenty percent of the width of the sites covered by those permits as view corridors, and substitute the requirement for the dedication in fee of a single, combined, off-site view corridor parcel that is at least twenty-five percent wider and subject to additional requirements provided for in Section 6.5(E)(2) of the Malibu Local Implementation Plan. This off-site view corridor is proposed to mitigate the loss of public views resulting from the deletion of the on-site public view corridors by providing a greater public benefit in the form of coastal views and potential public access than what would otherwise be provided through the on-site view corridors. To ensure that the applicant's offer to provide for public views across the entire mitigation site is implemented, these amendments involve changes to the permit condition language to require the applicant to take specific steps and to provide evidence that the applicant has established the off-site view corridor through the recordation of the open space deed restriction and transfer of fee title to a public agency prior to the issuance of these permit amendments. In addition, the applicant is also proposing to make a monetary contribution in the amount of (\$1,000,000) over three years to the City's redevelopment of Legacy Park to assist in providing additional off-site public visual resource, public access, and recreational benefits.

The project sites for the two subject CDP Amendments are contiguous beachfront properties. The site that is the subject of Coastal Development Permit 4-00-057, known as 22310 and 22306 Pacific Coast Highway, is a 0.48-acre parcel (known as APN: 4452-001-021, previously known as APN's: 4452-001-013 & 4452-001-014) located on Carbon Beach between Pacific Coast Highway and the Pacific Ocean and in an area characterized as a built-out portion of Malibu consisting of residential development. The site is currently developed with a 5,425 sq. ft. single family residence, 400 sq. ft. garage, driveway, privacy wall, 125 foot long bulkhead, 50 foot long return wall, and septic system all constructed pursuant to the underlying coastal development permit. The site that is the subject of Coastal Development Permit 4-01-100, known as 22258 Pacific Coast Highway, is a 0.21-acre parcel (known as 4451-006-012) located on Carbon Beach. The site is currently developed with a 1,850 sq. ft. single family residence, 400 sq. ft. attached garage, driveway and parking court, bulkhead and return wall, swimming pool, wood deck, privacy wall and septic system all constructed pursuant to the underlying coastal development permit and subsequent permit amendments. Additionally, there is unpermitted development spanning across both properties consisting of a front yard concrete wall topped with wood screening, two side yard gates and landscaping that are currently obstructing both public view corridors that were required by both underlying coastal development permits.

The applicant is seeking authorization to retain this unpermitted development by applying for a local government coastal development permit from the City of Malibu (CDP Application No. 07-029) to provide after-the fact approval of the as-built front yard solid concrete wall topped with wood screening, two side yard gates, and landscaping at 22310 and 22258 Pacific Coast Highway. In addition, the local permit application proposes the demolition of a single family

residence located at 19862 Pacific Coast Highway to create an off-site view corridor with a visually permeable glass wall as mitigation for obstructing public view corridors at 22258 and 22310 Pacific Coast Highway required by previously issued CDPs 4-00-057 and 4-01-100. This local permit was approved on December 2, 2008, with conditions imposed by the City to prevent it from becoming effective until an LCP amendment to add a provision that would allow for satisfaction of public view corridor requirements off-site were certified by the Coastal Commission. The City also required that the applicant obtain an amendment to Coastal Development Permit Nos. 4-00-057 and 4-01-100 to remove the on-site public view corridor requirements (which are the subject of this permit amendment) prior to City CDP effectiveness. However, this local permit was appealed by Coastal Commissioners Sara Wan and Mary Shallenberger on January 15, 2009 (Appeal No. A-4-MAL-09-006) on the grounds that (1) the project was found to be inconsistent with the on-site public view corridor requirements of certified Malibu Land Use Plan (LUP) Section No. 6.18 and Local Implementation Plan (LIP) Section No. 6.5(E)(2), which at the time did not permit off-site view corridors in lieu of on-site view corridors and (2) for the City to have approved a coastal development permit concurrently with an associated LCP amendment that was necessary to permit the CDP was necessarily inconsistent with the certified Malibu LCP. More specifically, if an LCP amendment was required, then clearly the project was not consistent with the policies and provisions of the certified LCP, particularly with LUP Section 6.18 and LIP Section 6.5(E)(2). Furthermore, the LCP amendment must be approved and certified by the Coastal Commission before being effective. The applicant has submitted a CDP amendment application to the City of Malibu in order to modify CDP 07-029 to bring the development into conformance with the certified LCP.

On July 14, 2011, the Commission approved City of Malibu's proposed LCP Amendment 2-10 with suggested modifications to modify LUP Section No. 6.18 and LIP Section No. 6.5(E)(2) (View Corridor Requirements) to allow for the option of providing off-site view corridors and public benefits in lieu of the LCP required on-site view corridor. Specifically, the LCP amendment allows the City to consider permitting an off-site view corridor in lieu of an on-site view corridor where the off-site visual resource improvement will provide a greater public benefit than what would otherwise be provided through the on-site view corridor. Notably, any off-site visual resource benefit must span the entire width of a beachfront parcel and be at least five (5) percent wider than the view corridor or corridors that would otherwise be required on the project site. The potential off-site view parcel shall be located adjacent to at least one publicly owned beachfront parcel that affords ocean view and, to the extent feasible, be located in the same geographic portion of the City as the project site. Any unimproved parcel to be used as an off-site view corridor must otherwise be suitable for the development of a habitable structure or other primary use in that there are no geotechnical hazards or other constraints present that would render the parcel unsafe. In addition the substitution of an off-site view parcel for a required on-site view corridor shall be effectuated by the recordation of an open space deed restriction and transfer of the View Parcel in fee title to a public entity.

On November 14, 2011, the City's Council accepted the Coastal Commission's modifications in full, and adopted the ordinance revising its LCP. Finally, on January 11, 2012, the Coastal Commission confirmed that the City's adoption of the LCP Amendment conformed with the Coastal Commission's actions and therefore, the LCP, as amended is now effectively certified. As a result of the LCP Amendment effectiveness, the applicant is now processing these coastal development permit amendments (4-00-057-A3 & 4-01-100-A4) to modify the Public View Corridor Special Conditions to delete the requirement to maintain the on-site view corridors,

including the execution and recordation of deed restrictions which provided that no less than twenty percent of the lineal frontage of each project site shall be maintained as a view corridor, and substitute the requirement for the dedication in fee of an off-site view corridor parcel that is at least twenty-five percent wider and meets all the requirements in Section 6.5(E)(2) of the Malibu LIP.

#### Off-Site View Corridor Parcel

The applicant has already identified a possible 60-foot wide off-site view corridor mitigation parcel located at 19862 Pacific Coast Highway, Malibu that the applicant asserts can meet all of the requirements of an off-site view corridor parcel in the Malibu LIP Section 6.5(E)(2). This proposed off-site view corridor parcel is currently owned by the applicant and is currently developed with an existing single family residence. The applicant has submitted a separate CDP application to the City of Malibu for the demolition of the residence and removal of all existing development on the off-site view corridor parcel. In this way, the site can be cleared before the open space deed restriction is recorded and the site is dedicated in fee title to a public agency.

The proposed off-site view corridor would provide 60 feet of contiguous coastal views through the demolition of an existing residence that obstructs all views of the ocean. This off-site parcel would be immediately adjacent to a 65-foot wide parcel owned by the State of California and is utilized by the California Department of Transportation (Caltrans) as an ocean-front public viewing platform known as Vista Point. The applicant has approached the Mountains Recreation and Conservation Authority (MRCA) about accepting the fee title dedication of this off-site view corridor parcel once all approvals are obtained, the site is cleared and an open space deed restriction has been recorded against the property's title. At its August 7, 2012 meeting, the MRCA governing board authorized its staff to accept the fee title dedication.

#### **B. PAST COMMISSION ACTION**

Coastal Development Permit No. 4-00-057 (Morton) was approved by the Commission on February 13, 2001 for the demolition of two existing single family residences and a 65 foot long bulkhead; construction of a new 5,425 sq. ft. single family residence with an attached 400 sq. ft. garage, driveway, privacy wall, 125 foot long bulkhead, and 50 foot long return wall; installation of a new alternative septic system; and performance of approximately 350 cu. yds. of grading (excavation). In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck stringline to the ambulatory mean high tide line and the reconstruction of an existing five foot wide public sidewalk located between Pacific Coast Highway and the proposed development. Coastal Development Permit No. 4-00-057 was approved with twelve (12) special conditions regarding (1) geologic recommendations, (2) landscaping plans, (3) construction responsibilities (4) sign restriction, (5) offer to dedicate lateral public access, (6) assumption of risk/shoreline protection, (7) limited term for shoreline protection deed restriction, (8) drainage and polluted runoff control, (9) required approvals, (10) construction of sidewalk, (11) removal of existing bulkhead, and (12) public view corridor. One deed restriction was recorded against the subject property in

compliance of the three conditions of approval that required a deed restriction, including a 5 foot wide view and a 16 foot wide public view corridor on the subject property to satisfy special condition No. 12 [Instrument Number 01-0771905, recorded May 4, 2001].

On August 8, 2001, Commission staff received Coastal Development Permit Amendment application No. 4-00-057-A1 requesting to change the approved bulkhead from treated wood to concrete by combining bulkhead and dwelling piles. On January 17, 2002, the permit amendment application was withdrawn by the applicant. On April 17, 2009, Commission staff received a second amendment request, Coastal Development Permit Amendment application No. 4-00-057-A2, proposing to modify Special Condition 12 and related deed restriction to replace the on-site view corridor dedication requirement with an off-site view corridor dedication requirement and monetary contribution to the city's development of Legacy Park which is similar to the permit amendment that is the subject of this staff report. This permit amendment application was determined by Commission staff to be inconsistent with the Malibu LCP and therefore to lessen or avoid the intended effect of the permit, and pursuant to the requirements of Section 13166 of the California Coastal Commission Regulations (Calif. Code of Regs., Title 14, Division 5.5), the amendment application was rejected.

Coastal Development Permit No. 4-01-100 (Morton) was approved by the Commission on December 11, 2001, for the demolition of an existing single family residence including decks, fencing, paved areas and bulkhead; construct a new 24 ft. high, 1,175 sq. ft. single family residence with 400 sq. ft. attached garage, driveway and parking court, bulkhead and return wall, swimming pool, wood deck, and stairs, 6 ft. high stucco privacy wall, three 6 ft. high wrought iron gates; install a secondary treatment septic system; and perform approximately 200 cu. yds. of grading. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck dripline to the ambulatory mean high tide line and the construction of a five foot wide public concrete sidewalk located between Pacific Coast Highway and the proposed development. Coastal Development Permit No. 4-01-100 was approved with thirteen (13) special conditions regarding (1) geologic recommendations, (2) drainage and polluted runoff control plans, (3) landscaping and erosion control plans (4) assumption of risk/shoreline protection, (5) offer to dedicate lateral public access, (6) public view corridor, (7) removal of existing bulkhead, (8) limited term for shoreline protection deed restriction, (9) construction of sidewalk, (10) pool drainage and maintenance, (11) construction responsibilities, (12) public view corridor, and (13) revised plans. One deed restriction was recorded against the subject property in compliance of the three conditions of approval that required a deed restriction, including two 5 foot wide public view corridors on the subject property to satisfy Special Condition No. 6 [Instrument Number 04-0523901, recorded March 4, 2001].

On September 10, 2003, Commission staff approved Coastal Development Permit Amendment No. 4-01-100-A1 requesting to amend permit to revise plans to increase 1<sup>st</sup> floor area from 650 sq. ft. to 850 sq. ft., increase 2<sup>nd</sup> floor area from 525 sq. ft. to 1,000 sq. ft., increase pool size, decrease paved area from 2,118 to 1,613 sq. ft., and install alternative septic system. On February 19, 2004, Commission staff approved a second amendment request, Coastal Development Permit Amendment No. 4-01-100-A2, to amend Special Condition 13 (Revised Plans) to require a revised set of plans that show the change in design elevation for the residence, deck and pool shell. On April 17, 2009, Commission staff received a third amendment request, Coastal Development Permit Amendment application No. 4-01-100-A3, proposing to modify

Special Condition 6 and related deed restriction to replace the on-site view corridor dedication requirement with an off-site view corridor dedication requirement and monetary contribution to the city's development of Legacy Park which is similar to the permit amendments that are the subject of this staff report. This permit amendment application was determined by Commission staff to be inconsistent with the Malibu LCP and therefore to lessen or avoid the intended effect of the permit, and pursuant to the requirements of Section 13166 of the California Coastal Commission Regulations (Calif. Code of Regs., Title 14, Division 5.5), the amendment application was rejected.

### **C. VISUAL RESOURCES**

The Malibu LCP provides 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 Malibu LCP requires that new development be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads and public viewing areas. Section 30251 of the Coastal Act 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, 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, both the certified Malibu Land Use Plan and Local Implementation Plan contain scenic and visual resource protection policies and ordinance requirements to carry out the provisions of the Coastal Act and the LUP, respectively. The primary intent of these policies is to require that new development is sited and designed to minimize impacts to visual resources, and where feasible, to preserve bluewater ocean views by limiting the height and siting of structures to maintain views over the site and/or to provide view corridors to maintain an ocean view through the site. The following policies from the Land Use Plan (LUP) portion of the LCP are applicable in this case:

- 6.1 The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.
- 6.2 Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.
- 6.3 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:

- a. Pacific Coast Highway
- b. Decker Canyon Road
- c. Encinal Canyon Road
- d. Kanan Dume Road
- e. Latigo Canyon Road
- f. Corral Canyon Road
- g. Malibu Canyon Road
- h. 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.
- 6.12 All new structures shall be sited and designed to minimize impacts to visual resources by:
  - a. Ensuring visual compatibility with the character of surrounding areas.
  - b. Avoiding large cantilevers or understories.
  - c. Setting back higher elements of the structure toward the center or uphill portion of the building.
- 6.13 New development in areas visible from scenic roads or public viewing areas, shall incorporate colors and exterior materials that are compatible with the surrounding landscape. The use of highly reflective materials shall be prohibited.
- 6.15 Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.
- 6.17 Where parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive descend from the roadway, new development shall be sited and designed to preserve bluewater ocean views by:
  - a. Allowing structures to extend no higher than the road grade adjacent to the project site, where feasible.

- b. Limiting structures to one story in height, if necessary, to ensure bluewater views are maintained over the entire site.
- c. Setting fences away from the road edge and limiting the height of fences or walls to no higher than adjacent road grade, with the exception of fences that are composed of visually permeable design and materials.
- d. Using native vegetation types with a maximum growth in height and located such that landscaping will not extend above road grade.

6.33 The Pacific Coast Highway corridor shall be protected as a scenic highway and significant viewshed.

In addition, the following LUP and LIP provisions, as amended by LCP Amendment 2-10, are specifically applicable in this case. LCP Amendment 2-10 was approved by the Commission on July 14, 2011, and became effective on January 11, 2012. Both the LUP and LIP, as amended, now specifically allow for the substitution of an off-site view corridor and public benefits in lieu of the LCP required on-site view corridor. LUP Section 6.18, as amended, states:

- 6.18 For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, new development shall provide a view corridor on the project site, that meets the following criteria:
- a. Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site
  - b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor.
  - c. No portion of any structure shall extend into the view corridor.
  - d. Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.
  - e. In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 70 percent maximum of the total lineal frontage of the overall project site and that the remaining 30 percent is maintained as one contiguous view corridor.
  - f. The requirements of Section 6.18 may be satisfied by providing an off-site view corridor that preserves and enhances coastal views from Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive. The required off-site view corridor shall span the entire width of a beachfront parcel and be at least twenty-five (25) percent wider than the view corridor or corridors that would otherwise be required on the project site. Potential off-site view parcels shall be located adjacent to at least one publicly owned beachfront parcel that affords ocean views, which parcel was publicly owned as of the effective date of the Land Use Plan amendment that added Section 6.18.f, and, to the extent feasible, be located in the same geographic portion of the City as the project site. The off-site view corridor must provide public visual resource benefits that are greater than what would otherwise be provided through an on-site view corridor. Public beach access and accessways shall be permitted uses on the view corridor mitigation site. Any unimproved parcel to be used as an off-site view corridor must otherwise be suitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that there are legitimate concerns over whether a proposed view corridor parcel, could otherwise be suitable for the development of a habitable structure

or other primary constraints, the proposed view corridor parcel shall be rejected as inadequate and inconsistent with the intent of this provision.

If deemed necessary by the decision-making body to satisfy the findings of this subsection, the applicant may, in addition to providing an off-site view corridor consistent with the above requirements undertake or fund all or a portion of an off-site measure, project, or program that provides additional public visual resource benefits.

LIP Section 6.5(E)(2), which, as amended states:

6.5 (E)(2) Where the topography of the project site does not permit the siting or design of a structure that is located below road grade, new development shall provide an ocean view corridor on the project site by incorporating the following measures.

- a. Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.
- b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. For lots greater than 50 feet in width, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side, provided that each foot of lot width greater than 50 feet is added to the view corridor. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views. Sites shall not be designed so as to provide for parking within these designated view corridors.
- c. No portion of any structure shall extend into the view corridor above the elevation of the adjacent street.
- d. Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.
- e. In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 80 percent maximum of the total lineal frontage of the overall project site and that the remaining 20 percent is maintained as one contiguous view corridor.
- f. The requirements of Section 6.5(E)(2) may be satisfied by providing an off-site view corridor that preserves and enhances coastal views from Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive. The requirements of Section 6.5(E)(2) may be deemed satisfied by an off-site view corridor if the decision making body makes the findings required in 1 through 6 below and the View Parcel has been dedicated in accordance with Section 6.5(E)(2)(g):
  - (1) The proposed off-site view corridor parcel (the "View Parcel") is a beachfront parcel that affords public views of the ocean and will provide public visual resources benefits that are greater than what would otherwise be provided through an on-site view corridor;
  - (2) The View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views, which parcel was publicly owned as the effective date of the Local Implementation Plan amendment that added Section 6.5(2)(f), and, to the extent feasible, be located in the same geographic portion of the City as the project site;

- (3) The off-site view corridor shall be provided across the entirety of the View Parcel and shall be at least twenty-five (25) percent wider than the view corridor(s) that would otherwise be required on the project site;
  - (4) There are no geotechnical hazards or other constraints present on or near the View Parcel that could otherwise render the View Parcel unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that the proposed view corridor parcel is not suitable for the development of a habitable structure or other primary use due the presence of geotechnical hazard or other constraints, the proposed view corridor parcel shall be rejected as inadequate and inconsistent with the intent of this provision.
  - (5) Public viewing, public beach access and accessways shall be permitted used on the dedicated View Parcel. Any physical development of facilities or structures to enhance public views or public access shall conform to the applicable standards, provisions, and requirements of the Malibu LCP.
  - (6) If deemed necessary by the decision-making body to satisfy the findings of this subsection, the applicant may, in addition to providing an off-site view corridor consistent with the above requirements, undertake or fund all or a portion of an off-site measure, project, or program that provides additional public visual resource benefits.
- g. The substitution of an off-site View Parcel for a required on-site view corridor shall be effectuated by the recordation of an open space deed restriction and transfer of the View Parcel in fee title to a public entity, including the following requirements and restrictions:
- (1) Recordation with the Los Angeles County Recorder of an open space deed restriction that applies to the entirety of the View Parcel(s), that ensures that any future development on the lot(s) is limited to only those improvements necessary to provide for public view enhancement or public beach access such as benches and visually permeable fencing, maintenance of roads, public accessways, and utilities consistent with existing easements; and shoreline protection if necessary to protect existing development and that restrictions can be enforced, the text of which has been approved pursuant to procedures in Section 13.19 of the Malibu LIP (recorded legal documents); and,
  - (2) Evidence that fee title to the donor site has been successfully transferred to a public entity after the recordation of a deed restriction listed in the prior paragraph and that the document effectuating the conveyance has been recorded with the Los Angeles County Recorder.

## **1. Adverse Effects to Visual Resources**

The project sites are located on Carbon Beach, a built-out area of Malibu primarily consisting of residential development. The Commission notes that the visual quality of the Carbon Beach area in relation to public views from Pacific Coast Highway has been significantly degraded from past residential development. Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding areas which are only accessible from Pacific Coast Highway. Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast Highway and the ocean. Specifically,

Commission notes that when residential structures are located immediately adjacent to each other, or when large individual residential structures are constructed across several contiguous lots, such development creates a wall-like effect when viewed from Pacific Coast Highway. This type of development limits the public's ability to view the coast or ocean to only those few parcels which have not yet been developed. Such development, when viewed on a regional basis, results in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

Therefore, in past permit actions and in certifying the Malibu Local Coastal Program, in order to protect public views of the ocean from public viewing areas and to enhance visual quality along the coast, the Commission has required that new residential development, be designed consistent with the provision of a public view corridor of no less than 20% of the width of the lineal frontage of the subject site to provide for unobstructed public views of the beach and ocean from Pacific Coast Highway over a portion of the site to mitigate the adverse effects to public views that result from new development along the coast. In this case, both original underlying permits were approved by the Commission with a special condition requiring the provision of a public view corridor on each of the project sites. The intent of these permit amendments is to delete the requirement for twenty percent of the width of the site to be maintained as a view corridor, and provide for off-site mitigation through the dedication in fee of an off-site view corridor parcel that is at least twenty-five percent wider.

In a past action, prior to certification of the Malibu LCP, the Commission allowed for the provision of off-site mitigation in lieu of the on-site view corridor for a project that consisted of the demolition of six existing single-family residence and construction of three new single-family residences on Carbon Beach (4-99-146-A2 (Gamma); 4-99-185-A1 (Broad); and 4-99-266-A1 (Daly)). In this action the Commission required the dedication of an entire off-site parcel to the State of California or an appropriate public agency in fee simple. The Commission also required that the off-site view parcel be opened for both visual and physical public access (vertical and lateral). The Commission found that the provision of a larger aggregated off-site view corridor constituted a substantially greater public benefit than the provision of the originally required smaller separate public viewing corridor on each site. The required off-site view parcel was a beachfront lot located on the seaward side of Pacific Coast Highway in the La Costa Beach area of Malibu immediately east of Carbon Beach. In its prior approval of permits for two of the subject parcels (4-99-185 and 4-99-266) the Commission specifically provided that the applicants may obtain an amendment to the coastal permit to delete the required on-site view corridor if the applicants provided for off-site mitigation consisting of both a public view corridor and a public vertical accessway across another parcel in the vicinity of Carbon Beach. The Commission's action was subsequently upheld by the court of appeal. (*La Costa Beach Homeowners' Ass'n v. California Coastal Commission* (2002) 101 Cal.App.4th 804.)

Today, the City of Malibu has its own certified Local Coastal Program and although the project sites are located in the City of Malibu, the Commission retains authority over these coastal development permits issued by the Commission, however the standard of review for the proposed amendments is the policies and provision of the certified Malibu LCP. The Malibu LCP, as amended by LCP Amendment 2-10, now specifically allows for the substitution of an off-site view corridor and public benefits in lieu of the LCP required on-

site view corridor. As such, the Commission finds that the proposed amendments to delete the requirement for twenty percent of the width of each site to be maintained as a view corridor, and substitute the requirement for the dedication in fee of an off-site view corridor parcel that is at least twenty-five percent wider and monetary contribution to the City of Malibu development of Legacy Park will be consistent with the LCP. However, these amendments will result in the loss of public views of the Pacific Ocean from Pacific Coast Highway at the project sites.

## **2. Off-site Mitigation**

The applicant proposes to mitigate the loss of public views resulting from the deletion of the public view corridors on-site by providing a separate off-site view corridor parcel that will provide for greater public benefit in the forms of coastal views and potential public access than what would otherwise be provided through the on-site view corridors. The applicant has already identified a possible 60-foot wide off-site view corridor mitigation parcel located at 19862 Pacific Coast Highway, Malibu and asserts that the parcel meets all of the requirements of an off-site view corridor parcel in the Malibu LIP Section 6.5(E)(2). This proposed off-site view corridor parcel is currently owned by the applicant and is currently developed with an existing single family residence. The applicant has submitted a separate CDP application to the City of Malibu for the demolition of the residence and removal of all existing development on the off-site view corridor parcel. In this way, the site can be cleared before the open space deed restriction is recorded and the site is dedicated in fee title to a public agency. The proposed off-site view corridor would provide 60 feet of contiguous coastal views through the demolition of an existing residence that obstructs all views of the ocean. This off-site parcel would be immediately adjacent to a 65-foot wide parcel owned by the State of California and is utilized by the California Department of Transportation (Caltrans) as an ocean-front public viewing platform known as Vista Point.

The applicant plans to dedicate this 60-foot wide off-site view corridor in lieu of the on-site view corridor requirements of both CDPs 4-00-057 and 4-01-100 located at 22310 and 22258 Pacific Coast Highway. These two coastal development permits required three non-contiguous on-site view corridors spanning over the two lots and requiring a total of 31 linear feet be maintained as public view corridors (exhibit 9). The replacement of the on-site 31 linear feet of view corridor with a 60 foot off-site view corridor would result in a view corridor nearly twice as wide (94% percent wider) than the on-site view corridors. The development of the contiguous 60 foot view corridor furthers the LCP policy of protecting Malibu's scenic and visual qualities to a much greater degree than the existing three non-contiguous on-site view corridors across the project sites that are currently required by the underlying permits. Therefore, to ensure that adverse effects to public views on the project site are adequately mitigated, the revised Public View Corridor conditions requires that, prior to issuance of the permits as amended, the applicant must provide evidence that the applicant has effectuated the off-site view corridor through the recordation of the open space deed restriction and transfer of fee title to a public agency. The open space deed restriction recordation and fee title dedication will be completed as part of the City of Malibu CDP 07-029. The applicant has approached the Mountains Recreation and Conservation Authority (MRCA) about accepting the fee title dedication of this off-site view corridor parcel. At its August 7, 2012 meeting, the MRCA governing board authorized its staff to accept the fee title dedication. After the applicant has completed the recordation of the open space deed

restriction and the fee title dedication of the off-site view corridor parcel, and the subject CDP Amendments have been issued, Commission staff will cooperate with the applicant to remove the deed restrictions on the subject properties that relate to the on-site view corridor requirements.

In addition, the applicant is also proposing to contribute a monetary contribution in the amount of (\$1,000,000) over three years to the City's development of Legacy Park to assist in providing additional off-site public visual resource benefits. The applicant's one million dollar contribution would fund a significant portion of Legacy Park's development. Legacy Park is located two miles west of the project site along Pacific Coast Highway. The enhancements would significantly improve views for passing motorists, pedestrians, and bicyclists on Pacific Coast Highway and other coastal roads. Additionally, park visitors would enjoy expansive views of the Santa Monica Mountains and the coast. The Malibu LCP, as amended by LCP Amendment 2-10, allows for the funding of a portion of an off-site measure that provides additional public visual resource benefits along with providing an off-site view corridor. As such, the applicant's monetary contribution to Legacy Park and the applicant's dedication of an off-site view corridor mitigation parcel together would provide a significantly greater public benefit than the on-site view corridor requirements.

As described above, the applicant's recordation of the open space deed restriction over the entire off-site view corridor parcel and the subsequent dedication in fee title of the property to a public agency will be completed as a condition of the City of Malibu's CDP. In order to ensure that the off-site view corridor has been so restricted and dedicated before the on-site view corridor restrictions are removed, the Commission finds it necessary to require the applicant to provide evidence that the off-site view corridor has been effectuated. For the reasons set forth above, the Commission finds that the proposed amendments, as conditioned, would further the Malibu LCP and Coastal Act's goal of siting and designing structures to minimize impacts on scenic areas visible from scenic roads and public viewing areas. Additionally, as conditioned, the Commission finds that the subject coastal development permit amendments to modify their Public View Corridor special condition is consistent with the visual/scenic resource protection policies of the Malibu LCP.

#### **D. PUBLIC ACCESS AND RECREATION**

The Malibu LCP provides for the protection and enhancement of public access and recreational opportunities in the City of Malibu. The policies contained in the Malibu LCP are intended to maximize the provision of coastal access and recreation consistent with the protection of public rights, private property rights, and coastal resources as provided in Section 30210 of the Coastal Act. Several additional policies contained in the Coastal Act, which are incorporated into the Land Use Plan, work to meet this objective. The following policies from the Coastal Act and Malibu Land Use Plan (LUP) are applicable in this case:

#### **Coastal Act Policies**

#### **Coastal Act Section 30210**

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 or private property owners, and natural resource areas from overuse.

**Coastal Act Section 30212**

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
  - (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
  - (2) adequate access exists nearby, or,
  - (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.
  
- (b) For purposes of this section, "new development" does not include:
  - (1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610
  - (2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.
  - (3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.
  - (4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.
  - (5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

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

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

**Coastal Act Section 30212.5**

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

### **Coastal Act Section 30213**

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreation opportunities are preferred.

The Commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

### **Land Use Plan Policies**

- 2.1 The shoreline, parkland, beaches and trails located within the City provide a wide range of recreational opportunities in natural setting which include hiking equestrian activities, bicycling, camping, educational study, picnicking, and coastal access. These recreational opportunities shall be protected, and where feasible, expanded or enhanced as a resource of regional, state and national importance.
- 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.
- 2.17 Recreation and access opportunities at existing public beaches and parks shall be protected, and where feasible, enhanced as an important coastal resource. Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities. Limitations on time of use or increases in use fees or parking fees, which effect the intensity of use, shall be subject to a coastal development permit.
- 2.67 Facilities to complement public access to and along the shoreline should be provided where feasible and appropriate. This may include parking areas, restroom facilities, picnic tables, or other such improvements. No facilities or amenities, including, but not limited to, those referenced above, shall be required as a prerequisite to the approval of any lateral or vertical accessways OTDs or as a precondition to the approval or construction of said accessways.

The proposed amendments to delete the requirement for twenty percent of the width of the sites to be maintained as view corridors, and provide for off-site mitigation through the dedication in fee of an off-site view corridor parcel that is at least twenty-five percent wider and monetary contribution to fund a portion of the development of Legacy Park in the City of Malibu furthers the Coastal Act's goal of providing maximum coastal access and recreational opportunities. By substituting the existing on-site view corridor requirement with an off-site view corridor requirement that allows public access as a permitted use on the parcel provides for greater public access benefits than what would otherwise be provided through the on-site view corridor parcel alone. Further, the applicant's one million dollar contribution would fund a significant portion of the development of Legacy Park to expand and enhance recreational opportunities and coastal

access including, but not limited to, creating additional passive recreation opportunities for coastal visitors, improve coastal trail systems, help distribute public recreational facilities throughout the city to prevent overcrowding or overuse by the public and provide additional lower cost visitor and recreational facilities. For the reasons set forth above, the Commission finds that the proposed amendments to substitute the requirement of an on-site view corridor requirement with an off-site view corridor and a monetary contribution to the redevelopment of Legacy Park would provide a significantly greater public benefit than what would be provided through an on-site public view corridor and would also further the Malibu LCP and Coastal Act's goal of protecting and enhancing public access and recreational opportunities.

#### **E. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject sites without the required coastal development permit. The unpermitted development includes a front yard concrete wall topped with wood screening, two side yard gates and landscaping and are currently obstructing all three public view corridors that were required by both underlying coastal development permits. As previously mentioned in this staff report, the applicant has sought to retain this unpermitted development by applying for a local government coastal development permit from the City of Malibu (CDP No. 07-029) for after-the fact approval of the as-built development. However, this local permit was appealed on January 15, 2009 (Appeal No. A-4-MAL-09-006). The applicant has submitted a CDP amendment application to the City of Malibu in order to modify CDP 07-029 to bring the development into conformance with the certified LCP. Although development has taken place prior to submission of these permit amendment applications, consideration of these applications by the Commission has been based solely upon the policies and provisions of the certified City of Malibu Local Coastal Program. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit. The Commission's enforcement division will pursue further actions to address this matter.

#### **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

The Commission incorporates its findings on 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 in detail above, the proposed amendments, as conditioned, are consistent with the policies of the Certified Local Coastal Program. Feasible mitigation measures which will minimize all adverse environmental effects have been required as Special Conditions 12 and 6. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen and significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the

CDPs 4-00-057-A3 & 4-01-100-A4 (HMG Carbon Beach Development, LLC)

proposed amendments, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

# **APPENDIX 1**

## **Substantive File Documents**

CDP No. 4-00-057, 4-00-057-A1, and 4-00-057-A2 (Morton); CDP 4-01-100, 4-01-100-A1, 4-01-100-A2, 4-01-100-A3 (Morton); CDP No. 4-99-146-A2 (Gamma); CDP No. 4-99-185-A1 (Broad); CDP No. 4-99-266-A1 (Daly); Appeal No. A-4-MAL-09-006; City of Malibu LCP Amendment No. 2-10.

## **APPENDIX 2**

### **Standard Conditions of CDP 4-00-057**

**1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

**2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

**3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

**4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

**5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **Special Conditions of CDP 4-00-057**

#### **1. Plans Conforming to Geotechnical, Geologic, and Coastal Engineering Consultants' Recommendations**

All recommendations contained in the reports prepared by Pacific Engineering Group dated October 30, 2000; October 5, 2000; June 21, 2000; and September 22, 1998 and by RJR Engineering Group, Inc. dated August 29, 2000; February 29, 2000; December 31, 1998; and September 23, 1998 shall be incorporated into all final design and construction including recommendations concerning foundation, drainage, and septic system plans and must be reviewed and approved by the consultant prior to commencement of development. Prior to issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director of the consultants' review and approval of all final design and construction plans.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultants shall require an amendment to the permit or a new coastal permit.

#### **2. Landscaping Plan**

Prior to issuance of a coastal development permit, the applicant shall submit a landscaping plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and

approval by the Executive Director. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

- (a) The portion of the subject site that is not sandy beach (or subject to wave action) located within the public view corridor and the portion of the site between the proposed residence and Pacific Coast Highway shall be planted within sixty (60) days of receipt of the certificate of occupancy for the residence. Any portion of the site that is subject to wave action shall be maintained as sandy beach area. To minimize the need for irrigation, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Invasive, non-indigenous plant species that tend to supplant native species shall not be used.
- (b) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (c) Vegetation within the public view corridor, as consistent with **Special Condition Twelve (12)**, shall be limited to low-lying vegetation of no more than two feet in height.

### **3. Construction Responsibilities and Debris Removal**

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

### **4. Sign Restriction**

No signs shall be posted on the property subject to this permit unless they are authorized by a coastal development permit or an amendment to this coastal development permit.

### **5. Offer to Dedicate Lateral Public Access**

In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering 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 acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire

width of the property (Assessor's Parcel Numbers 4452-001-013 and 4452-001-014) from the ambulatory mean high tide line landward to the approved deck stringline.

The document shall be recorded free of prior liens that the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances that may affect said interest. 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. The recording document shall include legal descriptions of both the applicant's entire parcels and the easement area. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

#### **6. Assumption of Risk/Shoreline Protection**

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

1. The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
2. The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
3. The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
4. The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
5. No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to Coastal Development Permit 4-00-057, as shown on Exhibit 5, shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code section 30235.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel and an exhibit showing the location of the shoreline protective device approved by this permit. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed

restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

### **7. Limited Term for Shoreline Protective Structure: Deed Restriction**

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:

- A. The applicant acknowledges that the purpose of the shoreline protective device authorized by this permit is solely to protect the septic system on site and that no shoreline protective device is required to protect the residence authorized by this permit. If the proposed septic system is replaced or abandoned for any reason (including the installation of a new sewer system along Pacific Coast Highway) then a new coastal development permit for the shoreline protective device authorized by Coastal Development Permit 4-00-057 shall be required. If a new coastal development permit for the shoreline protective device is not obtained in the event of replacement or abandonment of the septic system, then the shoreline protective device authorized by this permit shall be removed. Removal of the shoreline protective device shall require a coastal development permit or other authorization under the Coastal Act.
- B. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

### **8. Drainage and Polluted Runoff Control Plan**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat or filter stormwater from each runoff event, up to and including the 85<sup>th</sup> percentile, 24 hour runoff event for volume-based BMPs, and/or the 85th percentile, one hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.

- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

## **9. Required Approvals**

Prior to issuance of a coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, evidence of all necessary approvals from the California Department of Transportation for the proposed modifications to the existing sidewalk, or evidence that such approvals are not required.

## **10. Construction of Sidewalk**

In order to implement the applicant's proposal to reconstruct a five foot wide public sidewalk between the proposed development and Pacific Coast Highway, the applicant agrees to construct the five foot wide sidewalk between Pacific Coast Highway and the proposed development shown on the proposed project plans no later than 60 days after the issuance of the certificate of occupancy. No encroachments, such as planters, vegetation, or other structures or obstacles, that would affect the public's ability to use the entire sidewalk area shall be constructed or placed.

## **11. Removal of Existing Bulkhead**

The applicant shall remove the existing bulkhead located on the subject site prior to the construction of the proposed residence.

## **12. Public View Corridor**

A. By acceptance of this coastal development permit **amendment (4-00-057-A3)**, the applicant agrees, on behalf of itself and its successors and assigns, **to provide an off-site view corridor parcel (the "View Parcel") that the decision-maker finds to meet the following criteria(see City of Malibu Local Implementation Plan Section 6.5(E)(2)(f)):**

~~(a) No less than 20 percent of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.~~

- 1. The proposed off-site view corridor parcel (the "View Parcel") is a beachfront parcel that affords public views of the ocean and will provided public visual resource benefits that are greater than what would otherwise be provided through an on-site view corridor;**

2. **The View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views, which parcel was publicly owned as of the effective date of the Local Implementation Plan amendment that added Section 6.5(E)(2)(f), and, to the extent feasible, be located in the same geographic portion of the City as the project site;**
3. **The off-site view corridor shall be provided across the entirety of the View Parcel and shall be at least twenty-five (25) percent wider than the view corridor(s) that otherwise would be required on the project site;**
4. **There are no geotechnical hazards or other constraints present on or near the View Parcel unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that the proposed view corridor parcel is not suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel shall be rejected as inadequate and inconsistent with the intent of this provision.**
5. **Public viewing, public beach access and accessways shall be permitted uses on the dedicated View Parcel. Any physical development of facilities or structures to enhance public views or public access shall conform to the applicable standards, provisions, and requirements of the Malibu LCP.**

~~(b) No structures, vegetation, or obstacles which result in an obstruction of public views of the Pacific Ocean from Pacific Coast Highway shall be permitted within the public view corridor as shown on Exhibit 5.~~

~~(c) Fencing within the public view corridor shall be limited to visually permeable designs and materials, such as wrought iron or non-tinted glass materials. Fencing shall be limited to no more than six feet in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than one inch in thickness/width and shall be placed no less than 12 inches apart in distance. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.~~

~~(d) Vegetation within the public view corridor, as consistent with Special Condition Two (2), shall be limited to low-lying vegetation of no more than two feet in height.~~

~~B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction setting forth the above restriction. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.~~

**B. PRIOR TO ISSUANCE OF THIS PERMIT AMENDMENT (4-00-057-A3), the applicant must provide evidence that the applicant has effectuated the provision of the off-site view corridor on the View Parcel through completion of both of the following:**

**1) The recordation of an open space deed restriction, in a form and content acceptable to the Commission's Executive Director, across the entire View Parcel that restricts uses on the parcel, in an enforceable manner, to: improvements necessary to provide for public view enhancement, public beach access, and public beach accessway consistent with Malibu LIP section 6.5(E)(2)(g)(1); construction and maintenance of roads, public accessways, and utilities consistent with existing easements; and shoreline protection if necessary to protect existing development. The deed restriction document shall be recorded free of prior liens and encumbrances (other than existing easements for roads, trails, and utilities) which the Executive Director determines may affect the interest being conveyed, and shall run with the land on behalf of the people of the State of California, binding all successors and assigns.**

**2) The dedication of the entire property, in fee title, to a public agency acceptable to the Executive Director after recordation of a deed restriction, which dedication has been recorded with the Los Angeles County Recorder.**

#### **Standard Conditions of CDP 4-01-100**

**1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

**2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

**3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

**4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

**5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

#### **Special Conditions of CDP 4-01-100**

##### **1. Plans Conforming to Geologic, Geotechnical, and Coastal Engineering Engineering Recommendations**

All recommendations contained in the Wave Uprush Study Addendum dated August 28, 2001 prepared by Pacific Engineering Group and the Geotechnical Engineering Report dated September 23, 1998 prepared by RJR Engineering Group, Inc. shall be incorporated into all final design and construction including foundations, grading, sewage disposal and drainage. Final plans must be reviewed and approved by the consultants. Prior to issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, two sets of plans with evidence of the consultants' review and approval of all project plans.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, sewage disposal and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultants shall require an amendment to the permit or new coastal permit.

## **2. Drainage and Polluted Runoff Control Plans**

*Prior to the Issuance of the Coastal Development Permit*, the applicants shall submit to the Executive Director for review and written approval, two sets of final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting geotechnical engineer and geologist to ensure the plan is in conformance with consultant's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat or filter stormwater from each runoff event, up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85<sup>th</sup> percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

## **3. Landscaping and Erosion Control Plans**

*Prior to issuance of a coastal development permit*, the applicant shall submit a landscaping plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

- (a) The portion of the subject site that is not sandy beach (or subject to wave action) located within the public view corridor and the portion of the site between the proposed residence and Pacific Coast Highway shall be planted within sixty (60) days of receipt of the certificate of occupancy for the residence. Any portion of the site that is subject to wave action shall be maintained as sandy beach area. To minimize the need for irrigation, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Invasive, non-indigenous plant species that tend to supplant native species shall not be used.
- (b) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (c) Vegetation within the public view corridor, as consistent with **Special Condition No. Six (6)**, shall be limited to low-lying vegetation of no more than two feet in height.

#### **4. Assumption of Risk/Shoreline Protection**

- A. By acceptance of this permit, the applicant acknowledges and agrees to the following:
  - 1. The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
  - 2. The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
  - 3. The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
  - 4. The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
  - 5. No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to Coastal Development Permit 4-01-100, as shown on revised plan pursuant to Special Condition No. Thirteen,

shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code section 30235.

- B. *Prior to issuance of the coastal development permit*, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel and an exhibit showing the location of the shoreline protective device approved by this permit. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

### **5. Offer to Dedicate Lateral Public Access**

In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering 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 acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property (Assessor's Parcel Number 4451-006-012) from the ambulatory mean high tide line landward to the approved deck dripline.

The document shall be recorded free of prior liens that the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances that may affect said interest. 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. The recording document shall include legal descriptions of both the applicant's entire parcel and the easement area. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

### **6. Public View Corridor**

A. By acceptance of this coastal development permit **amendment (4-01-100-A4)**, the applicant agrees, on behalf of itself and its successors and assigns, **to provide an off-site view corridor parcel (the "View Parcel") that the decision-maker finds to meet the following criteria(see City of Malibu Local Implementation Plan Section 6.5(E)(2)(f)):**

~~(1) No less than 20 percent of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.~~

1. **The proposed off-site view corridor parcel (the “View Parcel”) is a beachfront parcel that affords public views of the ocean and will provided public visual resource benefits that are greater than what would otherwise be provided through an on-site view corridor;**
2. **The View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views, which parcel was publicly owned as of the effective date of the Local Implementation Plan amendment that added Section 6.5(E)(2)(f), and, to the extent feasible, be located in the same geographic portion of the City as the project site;**
3. **The off-site view corridor shall be provided across the entirety of the View Parcel and shall be at least twenty-five (25) percent wider that the view corridor(s) that otherwise would be required on the project site;**
4. **There are no geotechnical hazards or other constraints present on or near the View Parcel unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that the proposed view corridor parcel is not suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel shall be rejected as inadequate and inconsistent with the intent of this provision.**
5. **Public viewing, public beach access and accessways shall be permitted uses on the dedicated View Parcel. Any physical development of facilities or structures to enhance public views or public access shall conform to the applicable standards, provisions, and requirements of the Malibu LCP.**

~~(2) No structures, vegetation, or obstacles which result in an obstruction of public views of the Pacific Ocean from Pacific Coast Highway shall be permitted within the public view corridor as shown on Exhibit 3.~~

~~(3) Fencing within the public view corridor shall be limited to visually permeable designs and materials, such as wrought iron or non-tinted glass materials. Fencing shall be limited to no more than six feet in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than one inch in thickness/width and shall be placed no less than 12 inches apart in distance. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.~~

~~(4) Vegetation within the public view corridor, as consistent with Special Condition Three (3), shall be limited to low-lying vegetation of no more than two feet in height.~~

~~B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction setting forth the above restriction. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the~~

~~Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.~~

**B. PRIOR TO ISSUANCE OF THIS PERMIT AMENDMENT (4-01-100-A4), the applicant must provide evidence that the applicant has effectuated the provision of the off-site view corridor through completion of both of the following:**

**1) The recordation of an open space deed restriction, in a form and content acceptable to the Commission's Executive Director, across the entire View Parcel that restricts uses on the parcel, in an enforceable manner, to: improvements necessary to provide for public view enhancement, public beach access, and public beach accessway consistent with Malibu LIP section 6.5(E)(2)(g)(1); construction and maintenance of roads, public accessways, and utilities consistent with existing easements; and shoreline protection if necessary to protect existing development. The deed restriction document shall be recorded free of prior liens and encumbrances (other than existing easements for roads, trails, and utilities) which the Executive Director determines may affect the interest being conveyed, and shall run with the land on behalf of the people of the State of California, binding all successors and assigns.**

**2) The dedication of the entire property, in fee title, to a public agency acceptable to the Executive Director after recordation of a deed restriction, which dedication has been recorded with the Los Angeles County Recorder.**

### **7. Removal of Existing Bulkhead**

The applicant shall remove the existing bulkhead located on the subject site prior to the construction of the proposed residence.

### **8. Limited Term for Shoreline Protective Structure Deed Restriction**

*Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:*

A. The applicant acknowledges that the purpose of the shoreline protective device authorized by this permit is solely to protect the septic system on site and that no shoreline protective device is required to protect the residence authorized by this permit. If the proposed septic system is replaced or abandoned for any reason (including the installation of a new sewer system along Pacific Coast Highway) then a new coastal development permit for the shoreline protective device authorized by Coastal Development Permit 4-01-100 shall be required. If a new coastal development permit for the shoreline protective device is not obtained in the event of replacement or abandonment of the septic system, then the shoreline protective device authorized by this permit shall be removed. Removal of the shoreline protective device shall require a coastal development permit or other authorization under the Coastal Act.

- B. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

### **9. Construction of Sidewalk**

*Prior to issuance of a coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, evidence of all necessary approvals from the California Department of Transportation for the proposed modifications to the existing sidewalk, or evidence that such approvals are not required. In order to implement the applicant's proposal to construct a five foot wide public sidewalk between the proposed development and Pacific Coast Highway, the applicant agrees to construct the five foot wide sidewalk between Pacific Coast Highway and the proposed development shown on the proposed project plans no later than 60 days after the issuance of the certificate of occupancy. No encroachments, such as planters, vegetation, or other structures or obstacles, that would affect the public's ability to use the entire sidewalk area shall be constructed or placed.*

### **10. Pool Drainage and Maintenance**

*Prior to the issuance of the Coastal Development Permit, the applicant shall submit, for review and approval of the Executive Director, a written plan to mitigate the potential for leakage and discharge from the proposed swimming pool. The plan shall at a minimum: 1) identify a non-chlorine based system, such as an ozone treatment system or other similar cleansing system to be used, 2) provide a separate water meter for the pool to allow monitoring of water levels for the pool, 3) identify the materials, such as plastic linings or specially treated concrete to be used to waterproof the underside of the pool to prevent leakage, and information regarding past success rates of these materials, and 4) identify methods to control pool drainage and to control infiltration and run-off resulting from pool drainage and maintenance activities. The permittee shall undertake development and maintenance in compliance with the mitigation plan approved by the Executive Director. No changes shall be made to the plan unless they are approved by the Executive Director.*

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

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

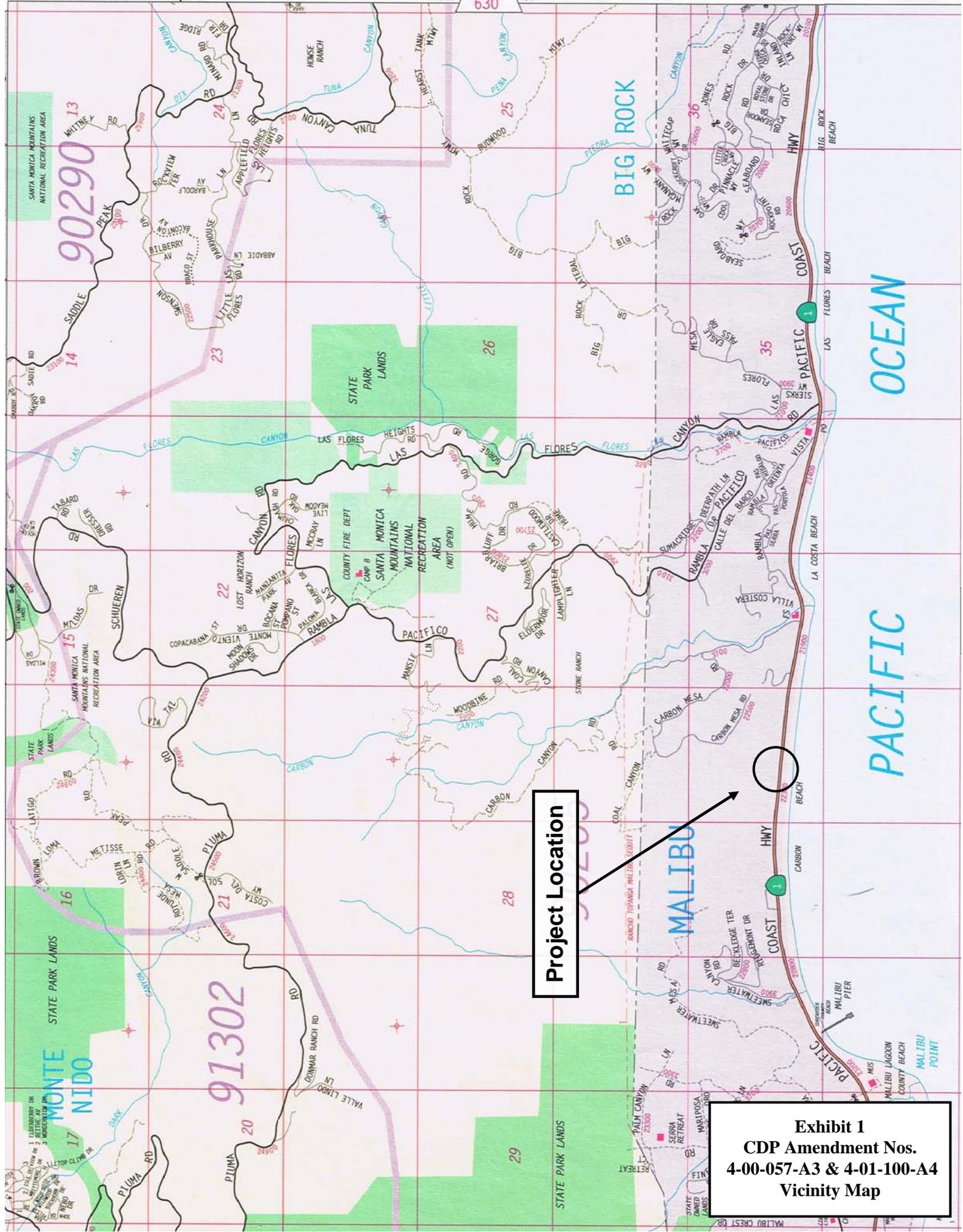
### **12. Sign Restriction**

No signs shall be posted on the property subject to this permit unless they are authorized by a coastal development permit or an amendment to this coastal development permit.

**13. Revised Plans (shown with revisions pursuant to Permit Amendment 4-01-100-A2)**

*Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised project plans prepared by a registered engineer and architect, which show:*

- (a) The lowest elevation of the bottom of concrete grade beams for the residential structure and decks shall not be lower than +13.5 ft. MSL-NGVD 1929 and the pool shell shall not be lower than 10. ft. MSL-NGVD 1929, as recommended in Wave Uprush dated September 15, 2002 prepared by Pacific Engineering Group.
- (b) The plan view of the bulkhead and return wall in relation to the property boundaries, septic system, and wave uprush limit line and cross-sections of the bulkhead and return wall.



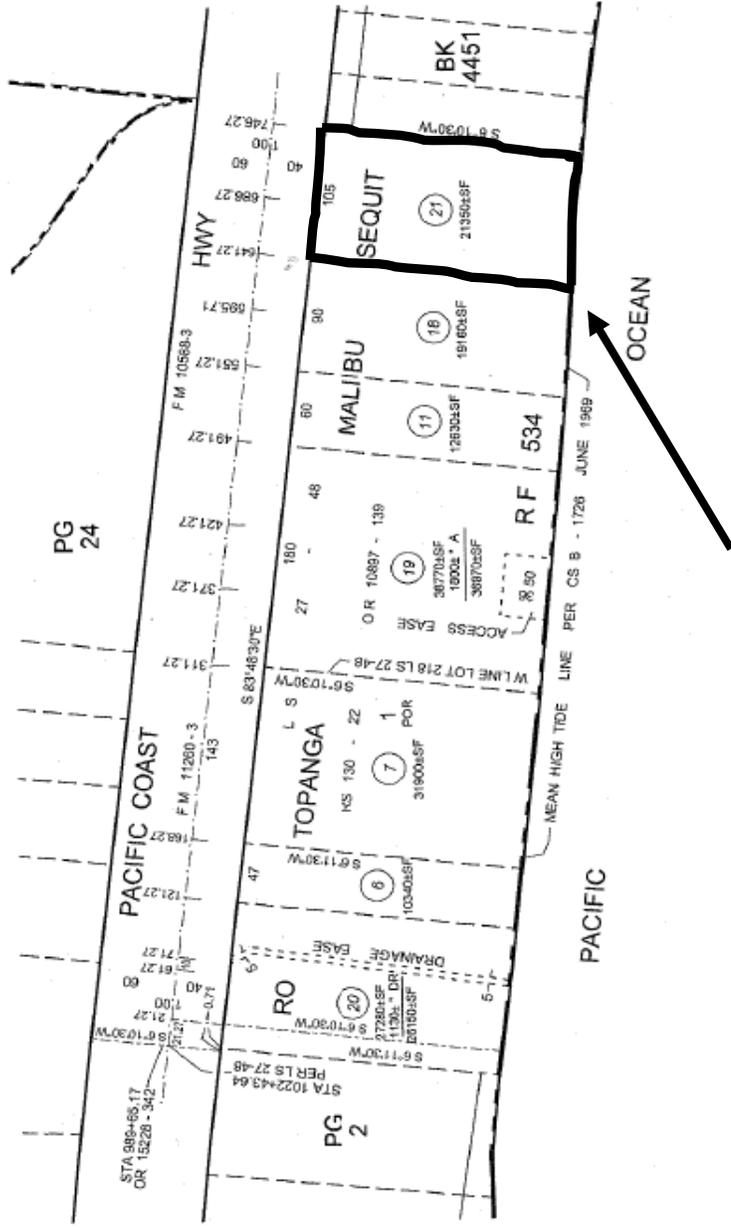
**Project Location**

**Exhibit 1**  
**CDP Amendment Nos.**  
**4-00-057-A3 & 4-01-100-A4**  
**Vicinity Map**

2005



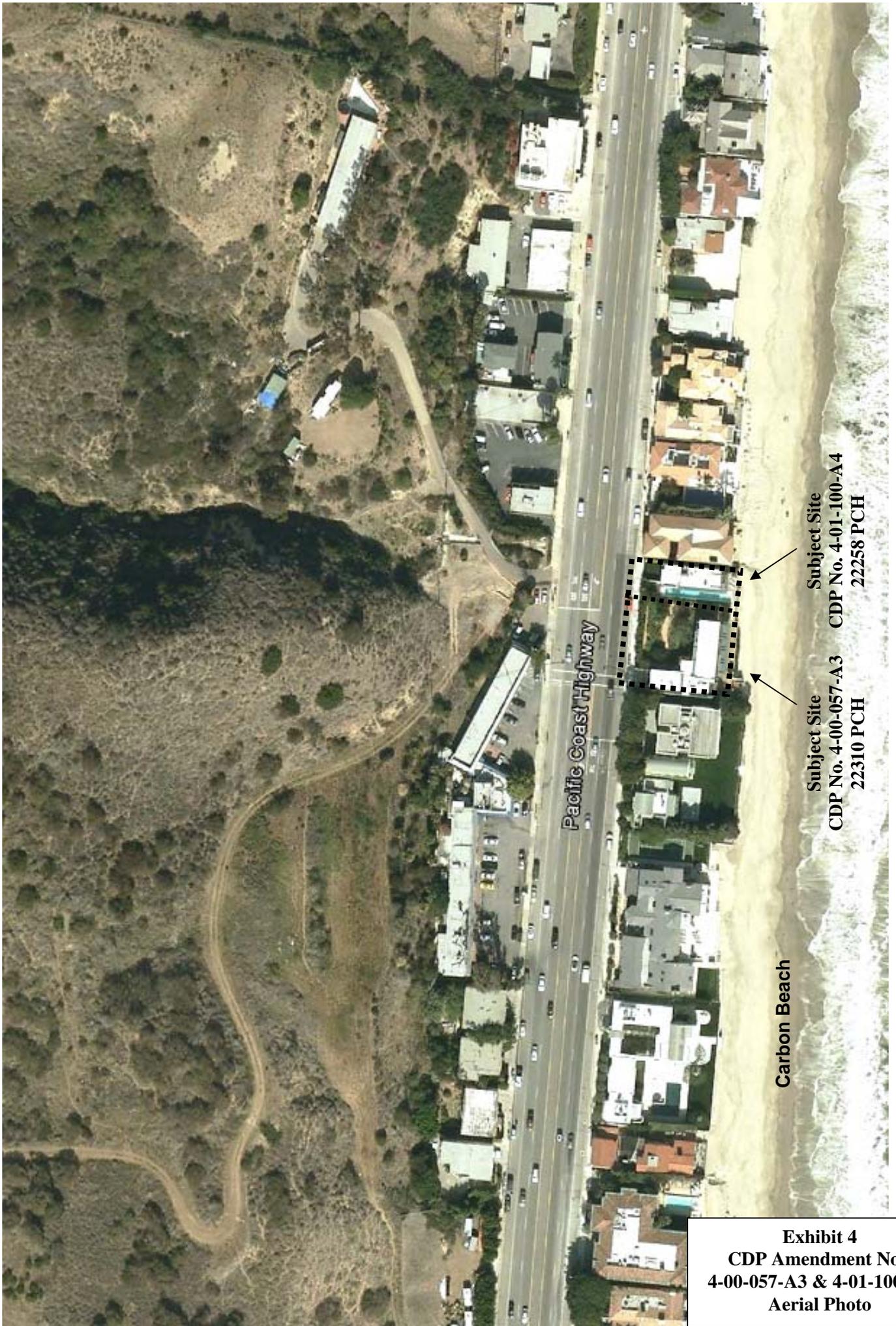
MAPPING AND GIS  
SERVICES  
SCALE 1" = 100'



**Subject Site for CDP  
Amendment No. 4-00-057-A4  
APN: 4452-001-021**

**Exhibit 2  
CDP Amendment Nos.  
4-00-057-A3 & 4-01-100-A4  
Parcel Map APN: 4452-001-021**





Pacific Coast Highway

Carbon Beach

Subject Site  
CDP No. 4-00-057-A3  
22310 PCH

Subject Site  
CDP No. 4-01-100-A4  
22258 PCH

**Exhibit 4**  
**CDP Amendment Nos.**  
**4-00-057-A3 & 4-01-100-A4**  
**Aerial Photo**



## CALIFORNIA COASTAL COMMISSION

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



Page 1 of 7  
Date: May 29, 2001  
Permit Application No. 4-00-057

COASTAL DEVELOPMENT PERMIT

On February 13, 2001, the California Coastal Commission granted to Peter Morton, permit 4-00-057, subject to the attached Standard and Special Conditions, for development consisting of: Demolition of two existing single family residences and a 65 foot long bulkhead; construction of a new 5,425 square foot single family residence with an attached 400 square foot garage, driveway, privacy wall, 125 foot long bulkhead, and 50 foot long return wall; installation of a new alternative septic system; and performance of approximately 350 cubic yards of grading (excavation). In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck stringline to the ambulatory mean high tide line and the reconstruction of an existing five foot wide public sidewalk located between Pacific Coast Highway and the proposed development. This permit is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 22306 and 22310 Pacific Coast Highway, Malibu.

Issued on behalf of the California Coastal Commission by,

PETER DOUGLAS  
Executive Director

  
By: Sabrina Haswell  
Coastal Planner

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

\_\_\_\_\_ Date

\_\_\_\_\_ Perm

**Exhibit 6**  
**CDP Amendment Nos.**  
**4-00-057-A3 & 4-01-100-A4**  
**CDP No. 4-00-057 Permit**

## COASTAL DEVELOPMENT PERMIT

Page 2 of 7  
Permit Application No. 4-00-057

### STANDARD CONDITIONS:

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

### SPECIAL CONDITIONS:

#### **1. Plans Conforming to Geotechnical, Geologic, and Coastal Engineering Consultants' Recommendations**

All recommendations contained in the reports prepared by Pacific Engineering Group dated October 30, 2000; October 5, 2000; June 21, 2000; and September 22, 1998 and by RJR Engineering Group, Inc. dated August 29, 2000; February 29, 2000; December 31, 1998; and September 23, 1998 shall be incorporated into all final design and construction including recommendations concerning foundation, drainage, and septic system plans and must be reviewed and approved by the consultant prior to commencement of development. Prior to issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director of the consultants' review and approval of all final design and construction plans.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultants shall require an amendment to the permit or a new coastal permit.

## COASTAL DEVELOPMENT PERMIT

Page 3 of 7  
Permit Application No. 4-00-057

### 2. Landscaping Plan

Prior to issuance of a coastal development permit, the applicant shall submit a landscaping plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

- (a) The portion of the subject site that is not sandy beach (or subject to wave action) located within the public view corridor and the portion of the site between the proposed residence and Pacific Coast Highway shall be planted within sixty (60) days of receipt of the certificate of occupancy for the residence. Any portion of the site that is subject to wave action shall be maintained as sandy beach area. To minimize the need for irrigation, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Invasive, non-indigenous plant species that tend to supplant native species shall not be used.
- (b) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (c) Vegetation within the public view corridor, as consistent with **Special Condition Twelve (12)**, shall be limited to low-lying vegetation of no more than two feet in height.

### 3. Construction Responsibilities and Debris Removal

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

### 4. Sign Restriction

No signs shall be posted on the property subject to this permit unless they are authorized by a coastal development permit or an amendment to this coastal development permit.

## COASTAL DEVELOPMENT PERMIT

Page 4 of 7  
Permit Application No. 4-00-057

### **5. Offer to Dedicate Lateral Public Access**

In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, **the applicant** agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering 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 acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property (Assessor's Parcel Numbers 4452-001-013 and 4452-001-014) from the ambulatory mean high tide line landward to the approved deck stringline.

The document shall be recorded free of prior liens that the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances that may affect said interest. 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. The recording document shall include legal descriptions of both the applicant's entire parcels and the easement area. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

### **6. Assumption of Risk/Shoreline Protection**

- A. By acceptance of this permit, the applicant acknowledges and agrees to the following:
1. The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
  2. The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
  3. The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
  4. The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

## COASTAL DEVELOPMENT PERMIT

Page 5 of 7  
Permit Application No. 4-00-057

5. No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to Coastal Development Permit 4-00-057, as shown on Exhibit 5, shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code section 30235.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel and an exhibit showing the location of the shoreline protective device approved by this permit. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

### **7. Limited Term for Shoreline Protective Structure: Deed Restriction**

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:

- A. The applicant acknowledges that the purpose of the shoreline protective device authorized by this permit is solely to protect the septic system on site and that no shoreline protective device is required to protect the residence authorized by this permit. If the proposed septic system is replaced or abandoned for any reason (including the installation of a new sewer system along Pacific Coast Highway) then a new coastal development permit for the shoreline protective device authorized by Coastal Development Permit 4-00-057 shall be required. If a new coastal development permit for the shoreline protective device is not obtained in the event of replacement or abandonment of the septic system, then the shoreline protective device authorized by this permit shall be removed. Removal of the shoreline protective device shall require a coastal development permit or other authorization under the Coastal Act.
- B. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## COASTAL DEVELOPMENT PERMIT

Page 6 of 7  
Permit Application No. 4-00-057

### **8. Drainage and Polluted Runoff Control Plan**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat or filter stormwater from each runoff event, up to and including the 85<sup>th</sup> percentile, 24 hour runoff event for volume-based BMPs, and/or the 85th percentile, one hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

### **9. Required Approvals**

Prior to issuance of a coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, evidence of all necessary approvals from the California Department of Transportation for the proposed modifications to the existing sidewalk, or evidence that such approvals are not required.

## COASTAL DEVELOPMENT PERMIT

Page 7 of 7  
Permit Application No. 4-00-057

### **10. Construction of Sidewalk**

In order to implement the applicant's proposal to reconstruct a five foot wide public sidewalk between the proposed development and Pacific Coast Highway, the applicant agrees to construct the five foot wide sidewalk between Pacific Coast Highway and the proposed development shown on the proposed project plans no later than 60 days after the issuance of the certificate of occupancy. No encroachments, such as planters, vegetation, or other structures or obstacles, that would affect the public's ability to use the entire sidewalk area shall be constructed or placed.

### **11. Removal of Existing Bulkhead**

The applicant shall remove the existing bulkhead located on the subject site prior to the construction of the proposed residence.

### **12. Public View Corridor**

A. By acceptance of this coastal development permit, the applicant agrees, on behalf of itself and its successors and assigns that:

- (a) No less than 20 percent of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.
- (b) No structures, vegetation, or obstacles which result in an obstruction of public views of the Pacific Ocean from Pacific Coast Highway shall be permitted within the public view corridor as shown on Exhibit 5.
- (c) Fencing within the public view corridor shall be limited to visually permeable designs and materials, such as wrought iron or non-tinted glass materials. Fencing shall be limited to no more than six feet in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than one inch in thickness/width and shall be placed no less than 12 inches apart in distance. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.
- (d) Vegetation within the public view corridor, as consistent with **Special Condition Two (2)**, shall be limited to low-lying vegetation of no more than two feet in height.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction setting forth the above restriction. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

**CALIFORNIA COASTAL COMMISSION**

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



Page 1 of 7  
 Date: March 24, 2004  
 Permit Application No. 4-01-100

**COASTAL DEVELOPMENT PERMIT**

On December 11, 2001, the California Coastal Commission granted to Red, White & Blue Pictures, permit 4-01-100, subject to the attached Standard and Special Conditions, for development consisting of: Proposal to demolish existing single family residence including decks, fencing, paved areas and bulkhead; construct a new 24 ft. high, 1,175 sq. ft single family residence with 400 sq. ft. attached garage, driveway and parking court, bulkhead and return wall, swimming pool, wood deck and stairs, 6 ft. high stucco privacy wall, three 6 ft. high wrought iron gates; install a secondary treatment septic system; and perform approximately 200 cu. yds. grading (100 cu. yds. excavation and 100 cu. yds. fill). The proposal also includes an offer to dedicate lateral access easement over the southern beachfront portion of the site as measured from the deck dripline to the ambulatory mean high tide line and the construction of a five foot wide public concrete sidewalk between Pacific Coast Highway and the proposed development. Amended to: Revise plans to increase 1st floor area from 650 sq. ft. to 850 sq. ft., increase 2nd floor area from 525 sq. ft. to 1,000 sq. ft., increase pool size, decrease paved area from 2,118 to 1,613 sq. ft., and install alternative septic system. No changes proposed to building or deck stringlines, view corridors, or offer-to-dedicate lateral public access easement. Amended to: Modify Special Condition No. Thirteen (13). This permit is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 22258 Pacific Coast Highway, Malibu (Los Angeles County).

Issued on behalf of the California Coastal Commission by,

PETER DOUGLAS  
 Executive Director

By: Kara Kemmler  
 Coastal Planner

**ACKNOWLEDGMENT:**

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Permit

**Exhibit 7**  
**CDP Amendment Nos.**  
**4-00-057-A3 & 4-01-100-A4**  
**CDP No. 4-01-100 Permit**

**STANDARD CONDITIONS:**

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

**SPECIAL CONDITIONS:**

1. **Plans Conforming to Geologic, Geotechnical, and Coastal Engineering Recommendations**

All recommendations contained in the Wave Uprush Study Addendum dated August 28, 2001 prepared by Pacific Engineering Group and the Geotechnical Engineering Report dated September 23, 1998 prepared by RJR Engineering Group, Inc. shall be incorporated into all final design and construction including *foundations, grading, sewage disposal and drainage*. Final plans must be reviewed and approved by the consultants. *Prior to issuance of the coastal development permit*, the applicant shall submit, for review and approval by the Executive Director, two sets of plans with evidence of the consultants' review and approval of all project plans.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, sewage disposal and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultants shall require an amendment to the permit or a new coastal permit.

2. **Drainage and Polluted Runoff Control Plans**

**Prior to the Issuance of the Coastal Development Permit**, the applicants shall submit to the Executive Director for review and written approval, two sets of final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The

plan shall be reviewed and approved by the consulting geotechnical engineer and geologist to ensure the plan is in conformance with consultant's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat or filter stormwater from each runoff event, up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85<sup>th</sup> percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

### **3. Landscaping and Erosion Control Plans**

Prior to issuance of a coastal development permit, the applicant shall submit a landscaping plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

- (a) The portion of the subject site that is not sandy beach (or subject to wave action) located within the public view corridor and the portion of the site between the proposed residence and Pacific Coast Highway shall be planted within sixty (60) days of receipt of the certificate of occupancy for the residence. Any portion of the site that is subject to wave action shall be maintained as sandy beach area. To minimize the need for irrigation, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Invasive, non-indigenous plant species that tend to supplant native species shall not be used.
- (b) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.

- (c) Vegetation within the public view corridor, as consistent with **Special Condition No. Six (6)**, shall be limited to low-lying vegetation of no more than two feet in height.

**4. Assumption of Risk/Shoreline Protection**

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

- 1) The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
- 2) The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
- 3) The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
- 4) The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 5) No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to Coastal Development Permit 4-01-100, as shown on revised plan pursuant to Special Condition No. Thirteen, shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code section 30235.

B. *Prior to issuance of the coastal development permit*, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel and an exhibit showing the location of the shoreline protective device approved by this permit. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

**5. Offer to Dedicate Lateral Public Access**

In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering 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 acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property (Assessor's Parcel Number 4451-006-012) from the ambulatory mean high tide line landward to the approved deck dripline.

The document shall be recorded free of prior liens that the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances that may affect said interest. 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. The recording document shall include legal descriptions of both the applicant's entire parcel and the easement area. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

#### **6. Public View Corridor**

- A. By acceptance of this coastal development permit, the applicant agrees, on behalf of itself and its successors and assigns that:
- 1) No less than 20 percent of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.
  - 2) No structures, vegetation, or obstacles which result in an obstruction of public views of the Pacific Ocean from Pacific Coast Highway shall be permitted within the public view corridor as shown on Exhibit 3.
  - 3) Fencing within the public view corridor shall be limited to visually permeable designs and materials, such as wrought iron or non-tinted glass materials. Fencing shall be limited to no more than six feet in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than one inch in thickness/width and shall be placed no less than 12 inches apart in distance. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.
  - 4) Vegetation within the public view corridor, as consistent with **Special Condition No. Three (3)**, shall be limited to low-lying vegetation of no more than two feet in height.
- B. *Prior to issuance of the coastal development permit*, the applicant shall record a deed restriction setting forth the above restriction. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

**7. Removal of Existing Bulkhead**

The applicant shall remove the existing bulkhead located on the subject site prior to the construction of the proposed residence.

**8. Limited Term for Shoreline Protective Structure Deed Restriction**

*Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:*

- A. The applicant acknowledges that the purpose of the shoreline protective device authorized by this permit is solely to protect the septic system on site and that no shoreline protective device is required to protect the residence authorized by this permit. If the proposed septic system is replaced or abandoned for any reason (including the installation of a new sewer system along Pacific Coast Highway) then a new coastal development permit for the shoreline protective device authorized by Coastal Development Permit 4-01-100 shall be required. If a new coastal development permit for the shoreline protective device is not obtained in the event of replacement or abandonment of the septic system, then the shoreline protective device authorized by this permit shall be removed. Removal of the shoreline protective device shall require a coastal development permit or other authorization under the Coastal Act.
- B. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

**9. Construction of Sidewalk**

*Prior to issuance of a coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, evidence of all necessary approvals from the California Department of Transportation for the proposed modifications to the existing sidewalk, or evidence that such approvals are not required. In order to implement the applicant's proposal to construct a five foot wide public sidewalk between the proposed development and Pacific Coast Highway, the applicant agrees to construct the five foot wide sidewalk between Pacific Coast Highway and the proposed development shown on the proposed project plans no later than 60 days after the issuance of the certificate of occupancy. No encroachments, such as planters, vegetation, or other structures or obstacles, that would affect the public's ability to use the entire sidewalk area shall be constructed or placed.*

**10. Pool Drainage and Maintenance**

*Prior to the issuance of the Coastal Development Permit, the applicant shall submit, for review and approval of the Executive Director, a written plan to mitigate the potential for leakage and discharge from the proposed swimming pool. The plan shall at a minimum: 1) identify a non-chlorine based system, such as an ozone treatment system or other similar cleansing system to be used, 2) provide a separate water meter for the pool to allow monitoring of water levels for*

the pool, 3) identify the materials, such as plastic linings or specially treated concrete to be used to waterproof the underside of the pool to prevent leakage, and information regarding past success rates of these materials, and 4) identify methods to control pool drainage and to control infiltration and run-off resulting from pool drainage and maintenance activities. The permittee shall undertake development and maintenance in compliance with the mitigation plan approved by the Executive Director. No changes shall be made to the plan unless they are approved by the Executive Director.

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

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

#### **12. Sign Restriction**

No signs shall be posted on the property subject to this permit unless they are authorized by a coastal development permit or an amendment to this coastal development permit.

#### **13. Revised Plans**

*Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised project plans prepared by a registered engineer and architect, which show:*

- (a) The lowest elevation of the bottom of concrete grade beams for the residential structure and decks shall not be lower than +13.5 ft. MSL-NGVD 1929 and the pool shell shall not be lower than 10. ft. MSL-NGVD 1929, as recommended in Wave Uprush Study dated September 15, 2002 prepared by Pacific Engineering Group.
- (b) The plan view of the bulkhead and return wall in relation to the property boundaries, septic system, and wave uprush limit line and cross-sections of the bulkhead and return wall.

**CALIFORNIA COASTAL COMMISSION**

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

# Th 26a



**DATE:** June 30, 2011

**TO:** Commissioners and Interested Persons

**FROM:** John Ainsworth, Deputy Director  
Gary Timm, Coastal Program Manager

**SUBJECT:** City of Malibu Local Coastal Program Amendment No. 2-10 for Public Hearing and Commission Action at the July 14, 2011 Commission Meeting at the Marin Civic Center in San Rafael, CA.

## DESCRIPTION OF THE SUBMITTAL

The City of Malibu's proposed amendment will affect both the Land Use Plan (LUP) and Local Implementation Plan (LIP) portions of its certified Local Coastal Program (LCP). The amendment proposes to amend LUP Policy No. 6.18 and LIP Section No. 6.5(E)(2) (View Corridor Requirements) to allow for the substitution of off-site view corridors and public benefits in lieu of the LCP required on-site view corridor.

## SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission deny the proposed City of Malibu LCP Amendment MAL-MAJ-2-10 as submitted and approve the amendment if modified as suggested. The suggested modifications will provide additional requirements or standards for off-site view corridor sites to insure that such off-site view parcels are permanently restricted as such, are limited in use and location, and will allow for the provision of public access. As modified, the amendment would allow for the provision of a larger aggregate offsite view corridor than would otherwise be provided on site and potential public access to the beach resulting in substantially greater public benefits. The motions to accomplish this are found on Pages 4-7 of this staff report. The standard of review for the changes to the Land Use Plan is whether the amendment meets the requirements of and is consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed changes to the Local Implementation Plan is whether the amendment conforms with and is adequate to carry out the provisions of the Land Use Plan (LUP) portion of the certified City of Malibu Local Coastal Program.

## SUBSTANTIVE FILE DOCUMENTS

City of Malibu City Council Ordinance No. 336 and Resolution No. 09-03 approving Local Coastal Program Amendment 07-001; Local Coastal Program Amendment No. 07-001 Text, dated January 12, 2009; City of Malibu certified Local Coastal Program, adopted September 2002; Coastal Development Permit Nos. 4-99-185 & 4-99-266;

**Exhibit 8**  
**CDP Amendment Nos.**  
**4-00-057-A3 & 4-01-100-A4**  
**City of Malibu LCP Amendment**  
**No. MAL-MAJ-2-10 Staff Report**

Coastal Development Permit Amendment Nos. 4-99-146-A2, 4-99-185-A1 & 4-99-266-A1.

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## I. PROCEDURAL ISSUES

### A. STANDARD OF REVIEW

The Coastal Act provides:

*The commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200)... (Section 30512(c))*

The Coastal Act further provides:

*The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter.*

*...The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken. (Section 30513)*

The standard of review that the Commission uses in reviewing the adequacy of the proposed amendment to the Land Use Plan is whether the Land Use Plan as amended would be consistent with, and meet the requirements of, the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the Local Implementation Plan of the certified Local Coastal Program, pursuant to Section 30513 and 30514(b) of the Coastal Act, is whether the Implementation Plan as modified by the proposed amendment would be in conformance with, and adequate to carry out, the provisions of the Land Use Plan portion of the adopted City of Malibu Local Coastal Program. In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified City of Malibu LUP as guiding policies.

### B. PUBLIC PARTICIPATION

On March 6, 2007, an application for Local Coastal Program Amendment (LCPA) No. 07-001 was submitted to the City of Malibu by David Goldberg of Latham and Watkins, LLP, on behalf of property owner, Peter Morton. The application concerned parcels located at 22258 and 22310 Pacific Coast Highway. Notice of the LCPA submittal was duly noticed in a local newspaper of general circulation, was posted on the subject

property, and mailed to interested parties, regional, state and federal agencies affected by the amendment, local libraries, media, and to the California Coastal Commission.

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held public hearings (Planning Commission Hearing on August 19, October 7, November 17, and December 2, 2008, and a City Council Hearing on January 12, 2009) and received oral and written comments regarding the proposed changes from concerned parties and members of the public. The hearings were noticed to the public by publishing the notice in the local newspaper and by mailing notice to interested parties, consistent with Section 13515 of Title 14 of the California Code of Regulations. Notice of the Coastal Commission hearing for LCP Amendment 2-10 has been distributed to all known interested parties.

### **C. PROCEDURAL REQUIREMENTS**

Pursuant to Section 13551 (b) of Title 14 of the California Code of Regulations, the City resolution for submittal may specify that a Local Coastal Program Amendment will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. The City Council Resolution for this amendment states that the amendment shall become effective only upon certification by the California Coastal Commission of these amendments to the LCP. In this case formal adoption of suggested modifications by the City must take place subsequent to the Commission's action to approve the LCPA and be transmitted to the Executive Director of the Commission for a final determination that the City's action is legally adequate.

## **II. STAFF MOTIONS, RESOLUTIONS, & RECOMMENDATIONS**

Following public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided just prior to each resolution.

### **A. DENIAL OF THE LAND USE PLAN AMENDMENT AS SUBMITTED**

**MOTION I:**        *I move that the Commission certify Amendment MAL-MAJ-2-10 to the City of Malibu Land Use Plan, as submitted by the City of Malibu.*

#### **STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **NO** vote. Following the staff recommendation will result in denial of the land use plan as submitted and adoption of the following resolution. The motion to

certify as submitted passes only upon an affirmative vote of a majority of the appointed Commissioners.

**RESOLUTION TO DENY CERTIFICATION OF THE LAND USE PLAN AMENDMENT AS SUBMITTED:**

The Commission hereby denies certification of Amendment MAL-MAJ-2-10 to the City of Malibu Land Use Plan and adopts the findings set forth below on grounds that the land use plan as modified by the proposed amendment does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the land use plan as submitted.

**B. CERTIFICATION OF THE LAND USE PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS**

**MOTION II:**     *I move that the Commission certify Amendment MAL-MAJ-2-10 to the City of Malibu Land Use Plan, if modified as suggested in this staff report.*

**STAFF RECOMMENDATION TO CERTIFY IF MODIFIED:**

Staff recommends a **YES** vote. Passage of this motion will result in certification of the land use plan with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of a majority of the appointed Commissioners.

**RESOLUTION TO CERTIFY THE LAND USE PLAN WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies Amendment MAL-MAJ-2-10 to the City of Malibu Land Use Plan if modified as suggested and adopts the findings set forth below on grounds that the land use plan as modified by the proposed amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the land use plan if modified.

### **C. DENIAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED**

**MOTION I:** *I move that the Commission reject Local Implementation Plan Amendment No. MAL-MAJ-2-10 as submitted by the City of Malibu.*

#### **STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

#### **RESOLUTION TO DENY CERTIFICATION OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED:**

The Commission hereby denies certification of the City of Malibu Local Implementation Plan Amendment MAL-MAJ-2-10 and adopts the findings set forth below on grounds that the Implementation Plan as modified by the proposed amendment does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment as submitted.

### **D. CERTIFICATION OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS**

**MOTION II:** *I move that the Commission certify Local Implementation Plan Amendment No. MAL-MAJ-2-10 if it is modified as suggested in this staff report.*

#### **STAFF RECOMMENDATION:**

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Plan Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

#### **RESOLUTION TO CERTIFY THE LOCAL IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the City of Malibu Local Implementation Plan Amendment MAL-MAJ-2-10 if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan as modified by the proposed amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

### **III. SUGGESTED MODIFICATIONS TO THE LAND USE PLAN AMENDMENT**

The staff recommends the Commission certify the following, with the modifications as shown below. All new language proposed by the City of Malibu to be added as part of the subject LCP amendment is shown in straight type only since no deletions to existing language is proposed. Language recommended by Commission staff to be inserted is shown in underline. Language recommended by Commission staff to be deleted is shown in ~~strikethrough~~.

<b>SUGGESTED MODIFICATION TO THE LAND USE PLAN</b>
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The amendment to the LUP is as follows:

1. Amend LUP Section 6.18, which addresses View Corridors, to include Subsection f to read as follows:
  - f. The requirements of Section 6.18 may be satisfied by ~~undertaking or funding all or a portion of an offsite alternative measure, project or program, which must include an offsite view corridor of greater lineal frontage, than what would otherwise be required by an onsite view corridor.~~ The offsite view parcel must be providing an offsite view corridor that preserves and enhances coastal views from Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive. The required offsite view corridor shall span the entire width of a beachfront parcel and be at least twenty-five (25) percent wider than the view corridor or corridors that would otherwise be required on the project site. Potential offsite view parcels shall be located adjacent to at least one publicly owned beachfront parcel that affords ocean views and, to the extent feasible, be located in the same geographic portion of the City as the project site. ~~The offsite alternative measure, project, or program and offsite view corridor must provide public visual resource benefits~~

that are greater than what would otherwise be provided through an onsite view corridor. ~~An offsite alternative measure, project, or program shall not include a vertical access component on the parcel providing the offsite view corridor. Public beach access and accessways shall be permitted uses on the view corridor mitigation site.~~ Any unimproved parcel, ~~or portion thereof~~, to be used as an offsite view corridor must otherwise be suitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that there are legitimate concerns over whether a proposed view corridor parcel, ~~or portion thereof~~, could otherwise be suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel ~~may~~ shall be rejected as inadequate and inconsistent with the intent of this provision.

If deemed necessary by the decision-making body to satisfy the findings of this subsection, the applicant may, in addition to providing an offsite view corridor consistent with the above requirements, undertake or fund all or a portion of an offsite measure, project, or program that provides additional public visual resource benefits.

#### IV. SUGGESTED MODIFICATIONS TO THE LOCAL IMPLEMENTATION PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. New language proposed by the City of Malibu to be added as part of the subject LCP amendment is shown in straight type only since no deletions to existing language is proposed. Language recommended by Commission staff to be inserted is shown in underline. Language recommended by Commission staff to be deleted is shown in ~~strikethrough~~.

<b>SUGGESTED MODIFICATION TO THE IMPLEMENTATION PLAN</b>
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Amendments to the LIP are as follows:

A. Amend LIP Section 6.5 (E)(2), which addresses View Corridor Requirements, to include Subsections d f and g to read as follows:

~~d f.~~ The requirements of Section 6.5(E)(2) may be satisfied by ~~undertaking or funding all or a portion of an offsite alternative measure, project or program, in addition to~~ providing an offsite view corridor that preserves and enhances coastal views from Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive. The requirements of Section 6.5(E)(2) may be deemed satisfied by an off-site view corridor if the decision making body finds

that makes the findings required in 1 through 6 below and the View Parcel has been dedicated in accordance with Section 6.5(E)(2)(g):

- (1) the proposed offsite view corridor parcel (the "View Parcel") is a beachfront parcel that affords public views of the ocean and will provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor;
- (2) the View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views and, to the extent feasible, be located in the same geographic portion of the City as the project site;
- (3) the offsite view corridor to be provided is of greater lineal frontage than otherwise would be required onsite shall be provided across the entirety of the View Parcel and shall be at least twenty-five (25) percent wider than the view corridor(s) that otherwise would be required on the project site;
- (4) ~~the offsite alternative measure, project or program and offsite view corridor provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor; and~~
- (5) in the opinion of the decision making body, there are no geotechnical hazards or other constraints present on or near the View Parcel that could otherwise render the View Parcel, or any portion thereof, unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that the proposed view corridor parcel is not suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel shall be rejected as inadequate and inconsistent with the intent of this provision.
- (6) Public viewing, public beach access and accessways shall be permitted uses on the dedicated View Parcel. Any physical development of facilities or structures to enhance public views or public access shall conform to the applicable standards, provisions, and requirements of the Malibu LCP.
- (7) If deemed necessary by the decision-making body to satisfy the findings of this subsection, the applicant may, in addition to providing an offsite view corridor consistent with the above requirements, undertake or fund all or a portion of an offsite measure, project, or program that provides additional public visual resource benefits.

~~An offsite alternative measure, project, or program shall not include a vertical access component on the View Parcel. The remaining portion of a View Parcel, if any, that is not restricted for use as a view corridor, pursuant to this Section, shall be subject to the standard view corridor requirements otherwise applicable to the entire lineal frontage of the View Parcel. If, after considering the width of a proposed offsite view corridor and all other applicable legal and physical constraints on physical development of the View Parcel (including standard view corridor requirements), the remainder of the View Parcel would not allow for the~~

~~development of a primary use consistent with the applicable development standards contained in the LIP, then the remaining lineal frontage of the View Parcel shall be offered as a permanent view corridor, and such excess lineal frontage may be relied upon by the decision-making body in supporting findings (3) and (4) above.~~

- g. The substitution of an off-site View Parcel for a required on-site view corridor shall be effectuated by the recordation of an open space deed restriction and transfer of the View Parcel in fee title to a public entity, including the following requirements and restrictions:
1. Recordation with the Los Angeles County Recorder of an open space deed restriction that applies to the entirety of the View Parcel(s), that ensures that any future development on the lot(s) is limited to only those improvements necessary to provide for public view enhancement or public beach access such as benches and visually permeable fencing, maintenance of roads, public access ways, and utilities consistent with existing easements; and shoreline protection if necessary to protect existing development and that restrictions can be enforced, the text of which has been approved pursuant to procedures in Section 13.19 of the Malibu LIP (recorded legal documents); and,
  2. Evidence that fee title to the donor site has been successfully transferred to a public entity after the recordation of a deed restriction listed in the prior paragraph and that the document effectuating the conveyance has been recorded with the Los Angeles County Recorder.

## **V. FINDINGS FOR DENIAL OF THE CITY OF MALIBU LCP AMENDMENT AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF MALIBU LCP AMENDMENT, IF MODIFIED AS SUGGESTED**

The following findings support the Commission's denial of the Local Coastal Program amendment as submitted and approval of the Local Coastal Program amendment if modified as indicated in Section III (*Suggested Modifications*) above. The Commission hereby finds and declares as follows:

### **A. AMENDMENT DESCRIPTION AND BACKGROUND**

The City of Malibu's proposed LCP amendment consists of changes to the Scenic and Visual Resource policies and provisions contained in Chapter 6 of the Land Use Plan (LUP) portion of the certified LCP and Chapter 6 –Scenic, Visual, and Hillside Resource Protection Ordinance of the Local Implementation Plan (LIP) portion of the certified LCP

to allow for the provision of offsite view corridors and, where applicable, additional public benefits, in lieu of the currently required onsite view corridor for new development. Specifically, the LCPA request proposes amendments to the certified LUP, *View Corridor Requirements* to amend policy 6.18 and to the certified LIP to amend Section 6.5(E)(2), *Ocean Views*. The proposed amendment text is attached as Exhibit 1.

As previously indicated, an application for the subject LCP amendment was originally submitted to the City by David Goldberg of Latham and Watkins, LLP, on behalf of property owner, Peter Morton. The application concerned parcels located at 22258 and 22310 Pacific Coast Highway in Malibu. Mr. Morton received a CDP (4-00-057) from the Commission in 2001 to demolish two existing single-family residences and construct a new single-family residence, garage, bulkhead and septic system. The permit contained a special condition to provide a view corridor across the site consistent with the requirements currently contained in the certified LCP. Specifically, Special Condition Twelve (12) required the applicant to execute and record a deed restriction which provided that no less than 20 percent of the lineal frontage of the project site shall be maintained as a public view corridor. Development within the public view corridor was limited to fencing of visually permeable designs and materials that minimized adverse effects to public views. Further, Special Condition Two (2) required the submittal of a landscape plan to ensure that vegetation within the public view corridor would not block public coastal views. Mr. Morton subsequently built the structures permitted by the CDP but development was not in compliance with the view corridor requirement established by special condition to the permit because a large wall was constructed in the location where the view corridor had been required which completely blocks all views through the site to the ocean. The proposed LCP amendment would allow the onsite view corridor requirement to be replaced by an offsite view parcel requirement and additional public benefits. An amendment to the CDP for the Morton site would also be required from the Commission in order to change the view corridor requirement to allow for the substitution of an offsite view parcel.

The subject LCP amendment was approved/certified by the Malibu City Council on January 12, 2009. The City's resolution (No. 09-03) and ordinance (No. 336) approving the subject LCP amendment (No. 07-001) is attached as Exhibits 2-3. The LCP amendment was initially submitted to the Commission on March 20, 2009. The LCPA was subsequently withdrawn on May 25, 2010 in order to allow additional time for Commission staff to consider the amendment and officially resubmitted on the same date. At the August 12, 2010 Commission hearing, the Commission extended the deadline to act on LCPA 2-10 for a period of one year.

## **B. SCENIC AND VISUAL RESOURCES AND PUBLIC ACCESS**

### **Coastal Act Policies**

The Coastal Act requires that new development be sited and designed in order to protect the scenic and visual qualities of coastal areas. Section 30251 of the Coastal Act states:

#### **Section 30251 Scenic and visual qualities**

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

In addition, both the certified Malibu Land Use Plan and Local Implementation Plan contain scenic and visual resource protection policies and ordinance requirements to carry out the provisions of the Coastal Act and the LUP, respectively. The primary intent of these policies is to require that new development is sited and designed to minimize impacts to visual resources, and where feasible, to preserve bluewater ocean views by limiting the height and siting of structures to maintain views over the site and/or to provide view corridors to maintain an ocean view through the site. The view corridor policies of the certified LCP are proposed to be amended by the subject LCPA in order to allow offsite view corridors in lieu of currently required onsite view corridors. In addition, because the proposed LCP amendment contains language specifically prohibiting public access on offsite view corridor parcels the proposed amendment raises issues with the Public Access and Recreation policies of the Coastal Act as provided below:

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.*

Coastal Act Section 30211 states:

*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.*

Coastal Act Section 30212(a) provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, where:

- (1) *it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.*
- (2) *adequate access exists nearby, or,*
- (3) *agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30220 of the Coastal Act 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.*

### **Malibu Land Use Plan Policies And Proposed Amendment**

The LUP currently contains the following policy requirements in regard to on-site view corridors:

6.18 For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, new development shall provide a view corridor on the project site, that meets the following criteria:

- a. Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.
- b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on beachfront lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views.
- c. No portion of any above ground structure shall extend into the view corridor.
- d. Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.
- e. In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel( s) provided that the development does not occupy more than 80 percent maximum of the total lineal frontage of the overall project site and that the remaining 20 percent is maintained as one contiguous view corridor. (Resolution No. 07-04 (LCPA No. 05-001))

The proposed amendment to the LUP would add subsection f. to state as follows:

f. The requirements of Section 6.18 may be satisfied by undertaking or funding all or a portion of an offsite alternative measure, project or program, which must include an offsite view corridor of greater lineal frontage, than what would otherwise be required by an onsite view corridor. The offsite view parcel must be adjacent to at least one publicly owned beachfront parcel that affords ocean views. The offsite alternative measure, project, or program and offsite view corridor must provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor. An offsite alternative measure, project, or program shall not include a vertical access component on the parcel providing the offsite view corridor. Any unimproved parcel, or portion thereof, to be used as an offsite view corridor must otherwise be suitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that there are legitimate concerns over whether a proposed view corridor parcel, or portion thereof, could otherwise be suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel may be rejected as inadequate and inconsistent with the intent of this provision.

**Malibu Local Implementation Plan And Proposed Amendment**

The LIP currently contains the following requirement to implement the provisions of LUP policy 6.18 provided above:

**6.5 E. Ocean Views**

New development on parcels located on the ocean side of public roads, including but not limited to, Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, Cliffside Drive shall protect public ocean views.

2. Where the topography of the project site does not permit the siting or design of a structure that is located below road grade, new development shall provide an ocean view corridor on the project site by incorporating the following measures.

- a. Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.
- b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. For lots greater than 50 feet in width, the view corridor may be split to provide a contiguous view corridor of not less than 10 percent of the lot width on each side, provided that each foot of lot width greater than 50 feet is added to the view corridor. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views. Sites shall not be designed so as to provide for parking within these designated view corridors. (Resolution No. 07-04 (LCPA No. 05-001))
- c. No portion of any structure shall extend into the view corridor above the elevation of the adjacent street. (Resolution No. 07-04 (LCPA No. 05-001))
- d. Any fencing across the view corridor shall be visually permeable and any landscaping

in this area shall include only low-growing species that will not obscure or block bluewater views.

e. In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 80 percent maximum of the total lineal frontage of the overall project site and that the remaining 20 percent is maintained as one contiguous view corridor. (Resolution No. 07-04 (LCPA No. 05-001))

The proposed LIP amendment would add subsection f. to state as follows:

f. The requirements of Section 6.5(E)(2) may be satisfied by undertaking or funding all or a portion of an offsite alternative measure, project or program, in addition to an offsite view corridor. The requirements of Section 6.5(E)(2) may be deemed satisfied if the decision making body finds that:

- (1) the proposed offsite view corridor parcel (the "View Parcel") is a beachfront parcel that affords public views of the ocean;
- (2) the View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views;
- (3) the offsite view corridor to be provided is of greater lineal frontage than otherwise would be required onsite;
- (4) the offsite alternative measure, project or program and offsite view corridor provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor; and
- (5) in the opinion of the decision making body, there are no geotechnical hazards or other constraints present on or near the View Parcel that could otherwise render the View Parcel, or any portion thereof, unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations.

An offsite alternative measure, project, or program shall not include a vertical access component on the View Parcel. The remaining portion of a View Parcel, if any, that is not restricted for use as a view corridor, pursuant to this Section, shall be subject to the standard view corridor requirements otherwise applicable to the entire lineal frontage of the View Parcel. If, after considering the width of a proposed offsite view corridor and all other applicable legal and physical constraints on physical development of the View Parcel (including standard view corridor requirements), the remainder of the View Parcel would not allow for the development of a primary use consistent with the applicable development standards contained in the LIP, then the remaining lineal frontage of the View Parcel shall be offered as a permanent view corridor, and such excess lineal frontage may be relied upon by the decision making body in supporting findings (3) and (4) above.

The certified LCP Land Use Plan also contains policies relative to the provision of public access and recreation including the following:

2.1 The shoreline, parklands, beaches and trails located within the City provide a wide range of recreational opportunities in natural settings which include hiking, equestrian activities, bicycling, camping, educational study, picnicking, and coastal access. These recreational opportunities

shall be protected, and where feasible, expanded or enhanced as a resource of regional, state and national importance.

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.

### Discussion

There are two primary components or objectives of the proposed LCP amendment. The amendment would add provisions to the existing LCP view protection policies to allow an alternative to satisfying the existing onsite view corridor requirements by: 1) providing an offsite view corridor of greater lineal frontage than the 20 percent required for onsite view corridors; and 2) undertaking or funding an offsite alternative measure, project or program that would enhance the City's visual and scenic resources. The City states that an example of an offsite program could be the funding of a City park. In approving the proposed LCP amendment, the City found that the proposed amendment would provide greater public visual resource benefits than a standard onsite view corridor.

As stated above, consistent with Section 30251 of the Coastal Act, the City of Malibu Land Use Plan (LUP) Policies require that new development on parcels located on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, and Cliffside Drive be sited and designed to preserve ocean views be either siting structures below road grade where feasible, limiting height, landscaping, fencing etc. (policy 6.17) or by providing onsite view corridors through 20 percent of the lineal frontage of the site where it is not feasible to site a structure below road grade (policy 6.18). Chapter 6 (Scenic and Visual Resources – New Development) policy 6.18 of the Land Use Plan is proposed to be amended by the City of Malibu in order to allow onsite view corridors to be replaced by offsite view corridors in limited circumstances.

The City's Local Implementation Plan (LIP) portion of the LCP includes nearly identical policies in Chapter 6 that carries out the LUP Policies. Chapter 6 of the LIP (Scenic Resources), policy section 6.5(Development Standards), E. (Ocean Views), No. 2 is proposed to be amended to allow the substitution of offsite view corridors to carry out the corresponding LUP policy referenced above.

In past permit actions and in its action to certify the Malibu Local Coastal Program the Commission found that it was important to preserve ocean views in new development projects in the City. For ocean fronting parcels the Commission required that views be preserved over structures where feasible and that view corridors be provided through

sites where it was not possible to site structures below road grade. In the eastern section of the City, where existing and new development on the ocean side of Pacific Coast Highway is at road grade a view corridor has been required. Because parcels are small and development tends to maximize the buildable area on the site the view corridors are also small and provide only fleeting glances of the ocean, especially from cars. Nonetheless, the Commission has found that a view corridor, even of narrow, is necessary to preserve ocean views and to prevent a solid wall of development that blocks views of the ocean from public roads and other viewing areas.

In a past action, prior to certification of the Malibu LCP, the Commission has allowed for the provision of offsite mitigation in lieu of the onsite view corridor for a project that consisted of the demolition of six existing single-family residences and construction of three new single-family residences on Carbon Beach (4-99-146-A2, Gamma; 4-99-185-A1, Broad; and 4-99-266-A1, Daly). In this action the Commission required the dedication of a specific entire parcel to the State of California or an appropriate public agency in fee simple. The Commission also required that the offsite view parcel be opened for both visual and physical public access (vertical and lateral). The Commission found that the provision of a larger aggregate offsite view corridor constituted a substantially greater public benefit than the provision of the originally required smaller separate public view corridors on each site. The required offsite view parcel was a beachfront lot located on the seaward side of PCH in the La Costa Beach area of Malibu immediately east of Carbon Beach. Both Carbon and La Costa Beach are characterized as built-out residential beach areas in Malibu. In its prior approval of permits for two of the subject parcels (4-99-185 and 4-99-266) the Commission specifically provided that the applicants may obtain an amendment to the coastal permit to delete the required onsite view corridor if the applicants provided for offsite mitigation consisting of both a public view corridor and a public vertical accessway across another parcel in the vicinity of Carbon Beach. The Commission's action was subsequently upheld by the court of appeal. (*La Costa Beach Homeowners' Ass'n v. California Coastal Commission* (2002) 101 Cal.App.4th 804.)

The subject proposed amendment to allow for the provision of substantially larger offsite view corridors in lieu of smaller onsite view corridors will likely be utilized for ocean front development projects proposed in the more densely populated areas of eastern Malibu along Pacific Coast Highway although there is also potential for offsite view corridors to be provided along Malibu Road, Broad Beach Road, and Birdview Avenue and Cliffside Drive which are ocean fronting streets on Point Dume. For instance, relative to the related Coastal Development Permit 4-00-057 (Morton) which required the provision of a public view corridor of no less than 20 percent of the lineal frontage of the project site on the project site, had the applicant included the provision for a larger public view corridor offsite, similar to the requirements of this proposed LCP amendment, such mitigation would have provided substantially greater public benefits in the forms of coastal views and potential public access and would have been consistent with the Chapter 3 requirements of the Coastal Act.

Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast Highway and the ocean. Specifically, the Commission notes that when residential structures are located immediately adjacent to each other, or when large individual residential structures are constructed across several contiguous lots, such development creates a wall-like effect when viewed from Pacific Coast Highway. This type of development limits the public's ability to view the coast or ocean to only those few parcels which have not yet been developed. Such development, when viewed on a regional basis, results in cumulative adverse effects to public views and to the visual quality of coastal areas. Therefore, in past permit actions and in certifying the Malibu LCP, in order to protect public views of the ocean from public viewing areas and to enhance visual quality along the coast, the Commission has required that new residential development be designed consistent with the provision of a public view corridor of no less than 20% of the width of the lineal frontage of the subject site to provide for views of the beach and ocean from Pacific Coast Highway. The intent of the public view corridors required by the Commission was to provide unobstructed public views of the beach and ocean from Pacific Coast Highway over a portion of each site to mitigate the adverse effects to public views that result from new development along the coast. The proposed amendment is intended to provide for offsite mitigation of the currently LCP required public view corridors on sites.

As the Commission has found in prior actions, the City's proposal to modify existing LCP view corridor requirements in the proposed amendment to allow for the use of offsite view corridors in limited circumstances is generally consistent with the intent of the scenic resource protection policies of the Coastal Act and the LCP. Opportunities exist to provide for expanded uninterrupted public view corridors. However, to provide greater clarification in order to adequately carry out the relevant policies of the LUP and LIP, some changes or modifications are needed to the proposed amendment language in order to provide additional requirements or standards for off-site view corridor sites to insure that such off-site view parcels are permanently restricted as such, are limited in use, and will allow for the provision of public access. As such, suggested modifications are required.

As proposed, the amendment to the LCP (LUP and LIP) allows for an offsite alternative measure, project, or program to be undertaken or funded that includes an offsite view corridor of greater lineal frontage than what would otherwise be required onsite. The proposal does not define "alternative measure, project, or program" or sufficiently define the location or size of an offsite view corridor other than to say it must be adjacent to at least one publicly owned beachfront parcel that affords ocean views. Representatives for Peter Morton, who submitted the subject LCP amendment request to the City, have identified 16 sites that they state will meet the requirement of being located adjacent to a publicly owned beachfront parcel. However, it has not been confirmed that all 16 sites

are currently buildable or that they would all be suitable as an offsite view parcel. Further, the proposed amendment language states that "an offsite alternative measure, project, or program shall not include a vertical access component on the parcel providing the offsite view corridor" inconsistent with Section 30210 of the Coastal Act, as incorporated in the certified LUP, which specifically requires that maximum public access, and recreational opportunities be provided. In addition, LUP Policy 2.7 provides that public accessways and trails to the shoreline shall be a permitted use in all land use and zoning designations. Moreover, no language exists anywhere in the certified LCP for Malibu that specifically prohibits public access on a parcel of land. Further, physical access to an oceanfront parcel only serves to enhance the visual experience of the coast. Therefore, suggested modifications to the LUP and the LIP are necessary to ensure public access and recreation is a permitted use on any offsite view corridor mitigation parcel consistent with LUP Policy 2.7 and the relevant public access and recreation policies of the Coastal Act.

The Coastal Act defines "Land Use Plan" as "the relevant portion of a local government's general plan, or local coastal element which are *sufficiently detailed* to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies, and, where necessary, a listing of implementing actions" (emphasis added). The Commission finds that the proposed language in the LUP amendment is not sufficiently detailed to ensure that the offsite view corridor requirements are adequate to mitigate the impacts of development on coastal views. Therefore, the Commission finds that the proposed amendment to the LUP Scenic and Visual Resource policies contained in the certified LCP does not conform to the requirements of Section 30251 of the Coastal Act. Further, because the proposed LCP (LUP and LIP) amendment contains specific prohibitions for public access, the Commission finds that the proposed amendment is not consistent with the Public Access and Recreation policies of the Coastal Act.

The proposed LIP language, in addition to providing the same requirements as the LUP mentioned above, continues to allow the offsite view corridor parcel to be developed which can result in difficulty in maintaining the view corridor and lead to enforcement problems in the future. Future development on a view parcel would also be limited by siting requirements and the necessity of providing and maintaining a public view corridor. Finally, the proposed LIP language implementing the LUP contains no requirements for deed restrictions or offers to dedicate on the offsite view parcel and, therefore, there is no guarantee that the offsite view corridor will be adequately protected. For these reasons the Commission finds that the proposed amendment to the Scenic Resources policies of the LIP are not sufficient to carry out the requirements of the certified Land Use Plan.

In order to provide conformity with Section 30251 of the Coastal Act, and the relevant policies of the certified City of Malibu LCP discussed above, relative to protecting views to and along the ocean, the Commission finds that suggested modifications to the proposed LCP amendment are necessary. Suggested modifications to the Land Use Plan amendment limit offsite view corridor parcels to Pacific Coast Highway, Malibu

Road, Broad Beach Road, plus Birdview Avenue and Cliffside Drive on Point Dume and include requirements that the offsite view parcel consist of an entire beachfront parcel, that the view corridor spans the entire width of the parcel, and be at least 25 percent wider than the view corridor or corridors that would otherwise be required on the project site. In addition, the offsite view parcel should, to the extent feasible, be located in the same geographic area of the City as the project site. Also, because the proposed amendment contains specific prohibitions on public access, the Commission finds that a suggested modification is necessary to delete said prohibition and to provide that public access on the view corridor mitigation parcels shall be a permitted use consistent with applicable provisions of the LCP. Public access to the offsite view parcel will allow more visitors to experience public views of the coast and ocean directly from the site. Relative to the requirement that offsite view corridors be larger than the view corridor that would otherwise be required on the project site and the requirement for additional public benefits the Commission notes that the provision for allowing an offsite view corridor parcel will be an available option to providing an onsite view corridor. An applicant for a coastal development permit can choose to provide a view corridor onsite in compliance with the LCP policy requirements that currently exist and will not be changed.

Identical suggested modifications are necessary to the proposed LIP amendment relative to carrying out the scenic resource and public access policies of the LCP Land Use Plan. In addition, suggested modifications provide that the substitution of an offsite view parcel for a required onsite view corridor be effectuated by the recordation of an open space deed restriction and transfer of the view parcel in fee title to a public entity. An open space deed restriction is the more appropriate mechanism to ensure that a donor parcel is protected as open space in instances where the property is dedicated in fee title to a public entity. In addition, a transfer of the view parcel in fee is necessary to insure that the site is adequately protected and is not sold or otherwise compromised at some future point in time. The LCP contains a similar requirement for parcels used as sites for Transfer of Development Credits (TDCs). Modifications to the LIP also ensure that any future development on the view parcel is limited to only those facilities necessary to provide for public view enhancement or public beach access such as benches and visually permeable fencing.

Finally, as proposed by the City, the LCP amendment provides that the view corridor requirements in the LUP and the LIP may be satisfied "by undertaking or funding all or a portion of an offsite alternative measure, project, or program" which "must include an offsite view corridor" or be included "in addition to providing an offsite view corridor" as a primary component of the proposed amendment. An example of an offsite alternative measure, project, or program could be the funding of a City park. The Commission is not opposed to the City's proposal to include an alternative measure, project, or program in conjunction with an offsite view corridor. However, such a component or requirement should be independent and should augment, not substitute for the LCP requirement of an offsite view parcel to mitigate the impacts of future development on coastal views. Therefore, suggested modifications to the LUP and the LIP are necessary to separate the City's proposal to include a provision to undertake or fund an

alternative measure, project, or program from the primary requirement for allowing offsite view corridors. Modifications provide the City the option of requiring an applicant to undertake or fund an alternative measure, project, or program at the City's discretion in addition to providing the offsite view parcel, however, the suggested modifications make it clear that the offsite view corridor parcel must be required as mitigation for not providing the typically required onsite view corridor for new development projects. The alternative measure, project, or program is allowed as an additional option, subject to the City's discretion, however, and not as an alternative to the primary intent of the proposed amendment to allow for offsite view corridor mitigation.

The Commission finds that the suggested modifications to the LUP policies of the proposed amendment are required to ensure that the proposed amendment conforms to the applicable coastal view protection and public access policies of the Coastal Act. The Commission also finds that the suggested modifications to the LIP provisions of the proposed amendment are required to ensure that they are consistent with all applicable LUP policies and adequate to carry out all provisions of the LUP.

### **C. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

California Public Resources Code (PRC) Section 21080.9 – within the California Environmental Quality Act (CEQA) – exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with their activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission. However, because the Natural Resources Agency found the Commission's LCP review and approval program to be functionally equivalent to the EIR process, see 14 C.C.R. § 15251(f), PRC Section 21080.5 relieves the Commission of the responsibility to prepare an EIR for each LCP. Nevertheless, some elements of CEQA continue to apply to this review process.

Specifically, pursuant to CEQA and the Commission's regulations (see 14 C.C.R. §§ 13540(f), 13542(a), and 13555(b)), the Commission's certification of this LCP amendment must be based in part on a finding that it meets the CEQA requirements listed in PRC section 21080.5(d)(2)(A). That section requires that the Commission not approve or adopt an LCP:

...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 Land Use Plan amendment has been found not to be in conformance with the Chapter 3 policies of the Coastal Act regarding scenic and visual resource protection. The Implementation Plan amendment has been found not to be in conformance with, or adequate to carry out, the provisions of the Land Use Plan portion of the certified LCP. To resolve the concerns identified, suggested modifications have been made to the

proposed amendment. Without incorporation of the suggested modifications, the Land Use Plan amendment as submitted, is not adequate to carry out and is not in conformity with the Chapter 3 policies of the Coastal Act. Without incorporation of the suggested modifications, the Implementation Plan amendment as submitted, is not adequate to carry out and is not in conformity with the Land Use Plan. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the LCP amendment. As modified, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

The Commission finds that for the reasons discussed in this report, if the LCP amendment is modified as suggested, there are no additional feasible alternatives or feasible mitigation measures available that could substantially reduce any adverse environmental impacts. The Commission further finds that the proposed LCP amendment, if modified as suggested, is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.

PROPOSED

MALIBU LOCAL COASTAL PROGRAM AMENDMENT

January 12, 2009

LCPA No. 07-001

RECEIVED  
MAR 23 2006

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

The existing language in the certified LCP is shown in straight type. The language proposed by the City of Malibu in this amendment to be inserted is shown underlined.

**1. Land Use Plan**

**Chapter 6 (Scenic and Visual Resources), Section C (Land Use Plan Policies) No. 2 (New Development) Policy No. 6.18 is hereby amended as follows:**

For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, new development shall provide a view corridor on the project site, that meets the following criteria:

- a. Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.
- b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on beachfront lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views.
- c. No portion of any above ground structure shall extend into the view corridor.
- d. Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.
- e. In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 80 percent maximum of the total lineal frontage of the overall project site and that the remaining 20 percent is maintained as one contiguous view corridor.

f. The requirements of Section 6.18 may be satisfied by undertaking or funding all or a portion of an offsite alternative measure, project or program, which must include an offsite view corridor of greater lineal frontage, than what would otherwise be required by an onsite view corridor. The offsite view parcel must be adjacent to at least one publicly owned beachfront parcel that affords ocean views. The offsite alternative measure, project, or program and offsite view corridor must provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor. An offsite alternative measure, project, or program shall not include a vertical access component on the parcel providing the offsite view corridor. Any unimproved parcel, or portion thereof, to be used as an offsite view corridor must otherwise be suitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that there are legitimate concerns over whether a proposed view corridor parcel, or portion thereof, could otherwise be suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel may be rejected as inadequate and inconsistent with the intent of this provision.

## **2. Local Implementation Plan**

**Chapter 6 (Scenic Resources) Section 6.5 (Development Standards) E (Ocean Views) No. 2 is hereby amended as follows:**

2. Where the topography of the project site does not permit the siting or design of a structure that is located below road grade, new development shall provide an ocean view corridor on the project site by incorporating the following measures.

a. Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.

b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. For lots greater than 50 feet in width, the view corridor may be split to provide a contiguous view corridor of not less than 10 percent of the lot width on each side, provided that each foot of lot width greater than 50 feet is added to the view corridor. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views. Sites shall not be designed so as to provide for parking within these designated view corridors.

c. No portion of any structure shall extend into the view corridor above the elevation of the adjacent street.

d. Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.

e. In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 80 percent maximum of the total lineal frontage of the overall project site and that the remaining 20 percent is maintained as one contiguous view corridor.

f. The requirements of Section 6.5(E)(2) may be satisfied by undertaking or funding all or a portion of an offsite alternative measure, project or program, in addition to an offsite view corridor. The requirements of Section 6.5(E)(2) may be deemed satisfied if the decision making body finds that:

- (1) the proposed offsite view corridor parcel (the "View Parcel") is a beachfront parcel that affords public views of the ocean;
- (2) the View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views;
- (3) the offsite view corridor to be provided is of greater lineal frontage than otherwise would be required onsite;
- (4) the offsite alternative measure, project or program and offsite view corridor provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor; and
- (5) in the opinion of the decision making body, there are no geotechnical hazards or other constraints present on or near the View Parcel that could otherwise render the View Parcel, or any portion thereof, unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations.

An offsite alternative measure, project, or program shall not include a vertical access component on the View Parcel. The remaining portion of a View Parcel, if any, that is not restricted for use as a view corridor, pursuant to this Section, shall be subject to the standard view corridor requirements otherwise applicable to the entire lineal frontage of the View Parcel. If, after considering the width of a proposed offsite view corridor and all other applicable legal and physical constraints on physical development of the View Parcel (including standard view corridor requirements), the remainder of the View Parcel would not allow for the development of a primary use consistent with the applicable development standards contained in the LIP, then the remaining lineal frontage of the View Parcel shall be offered as a permanent view corridor, and such excess lineal frontage may be relied upon by the decision making body in supporting findings (3) and (4) above.

RESOLUTION NO. 09-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT NO. 07-001 AMENDING THE MALIBU LOCAL COASTAL PROGRAM'S LAND USE PLAN SECTION 6.18 (VIEW CORRIDORS) AND COROLLARY CHANGES TO THE LOCAL IMPLEMENTATION PLAN TO ALLOW FOR THE UTILIZATION OF OFFSITE VIEW CORRIDORS AND PUBLIC BENEFITS IN LIEU OF THE REQUIRED ONSITE VIEW CORRIDOR (MORTON)

THE CITY COUNCIL OF THE CITY OF MALIBU DOES FIND, ORDER AND RESOLVE AS FOLLOWS:

Section 1.     Recitals.

- A.     On March 6, 2007, an application for Local Coastal Program Amendment (LCPA) No. 07-001 was submitted by David Goldberg of Latham and Watkins, LLP, on behalf of property owner, Peter Morton.
- B.     In addition, on March 6, 2007, an application for Coastal Development Permit (CDP) No. 07-029, Neighborhood Standards (NS) No. 08-002, Demolition Permit (DP) No. 07-007, and Administrative Plan Review (APR) No. 08-082 was submitted concurrently with the LCPA application by David Goldberg of Latham and Watkins, LLP, on behalf of property owner, Peter Morton. The application was for parcels located at 22258 and 22310 Pacific Coast Highway.
- C.     On July 24, 2008, as required by the Local Coastal Program's (LCP) Local Implementation Plan (LIP) Chapter 19, a Notice of Availability for Local Coastal Program Documents and Notice of Planning Commission public hearing was published in a newspaper of general circulation and mailed to interested parties, regional, state and federal agencies affected by the amendment, local libraries, media, and to the California Coastal Commission.
- D.     On July 29, 2008, a Notice of Application for LCPA No. 07-001, CDP No. 07-029, NS No. 08-002, APR No. 08-082, and DP No. 07-001 was posted on the subject property.
- E.     At its August 19, 2008 meeting, the Planning Commission continued the item to the October 7, 2008 Regular Planning Commission meeting. The applicant requested that the Commission continue the item, to allow for a modification to the proposed amendment.
- F.     On September 11, 2008, pursuant to LIP Chapter 19, a Notice of Availability of Local Coastal Program Documents and Notice of Planning Commission Public Hearing public hearing was published in a newspaper of general circulation and mailed to interested parties, regional, state and federal agencies affected by the amendment, local libraries, media, and to the California Coastal Commission.

G. On October 7, 2008, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, reviewed and considered written reports, public testimony and other information in the record. The Planning Commission directed staff to prepare a resolution recommending the City Council adopt the LCPA as amended.

H. The Regular Planning Commission meeting of November 4, 2008 was adjourned to November 17, 2008.

I. On November 17, 2008, the Planning Commission continued the item to its December 2, 2008 meeting due to lack of quorum.

J. On December 2, 2008, the Planning Commission adopted Resolution No. 08-80 recommending that the City Council approve LCPA No. 07-001.

K. On December 25, 2008, pursuant to LIP Chapter 19, a Notice of City Council Public Hearing was published in a newspaper of general circulation and mailed to interested parties, regional, state and federal agencies affected by the amendment, local libraries, media, and to the California Coastal Commission.

L. On January 12, 2009, the City Council held a duly noticed public hearing to consider the application, the evidence, and information provided in support of and in opposition to the application, public testimony of all interested persons and the recommendations of the Planning Commission.

## Section 2. Environmental Review.

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

## Section 3. Local Coastal Program Amendment No. 07-001.

A. LCPA No. 07-001 includes amendments to the certified LCP Land Use Plan (LUP) and LIP. Section 4 of this Resolution sets forth the City Council's conclusions with respect to the required findings set forth in LIP Section 19.6 pertaining to amendments to the LCP. Amendments to the LIP are identified in City Council Ordinance No. 336. The amendment to the LUP is as follows:

1. Amend LUP Section 6.18, which addresses View Corridors, to include Subsection f to read as follows:

f. The requirements of Section 6.18 may be satisfied by undertaking or funding all or a portion of an offsite alternative measure, project or program, which must include an offsite view corridor of greater lineal frontage, than what would otherwise be required by an onsite view

corridor. The offsite view parcel must be adjacent to at least one publicly owned beachfront parcel that affords ocean views. The offsite alternative measure, project, or program and offsite view corridor must provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor. An offsite alternative measure, project, or program shall not include a vertical access component on the parcel providing the offsite view corridor. Any unimproved parcel, or portion thereof, to be used as an offsite view corridor must otherwise be suitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that there are legitimate concerns over whether a proposed view corridor parcel, or portion thereof, could otherwise be suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel may be rejected as inadequate and inconsistent with the intent of this provision.

Section 4. Local Coastal Program Amendment Findings.

The proposed amendment would advance the core goals and policies of the Coastal Act. The intent of the onsite view corridor requirement is to preserve coastal views from the City's seaside roads. Under the proposed amendment, the permitting of offsite projects or programs, including an offsite view corridor, would enhance the City's visual and scenic resources and provide a greater public benefit to coastal resources than an onsite view corridor. Pursuant to the proposed amendment, the offsite view corridor alternative would only be available in those cases where the decision making body determines that the public benefits of a proposed offsite view corridor and related program would be greater than the benefits that would otherwise flow from an onsite view corridor meeting minimum applicable LCP requirements. Accordingly, an offsite project or program alternative, that includes an offsite view corridor, would be more protective of coastal scenic resources and more beneficial to the community than the minimum onsite view corridor requirement.

Section 5. Approval of Amendments to the Certified Local Coastal Program LUP.

Subject to the contingency set forth in Section 7, the City Council hereby adopts LCPA No. 07-001 amending the LUP.

Section 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 07-001 to the California Coastal Commission for certification, in conformance with the submittal requirements specified in California Code of Regulation, Title 14, Division 5.5., Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations Section 13551, et. seq.

Section 7. Effectiveness.

The LCP amendment approved in this resolution shall become effective only upon certification by the California Coastal Commission of these amendments to the LCP.

Section 8.    Certification.

The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 12th day of January 2009.

\_\_\_\_\_  
PAMELA CONLEY ULICH, Mayor

ATTEST:

\_\_\_\_\_  
LISA POPE, City Clerk  
(seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
CHRISTI HOGIN, City Attorney

ORDINANCE NO. 336

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT NO. 07-001 AMENDING THE LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN SECTION 6.5(E)(2) (VIEW CORRIDOR REQUIREMENTS) TO ALLOW FOR THE UTILIZATION OF OFFSITE VIEW CORRIDORS AND PUBLIC BENEFITS IN LIEU OF THE REQUIRED ONSITE VIEW CORRIDOR (MORTON)

THE CITY COUNCIL OF THE CITY OF MALIBU DOES ORDAIN AS FOLLOWS:

Section 1. Recitals.

- A. The history of this Local Coastal Program (LCP) amendment is set forth in the recitals of Resolution No. 09-03, in which the City Council approved amendments to the Land Use Plan (LUP), subject to certification by the California Coastal Commission (CCC).
- B. On January 12, 2009, the City Council held a duly noticed public hearing to consider the application, the evidence and information provided in support of and in opposition to the application, public testimony of all interested persons and the recommendations of the Planning Commission.

Section 2. Environmental Review.

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

Section 3. Local Coastal Program Amendment No. 07-001.

LCPA No. 07-001 includes amendments to the certified LCP LUP and Local Implementation Plan (LIP). Section 4 of this Ordinance sets forth the City Council's conclusions with respect to the required findings set forth in LIP Section 19.6 pertaining to amendments to the LCP. Amendments to the LUP are identified in City Council Resolution No. 09-03. Amendments to the LIP are as follows:

- A. Amend LIP Section 6.5 (E)(2), which addresses View Corridor Requirements, to include Subsection d to read as follows:
- d. The requirements of Section 6.5(E)(2) may be satisfied by undertaking or funding all or a portion of an offsite alternative measure, project or program, in addition to an offsite view corridor. The requirements of Section 6.5(E)(2) may be deemed satisfied if the decision making body finds that:
- (1) the proposed offsite view corridor parcel (the "View Parcel") is a beachfront parcel that affords public views of the ocean;

- (2) the View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views;
- (3) the offsite view corridor to be provided is of greater lineal frontage than otherwise would be required onsite;
- (4) the offsite alternative measure, project or program and offsite view corridor provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor; and
- (5) in the opinion of the decision making body, there are no geotechnical hazards or other constraints present on or near the View Parcel that could otherwise render the View Parcel, or any portion thereof, unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations.

An offsite alternative measure, project, or program shall not include a vertical access component on the View Parcel. The remaining portion of a View Parcel, if any, that is not restricted for use as a view corridor, pursuant to this Section, shall be subject to the standard view corridor requirements otherwise applicable to the entire lineal frontage of the View Parcel. If, after considering the width of a proposed offsite view corridor and all other applicable legal and physical constraints on physical development of the View Parcel (including standard view corridor requirements), the remainder of the View Parcel would not allow for the development of a primary use consistent with the applicable development standards contained in the LIP, then the remaining lineal frontage of the View Parcel shall be offered as a permanent view corridor, and such excess lineal frontage may be relied upon by the decision making body in supporting findings (3) and (4) above.

Section 4. Local Coastal Program Amendment Findings.

A. Based on the evidence in the whole record, the City Council hereby finds that the proposed amendment meets the requirements of, and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act.

The proposed amendment would advance the core goals and policies of the Coastal Act. The intent of the onsite view corridor requirement is to preserve coastal views from the City's seaside roads. Under the proposed amendment, the permitting of offsite projects or programs, including an offsite view corridor, would enhance the City's visual and scenic resources and provide a greater public benefit to coastal resources than an onsite view corridor. Pursuant to the proposed amendment, the offsite view corridor alternative would only be available in those cases where the decision making body determines that the public benefits of a proposed offsite view corridor and related program would be greater than the benefits that would otherwise flow from an onsite view corridor meeting minimum applicable LCP requirements. Accordingly, an offsite project or program alternative, that includes an offsite view corridor, would be more protective of coastal scenic resources and more beneficial to the community than the minimum onsite view corridor requirement.

Section 5. Approval of Amendments to the Certified Local Coastal Program LIP.

Subject to the contingency set forth in Section 7, the City Council hereby adopts LCPA No. 07-001 amending the Local Implementation Plan.

Section 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 07-001 to the California Coastal Commission for certification, in conformance with the submittal requirements specific in California Code of Regulation, Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations Section 13551, et. Seq.

Section 7. Effectiveness.

The LCP amendments and zoning ordinance amendments approved in this ordinance shall be come effective only upon certification by the California Coastal Commission of these amendments to the LCP.

Section 8. Certification.

The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
PAMELA CONLEY ULICH, Mayor

ATTEST:

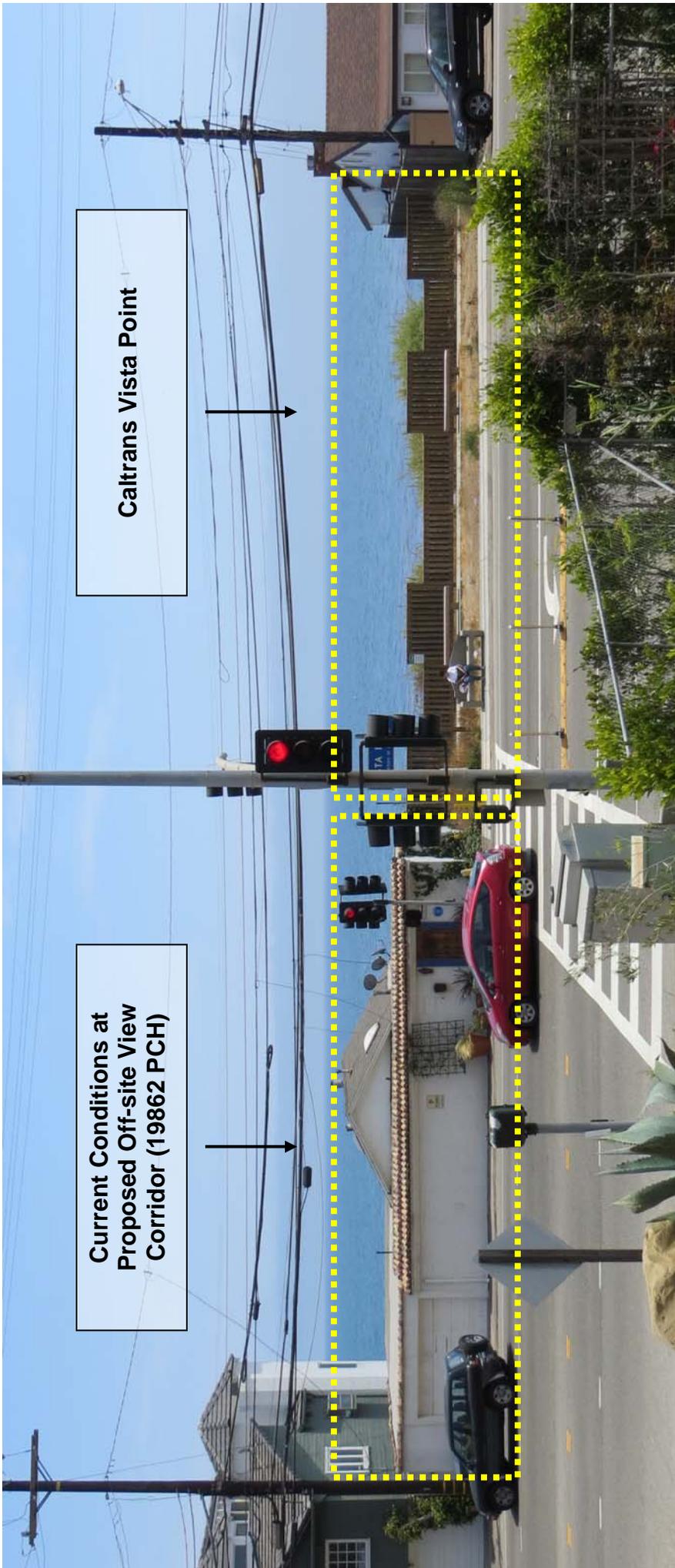
\_\_\_\_\_  
LISA POPE, City Clerk  
(seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
CHRISTI HOGIN, City Attorney



# Proposed Off-Site View Corridor



Current Conditions at  
Proposed Off-site View  
Corridor (19862 PCH)

Caltrans Vista Point

**Exhibit 10**  
**CDP Amendment Nos.**  
**4-00-057-A3 & 4-01-100-A4**  
**Proposed Off-site View Corridor**

**LEGAL DESCRIPTION:**

PORTION OF LOTS 205, 206 & 207 AS PER L.S. 27,48  
IN THE COUNTY OF LOS ANGELES, STATE OF  
CALIFORNIA AS SHOWN ON SAID MAP IN THE  
OFFICE OF THE RECORDER OF SAID COUNTY.



Scale 1" = 40'

**PROPERTY ADDRESS:**

22306, 22310 P.C.H.  
MALIBU, CA 90265

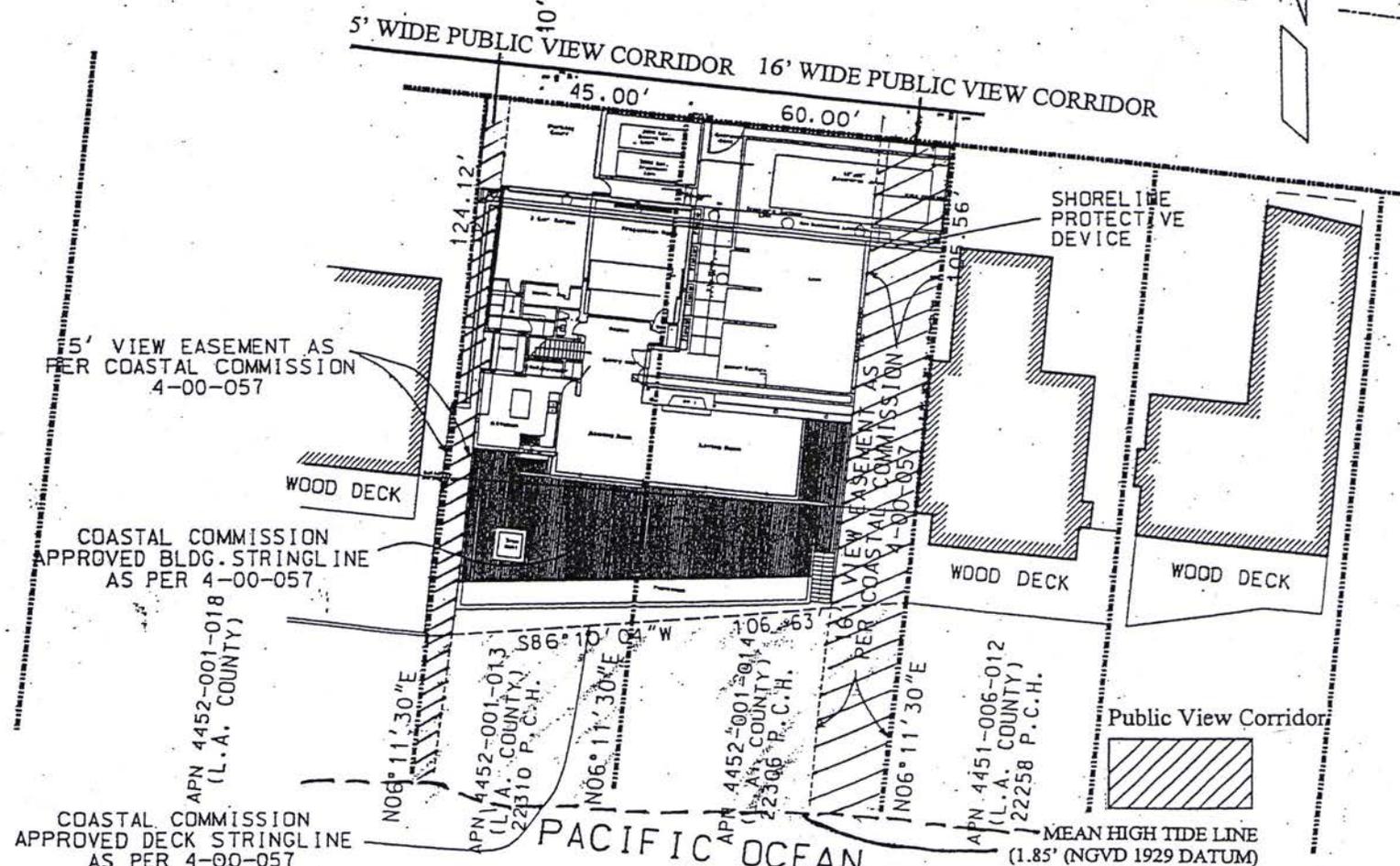
**BASIS OF BEARINGS:**

THE BEARING OF N83° 48' 30" W  
ON THE CENTERLINE OF PACIFIC  
COAST HWY. AS SHOWN ON THE  
MAP OF F.M. 11260-3 IN THE COUNTY  
OF LOS ANGELES, STATE OF  
CALIFORNIA, IN THE OFFICE OF  
THE RECORDER OF SAID COUNTY.



**ACCESSOR'S PARCEL NO.'S:**

A.P.N. 4452-001-013, 014



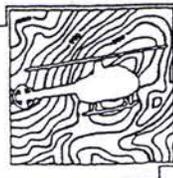
**LATERAL ACCESS & VIEW EASEMENT PLAT**

REVISIONS:

SURVEYED FOR:

PETER A. MORTON  
CHAIRMAN HARD ROCK HOTEL  
510 NORTH ROBERTSON BOULEVARD  
LOS ANGELES, CA 90048

SURVEYED BY:



**LAND & I**  
BOUNDARY - TOP  
SUBDIVISIONS - I  
22761 PACIFIC  
SUITE #260  
MALIBU, CA 91  
BUSINESS (310)  
FAX (310) 456

SCALE:

**Exhibit 11**  
**CDP Amendment Nos.**  
**4-00-057-A3 & 4-01-100-A4**  
**CDP No. 4-00-057 Recorded**  
**Public View Corridor**

DR. BY:

# PACIFIC COAST HIGHWAY

## EXHIBIT C PUBLIC VIEW CORRIDOR

PORTION OF THE RANCHO TOPANGA  
MALIBU SEQUIT, BOOK 1 PAGE 407  
ET SEQ. OF PATENTS  
IN THE CITY OF MALIBU, COUNTY OF LOS  
ANGELES, STATE OF CALIFORNIA

**LEGEND:**



PUBLIC VIEW CORRIDOR

**BENCH MARK:**

LA COUNTY ROAD DEPT. BM NO. DY 5387  
USC&GS MON NO. S-576 1939 EL=13.81



FEB 23 2004

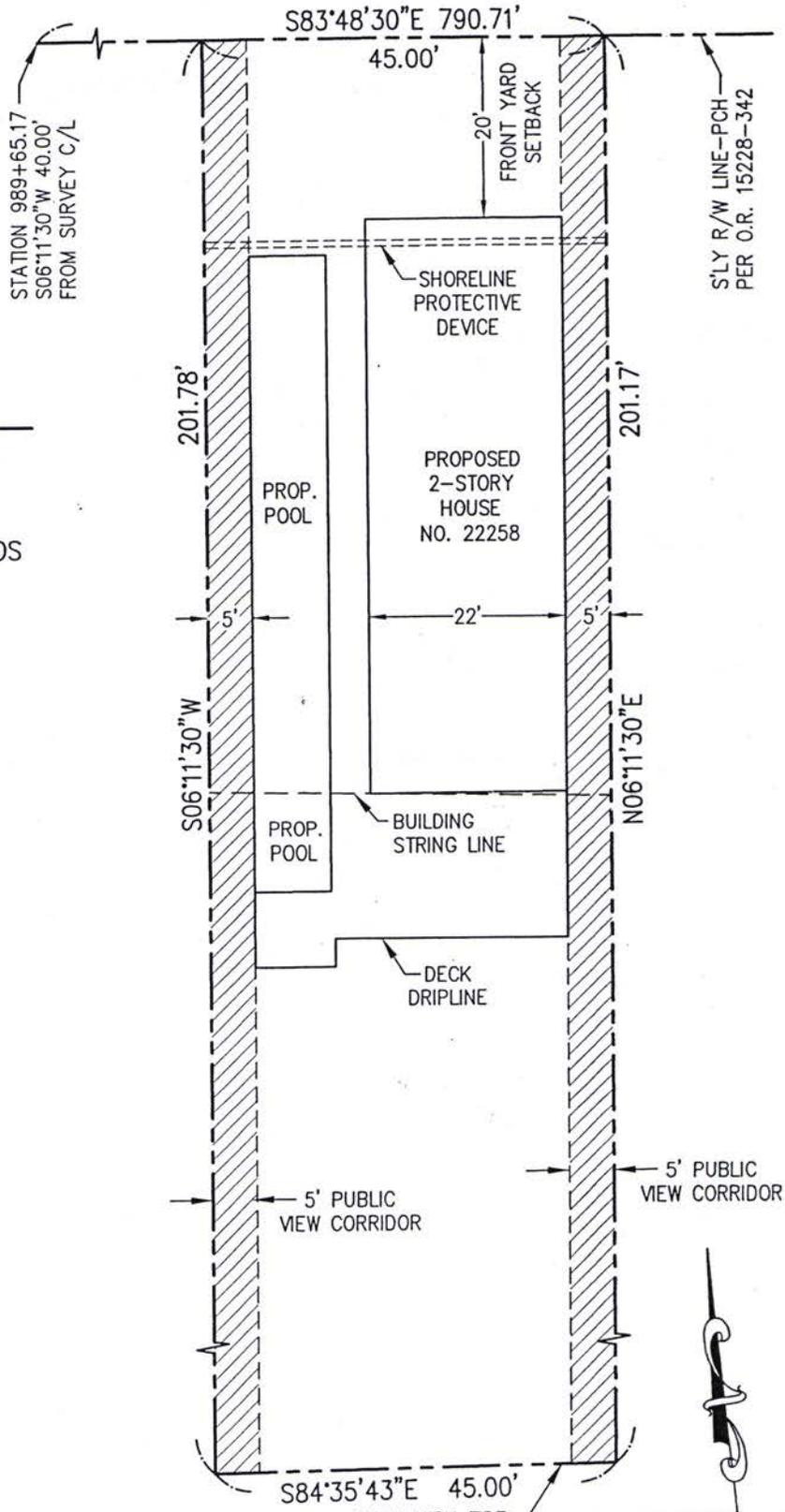
PREPARED BY:

**DAVID R. GRAY, INC.**

2510-G LAS POSAS ROAD PMB 455  
CAMARILLO, CA 93010  
805-987-3945 805-987-1655 FAX  
JOB NO. 0124 AUG. 2002 REV. 02-23-04

PACIFIC  
OCEAN

MEAN HIGH  
ELEVATION  
AS DETERMINED  
SEPTEMBER



**Exhibit 12**  
**CDP Amendment Nos.**  
**4-00-057-A3 & 4-01-100-A4**  
**CDP No. 4-01-100 Recorded**  
**Public View Corridor**