

**CALIFORNIA COASTAL COMMISSION**

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



# F11a

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## ADDENDUM

**DATE:** January 6, 2014  
**TO:** Commissioners and Interested Parties  
**FROM:** South Central Coast District Staff  
**SUBJECT:** Agenda Item F11a, Application No. 5-84-754-A2 (Ackerberg), Friday, January 10, 2014

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The purpose of this addendum is to add language that was inadvertently omitted from Appendix 1 (Substantive File Documents) contained in the December 19, 2013 staff report.

The following language shall be added to Appendix 1 of the December 19, 2013 staff report, which was inadvertently omitted from the staff report that was distributed:

Note: Double underline indicates text to be added to the December 19, 2013 staff report.

### Substantive File Documents

City of Malibu, Local Coastal Program; Coastal Development Permit No. 5-83-360 (Trueblood Jr.); Coastal Development Permit No. 5-84-754 (Ackerberg); Coastal Development Permit No. 5-84-754-A1 (Ackerberg); Coastal Development Permit No. 5-83-754 (Ackerberg); Coastal Development Permit No. 5-83-703-A1 (Geffen); “Coastal Engineering Report,” prepared by David Weiss, dated September 30, 2013.

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# F11a

Filed: 11/4/13  
180th Day: 5/3/13  
Staff: D. Venegas-V  
Staff Report: 12/19/13  
Hearing Date: 1/10/14

## STAFF REPORT: PERMIT AMENDMENT

**Application No.:** 5-84-754-A2

**Applicant:** Lisette Ackerberg

**Agent:** Diane Abbitt, Law Office of Diane Abbitt

**Location:** 22466 Pacific Coast Highway, City of Malibu, Los Angeles County (APNs: 4452-002-013, 4452-002-011)

**Description of Amendment:** Construction of a 10-ft. wide vertical public beach accessway that will comply with the requirements of the Americans with Disabilities Act (ADA) consisting of a concrete walkway, public access signage, one visually permeable gate, and a removable gangplank ramp to access the beach during periods of low sand elevation. The gate will automatically open one hour before sunrise and automatically close one hour after sundown. In addition, the project includes the reconfiguration of an existing tennis court and the installation of a retractable private ramp to access the beach from the existing residence's private deck.

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## SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed amendment with 10 special conditions.

The project site is located on two beachfront lots totaling 0.95 acres in size at 22466 and 22500 Pacific Coast Highway, within the City of Malibu in Los Angeles County (APNs 4452-002-013

and 4452-002-011) (Exhibits 1-2)<sup>1</sup>. The property is located between Pacific Coast Highway (“PCH”) and the beach, in an area of Malibu known as Carbon Beach, where contiguous residential development fronting the highway separates it from the beach both physically (i.e., the public cannot reach the beach from the road) and visually (the public cannot see the beach from the road). In the 1980s, the Commission approved two permits for development on the subject property, each of which required the permittee to offer to dedicate a vertical and lateral public access easement over a portion of the property.

The site is currently developed with an 8,850 sq. ft. single family residence (constructed pursuant to the underlying coastal development permit and Coastal Development Permit Waiver No. 4-92-193), swimming pool, tennis court and an existing 140 linear foot bulkhead (constructed pursuant to CDP No. 5-83-360). Additionally, unpermitted development consisting of rock riprap, a 9-ft. high concrete wall, fence, railing, planter, light posts, and landscaping are located on the subject property. In addition to being unpermitted, these items are located within vertical and lateral public access easements (created in response to previous permit conditions), obstructing public access to the beach and along the beach seaward of the residence. Since the above mentioned unpermitted development is obstructing public access to the beach, the current easement holder, Mountains Recreation and Conservation Authority, has not yet been able to actually open and operate the vertical public access easement.

The Commission has previously issued Consent Cease and Desist Order CCC-09-CD-01-A, requiring the applicant remove the above referenced unpermitted development and submit a coastal development permit amendment application to construct the necessary improvements for the operation of the public access way. In response to that order, the applicant is now requesting an amendment to Coastal Development Permit (CDP) No. 5-84-754 to construct public access improvements within a recorded 10-foot wide vertical public access easement that complies with the standards of the Americans with Disabilities Act (ADA) and 69 cu. yds. of associated backfilling and excavation for the construction of the accessway (14 cu. yds. of excavation and 55 cu. yds. of backfilling). This accessway will include footings to support the accessway, a privacy wall, safety lights located on the privacy wall, a portable gangplank ramp that extends from the seaward end of the accessway to the beach and a visually permeable gate. The gate will automatically open one hour before sunrise and automatically close one hour after sundown. In addition, the project includes the reconfiguration of the existing private tennis court, court lights, wind screen, planter and landscaping that are all currently located within the public access easement area; and the installation of a private retractable/fold down ramp to provide beach access from existing residence’s deck to the beach.

Although the project site is located in the City of Malibu, an area with a certified Local Coastal Program (LCP), the Commission retains authority over coastal development permits issued by the Commission and; therefore, the Commission is processing the subject amendment request. Jurisdiction over consideration of CDP amendments is set forth in Malibu LIP Section 13.10.2

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<sup>1</sup> Although the property actually consists of two separate parcels, each with a different address, the two parcels have been in common ownership and held as a single parcel at all times relevant to this action. The property is sometimes referred to by just the 22466 Pacific Coast Highway address and is referred to in previous documents as 22468 Pacific Coast Highway. Mrs. Ackerberg owns both parcels and each of the two CDPs at issue (CDP No. 5-83-360 and CDP No. 5-84-754) apply to the entire site (both parcels) as well. To avoid confusion, the two parcels will be collectively referred to in this report as “the property.”

(B)(2). However, the standard of review for the proposed amendment is the policies and provisions of the certified City of Malibu Local Coastal Program (LCP). As conditioned, the proposed amendment is consistent with all applicable policies of the Malibu certified LCP.

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## APPENDICES

### Appendix 1 Substantive File Documents

#### EXHIBITS

- Exhibit 1. Vicinity Map
- Exhibit 2. Parcel Map
- Exhibit 3. Aerial Photo
- Exhibit 4. Site Photo
- Exhibit 5. Site Removal Plan
- Exhibit 6. Site Construction Plan
- Exhibit 7. Site Section and Elevations Plan
- Exhibit 8. Gangway Plan
- Exhibit 9. Accessway Elevation and Details Plan
- Exhibit 10. Original Permit Staff Report
- Exhibit 11. Permit Amendment No. 5-84-754-A1
- Exhibit 12. Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-01-A

**LOCAL APPROVALS RECEIVED:** City of Malibu, Approval in Concept, dated June 24, 2013.

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**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 amendment to Coastal Development Permit No. 5-84-754 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 ground 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 permit 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 AND SPECIAL CONDITIONS**

**NOTE:** Unless specifically altered by the amendment, all standard and special conditions previously applied to Coastal Development Permit 5-84-754 and subsequent amendments remain in effect. In addition, the following 10 special conditions are hereby imposed as conditions upon the proposed project as amended pursuant to CDP 5-84-754-A2.

## **III. SPECIAL CONDITIONS**

### **1. Final Project Plans**

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for the review and approval of the Executive Director, two sets of final project plans for all improvements within the public accessway. All plans must be drawn to scale with dimension shown. The final project plans shall provide that the portable gangway ramp shall be designed by a civil engineer and constructed in a manner that it may be secured and locked into place or removed and placed into storage. In addition, all public access way improvements, including but not limited to, the portable gangway ramp shall be designed in consultation with Mountains Recreation and Conservation Authority ("MRCA").
- B. The Applicant shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

**2. Construction Responsibilities, Debris Removal And Interim Erosion Control Plans**

**A.** By accepting this permit, the applicant shall agree to comply with the following construction-related requirements:

1. The applicant shall not store or place any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no heavy machinery shall be allowed on the sandy beach at any time, or be stored or placed in the sandy beach or intertidal zone at any time.
2. Construction equipment shall not be cleaned on the beach.
3. Construction debris and sediment shall be properly contained and secured on site with best management practices to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.
4. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours. Debris shall be disposed at a debris disposal site outside of the coastal zone or at a location within the coastal zone authorized to receive such material.
5. During construction activities authorized pursuant to this permit, the applicant shall be responsible for removing all unsuitable material or debris within the area of placement should the material be found to be unsuitable for any reason, at any time, when the presence of such unsuitable material/debris can reasonably be attributed to the placement material. Debris shall be disposed at a debris disposal site outside of the coastal zone or at a location within the coastal zone authorized to receive such material.

**B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicant shall submit to the Executive Director an Interim Erosion Control and Construction Best Management Practices Plan, prepared by a qualified, licensed professional. The qualified, licensed professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan are in conformance with the following requirements:

1. The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any staging areas and stockpile areas.
2. Include a narrative report describing all temporary run-off and erosion control measures to be used during construction.
3. The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
4. The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install temporary drains and swales; sand bag barriers; silt fencing; stabilize any stockpiled fill with geofabric covers or other appropriate cover; install geotextiles or mats on all cut or fill slopes; and close and stabilize open trenches as



soon as possible. Basins shall be sized to handle not less than a 10 year, 6 hour duration rainfall intensity event.

5. The erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
  6. The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.
  7. All temporary, construction related erosion control materials shall be comprised of bio-degradable materials (natural fiber, not photo-degradable plastics) and must be removed when permanent erosion control measures are in place. Bio-degradable erosion control materials may be left in place if they have been incorporated into the permanent landscaping design.
- C. The final Interim Erosion Control and Construction Best Management Practices Plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any necessary changes to the Coastal Commission approved site/development plans required by a qualified, licensed professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

### **3. Public Access Signage Plan**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit or the review and approval of the Executive Director, a Public Access Signage Plan. The Public Access Signage Plan shall be prepared in consultation with Mountains Recreation and Conservation Authority. By acceptance of this coastal development permit amendment, the applicant agrees to allow the installation and maintenance of Public Access signs by Mountains Recreation and Conservation Authority, or its successor within: (1) the public vertical access easement; and (2) the Caltrans right of way easement, if authorized by Caltrans. The Public Access Signage Plan shall describe the location, number, size, and contents of signs to be installed.

No additional signs shall be posted on the property subject to this permit amendment that either (a) explicitly or implicitly indicate that any portion of the beach on the subject site located seaward of any existing structure is private or (b) contain messages that could discourage public

use of the beach. In no instance shall signs be posted which read “Private Beach” or Private Property.”

#### **4. Construction of Accessway Improvements**

The applicant shall commence construction of all improvements within the 10-ft. wide vertical public access easement pursuant to the Final Approved Plans pursuant to Special Condition One (1) within 90 days of the issuance of this permit. The Executive Director may grant additional time for good cause. Following commencement of construction of the public accessway improvements under this coastal development permit amendment, applicant shall carry out the construction expeditiously and shall finalize construction as promptly as is reasonably possible, but in no event more than 60 days following commencement of construction, unless the Executive Director or his designee, in consultation within the licensed contractor hired to construct the accessway improvement, determines that additional time is warranted. If, at any time, applicant fails to or is otherwise unable to proceed with the construction of the improvements under this coastal development permit application, at the easement holder’s written request, applicant shall authorize the easement holder to assume the primary role in and proceed with construction and to enter the property for that purpose. If this occurs, applicant agrees to pay the easement holder’s cost of construction. Applicant shall pay such costs within 15 days of receiving a written request from the easement holder for such payment, accompanied by bona fide invoices and/or contracts documenting such costs. In the event that construction of some or all of the improvements under this coastal development permit amendment is undertaken by the easement holder under the provisions of this section and provided that the easement holder uses the services of a licensed contractor, applicant also agrees to indemnify and hold the easement holder harmless against any claims arising out of or related to the construction of the improvements under this coastal development permit amendment.

#### **5. Plans Conforming to Geotechnical Engineer’s Recommendations**

By acceptance of this amendment, the applicant agrees to comply with the recommendations contained in all of the geology, geotechnical, and/or soils reports referenced as Substantive File Documents. These recommendations, including recommendations concerning foundations, sewage disposal, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant 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 that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

#### **6. Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this amendment, the applicant acknowledges and agrees (i) that the site may be subject to hazards from storm waves, tsunamis, surges, flooding, erosion, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers,

agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

## **7. Deed Restriction**

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

## **8. Removal of Excavated Material**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of material.

## **9. State Lands Commission Review**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT the applicant shall obtain all other necessary State permits that may be necessary for all aspects of the proposed project (including approvals from the California State Lands Commission) unless evidence is submitted that such approval(s) are not required). In addition, by acceptance of this permit, the applicant agrees to obtain all necessary Federal permits that may be necessary for all aspects of the proposed project (including, but not limited to, the U.S. Army Corps of Engineers).

## **10. Condition Compliance**

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

result in the expiration of this coastal permit approval and the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

## **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

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

The applicant is requesting an amendment to Coastal Development Permit (CDP) No. 5-84-754 to construct a 10-foot wide vertical public accessway within a previously recorded vertical public access easement that complies with the standards of the Americans with Disabilities Act (ADA) and 69 cu. yds. of associated backfilling and excavation for the construction of the accessway (14 cu. yds. of excavation and 55 cu. yds. of backfilling). This accessway will include footings to support the accessway, a privacy wall, safety lights located on the privacy wall, a portable gangplank ramp that extends from the seaward end of the accessway to the beach and a visually permeable gate. The gate will automatically open one hour before sunrise and automatically close one hour after sundown. In addition, the project includes the reconfiguration of the existing tennis court, court lights, wind screen, planter and landscaping that are all currently located within the public access easement area; and the installation of a fold down ramp to provide beach access from existing residence's deck to the beach.

The project site is located on two contiguous beachfront lots totaling 0.95 acres in area at 22466 and 22500 Pacific Coast Highway, within the City of Malibu in Los Angeles County (APNs 4452-002-013 and 4452-002-011) (Exhibits 1-2)<sup>2</sup>. The property is located between Pacific Coast Highway ("PCH") and the beach, in an area of Malibu known as Carbon Beach, where contiguous residential development fronting the highway separates it from the beach both physically (i.e., the public cannot reach the beach from the road) and visually (the public cannot see the beach from the road). There are only two other open vertical public accessways (ones running perpendicular to the coast, providing access from the road to the beach) in an area, one located .3 miles upcoast and one .4 miles downcoast from the property. In the 1980s, the Commission approved two coastal development permits for development on the subject property, each of which required the permittee to offer to dedicate a public access easement over a portion of the property (one vertical from PCH to the mean high tide line ("MHTL") and one lateral across the width of the property from the toe of the seawall to the MHTL). The offer to dedicate the lateral public access easement was recorded by the previous owner (Ralph W. Trueblood, JR.) on August 17, 1983 (irrevocable offer to dedicate public access easement and declaration of restrictions recorded as Document No. 83-950711) and was accepted by the State Lands Commission (Document No. 02-0671882) on March 20, 2002. The offer to dedicate the vertical public access easement was recorded by Norman J. Ackerberg and Lisette Ackerberg on April 4,

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<sup>2</sup> Although the property actually consists of two separate parcels, each with a different address, the two parcels have been in common ownership and held as a single parcel at all times relevant to this action. The property is sometimes referred to by just the 22466 Pacific Coast Highway address and is referred to in previous documents as 22468 Pacific Coast Highway. Mrs. Ackerberg owns both parcels and each of the two CDPs at issue (CDP No. 5-83-360 and CDP No. 5-84-754) apply to the entire site (both parcels) as well. To avoid confusion, the two parcels will be collectively referred to in this report as "the property."

1985 (irrevocable offer to dedicate recorded as Document No. 85-369283) and was accepted by Mountains Recreation and Conservation Authority (MRCA) (certificate of acceptance of vertical public access easement recorded as Document No. 2012-1458040) on September 27, 2012.

The site is currently developed with an 8,850 sq. ft. single family residence (constructed pursuant to the underlying coastal development permit and Coastal Development Permit Waiver No. 4-92-193), swimming pool, tennis court and a 140 linear foot bulkhead (constructed pursuant to CDP No. 5-83-360). Additionally, unpermitted development consisting of rock riprap, a 9-ft. high concrete wall, fence, railing, planter, light posts, and landscaping are located on the subject property. In addition to being unpermitted, these items are located within vertical and lateral public access easements (created in response to previous permit conditions), obstructing public access to the beach and along the beach seaward of the residence. Since the above mentioned development is obstructing public access to the beach, the current easement holder, Mountains Recreation and Conservation Authority, has not yet been able to actually open and operate the vertical public access easement.

The applicant has already received authorization from the California Coastal Commission through the Commission approved Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-01-A CCC to remove the following development that is currently located within the vertical and lateral public access easement areas: 1) wind screen, 2) planter, 3) tennis court netting, 4) tennis court lights, 5) a 10-ft wide section of the 9-ft high concrete wall, 6) chain link fence, 7) vegetation 8) existing beach access ramp and 9) rock riprap. In this permit amendment, the applicant is seeking authorization for the relocation of the following development: 1) wind screen, 2) planter, 3) tennis court netting and 4) tennis court lights to be located outside of the vertical public access easement area.

The proposed 10-ft wide vertical public accessway will be constructed on top of the existing tennis court and therefore the existing tennis court will need to be shifted approximately 10 feet to the west, resurfaced and restriped. Additionally, a section of the existing previously approved 140 liner foot long bulkhead that is located within the vertical public access easement area will be lowered in height within the 10 ft. wide access easement by approximately 1 ft. to accommodate the constriction of the proposed vertical accessway. All proposed work will occur within the vertical public access easement area and portion of the site located landward of the existing seawall. No heavy machinery will be operated on the sandy beach. Additionally, the construction of the accessway and footings will require minor excavation and backfilling.

The proposed development is compatible with the character of other residential development in the area. In addition, the proposed development includes that use of a visually permeable gate on the accessway on site. As such, the proposed development is designed to minimize impacts to visual resources to the extent feasible.

## **B. PAST COMMISSION ACTION**

On June 9, 1983, the Commission approved CDP No. 5-83-360 (Trueblood) with conditions, authorizing the construction of a wooden bulkhead along the southern portion of the property

located at 22486 Pacific Coast Highway.<sup>3</sup> The Commission found that the proposed development would cause an increase in shoreline erosion and loss of shoreline sand supply, thereby impacting coastal access due to the degradation or loss of usable beach. Accordingly, the Commission conditioned the permit to require that the applicant offer to dedicate an easement for lateral public access and recreational use along the beach directly seaward of the bulkhead, creating more public beach area, in anticipation of, and to offset, the loss of beach that would result from placement of the bulkhead. The Commission required, as a prior to issuance condition of the permit, recordation of an offer to dedicate (OTD) an easement for lateral public access and passive recreational use from the toe of the bulkhead to the mean high tide line, across the entire width of the lot. The permit condition also required that the OTD “restrict the applicant from interfering with present use by the public of the areas subject to the easement prior to acceptance of the offer.” The owner recorded the lateral access OTD on August 17, 1983 (irrevocable offer to dedicate public access easement and declaration of restrictions recorded as Document No. 83-95071), and it appeared in the chain of title from that point on. The State Lands Commission accepted the lateral access easement on March 20, 2002. Although the permit was issued to the Ackerbergs’ predecessor as owner of the property, the permit and OTD clearly state that the terms and conditions of the document run with the land, binding Mrs. Ackerberg as a subsequent purchaser.

On January 24, 1985, the Coastal Commission unanimously approved a coastal development permit CDP No. 5-84-754 (Ackerberg) for the demolition of the existing single family residence, guest house and pool, the construction of a new residence and pool, and the renovation of an existing tennis court. The permit was approved with two (2) special conditions regarding (1) vertical access condition and (2) revised plans. Specifically, Special Condition 1 required the Ackerbergs to record, prior to issuance of the permit, an offer to dedicate a 10-ft wide easement along the eastern (downcoast) property boundary from Pacific Coast Highway to the mean high tide line.<sup>4</sup> The Commission determined that providing access to the beach in this area of the Malibu coastline was necessary to bring the project into conformity with the public access policies of the Coastal Act and, therefore, included a requirement of recordation of an Offer to Dedication (OTD) for a vertical public access easement. On April 4, 1985, the Ackerbergs recorded the OTD for a 10-ft wide easement along the eastern (downcoast) boundary of the property, extending from the northern property boundary, at its intersection with the seaward sidewalk along Pacific Coast Highway, to the mean high tide line (irrevocable offer to dedicate recorded as Document No. 85-369283).

Moreover, on June 5, 1985, the Coastal Commission approved Coastal Development Permit Amendment No. 5-84-754-A1 (Ackerberg) to add a 12 ft. diameter satellite television dish antenna on the roof of the new single family residence. Furthermore, on September 11, 1992 the Commission approved Coastal Development Permit Waiver No. 4-92-193 for the addition of a 800 sq. ft. exercise room above the attached garage of the existing 8050 sq. ft. single family residence.

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<sup>3</sup> This property is now identified as 22500 and 22466 Pacific Coast Highway.

<sup>4</sup> The Commission found that vertical public access in this location was necessary due to the contiguous residential development along Carbon Beach blocking views and the lack of open accessway in the area.

On March 28, 2005, Commission staff confirmed that unpermitted development on the project site was obstructing the vertical and lateral public access easements including, but not limited to, rock riprap located seaward of the vertical seawall, a 9-ft. high concrete privacy wall, a large generator and associated concrete slab<sup>5</sup>, fence, railing, planter, light posts, and landscaping. At the hearing for CDP No. 5-84-754, the Commission clarified that the Ackerbergs could temporarily use the portion of the property within the vertical access easement area until such time as the OTD was accepted and the easement ready to be opened for public use. Pursuant to his authority under Coastal Act Section 30809, the Executive Director issued a Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings ("NOI") on April 27, 2007, addressing the unpermitted development and the obstruction of public access. Mrs. Ackerberg objected to the recordation of a Notice of Violation and the issuance of the Order. In an effort to resolve the violations on Mrs. Ackerberg's property, Commission staff also sent a Draft Consent Cease and Desist Order to the applicant's legal counsel. After several failed attempts between staff and Mrs. Ackerberg to reach a settlement to resolve the matter, the Executive Director initiated enforcement proceedings to finally resolve the violations. On July 8, 2009, the Commission approved Cease and Desist Order CCC-09-CD-01 ("Order") directing Mrs. Ackerberg to: 1) cease and desist from construction and/or maintenance of unpermitted material or structures, 2) removal all unpermitted material and structures from the easement areas of the property, 3) allow public use of the easements, in compliance with the Coastal Act and with the terms and conditions of the existing permits and easements, and 4) cease and desist from unpermitted development activities or non-compliance with conditions of the CDPs.

Additionally, on March 7, 2013, the Commission approved Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-01-A to modify Cease and Desist Order CCC-09-CD-01 previously issued by the Commission on July 8, 2009, by incorporating new, mutually acceptable language to the order to settle all Coastal Act related claims, including claims for monetary fines and penalties under Chapter 9 of the Coastal Act. Specifically, through this Consent and Agreement and Amended Order, Mrs. Ackerberg has agreed to, among other things, 1) remove all unpermitted development and development inconsistent with previously issued coastal development permits ("CDPs"), as described below, 2) provide for public access across a public vertical access easement by paying for and constructing an accessway ("Accessway"), 3) make an annual payment to the Mountains Recreation and Conservation Authority ("MRCA"), the holder of the vertical public access easement, for ten years to fund the operation and maintenance of the Accessway, and 4) settle monetary claims for relief for those violations of the Coastal Act alleged in the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings dated April 27, 2007 ("NOI"), and occurring prior to the date of the Consent Agreement and Amended Order.

The Consent Agreement and Amended Order approved by the Commission laid the ground work for the proposed permit amendment application that is the subject of this staff report. Specifically, Condition No. 4 "Access Improvement Plan" of the Order required Mrs. Ackerberg to submit: 1) a public accessway improvement plan and 2) submit a CDP amendment application

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<sup>5</sup> The applicant has since removed the generator and associated concrete slab pursuant to a permit issued by the City of Malibu.

to authorize the accessway under the Coastal Act. Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-01-A Condition 4.2 states:

*4.2 Within 14 days of reviving approval of the Accessway Improvement Plan from the Executive Director, Respondent shall submit to the South Central Coast District office of the Commission all materials that are required to complete a coastal development permit (“CDP”) amendment application (to amend existing CDP No. 5-84-754), for the proposed Accessway Improvement Plan approved by the Executive Director, At least 21 days prior to the submittal of the CDP application, Respondent shall offer the holder of the vertical access easement (“easement holder”) the opportunity to be a co-applicant in this CDP amendment application.*

Thus, pursuant to the requirements of Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-01-A Condition 4.2, the applicant is now requesting an amendment to Coastal Development Permit (CDP) No. 5-84-754 to construct a 10-foot wide ADA-compliant vertical public accessway. This accessway will include a privacy wall located between the residential portion of the site and the accessway consistent with all stringline requirements, low-wattage public safety lights located on the privacy wall, a portable gangplank ramp that extends from the seaward end of the accessway to the beach to allow for public access during periods of low beach sand elevation, and a visually permeable gate with automatic locks. Additionally, the Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-01-A required the applicant to consult with the vertical public access easement holder, Mountains Recreation and Conservation Authority (“MRCA”), to ensure that the accessway will provide adequate public access across the public access easement and comply with applicable requirements.

### **C. PUBLIC ACCESS AND RECREATION**

The Malibu Local Coastal Program (LCP) provides for the protection and enhancement of public access and recreation opportunities in the City of Malibu. The policies contained in the Malibu LCP are intended to maximize the provisions 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 resources areas from overuse.

##### **Coastal Act Section 30211**



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) 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 30214**

- (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:
  - (1) Topographic and geological site characteristics.
  - (2) The capacity of the site to sustain use and at what level of intensity.

- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
  - (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.
- (b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under section 4 of Article X of the California Constitution.
- (c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

### **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.
- 2.7 Public accessways and trails to the shoreline and public parklands shall be permitted use in all land use and zoning designations. Where there is an existing, but unacceptable and/or unopened public access Offer-to-Dedicate (OTD), easement, or deed restriction for lateral, vertical or trail access or related support facilities e.g. parking construction of necessary access improvements shall be permitted to be constructed, opened and operated for its intended public use.
- 2.15 The City should coordinate with County, federal and state park agencies and nonprofit land trusts or organizations to insure that private land donations and/or public access dedications are accepted and managed for their intended use.
- 2.38 To help finance the construction and maintenance of new accessways, the use of private or public grant or other local, State and Federal funding sources shall be utilized.
- 2.71 Public agencies and private associations which may be appropriate to accept offers of dedication include, but shall not be limited to, the State Coastal Conservancy, the Department of Parks and Recreation, the State Lands Commission, the County, the City, the Santa Monica Mountains Conservancy and non-governmental organizations.

- 2.73 Maximum public access shall be provided in a manner which minimizes conflicts with adjacent uses.
- 2.85 Improvements and/or opening of accessways already in public ownership or accepted pursuant to a Coastal Permit shall be permitted regardless of the distance from the nearest available vertical accessway.
- 2.86 The following standards shall apply in carrying out the access policies of the LCP relative to requiring and locating vertical accessways to the shoreline. These standards shall not be used as limitations on any access requirements pursuant to the above policies. ...
  - o. Carbon Beach
    - 1. Requirement for or public acquisition of vertical access every 1,000 feet of shoreline.
    - 2. Improve and open 2 existing vertical access OTDs and 4 existing vertical access deed restrictions.
    - 3. Maintain and operate existing "Zonker Harris" vertical accessway.

The policies of the adopted Malibu LCP and Sections 30210 and 30211 of the Coastal Act mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, Section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches.

In the case of the proposed project, consistent with the requirements of the Cease and Desist Order approved by the Commission for the removal of the unpermitted development on site the applicant is proposing to construct a new public access way within a previously recorded vertical public access easement and install public access signage on site. Thus, the project will serve to improve public access and recreational opportunities on the site consistent with the policies and provisions of the Coastal Act.

The subject site is a beachfront lot located between Pacific Coast Highway and the ocean. Easements have been recorded for both public vertical and lateral access on and across the subject property. The lateral public access easement, accepted by State Lands Commission, is located along the sandy beach portion of the subject lot between the mean high tide line and the toe of the bulkhead. The vertical public access easement, accepted by Mountains of Recreation and Conservation Authority, is located on the eastern (downcoast) side of the property and extends from the northern property boundary to the mean high tide line to the south. The proposed project will facilitate the public's ability to access the beach and ocean by opening a previously closed vertical public access easement and construction a 10-ft wide vertical public accessway, consistent with the policies of the LCP, to allow for access from Pacific Coast Highway to the beach. The proposed project includes a gate with an automatic lock which will be used to control access to the beach, for instance restricting access at night or when unsafe conditions exist such as storm damage. MRCA, the holder of the subject vertical public access easement, manage the accessway once the accessway improvements have been constructed.

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

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

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

The Commission must consider a project's direct and indirect effect on public tidelands. To protect public tidelands when beachfront development is proposed, the Commission must consider (1) whether the development or some portion of it will encroach on public tidelands (i.e., will the development be located below the mean high tide line as it may exist at some point throughout the year) and (2) if not located on tidelands, whether the development will indirectly affect tidelands by causing physical impacts to tidelands. In the case of the proposed project amendment, the applicant has not provided evidence whether or not the State Lands Commission asserts a claim that the project intrudes onto sovereign lands. Thus, Special Condition No. Nine (9) requires the applicant obtain all other necessary State or Federal permits that may be necessary for all aspects of the proposed project, including from the California State Lands Commission, or provide evidence that no such approval is required .

Even structures located above the mean high tide line, however, may have an adverse effect on shoreline processes as waves may still reach the structures, and wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately to the extent and availability of tidelands. That is why the Commission also much consider whether a project will have indirect effects on public ownership and public use of shorelands. The applicant seeks Commission approval of not only the improvements within the public vertical access easement

area but also for the installation of a new retractable private access ramp to the beach from the applicant's deck. The permanent occupation of sandy area by the proposed private access ramp within the lateral public access easement area would result in adverse effects to public access along the sandy beach. However, in this case, the applicant has coordinated with Commission staff to design the project to use a retractable ramp that will be temporarily lowered to the beach for private access in order to minimize any adverse impacts to lateral public access.

The beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to increase significantly over the coming years. The public has a right to use the shoreline under the public trust doctrine, the California Constitution and California common law. The Commission must protect those public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights. In the case of the proposed project, the potential for the permanent loss of sandy beach as a result of the change in the beach profile or steepening from potential scour effects, as well as the presence of a residential structure out over the sandy beach does exist.

In past permit actions, the Commission has required that all new development on a beach, including new single family residences, provide for lateral public access along the beach in order to minimize any adverse effects to public access. In this case, when the Commission previously approved the underlying coastal permit (CDP 5-84-754) in 1985 for the demolition of the existing single family residence, guest house and pool, the construction of a new residence and pool, and the renovation of an existing tennis court, the permit was approved with two (2) special conditions regarding (1) vertical access condition and (2) revised plans. Specifically, Special Condition 1 required the Ackerbergs to record, prior to issuance of the permit, an offer to dedicate a 10-ft wide easement along the eastern property boundary from Pacific Coast Highway to the mean high tide line. The Commission determined that providing access to the beach in this area of the Malibu coastline was necessary to bring the project into conformity with the public access policies of the Coastal Act and, therefore, included a requirement of recordation of an Offer to Dedication (OTD) for a vertical public access easement.

Additionally, on June 9, 1983, the Commission approved CDP No. 5-83-360 (Trueblood) with conditions, authorizing the construction of a wooden bulkhead along the southern portion of the property located at 22486 Pacific Coast Highway. The Commission found that the proposed development would cause an increase in shoreline erosion and loss of shoreline sand supply, thereby impacting coastal access due to the degradation or loss of usable beach. Accordingly, the Commission conditioned the permit to require that the applicant offer to dedicate an easement for lateral public access and recreational use along the beach directly seaward of the bulkhead, creating more public beach area, in anticipation of, and to offset, the loss of beach that would result from placement of the bulkhead. The Commission required, as a prior to issuance condition of the permit, recordation of an offer to dedicate (OTD) an easement for lateral public access and passive recreational use from the toe of the bulkhead to the mean high tide line.

Both the offer to dedicate lateral and vertical public access easements were recorded prior to the issuance of the coastal development permit and have since been accepted by non-profit organizations previously discussed in detail above. Although the vertical public access easement on the subject property has been accepted, Mountains Recreation and Conservation Authority have not yet been able to actually open and operate the vertical public access easement due to the

unpermitted development currently obstructing the vertical accessway as previously discussed above.

Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that public access to the sea be provided adequate to allow use of dry sand and rocky coastal beaches. Sections 30220 and 30221 of the Coastal Act require that coastal areas suited for coastal recreational activities, that cannot be provided at inland water areas, be protected. Furthermore, Section 30214 requires that the provision of public access opportunities take into account site geology and other characteristics, protection of natural resources, and the need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

As described below, the applicant's consultants have investigated the geology of the site and designed the proposed accessway to assure stability. The proposed project includes a visually permeable gate which will be used to control access to the beach, for instance restricting access at night or when unsafe conditions exist such as storm damage. MRCA, the holder of the subject vertical public access easement, will manage the accessway once the accessway improvements have been constructed. The Commission finds that in order to ensure that the accessway will be provided and enhance public access to the beach, Special Condition Three (3) is necessary to require the applicant to submit a Public Access Signage Plan, that is prepared in consultation with MRCA, to include details regarding the location and wording of the proposed signs to ensure compliance.

The applicant has submitted preliminary project plans for the proposed portable gangway ramp and accessway which have not yet been fully evaluated by the Mountains Recreation and Conservation Authority ("MRCA"), the holder of the vertical public access easement. Thus, to ensure that the applicant's proposal is adequately implemented, Special Condition One (1) requires the applicant to submit two sets of final project plans, for the review and approval of the Executive Director, that have been prepared in consultation with MRCA to ensure that all public access improvements on site are constructed in a manner that will ensure engineering and geologic stability while also complying with the requirements of the MRCA for the provision of public access.

In addition, in response to the previously approved Consent Cease and Desist Order, the applicant is now proposing to construct all public access improvements within the Public Vertical Access Easement. In order to ensure that the access improvements are constructed in a timely manner, Special Condition Four (4) requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. In addition, Special Condition Four (4) requires that the applicant commence construction of all improvements within the 10 ft. wide vertical public access easement pursuant to the Final Approved Plans pursuant to Special Condition One (1) within 90 days of the issuance of this permit. The Executive Director may grant additional time for good cause. Following commencement of construction of the public accessway improvements under this coastal development permit amendment, applicant shall carry out the construction expeditiously and shall finalize construction as promptly as is reasonably possible, but in no event more than 60 days following commencement of construction, unless the Executive Director or his designee, in

consultation within the licensed contractor hired to construct the accessway improvement, determines that additional time is warranted.

In addition, consistent with the requirements of the Cease and Desist Order approved by the Commission for the removal of the unpermitted development on site the applicant is also proposing to install public access signage indicating that the vertical public accessway is available for use. However, the applicant has not yet submitted detailed final plans for such signs. Therefore, to ensure that the applicant's proposal is adequately implemented, Special Condition Three (3) requires that the applicant shall submit for the review and approval of the Executive Director, a Public Access Signage Plan. The Public Access Signage Plan shall be prepared in consultation with Mountains Recreation and Conservation Authority. By acceptance of this coastal development permit amendment, the applicant agrees to allow the installation and maintenance of Public Access signs by Mountains Recreation and Conservation Authority, or its successor within: (1) the public vertical access easement; and (2) the Caltrans right of way easement, if authorized by Caltrans. The Public Access Signage Plan shall describe the location, number, size, and contents of signs to be installed.

Further, the Commission notes that chronic unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the Malibu area. These signs have an adverse effect on the ability of the public to access public trust lands. Therefore, Special Condition Three (3) also provides that no additional signs shall be posted on the property subject to this permit amendment which either (a) explicitly or implicitly indicate that any portion of the beach on the subject site located seaward of any existing structure is private or (b) contain messages that attempt to prohibit public use of the beach. In no instance shall signs be posted which read "Private Beach" or Private Property."

Further, Special Condition Seven (7) requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as a restriction on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restriction are imposed on the subject property.

In conclusion, the Commission finds that the proposed improvements within previously recorded vertical public access easement on site and the installation of public access signage on site, with the above referenced conditions will serve to improve public access and recreational opportunities on the site consistent with the policies and provisions of the Coastal Act. Thus, the Commission finds that the proposed project, as conditioned, will not significantly impact public access or recreational opportunities at the project site, and therefore the project is consistent with the public access policies of the adopted Malibu LCP and Chapter 3 of the Coastal Act.

In summary, the following special conditions are required to assure the project's consistency with the public access policies of the adopted Malibu LCP and Chapter 3 of the Coastal Act.:

- Special Condition 1: Revised Plans
- Special Condition 3: Public Access Signage Plan
- Special Condition 4: Construction of Accessway Improvements
- Special Condition 7: Deed Restriction
- Special Condition 9: State Lands Commission Review

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with the public access policies of the adopted Malibu LCP and Chapter 3 of the Coastal Act.

#### **D. HAZARDS AND WATER QUALITY**

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

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

Sections 30253 of the Coastal Act states, in pertinent part, that new development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

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

- 4.2 All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.
- 4.5 Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geological hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.
- 4.10 New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosion manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.



- 4.16 All applications for new development on a beach, beachfront or blufftop property shall include a wave uprush and impact report and analysis prepared by a licensed civil engineer with expertise in coastal engineering which addresses and demonstrates the effect of said development in relation to the following:
- The profile of the beach;
  - Surveyed locations of mean high tide lines acceptable to the State Lands Commission;
  - The availability of public access to the beach;
  - The area of the project site subject to design wave uprush;
  - Foundation design requirements;
  - The need for a shoreline protection structure over the life of the project;
  - Alternatives for protection of the septic system;
  - The long term effects of proposed development on sand supply;
  - Future projections in sea level rise; and,
  - Project alternatives designed to avoid or minimize impacts to public access.
- 4.22 Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered. Development shall be set back a sufficient distance landward and elevated to a sufficient foundation height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.
- 4.23 New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and setback as far landward as possible. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.
- 4.24 All proposed development on a beach or along the shoreline, including a shoreline protection structure, 1) must be reviewed and evaluated in writing by the State Lands Commission and 2) may not be permitted if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing.
- 4.26 Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:
- No stockpiling of dirt or construction materials shall occur on the beach;
  - All grading shall be properly covered and sandbags and/or ditches shall be used to prevent runoff and siltation;
  - Measures to control erosion shall be implemented at the end of each day's work;
  - No machinery shall be allowed in the intertidal zone at any time to the extent feasible;
  - All construction debris shall be removed from the beach.

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

Additionally, Section 30231 of the Coastal Act, which is incorporated as a policy of the Malibu LCP, states that:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.*

In addition, the following LUP policies pertain to the protection of water quality:

- 3.95 New development shall be sited and designed to protect water quality and minimize impacts to coastal waters by incorporating measures designed to ensure the following:

- a. Protecting areas that provide important water quality benefits, areas necessary to maintain riparian and aquatic biota and/or that are susceptible to erosion and sediment loss.
  - b. Limiting increases of impervious surfaces.
  - c. Limiting land disturbances activities such as clearing and grading, and cut-and-fill to reduce erosion and sediment loss.
  - d. Limiting disturbance of natural drainage features and vegetation.
- 3.96 New development shall not result in the degradation of the water quality of groundwater basins or coastal surface waters including the ocean, coastal streams, or wetlands. Urban runoff pollutants shall not be discharged or deposited such that they adversely impact groundwater, the ocean, coastal streams, or wetlands, consistent with the requirements of the Los Angeles Regional Quality Control Board's municipal stormwater permit and the California Ocean Plan.
- 3.97 Development must be designed to minimize, to the maximum extent feasible, the introduction of pollutants of concern that may result in significant impacts from site runoff from impervious areas. To meet the requirement to minimize "pollutants of concern," new development shall incorporate a Best Management Practice (BMP) or a combination of BMPs best suited to reduce pollutant loading to the maximum extent feasible.

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

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

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

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

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

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

The intent of the stringline standard is to limit infill development to only existing developed shoreline areas and limit the encroachment of new structures out onto the beach in order to ensure maximum public access, and minimize wave hazard and impacts to coastal processes, shoreline sand supply, and public views. In the case of the proposed project, in addition to the proposed public access improvements on site, the applicant is also proposing to reconfigure an existing tennis court and install a retractable private access ramp to the beach on the upcoast side of the property. The permanent occupation of sandy area by the proposed private access ramp within the lateral public access easement area would result in adverse effects to public access along the sandy beach and would constitute seaward encroachment by private residential development. However, in this case, the applicant has coordinated with Commission staff to design the project to use a retractable ramp that will be temporarily lowered to the beach for private access in order to minimize any adverse impacts to lateral public access and avoid seaward encroachment by private development or the need for additional shoreline protection.

Therefore, the Commission finds that the proposed development is consistent with the relevant sections of the LCP and Coastal Act regarding seaward encroachments including LUP Policy 4.30 and Coastal Act Policies 30253.

In addition, the applicant has submitted information prepared by a coastal engineering consultant regarding the location of the mean high tide line on the subject property in the report titled: Coastal Engineering Report, 22466 Pacific Coast Highway, Malibu, CA, dated September 30, 2013 by David C. Weiss Structural Engineer and Associates, Inc. The applicant's coastal engineering consultant has asserted that there are two design waves considered for this geographic area. The first breaks down approximately 340' from the face of the bulkhead and arrives at the bulkhead at elevation +10.0 MSL. The second design wave breaks somewhat more than 150' seaward of the bulkhead and arrives at the bulkhead at elevation +11.65 MSL. The elevations of both waves at the face of the bulkhead are lower than the elevation of the proposed accessway. Therefore, under design storm conditions, the accessway will not be inundated.

The Commission finds that the any new development that is permitted on the subject site must be designed and constructed in a manner that ensures geologic and structural stability and minimize hazards consistent with Policies 4.2, 4.5, 4.22, 4.23 of the LCP, and Section 30253 of the Coastal Act which has been included in the certified Malibu LCP.

Further, the Commission further finds that wave uprush and storm waves have the potential to affect and erode the concrete walkway and particularly the area immediately seaward of the seaward edge of the walkway. Although the applicant's engineering consultant has estimated that the maximum limit of wave uprush will be lower in elevation than the elevation of the proposed accessway, beachfront development located on the subject site is subject to an unusually high degree risk due to storm waves and surges, high surf conditions, erosion, and flooding. Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from natural hazards, including wildfire and erosion, those risks remain substantial here. If the applicant nevertheless chooses to proceed with the project, the Commission requires the applicant to assume the liability from these associated risks. Through the assumption of risk condition, the applicant acknowledges the nature of the fire and/or geologic hazard that exists on the site and that may affect the safety of the proposed development.

Additionally, to minimize erosion and ensure stability of the project site, the project must include adequate drainage and erosion control measures. In order to achieve these goals, the Commission requires the applicant to submit drainage and interim erosion control plans certified by the geotechnical engineer. Furthermore, to ensure that the potential for construction or demolition activities to adversely affect the marine environment are minimized, Special Condition No. Two (2) requires the applicant to ensure that stockpiling of materials shall not occur on the beach area, that no machinery will be allowed in on the sandy beach at any time, all debris resulting from the construction or demolition is promptly removed from the beach area, all grading shall be properly covered, and that sand bags and/or ditches shall be used to prevent runoff and siltation from the property. Lastly, Special Condition No. Eight (8) requires the applicant to provide of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material.

Although the conditions described above render the project sufficiently stable to satisfy the requirements of Section 30253, no project is wholly without risks.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30253 of the Coastal Act and as a response to the risks associated with the project:

- Special Condition 2: Construction Responsibilities, Debris Removal And Interim Erosion Control Plan
- Special Condition 5: Plans Conforming to Geotechnical Engineer's Recommendations
- Special Condition 6: Assumption of Risk, Waiver of Liability and Indemnity
- Special Condition 8: Removal of Excavated Materials

For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with Section 30253 and 30231 of the Coastal Act, which is incorporated as part of the LCP of the Coastal Act.

## **E. 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.

The property is located between Pacific Coast Highway (“PCH”) and the beach, in an area of Malibu known as Carbon Beach, where contiguous residential development fronting the highway separates it from the beach both physically (i.e., the public cannot reach the beach from the road) and visually (the public cannot see the beach from the road). 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 limit’s the public’s ability to view the coast or ocean to only those few parcels which have not yet been developed. Currently, an unpermitted as-built 9ft. high concrete wall is located within the vertical public access easement area and is blocking all views to the ocean (Exhibit 4). The applicant is proposing to remove a 10-ft. wide section of the concrete wall that is currently located within the vertical public easement area to allow for the construction of the new 10 ft. wide vertical public accessway. Removal of this 10-ft. wide section of concrete wall will open up views to the ocean from Pacific Coast Highway; however,



the new proposed 10-ft. wide vertical public accessway with a gate will be unavoidably visible from public viewing areas. To help minimize these visual impacts, the applicant is proposing to design the gate using visually permeable design within the accessway to allow for some bluewater ocean views. However, the applicant has not yet submitted detailed final plans for such signs. Therefore, to ensure that the applicant's proposal is adequately implemented, Special Condition 1 requires that the applicant shall submit for the review and approval of the Executive Director, Final Project Plans, which shall include the details for the installation of the gate, which shall be prepared in consultation with Mountains Recreation and Conservation Authority.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of the Malibu LCP, including Section 30251 of the Coastal Act, which is incorporated as part of the LCP.

#### **F. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without the required coastal development permit.

On March 28, 2005, Commission staff confirmed that unpermitted development on the project site was obstructing vertical and lateral public access easements including, but not limited to, rock riprap, 9-ft. high concrete wall, large generator and associated concrete slab<sup>6</sup>, fence, railing, planter, light posts, and landscaping. Pursuant to his authority under Coastal Act Sections 30810 and 30812, the Executive Director issued a Notice of Intent to Record a Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings ("NOI") on April 27, 2007, addressing the unpermitted development and the obstruction of public access. Mrs. Ackerberg objected to the recordation of a Notice of Violation and the issuance of the Order. In an effort to resolve the violations on Mrs. Ackerberg's property, Commission staff also sent a Draft Consent Cease and Desist Order to the applicant's legal counsel. After several failed attempts between staff and Mrs. Ackerberg to reach a settlement to resolve the matter, the Executive Director initiated enforcement proceedings to finally resolve the violations. On July 8, 2009, the Commission approved Cease and Desist Order CCC-09-CD-01 ("Order") directing Mrs. Ackerberg to: 1) cease and desist from construction and/or maintenance of unpermitted material or structures, 2) removal all unpermitted material and structures from the easement areas of the property, 3) allow public use of the easements, in compliance with the Coastal Act and with the terms and conditions of the existing permits and easements, and 4) cease and desist from unpermitted development activities or non-compliance with conditions of the CDPs.

Additionally, on March 7, 2013, the Commission approved Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-01-A to modify Cease and Desist Order CCC-09-CD-01 previously issued by the Commission on July 8, 2009, by incorporating new, mutually acceptable language to the order to settle all Coastal Act related claims, including claims for monetary fines and penalties under Chapter 9 of the Coastal Act. Specifically, through this Consent and Agreement and Amended Order, Mrs. Ackerberg has agreed to, among other things, 1) remove all unpermitted development and development inconsistent with previously issued coastal development permits ("CDPs"), as described below, 2) provide for public access across a

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<sup>6</sup> The applicant has since removed the generator and associated concrete slab pursuant to a permit issued by the City of Malibu.

public vertical access easement by paying for and constructing an accessway (“Accessway”), 3) make an annual payment to the Mountains Recreation and Conservation Authority (“MRCA”), the holder of the vertical public access easement, for ten years to fund the operation and maintenance of the Accessway, and 4) settle monetary claims for relief for those violations of the Coastal Act alleged in the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings dated April 27, 2007 (“NOI”), and occurring prior to the date of the Consent Agreement and Amended Order.

The Consent Agreement and Amended Order approved by the Commission laid the ground work for the proposed permit amendment application that is the subject of this staff report. Specifically, Condition No. 4 “Access Improvement Plan” of the Order required Mrs. Ackerberg to submit 1) accessway improvement plan and 2) submit a CDP amendment application to authorize the accessway under the Coastal Act. Thus, pursuant to the requirements of Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-01-A, the applicant is now requesting an amendment to Coastal Development Permit (CDP) No. 5-84-754 to construct a 10-foot wide ADA vertical public accessway.

In previous permit actions, the Commission has typically required a special condition requiring the removal of the unpermitted development on site, however the applicant has already received authorization from the Commission pursuant to approved Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-01-A to remove the unpermitted development from the vertical and lateral public access easement areas.

In addition, in order to ensure that the access improvements are constructed in a timely manner, Special Condition Ten (10) requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. In addition, Special Condition Four (4) requires that the applicant commence construction of all improvements within the 10 ft. wide vertical public access easement pursuant to the Final Approved Plans pursuant to Special Condition One (1) within 90 days of the issuance of this permit. The Executive Director may grant additional time for good cause. Following commencement of construction of the public accessway improvements under this coastal development permit amendment, applicant shall carry out the construction expeditiously and shall finalize construction as promptly as is reasonably possible, but in no event more than 60 days following commencement of construction, unless the Executive Director or his designee, in consultation within the licensed contractor hired to construct the accessway improvement, determines that additional time is warranted.

Although development has taken place prior to Commission action on this permit amendment, consideration of the application by the Commission is based solely upon policies of the adopted Malibu LCP and the public access policies of the Coastal Act. Commission action on this permit amendment application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit or permit amendment. The following special condition is required to assure the project’s consistency with the adopted Malibu LCP and the public access policies of the Coastal Act. Only as conditioned, is the proposed development consistent with the policies of the adopted Malibu LCP and the public access policies of the Coastal Act.

Special Condition 10. Condition Compliance

**G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit Amendment 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 above, the proposed amendment, as conditioned, is 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. The following special conditions are required to assure the project's consistency with Section 13096 of the California Code of Regulations:

Special Conditions 1 through 10

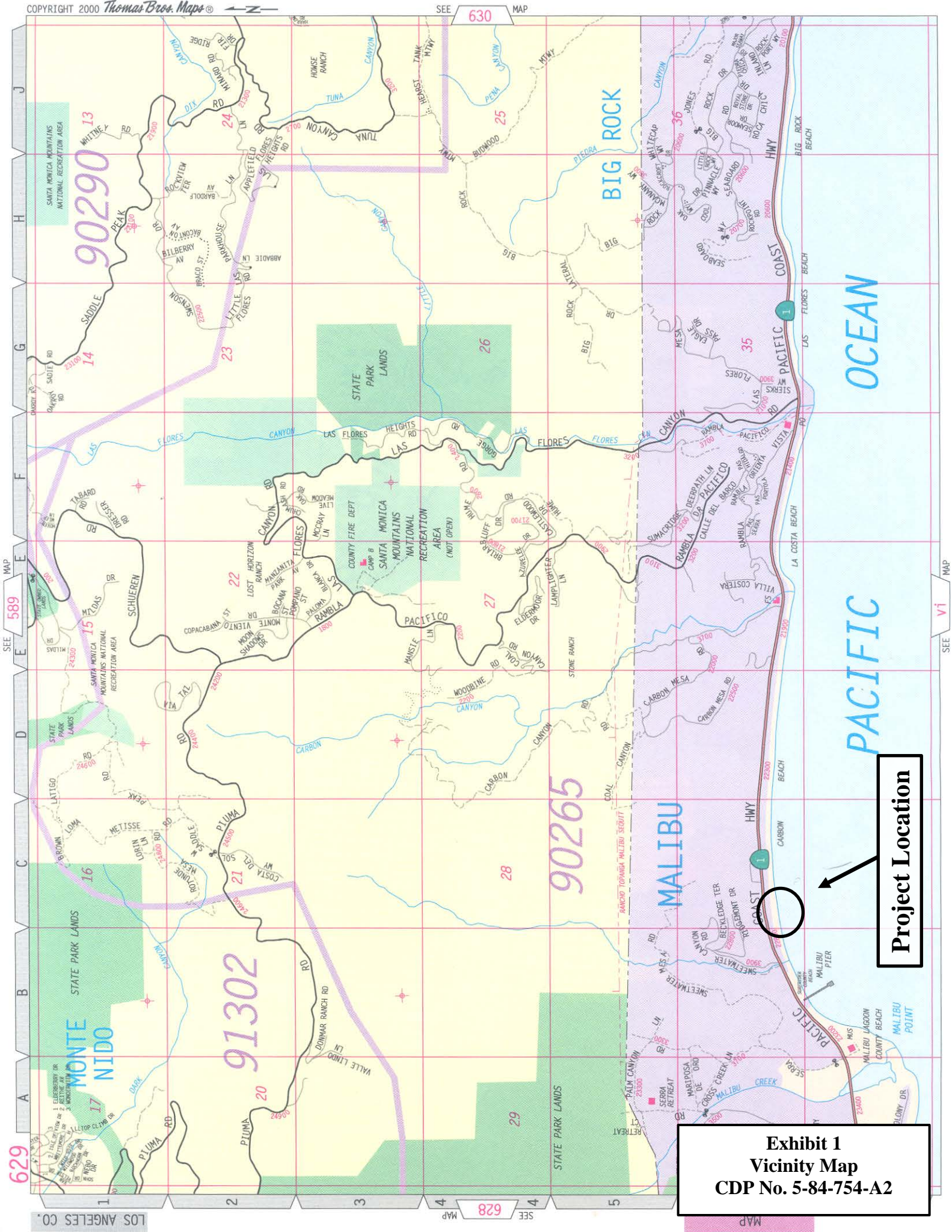
As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed amendment, as conditioned 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**

City of Malibu, Local Coastal Program; Coastal Development Permit No. 5-83-360 (Trueblood Jr.); Coastal Development Permit No. 5-84-754 (Ackerberg); Coastal Development Permit No. 5-84-754-A1 (Ackerberg); Coastal Development Permit No. 5-83-754 (Ackerberg); Coastal Development Permit No. 5-83-703-A1 (Geffen)





**Project Location**

**Exhibit 1  
Vicinity Map  
CDP No. 5-84-754-A2**





**Existing  
Residence**

**Existing  
Tennis Court**

**Exhibit 2  
Aerial Photo  
CDP No. 5-84-754-A2**





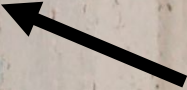
**Existing  
Residence**

**Existing  
Tennis Court**

**Exhibit 3  
Aerial Photo  
CDP No. 5-84-754-A2**



**Proposed Vertical  
Public Accessway Area**



**Exhibit 4  
Site Photo  
CDP No. 5-84-754-A2**







ABRAMSON  
TEIGER  
ARCHITECTS  
1000 INGLEWOOD STREET  
SUNNYVALE, CA 94089  
TEL: 415-353-0555  
FAX: 415-353-0555  
WWW.ABRAMSONTEIGER.COM

ACKERBERG BEACH ACCESS  
22466 PACIFIC COAST HIGHWAY  
MALIBU, CA 90265



NO.	DATE	REVISION
1	07/10/02	CDP SUBMITTAL
2	07/10/02	CDP SUBMITTAL
3	07/10/02	CDP SUBMITTAL
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NOTES:  
1. ALL EXISTING STRUCTURES AND UTILITIES SHOWN ON THIS PLAN ARE TO BE REMOVED.  
2. ALL NEW CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE AND ALL APPLICABLE ORDINANCES.  
3. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.  
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL ADJACENT PROPERTIES AND UTILITIES DURING CONSTRUCTION.  
5. ALL MATERIALS AND WASTE SHALL BE PROPERLY DISPOSED OF AT AN APPROVED LOCATION.  
6. THE SITE SHALL BE RESTORED TO ITS ORIGINAL CONDITION OR BETTER.  
7. ALL UTILITIES SHALL BE DEEPLY REPAIRED OR REPLACED.  
8. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.  
9. ALL CONSTRUCTION SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.  
10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INSURANCE COVERAGE.  
11. ALL WORK SHALL BE COMPLETED IN ACCORDANCE WITH THE SPECIFICATIONS AND DETAILS SHOWN ON THIS PLAN.  
12. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY LABORER'S COMPENSATION CERTIFICATES.  
13. ALL MATERIALS SHALL BE STORED AT AN APPROVED LOCATION.  
14. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY TRUCKING PERMITS.  
15. ALL TRUCKS SHALL BE EQUIPPED WITH DUST SUPPRESSION DEVICES.  
16. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY NOISE ABATEMENT MEASURES.  
17. ALL CONSTRUCTION SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.  
18. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INSURANCE COVERAGE.  
19. ALL WORK SHALL BE COMPLETED IN ACCORDANCE WITH THE SPECIFICATIONS AND DETAILS SHOWN ON THIS PLAN.  
20. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY LABORER'S COMPENSATION CERTIFICATES.

Site Removal Plan  
AKS A 01

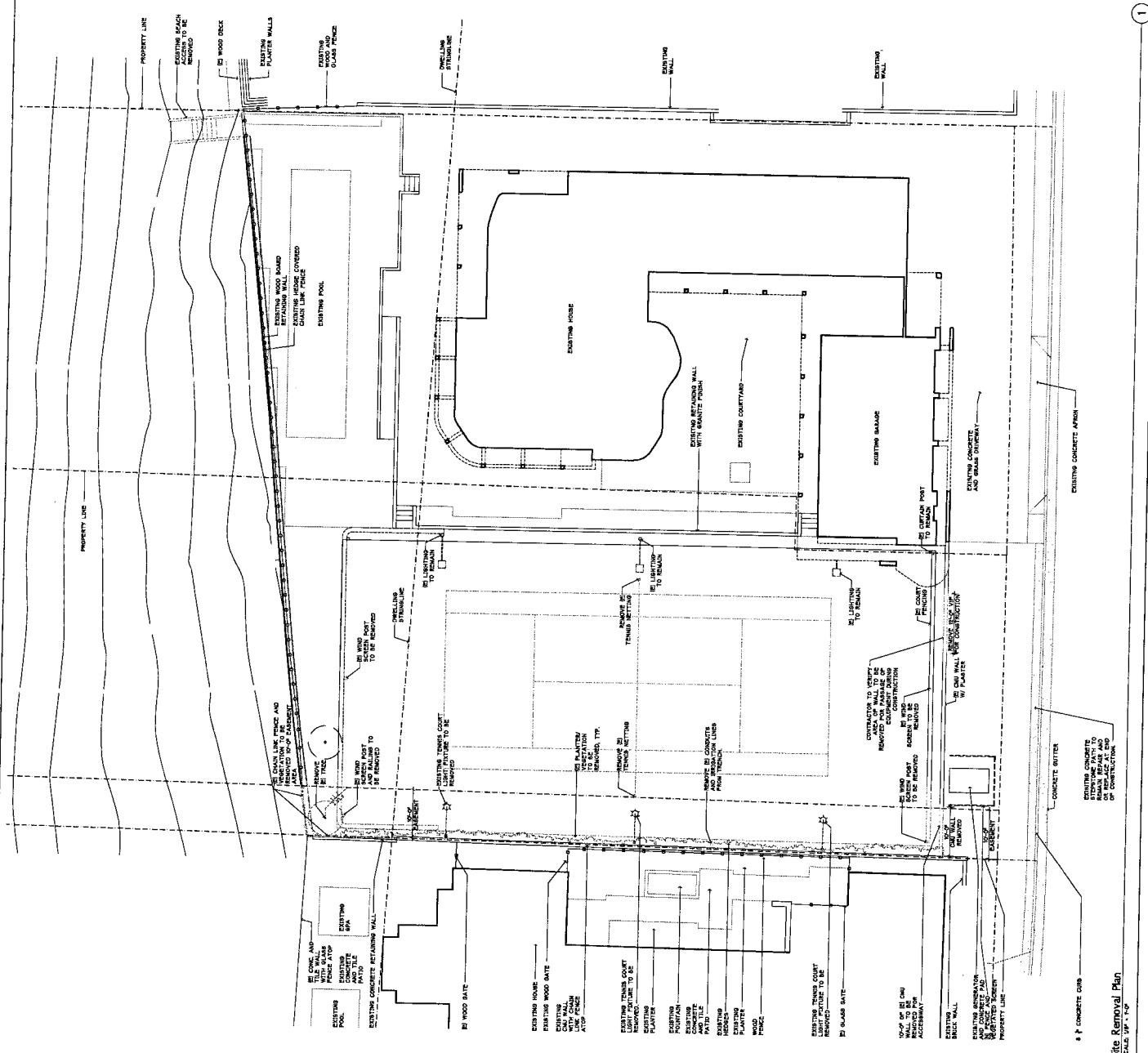


Exhibit 5  
Site Removal Plan  
CDP No. 5-84-754-A2

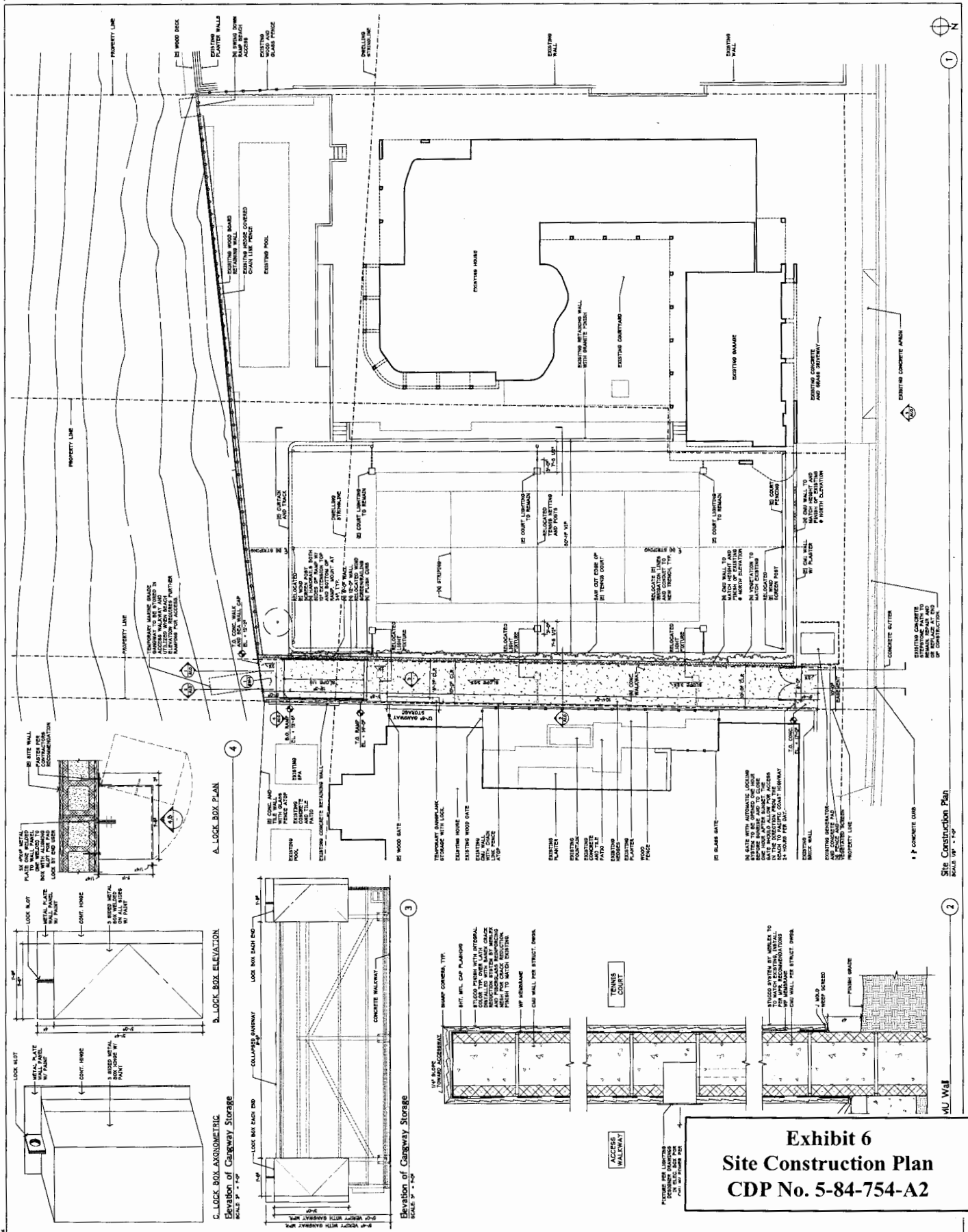
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All blouses, dresses, overcoats, and slacks, jackets or reconstructed by this shop are made of new jersey, rayon, or chambray. They are made to order and are guaranteed to be described for use and price in correspondence with the specified price. None of such items, suitcases, overcoats, or slacks shall be used by or sold to any parent, child, or grandchild of any of the contributors of Alumnus.

Site Construction Plan

AK13

A 02



**Exhibit 6**  
**Site Construction Plan**  
**CDP No. 5-84-754-A2**



ACKERBERG BEACH ACCESS  
22466 PACIFIC COAST HIGHWAY  
MALIBU, CA 90265

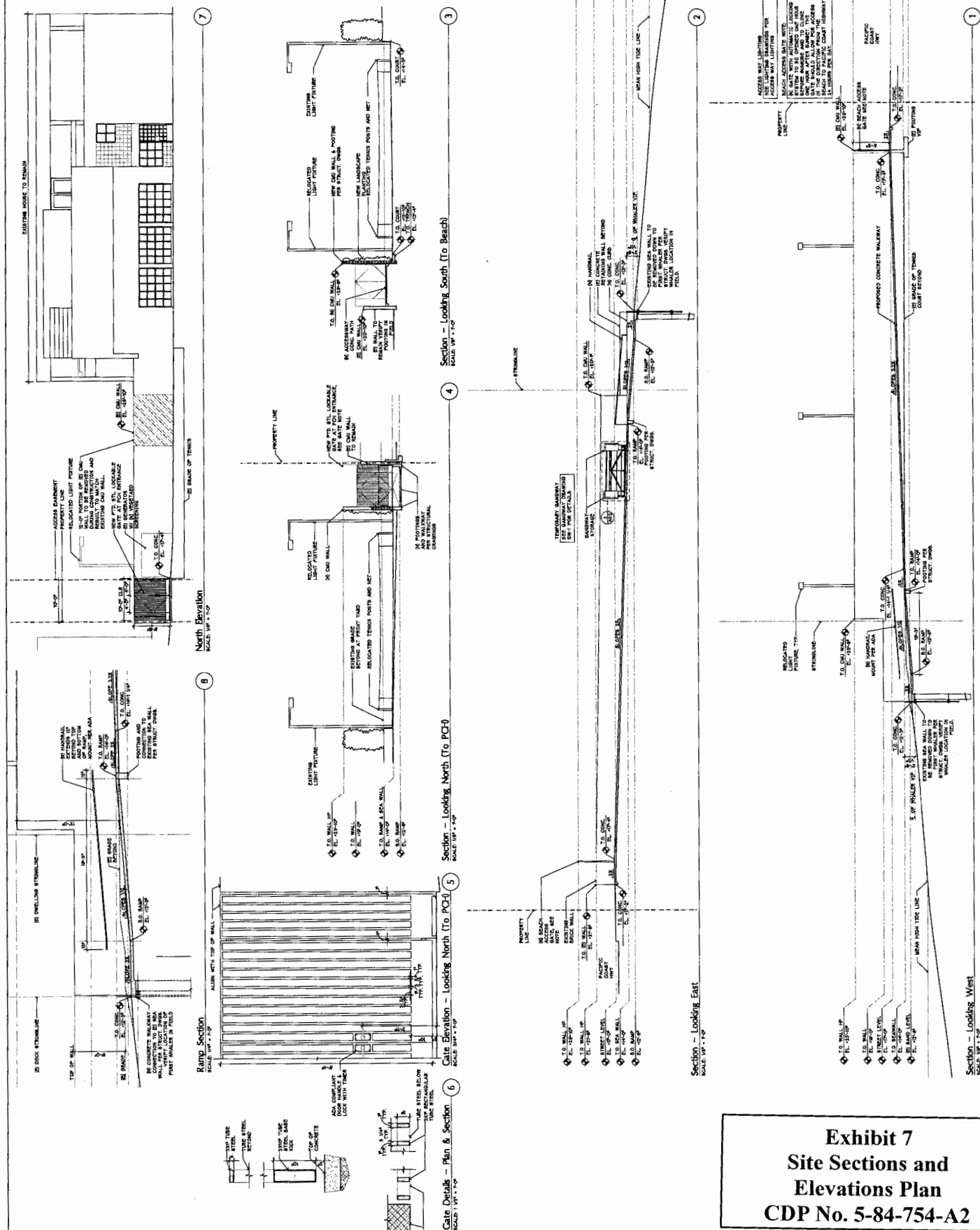


No.	Date	Detail
01	2015/05/24	CDP SUBMITTAL
02	2015/06/18	CDP SUBMITTAL #2
03	2015/09/17	PERMIT

All known deaths in Afghanistan and those indicated or represented by the asterisk are caused by one category of Afghanistan Taliban. Afghanistan and every province, including the developed for rate for the concentration and the special interest. Report of the United States of America, Department of State, Bureau of Democracy, Human Rights, and Labor, is published in the report. See also: [www.dhs.gov](http://www.dhs.gov)

### Site Sections and Elevations

AK13 A 10



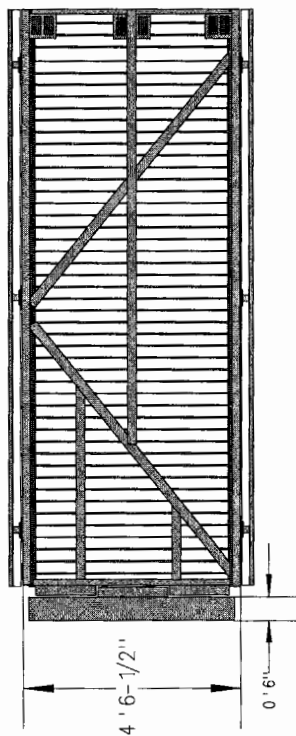
**Exhibit 7**  
**Site Sections and**  
**Elevations Plan**  
**CDP No. 5-84-754-A2**

# Gangway 4' x 12'

12" Self Mating Decking 6063-T6  
Mill Finish Knurled  
(meets all ADA requirements)

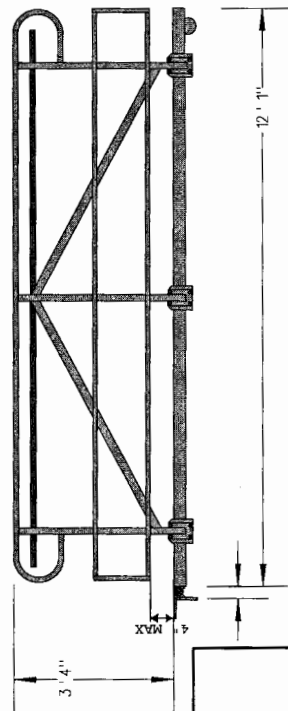
Main side channels  
3" x 1-1/2" x .130" x .20"  
6061-T6

Cross supports 6061-T6  
1-1/2" x 1/8" square tube



Guardrail uprights  
1-1/2" Square tube @ 36" AFF

Handrail cap  
1-1/2" x 1/8" rd. Tube  
alum. 6061-T6

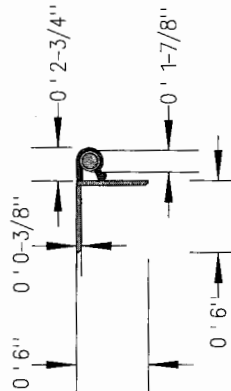
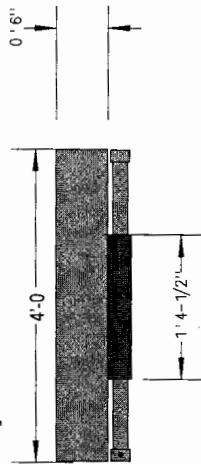


## Design Criteria

1. Ramp (gangway) sections designed for 75 pounds per sq. ft. and a concentrated vertical load of 300# distributed uniformly over an area of one sq. ft. when decked with aluminum panels or structural equivalent. (see Notes)
2. Handrails designed to resist a load of 250# applied at any point at any direction or 20 plf uniform load. The loading shall not be applied simultaneously.

## Gangway weights:

Deck 4 x 12 = 265 lbs  
Handrails each = 47 lbs  
Total = 359 lbs



## Mounting Bracket



## Handrail Detail

Advanced Platform & Access Design  
3196 SE Waaler Street / Stuart, FL 34997 / 772-221-9449

ing # 414-020711

Exhibit 8  
Gangway Plan  
CDP No. 5-84-754-A2

CIVIL - STRUCTURAL - MARINE  
**APAD**  
Advanced Platforms

The Engineer hereby warrants that the design and construction of the project shall conform to the applicable codes and standards of the State of Florida and the United States of America. The Engineer shall be responsible for the design and construction of the project. The Engineer shall be responsible for the design and construction of the project. The Engineer shall be responsible for the design and construction of the project.

Advanced Platforms & Access Design, LLC

## Notes & Comments

Advanced Platforms  
3196 SE Waaler St.  
Stuart, FL 34997  
PH: (772) 221-9449  
FX: (772) 382-6486  
www.foldingdocks.com

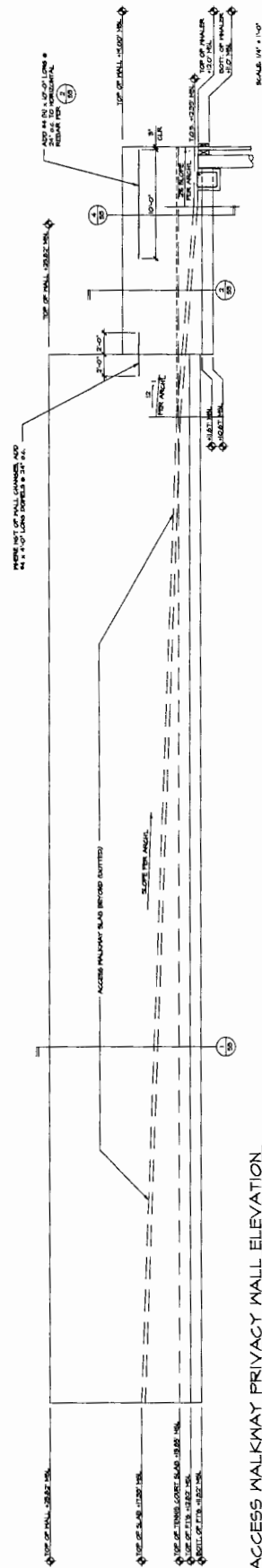
1
2
3
4
5

All dimensions shall be verified in the field by the contractor. The contractor is responsible for the coordination of all dimensions.

Project:

Sheet Name: Gangway 4' x 12'

Sheet #: GW-1



ACCESS WALKWAY PRIVACY WALL ELEVATION

CUT	FILL
<p>1. 12" MIN. THICKNESS</p> <p>2. 12" MIN. THICKNESS</p> <p>3. 12" MIN. THICKNESS</p> <p>4. 12" MIN. THICKNESS</p> <p>5. 12" MIN. THICKNESS</p> <p>6. 12" MIN. THICKNESS</p> <p>7. 12" MIN. THICKNESS</p> <p>8. 12" MIN. THICKNESS</p> <p>9. 12" MIN. THICKNESS</p> <p>10. 12" MIN. THICKNESS</p> <p>11. 12" MIN. THICKNESS</p> <p>12. 12" MIN. THICKNESS</p> <p>13. 12" MIN. THICKNESS</p> <p>14. 12" MIN. THICKNESS</p> <p>15. 12" MIN. THICKNESS</p> <p>16. 12" MIN. THICKNESS</p> <p>17. 12" MIN. THICKNESS</p> <p>18. 12" MIN. THICKNESS</p> <p>19. 12" MIN. THICKNESS</p> <p>20. 12" MIN. THICKNESS</p> <p>21. 12" MIN. THICKNESS</p> <p>22. 12" MIN. THICKNESS</p> <p>23. 12" MIN. THICKNESS</p> <p>24. 12" MIN. THICKNESS</p> <p>25. 12" MIN. THICKNESS</p> <p>26. 12" MIN. THICKNESS</p> <p>27. 12" MIN. THICKNESS</p> <p>28. 12" MIN. THICKNESS</p> <p>29. 12" MIN. THICKNESS</p> <p>30. 12" MIN. THICKNESS</p> <p>31. 12" MIN. THICKNESS</p> <p>32. 12" MIN. THICKNESS</p> <p>33. 12" MIN. THICKNESS</p> <p>34. 12" MIN. 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THICKNESS</p> <p>100. 12" MIN. THICKNESS</p>

GRADING QUANTITIES

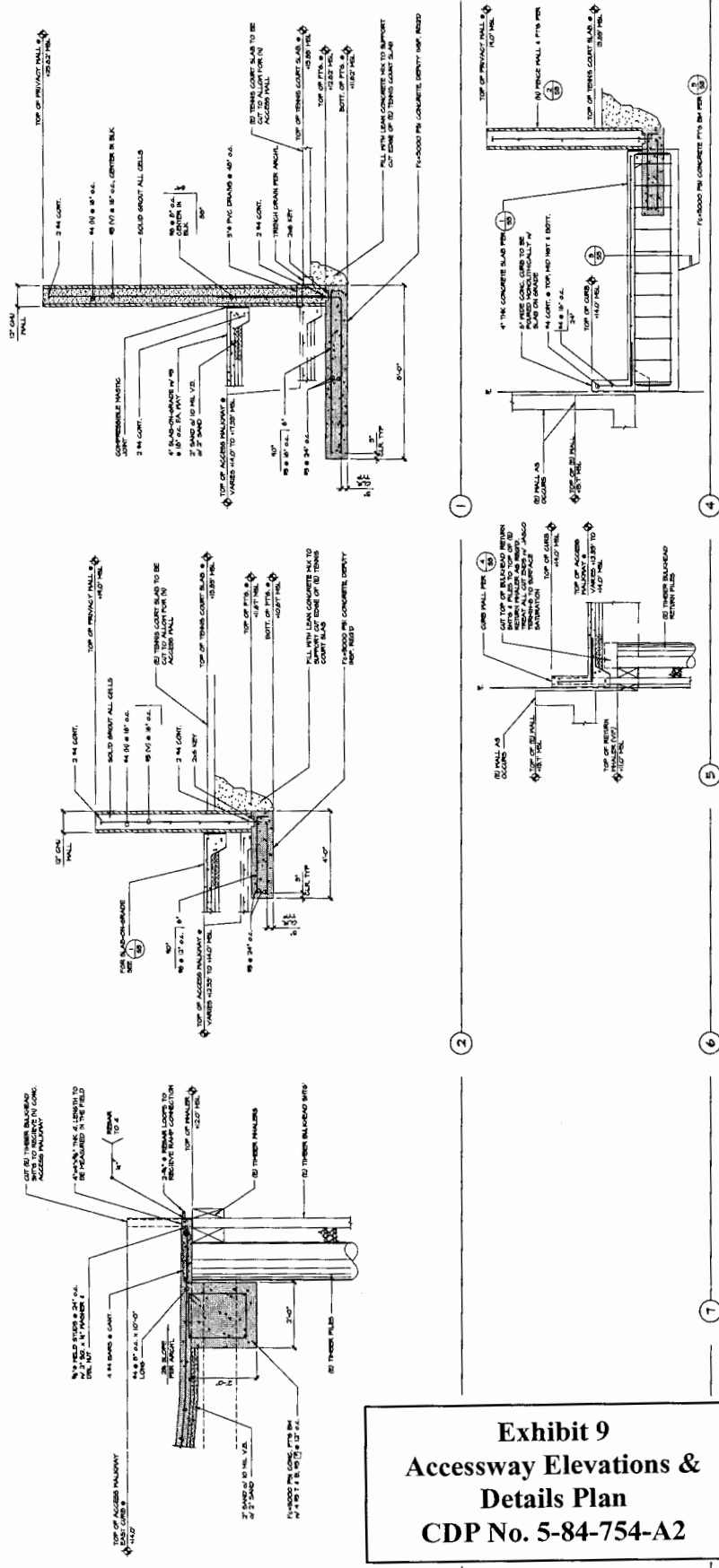


Exhibit 9  
Accessway Elevations &  
Details Plan  
CDP No. 5-84-754-A2

California Coastal Commission  
SOUTH COAST DISTRICT  
245 West Broadway, Suite 380  
P.O. Box 1450  
Long Beach, California 90801-1450  
(213) 590-5071

94  
FILED: 11/ 7/84  
49th DAY: 12/26/84  
180th DAY: 5/ 6/85  
STAFF: Gleason:do  
STAFF REPORT: 1/14/85  
HEARING DATE: 1/24/85

REGULAR CALENDAR

STAFF REPORT AND RECOMMENDATION

Application No.: 5-84-754

Applicants: Lisette & Norman Ackenberg Agent: Edwin Reeser  
22466 Pacific Coast Highway  
Malibu, CA

Description: Demolition of an existing single family dwelling, guest house, swimming pool, and construction of a new two-story single family dwelling and swimming pool. The project also includes the renovation of an existing tennis court.

Site: 22466 Pacific Coast Highway, Malibu, Los Angeles County

SUMMARY

The staff is recommending approval of the project subject to a vertical access condition and a stringline condition to bring the project into conformance with the policies of Chapter 3 of the Coastal Act.

Substantive File Documents:

1. Malibu/Santa Monica Interpretive Guidelines
2. 5-83-871 (Diamond)
3. 5-83-242 (Singleton)
4. 5-84-592 (Gordon)
5. 5-83-360 (Trueblood)
6. 5-84-629 (Ritchie)
7. 5-83-136 (Geffen)
8. Seventh Edition, Coastal Access Inventory

STAFF RECOMMENDATION

The staff recommends the Commission adopt the following resolution:



Exhibit 10  
Original Permit No. 5-84-754  
Staff Report  
CDP No. 5-84-754-A2

# I. Approval

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

## II. Standard Conditions: See Attachment X.

## III. Special Conditions

This permit is subject to the following special conditions:

1. Vertical Access Condition. Prior to transmittal of the permit, the Executive Director shall certify in writing that the following conditions have been satisfied. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public pedestrian access to the shoreline. Such easement shall be 10 feet wide located along the eastern boundary of the property line and extend from the northerly property line to the mean high tide line. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such periods running from the date of recording.

2. Revised Plans. Prior to transmittal of permit, the applicant shall be required to submit revised plans which conform the structural and deck stringline criteria contained in the adopted Interpretive Guidelines for the Malibu/Santa Monica Mountains.

## IV. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Project Description. The proposed project consists of the demolition of an existing single family dwelling, guest house and swimming pool and the construction of a new two-story single family dwelling with three-car garage, swimming pool and septic system. The newly proposed project involves construction of a new swimming pool on the seaward side of the residence. The previous swimming pool was located landward of the previously existing residence. In addition as part of the project, the applicant proposes to renovate an existing tennis court. Also, the proposed project will result in the relocation of the tennis court on the project site approximately 14 feet seaward.

B. Background. On June 9, 1983, the California Coastal Commission approved the construction of a 140-foot in length wood pile-supported, wood sheeted bulkhead. In its action to approve the project the Commission imposed a lateral access condition requiring an offer of dedication of an easement for public access from the mean high tide line to toe of the bulkhead. In addition the Commission required the applicants to assume the risks associated with development of the site which might result from flood or wave damage.

C. Public Access. The Coastal Act contains strong policy provisions in Sections 30210 and 30212, requiring public access to and along the shore. However, the requirements for the provision of access for the public to California's shoreline is not limited to the Coastal Act. The California Constitution in Article X, Section 4 provides:

No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purposes . . . and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof. (Emphasis added).

The Coastal Act contains more specific policies regarding the provision of public access to the State's shoreline. Coastal Act Section 30210 as set forth below, stipulates that in meeting the requirements of Section 4, Article X of the Constitution maximum public access, conspicuously posted shall be provided subject to certain conditions.

1. Lateral Access. The Coastal Act in Section 30210 requires the provision of public access along the shoreline in new development projects. An application for a seawall at this location in 1983 (5-83-360, Trueblood) was conditioned to provide public lateral access across the project site from the toe of the seawall to the mean high tide line. Therefore, the Commission finds that lateral access for the public has been provided for through prior permit action of the Commission and that the currently proposed project is consistent with Sections 30210 and 30212 of the Coastal Act as it relates to the provision of lateral access.



2. Vertical Access. New development projects are required to provide public access in compliance with the public access provisions of Chapter 3 of the 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 of private property owners, and natural resource areas from overuse.

Section 30212 of the Coastal Act contains several very explicit policy provisions regarding the location and type of public access to be provided.

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 regional commission or the commission determines that such 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.

In addition to the above provisions of the Coastal Act, Section 30214(a) addresses with a greater degree of specificity the time, place and manner of public access. Section 30214(a) states:

Section 30214.

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

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Additionally, the legislature has expressed its intent that the Commission balance the rights of the individual property owner with the public's constitutional right of access to the coast. Section 30214(b) states:

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

All projects requiring a Coastal Development permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. New development on sites located between the sea and the first public road may be required to provide vertical access under the policy provisions of Section 30212 of the Coastal Act. In determining where vertical access should be required, the Commission must consider the need to gain access to the shoreline in a given area, taking into account the physical constraints of the site, including, but not limited to, safety hazards, existence of fragile coastal resources, the location of support facilities, such as parking areas and the privacy needs of residents of the project site.

As outlined in the Seventh Edition, September 1983, Coastal Access Inventory within the area identified as the Malibu Coastline (a distance of about 27 miles from Topanga State Beach on the east to Leo Cabrillo State Beach on the west) only 16 vertical accessways have been recorded as a result of Coastal permit requirements. Of these, only 4 vertical accessways have been opened to the public. Accessways obtained through the Coastal permit process cannot be developed and/or actually used by

the public until a public or private agency agrees to accept responsibility for maintenance and liability. The following is a list of vertical accessways that have been obtained via the Coastal permit process in Malibu.

<u>Coastal Permit No.</u>	<u>Street Address/Malibu</u>	<u>Width of Access</u>	<u>Open</u>
73-290	State Park/Point Dume	6'	Yes
73-511	26168 Pacific Coast Highway	6'	Yes
73-1526	22706 " " "	10'	Yes
74-2840	22626 " " "	2'	No
75-6376	22032 " " "	5'	No
76-8877	21554 " " "	6'	No
76-8957	25120 " " "	35'	Yes
77-376	19020 " " "	3'	No
77-574	26834 Malibu Cove Colony	5'	No
77-1466	31736 Broad Beach Road	5 -10'	No
77-2130	27398 Pacific Coast Highway	10'	No
78-3473	27700 " " "	10'	No
78-3591	20802 " " "	5'	No
79-4918	21202 " " "	10'	No
80-2707	27900 " " "	10'	No
5-83-136	22126-22132 Pacific Coast Highway	9'	No

In addition to the vertical accessways listed above, there are several vertical accessways in Malibu which are owned by the County of Los Angeles. One County accessway (at 22550 P. C. H.) is located within 500 feet of the project site; however, the accessway is closed and the County has no plans to open this accessway.

The project site is located in the Carbon Beach area of Malibu; one of the least publicly accessible beaches in the Malibu area. The existence of a solid row of residential structures along this stretch of Pacific Coast Highway effectively creates a private beach enclave. The residential development along Carbon Beach even precludes views of the ocean and shoreline from Pacific Coast Highway.

On the inland side of Pacific Coast Highway in the vicinity of the project are multi-unit apartment buildings, small offices and commercial structures. Although this particular area of Malibu has not experienced great demand for recycling of existing structures or development of the few vacant parcels, it appears inevitable that as the pattern of growth in Malibu continues, a demand for recycling and more intensive development will occur. In turn this will create a greater demand for beach usage.

In order to determine whether the currently proposed project complies with the access provisions of the Coastal Act and more specifically with Section 30212 of the Coastal Act, the Commission must determine whether adequate access exists nearby.

The Commission has already found that the project meets the definition of new development, thus if adequate access does not exist nearby, access for the public from the nearest public roadway (P. C. H.) to the shoreline is required.

In its review of prior similar permit applications where the issue of vertical access has been raised, the Commission has used a 500-foot criteria as a guideline to determine whether adequate access exists nearby. More specifically, the Commission has previously made a determination in similar cases if open vertical access for the public exists within 500 feet of the project site, adequate access exists nearby. With respect to the currently proposed project, the Commission notes that the nearest open public vertical accessways are located 1,300 feet west of the project and 3,099 feet east of the project site. Since open vertical access for the public does not exist nearby, the Commission finds it is necessary to condition the project to provide for vertical access for the public, from Pacific Coast Highway across the project site to the shore. Only if so conditioned would the project be consistent with Section 30212 of the Coastal Act.

The Commission further finds that since the project site consists of two contiguous lots with a total frontage of 140 feet both the applicant and the Commission are afforded great flexibility in siting the vertical accessway. The Statewide Guidelines adopted by the Commission indicate that a vertical accessway when provided should be a minimum of 10 feet in width and should usually be sited along the borders of the project site. The Commission concludes the large size of the project site (40,041 square feet) affords great opportunity in the actual design of the vertical accessway across the project site benefiting both the applicant and the public. In addition, the Commission notes that there is on-street parking available on both sides on Pacific Coast Highway in the vicinity of the project. Therefore, the Commission concludes that adequate support facilities (for parking) exist within the vicinity of the project. Finally the Commission finds that if conditioned, as indicated above with a vertical accessway, the project would be in conformance with the access policies of Chapter 3 of the Coastal Act.

D. Scenic and Visual Resources/Seaward Encroachment. The Coastal Act in Section 30251 states:

Section 30251.

The scenic and visual qualities of coastal areas shall be conserved 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 surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The proposed project consists of the demolition of an existing single family dwelling and swimming pool and the construction of a new

two-story, 32-foot above average finished grade, single family residence with swimming pool. The project also involves renovation of an existing tennis court and the relocation of the tennis court approximately 14 feet seaward of its present location.

New development along the shoreline is of particular concern to the Commission. Section 30251 of the Coastal Act requires that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas. As one means of limiting the encroachment of residential development onto sand beach areas, the Commission has adopted a stringline guideline. With respect to this criteria, the Guidelines state:

**"In a developed area where new construction is generally infilling and is otherwise consistent with Coastal Act policies, no part of a proposed new structure, including decks and bulkheads, should be built further onto a beach front than a line drawn between the nearest adjacent corners of the adjacent structures. Enclosed living space in the new unit should not extend farther seaward than a second line drawn between the most seaward portions of the nearest corner of the enclosed living space of the adjacent structure."**

One of the purposes of this Guideline is to limit seaward encroachment on sandy beach areas. In the case of the currently proposed project, the applicant proposes to demolish an existing single family home and construct a significantly larger single family home. The proposed construction will occur landward of an existing seawall/bulkhead previously approved by the Commission. As proposed the new residence will conform with the Commission's stringline condition for structural development. However, other portions of the development including a solar trellis for the residence exceed the stringline. Also, the project calls for the seaward encroachment of a tennis court by 14 feet which could have a visual impact since if relocated the tennis court would be at the bulkhead line. Therefore, the Commission finds it necessary to condition the project to require revised plans which clearly indicate the project complies with both structural and deck stringlines. Only if so conditioned would the project be consistent with Section 30251 of the Coastal Act which addresses scenic and visual resources.

E. Hazards. Section 30253 (1) of the Coastal Act specifies that new development minimize risks to life and property in areas of high geologic flood and fire hazard. That an emergency permit was requested by the prior owner of the project site for construction of a 140-foot in length wood seawall attests to the potential flood hazard on the site. In approving the regular permit for construction of a seawall on the site, the Commission required the seawall to meet storm design criteria and for the project applicant to assume the risks associated with development of the site. Therefore, the Commission finds that the

seawall will serve to mitigate the flood hazard which previously existed on the site and that as previously conditioned, the project is consistent with Section 30253 (1) of the Coastal Act.

F. Local Coastal Program. Section 30604(a) of the Coastal Act states in Part:

Section 30604.

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The County of Los Angeles adopted the Land Use Plan portion of the Malibu/Santa Monica Mountains area Local Coastal Program on December 28, 1982, for submittal to the Commission for certification. On March 24, 1983 the Commission voted to find that the Land Use Plan raised a "Substantial Issue" in terms of conformity with the Coastal Act and voted to deny the Land Use Plan as submitted.

At the time of this writing the Commission is scheduled to consider suggested modifications to the Malibu Land Use Plan at the Commission hearing in early January.

Among the suggested modifications which the Commission is scheduled to consider are access policies proposed as modifications to the County's Land Use Plan. With respect to beach access in general and vertical access specifically, the suggested modifications state:

#### 4.1.2 COASTAL ACCESS

##### 1. GENERAL POLICIES

- P49 In accordance with Section 30214(a) of the Coastal Act, the time, place, and manner of public beach access requirements for new development will depend on individual facts and circumstances, including topographic and site characteristics, the capacity of the site to sustain use at the intensity proposed, the proximity to adjacent residential uses, the privacy of adjacent owners, the feasibility to provide for litter collection, and safety of local residents and beach users.
- P50 In accordance with Section 30214(b) of the Coastal Act, the requirement of access shall be reasonable and equitable, balancing the rights of the individual property owner and the public.

### Vertical Access

P51 For all land divisions, non-residential new development, and residential new development on lots with 75 or more feet of frontage or with an existing drainage or utility easement connecting a public street with the shoreline or on groups of two or more undeveloped lots with 50 feet or more of frontage per lot, an irrevocable offer of dedication of an easement to allow public vertical access to the mean high tide line shall be required, unless public access is already available at an existing developed accessway within 500 feet of the project site measured along the shoreline. Such offer of dedication shall be valid for a period of 21 years, and shall be recorded free of prior liens. The access easement shall measure at least 10 feet wide. Where two or more offers of dedication within 500 feet of each other have been made pursuant to this policy, the physical improvement and opening to public use of one offered accessway shall result in the abandonment of other offers located within 500 feet of the improved accessway.

\* Exceptions to the above requirement for offers of dedication may be made regarding beaches identified in the Land Use Plan's Area-Specific Marine Resource Policies (P111 through P113) as requiring limitations on access in order to protect sensitive marine resources.

\* P51b On the basis of a Beach Management Plan prepared by the County and approved by the Coastal Commission which takes into account beach recreation opportunities, the width of the beach, the presence of immediately adjacent residences or sensitive natural resources, local parking conditions, beach support facilities, the feasibility of emergency vehicle access to the beach, and related factors, accessways at greater intervals than would be required by P51 may be required, up to a maximum standard of separation for new vertical accessways of one accessway per 2000 feet of shoreline. Such a Beach Management Plan, which may be submitted to the Commission for its review at the same time as the implementing ordinances, shall assure that lateral access offers made in connection with coastal permits previously approved (as well as in connection with future permits and vertical access offers sufficient to meet the standard of separation included in the Plan) are accepted for maintenance and liability purposes by the County or other responsible entity acceptable to the Executive Director of the Coastal Commission. Reasonable restrictions on use of the beach to protect sensitive marine resources, minimize risks to public safety due to geologic and wave hazards and reduce potential conflicts with the privacy of nearby residences while promoting reasonable public access may be adopted by the accepting agency as part of the Beach Management Plan.

If the Commission were to approve the currently proposed project without a vertical access condition in advance of the development of a Beach



Management Plan as indicated in proposed suggested modification P51G above, the ability of the County to prepare a Local Coastal Program in conformance with the policies of Chapter 3 of the Coastal Act would be prejudiced.

In addition to the proposed suggested modifications to the County of Los Angeles Land Use Plan access policies listed above, the suggested modifications also call for development of a beach access program to be implemented in conjunction with the proposed policies on public access. With respect to the beach access program the suggested modifications state:

## 2. BEACH ACCESS PROGRAM

### Objectives

(a) ~~The principal~~ One means of maximizing public access is to create and improve major accessways at locations where adequate parking and other necessary public improvements, including parking or public transit facilities where appropriate, can be provided to ensure adequate safety for users, traffic safety, security and privacy for adjacent residents, and clear public identification.

(b) Priorities for improved vertical public access in the Malibu Coastal Zone shall be in accordance with the ranking as depicted in Figure 5. Other criteria for determining priority for this new beach access are:

- (1) First priority shall go to expanding safe off-highway parking at existing beaches with lifeguards.
- (2) New accessway priorities shall feature:

Improvement of access to sandy beaches where there is no current public access.

Improvement of access to sandy beaches where the distance between existing accessways exceeds one-half mile.

Improvement of accessways using offers of dedication which were already made pursuant to the conditions of coastal permits issued by the Coastal Commission or the County where to do so would allow the County to avoid requiring future offers of dedication as provided by P51.

Capacity to allow emergency vehicle passage from highway to beach and return, except where steepness or the existence of stairs would not allow vehicle use.



Revenue recovery system so that the costs of new accessways and adjacent beach operations are wholly covered to the extent possible.

New accessways should be obtained in conjunction with off-highway property where it is feasible to develop parking or public transit facilities and safe pedestrian systems.

(3) . Beach access opportunities requiring vertical pedestrian pathways shall not be opened until the improvements are in place and a public agency is willing to accept management and liability for such accessways.

(c) The frequency of public access locations shall vary according to localized beach settings and conditions as set forth for Policy 55 P51 below. Vertical access standards and related dedication requirements may range from none in areas of major public beach holdings to one accessway per 1,000 feet of shoreline where accessways would be short and directly link roadways with adequate parking or transit access and the beach.

The Beach Access Program proposed above is directly related to the access policies of the suggested modifications. Thus, if the Commission were to approve the project, as proposed without a vertical access condition, the ability of the County to prepare a LCP in conformance with Chapter 3 of the Coastal Act would be prejudiced.

Attachment X

To: Permit Applicants

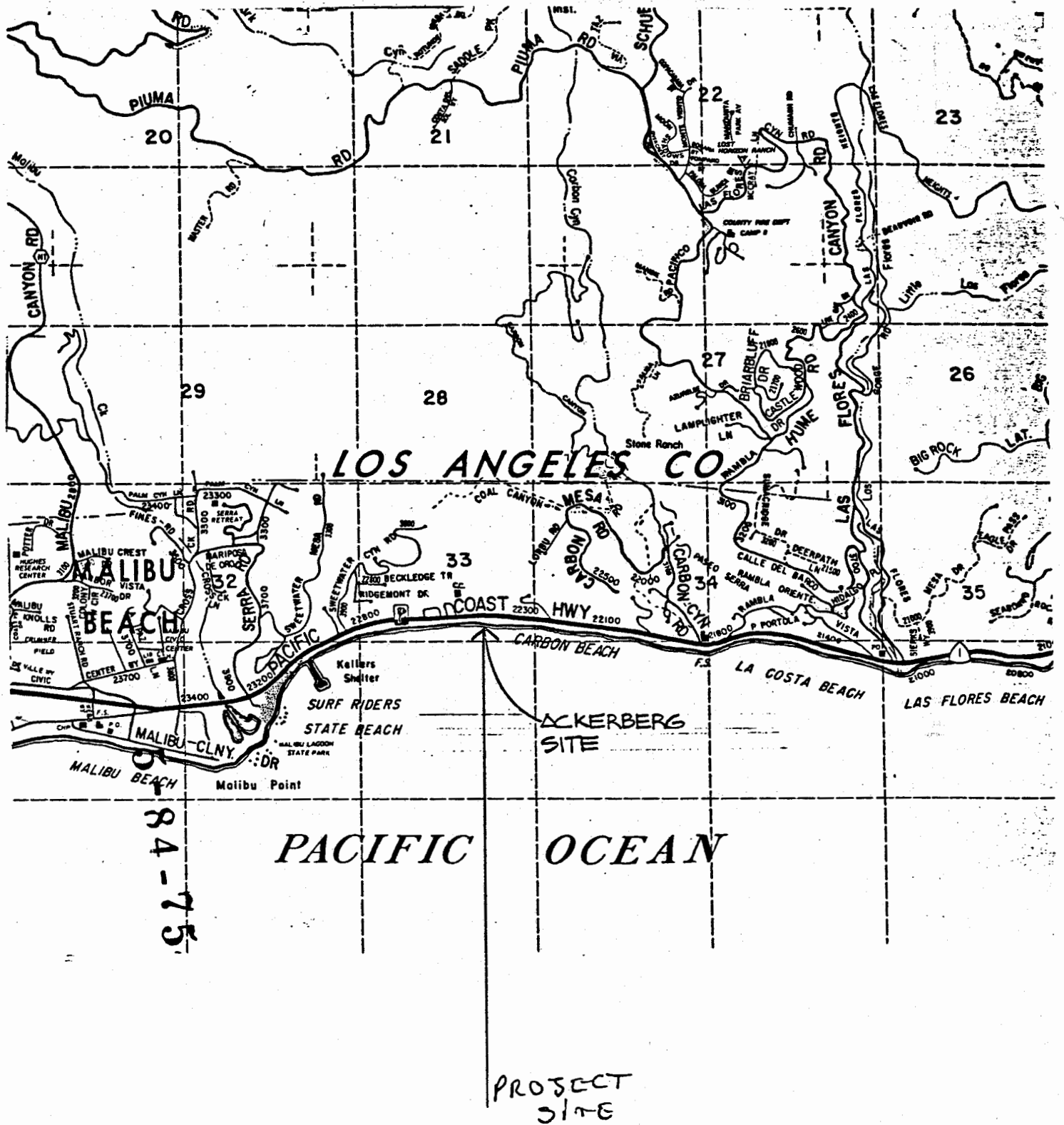
From: California Coastal Commission, South Coast District

Subject: Standard Conditions

The following standard conditions are imposed on all permits issued by the California Coastal Commission.

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. 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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



5-84-754  
EXHIBIT 1  
LOCATION MAP

5-84-754

PACIFIC COAST HWY.

STREET PROP. LINE

L=86.54'

L=61.76'

EXISTING  
TENNIS COURT

EX. RESIDENCE  
22410 PCH

EXISTING 2  
STORY EXTR.  
WALL LINE

ROOF LINE

EX. RESIDENCE  
22446 PCH

COMMISSION  
STRINGLINE

EXIST'G 2 STORY  
EXTR. WALL LINE

EX. 6' HIGH  
WINDBREAKER

EX. COMMON  
TIMBER  
BULKHEAD.

NEW POOL

NEW HOUSE  
22466 PCH  
(FORMERLY 22486)

BLDG. STRINGLINE

DECK, BULKHEAD  
(EXIST'G) AND 6'  
HIGH FENCE  
STRINGLINE

EX. 6' HIGH  
WINDBREAKER

TENNIS COURT  
TO BE RELOCATED

BEACH

STRINGLINE MAP

1"=40'

DRAWN BY  
RICHARD SOL, AIA  
31 OCT. 1984

*Richard Sol*

ST. LIC. NO. C11884

RANDOM LINE CONNECTING POINTS  
ON MEAN HIGH TIDE LINE @ EL. 185  
AS SURVEYED ON DEC. 14, 1983.

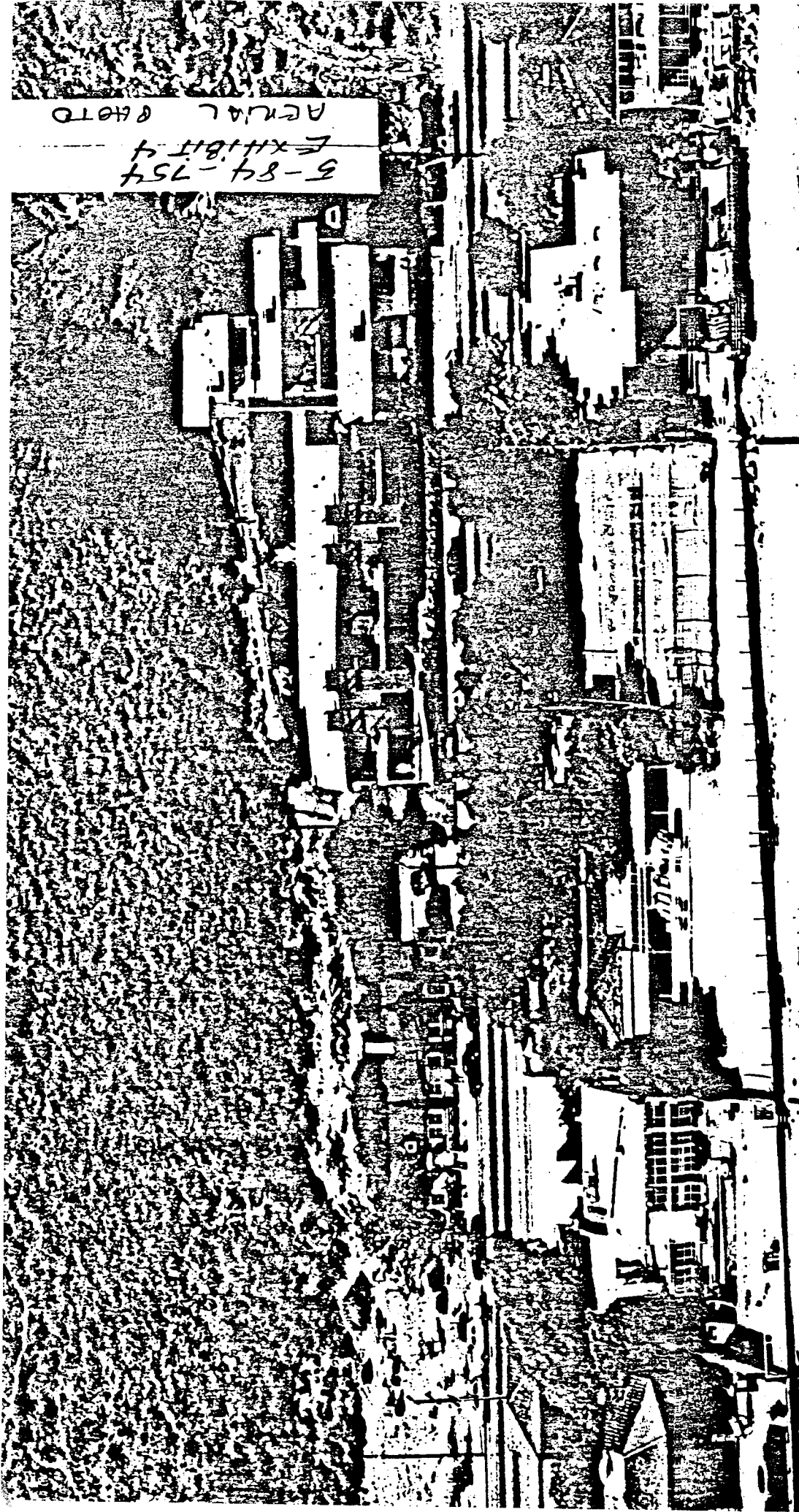
PACIFIC OCEAN

5-84-754  
EXHIBIT 2  
SITE PLAN



Norman J. & Lisette Ackenberg  
22466 Pacific Coast Highway  
(Formerly 22486 PCH)  
Malibu, CA 90265

5-84-754  
EXHIBIT 3  
AERIAL PHOTO



5-84-754  
EXHIBIT 4  
AERIAL PHOTO

APPLICANT

Norman J. & Lisette Ackerberg  
22466 Pacific Coast Highway  
(Formerly 22486 PCH)  
Malibu, CA 90265

California Coastal Commission  
SOUTH COAST DISTRICT  
245 West Broadway, Suite 380  
P.O. Box 1450  
Long Beach, California 90801-1450  
(213) 590-5071

IMMATERIAL AMENDMENT TO PERMIT

DATE: June 5, 1985

RECEIVED  
JUN 13 1985

Dear Lisette & Norman Ackerberg:

COASTAL COMMISSION  
SOUTH COAST DISTRICT

Permit Number 5-84-754 issued to Lisette & Norman Ackerberg  
has been amended as follows:

Original Permit: Demolition of a single-family residence, guest house, swimming pool, and construction of a two-story residence, swimming pool, and renovation of an existing tennis court. (Issued Jan. 24, 1985)

Amendment: To add a 12 foot diameter satellite TV dish antenna on the roof of the new single-family residence. Maximum height of the antenna is 35 feet above average grade. This amendment was determined by the Executive Director to be immaterial, was duly noticed, and no objections were received.

This amendment will become effective upon return of a signed copy of this form to the District Office. The remaining conditions, if any, are still in effect.

Sincerely,

Tom Crandall  
South Coast Director

Attachment: Permit

cc: File  
Applicant  
Representative  
Local Building Dept.

*D.H. Pickens*

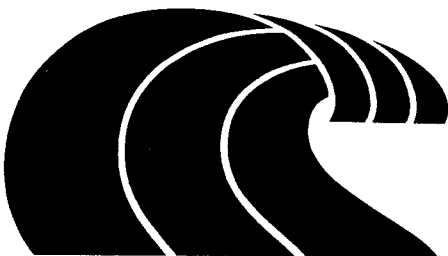
Staff Analyst  
D.H. Pickens

*Norman Ackerberg*

Applicant's Signature

*Lisette Ackerberg*

Exhibit 11  
Permit Amendment  
No. 5-84-754-A1  
CDP No. 5-84-754-A2





**CONSENT AGREEMENT AND CEASE AND DESIST ORDER AMENDMENT  
NO. CCC-09-CD-01-A**

**1.0     AMENDMENT TO CEASE AND DESIST ORDER**

Pursuant to its authority under Public Resources Code Section 30810 and California Code of Regulations Title 14, Division 5.5, Section 13188, the Commission, with the consent and agreement of Lisette Ackerberg, in her individual capacity and as trustee of the Lisette Ackerberg Trust, (hereinafter, "Respondent"), hereby amends Cease and Desist Order No. CCC-09-CD-01, which was previously approved by the Commission on July 8, 2009. Effective upon issuance of this Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-01-A, the remaining terms of this document shall constitute the terms of Cease and Desist Order No. CCC-09-CD-01, as amended, and shall be referred to as the "Consent Agreement and Amended Order". Through the execution of this Consent Agreement and Amended Order, Respondent agrees to comply with the terms of the Consent Agreement and Amended Order and agrees to accept the terms and conditions herein.

**2.0     NO FUTURE UNPERMITTED DEVELOPMENT**

Respondent shall not perform, cause to be performed, or permit the performance of any development, as that term is defined in the Coastal Act (Cal. Pub. Res. Code § 30106), on the property located at 22466 and 22500 Pacific Coast Highway in Malibu, Los Angeles County, identified by the Los Angeles County Assessor's Office as APNs 4452-002-011 and 4452-002-013, (the "subject property") without first obtaining authorization under the Coastal Act or the City of Malibu's Local Coastal Program, as appropriate, or written acknowledgment from the appropriate governmental entity that the proposed development is exempt therefrom. Respondent shall refrain from any attempts to limit or interfere with lawful public use of the public access easements created by the acceptances of Offers to Dedicate recorded July 11, 1983 (Instrument No. 83-950711) and April 4, 1985 (Instrument No. 85-369283), or lawful use by the holder(s) of the easement(s) to maintain the areas and make them available for public use.

**3.0     REMOVAL PLAN**

- 3.1     Within 60 days of issuance of this Consent Agreement and Amended Order, Respondent shall submit for the review and approval of the Executive Director of the Commission a proposed Removal Plan that provides for the removal of all structures and materials that are located within the vertical and lateral public access easements on the subject property as a result of either development (as that term is defined in the Coastal Act – Cal. Pub. Res. Code § 30106) that lacked the necessary authorization under the Coastal Act or its predecessor (hereinafter referred to as "unpermitted devel

**Exhibit 12**  
**Consent Agreement and Amendment**  
**to Cease and Desist Order**  
**CDP No. 5-84-754-A2**



inconsistent with coastal development permits Nos. 5-83-360 and 5-84-754, including but not limited to: rock riprap, with the exception of any rock riprap for which Respondent has submitted a request for after-the-fact authorization as provided for in Section 3.6, a 9-ft high wall, concrete slab and generator, fence, railing, planter, light posts, staircase, and landscaping. The Removal Plan shall be prepared by a certified civil engineer or other qualified professional licensed by the State of California acceptable to the Executive Director of the Commission ("Executive Director"), and must contain the following provisions:

- A. A detailed description of the proposed removal activities, which shall indicate that Respondent will utilize removal techniques that, to the extent possible, minimize impacts to the beach.
  - B. A timetable for removal, consistent with sections 8.1 and 8.3, below.
  - C. Identification of the disposal or recycling site to which removed development materials will be transported, which site must be a licensed disposal facility located outside of the Coastal Zone, and a commitment that any hazardous materials will be transported to a licensed hazardous waste disposal facility.
  - D. If mechanized equipment is to be used, the Removal Plan must specify the following information:
    - 1) Type of mechanized equipment that will be used for removal activities;
    - 2) Length of time equipment will be used;
    - 3) Routes that will be utilized to bring equipment to and from the property including to and from the sandy beach area where the rock riprap is located;
    - 4) Storage location for equipment when not in use during removal process (mechanized equipment cannot be stored on the sandy beach);
    - 5) Hours of operation of mechanized equipment;
    - 6) Contingency plan that addresses clean-up and disposal of released materials and water quality concerns in case of a spill of fuel or other hazardous release from use of mechanized equipment;
    - 7) Measures to be taken to protect water quality.
- 3.2 Respondent represents and warrants that the concrete slab and generator addressed in the original Cease and Desist Order (CCC-09-CD-01) have been removed from the vertical easement area and relocated pursuant to a building permit issued by the City of Malibu. The Commission acknowledges that Respondent has provided evidence that the relocation of the concrete slab and generator was completed pursuant to the issued building permit and that the City of Malibu has signed off on the permit.
- 3.3 If the Executive Director determines that any modifications or additions to the submitted Removal Plan are necessary, he shall notify Respondent and Respondent shall complete

all requested modifications and resubmit a revised Removal Plan for review and approval within 10 days of the date of the notification.

- 3.4 Respondent shall commence removal activities, complete all removal activities listed in the Removal Plan, and perform all removal activities consistent with the Removal Plan and consistent with the timeline established by Section 8.0, below.
- 3.5 Within 10 days of completion of removal activities, Respondent shall submit evidence of the completion to the Executive Director for his review and approval. After review of the evidence, if the Executive Director determines that the removal activities did not address and resolve the unpermitted development and any other inconsistencies with previously issued coastal development permits in whole or in part and in compliance with the Coastal Act, the Removal Plan, and this Consent Agreement and Amended Order, he shall specify any measures necessary to ensure that the removal complies with the approved Removal Plan, this Consent Agreement and Amended Order, and the Coastal Act. Respondent shall implement any specified measures, within the timeframe specified by the Executive Director.

3.6 COASTAL DEVELOPMENT PERMIT AMENDMENT – AFTER-THE-FACT

A. If Respondent desires to retain any portion of the rock riprap identified in Section 17.0, below, within 30 days of issuance of this Consent Agreement and Amended Order, Respondent shall submit, and not withdraw or impede final Commission action in any way on, a "complete" coastal development permit amendment application for after-the-fact changes to CDP No. 5-83-360 to allow for a change in limits and size of rock to be used as toe protection to ensure structural stability of an existing, approved bulkhead.

1. In any application submitted pursuant to this Section 3.6, Respondent shall propose the minimum amount of rock necessary to ensure structural integrity of the existing, approved bulkhead. Respondent shall also propose to remove any authorized rock that becomes exposed by wind, rain, tide, surf, sea-level rise, or other means.
2. Any application submitted pursuant to this Section 3.6, shall include authorization and/or lease agreements from the California State Lands Commission ("SLC") for the placement of new or retention of existing development, including rock riprap, within the lateral public access easement held by SLC on the subject property. Delays caused by SLC in processing such authorization and/or lease agreements shall be grounds, pursuant to Section 12.0, below, for the Executive Director to extend the deadline in Section 3.6A, above.
3. Respondent agrees that if, at any time in the future, she or her successors in interest, heirs, or assigns proposes to construct a new shoreline protective device, at the time of its construction she or her successors in interest, heirs, or assigns shall remove any rock that remains in the lateral public access easement area and has not been authorized to remain through the approval of

the new shoreline protective device. Respondent agrees to provide notice of and condition transfer upon others agreeing to this requirement and the other terms of this Consent Agreement and Amended Order to any successors in interest, heirs, and/or assigns.

4. Respondents shall comply with the terms and conditions of any permit issued pursuant to the application submitted under this Section within 150 days of final Commission action.
5. Within 30 days of the effective date of this Consent Agreement and Amended Order, Respondent shall submit, for the review and approval of the Commission's Executive Director, a Second Removal Plan for removal of any development listed in Section 3.6.A that Respondents do not apply to retain in the permit application required by that Section. The Second Removal Plan shall be prepared and implemented consistent with the provisions set forth in Section 3.1-3.5, above and 8.1, below.

B. Denial of Development

1. Respondents shall submit, for the review and approval of the Commission's Executive Director, a Third Removal Plan for the removal of any development for which this Consent Agreement and Amended Order provides for application to the Commission, and for which the Commission denies authorization. The Third Removal Plan shall be submitted within 30 days of final action on said denial, and shall be prepared and implemented consistent with the provisions set forth in Section 3.1 – 3.5, above and 8.1, below.

4.0 ACCESSWAY IMPROVEMENT PLAN

- 4.1 Within 60 days of issuance of this Consent Agreement and Amended Order, Respondent shall submit for the review and approval of the Executive Director a proposed Accessway Improvement Plan that provides for public access across and through the vertical public access easement area on the subject property from Pacific Coast Highway to the sandy beach, including any development required to facilitate public access and any other development proposed for the easement area. Prior to submittal of the Accessway Improvement Plan, Respondent shall consult with the Mountains Recreation and Conservation Authority ("MRCA"), the holder of the subject vertical public access easement, or its successor in interest, to ensure that the Accessway Improvement Plan will provide adequate public access across the public access easement and comply with applicable requirements. If the Executive Director determines that any modifications or additions to the submitted Accessway Improvement Plan are necessary, he will notify Respondent and Respondent shall complete all requested modifications and resubmit a revised Accessway Improvement Plan for review and approval within 14 days from the date of the notification. The Accessway Improvement Plan shall include the following design criteria/constraints:

- A. The access easement shall remain 10 feet in width.

B. The accessway may have no more than one gate located at the landward (Pacific Coast Highway) side of the subject property. The gate shall be installed with an automatic locking system. The gate shall incorporate a mechanism that automatically puts the gate into the unlocked and "open" position from one hour before sunrise to one hour after sunset. The gate shall be of an open design, allowing public views from PCH to the ocean and/or beach. No solid or other visually impermeable materials shall be used in the construction of the gate, except as may be required to secure the gate in place. The gate shall provide for the ability to exit the easement area to Pacific Coast Highway 24 hours a day.

C. A ramp at the seaward end of the accessway shall be used in the design to allow for access over the permitted seawall and to account for fluctuations in sand elevations. The ramp shall be designed to not impede lateral public access along the sandy beach.

D. Security lighting may be proposed, however any existing lighting/light posts within the easement area used for illuminating the existing tennis court must be removed as required by Section 3.0, above.

E. Security cameras may be proposed to monitor the subject property not encumbered by the access easements, but in no circumstances shall any security camera or system be located within the access easement. In addition, any proposed security camera/system shall be designed so as not to interfere with or to discourage the public's ability to use and enjoy the access easement.

F. Fences and/or walls may be proposed to separate the public access easement from the area of the subject property not encumbered by the access easement. The height and seaward extension of the fence/wall shall be consistent with the City of Malibu Local Coastal Plan ("City LCP"). Any fence/wall shall not be located within the 10-foot wide easement area.

- 4.2 Within 14 days of receiving approval of the Accessway Improvement Plan from the Executive Director, Respondent shall submit to the South Central Coast District office of the Commission all materials that are required to complete a coastal development permit ("CDP") amendment application (to amend existing CDP No. 5-84-754), for the proposed Accessway Improvement Plan approved by the Executive Director. At least 21 days prior to the submittal of the CDP amendment application, Respondent shall offer the holder of the vertical access easement ("easement holder") the opportunity to be a co-applicant in the CDP amendment application.
- 4.3 If, after receiving the CDP amendment application submittal, the Executive Director determines that additional information is required to complete the application, the Executive Director shall send a written request to the Respondent (and any co-applicant(s)) for the information, which request will set forth the additional materials required and provide a reasonable deadline for submittal. Respondent shall submit or

ensure the submittal of the required materials by the deadline specified in the request letter.

- 4.4 Respondent agrees to not withdraw this application and to allow the application to proceed through the Commission permitting process according to applicable laws and regulations and the standard permitting procedures.
- 4.5 Respondent shall fully participate and cooperate in the Commission permitting process, provide timely responses, and work to move the process along as quickly as possible, including responding to requests for information.
- 4.6 If, at any time, Respondent fails to or is otherwise unable to proceed with the CDP amendment application process, Respondent shall authorize the easement holder to assume the primary role in and proceed with processing the CDP amendment application on its own. If this occurs, Respondent agrees to pay the easement holder's costs of processing the CDP amendment application. Respondent shall pay such costs within 15 days of receiving a written request from the easement holder for such payment, accompanied by bona fide invoices and/or contracts documenting such costs. Regardless of who processes the CDP amendment application, all Respondent's obligations under this Consent Agreement and Amended Order remain in effect, and Respondent shall undertake all work required herein to ensure that the Removal and Accessway Improvement Plans are implemented, consistent with the terms and conditions of this Consent Agreement and Amended Order.
- 4.7 Respondent shall fully implement the Accessway Improvement Plan upon approval by the Commission and based on the timeframe to commence development of the accessway established in Section 8.0, below.
- 4.8 Pursuant to her offer and agreement and pursuant to this Consent Agreement and Amended Order, Respondent shall pay the costs of constructing the access improvements on the subject property.
- 5.0 All plans, reports, photographs and any other materials that the Consent Agreement and Amended Order requires Respondent to submit shall be submitted to:

California Coastal Commission  
Attn: Aaron McLendon  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802  
(562) 590-5071  
Facsimile (562) 590-5084

With a copy to:  
California Coastal Commission  
Attn: Pat Veasart  
89 S. California St., Suite 200  
Ventura, CA 93001  
(805) 585-1800  
Facsimile (805) 641-1732

- 6.0 All work to be performed under this Consent Agreement and Amended Order shall be done in compliance with all applicable laws.

- 7.0 Nothing in this Consent Agreement and Amended Order will restrict the submittal of any future application(s) by Respondent for coastal development permits and/or amendments to existing permits, for proposed development on the Subject Property outside of the easement areas. Said proposed development may include, but is not limited to, placement of tennis court lighting, fencing, and wind screens, and planters and stairways. Nothing herein provides any assurance of the Commission's approval of any future application(s) by Respondent for coastal development permits and/or amendments to existing permits.

8.0 ADDITIONAL DEADLINES

8.1 Removal Plan

Within 180 days of approval of the Removal Plans produced pursuant to this Consent Agreement and Amended Order, Respondent shall commence removal of the unpermitted development and/or the development inconsistent with CDP Nos. 5-83-360 and 5-84-754, as defined by the approved Removal Plan, with the following exceptions:

- i. The 9-foot high wall in the vertical public access easement, located on the Pacific Coast Highway side of the property.

Respondent shall completely remove the unpermitted development and/or the development inconsistent with CDP Nos. 5-83-360 and 5-84-754 (with the exception of items i, above) within 30 days of commencement of removal operations or until such time as provided for in the approved Removal Plans.

8.2 Accessway Improvement Plan

Within 150 days of approval of the CDP amendment application discussed in Section 4.0, above, or within 1 year of the effective date of the Consent Agreement and Amended Order (provided the CDP amendment application has been approved), whichever occurs first, Respondent shall satisfy any permit conditions that must be satisfied to cause the permit to issue and shall commence construction of the public accessway as authorized by the amended CDP. At no time shall construction of the public accessway begin until the CDP amendment has been issued. If the CDP amendment has not been approved within 1 year of the effective date of the Consent Agreement and Amended Order, construction shall commence within 30 days of the date the amended CDP is issued, which Respondent shall use best efforts to secure.

8.3 Construction of Accessway Improvements

Following commencement of construction of the accessway improvements under the CDP amendment, Respondent shall carry out the construction expeditiously and shall finalize construction as promptly as is reasonably possible, but in no event more than

60 days following commencement of construction, unless the Executive Director or his designee, in consultation with the licensed contractor hired to construct the accessway improvement, determines that additional time is warranted. If, at any time, Respondent fails to or is otherwise unable to proceed with the construction of the improvements under the CDP amendment, at the easement holder's written request, Respondent shall authorize the easement holder to assume the primary role in and proceed with construction and to enter the property for that purpose. If this occurs, Respondent agrees to pay the easement holder's costs of construction. Respondent shall pay such costs within 15 days of receiving a written request from the easement holder for such payment, accompanied by bona fide invoices and/or contracts documenting such costs. In the event that construction of some or all of the improvements under the CDP amendment is undertaken by the easement holder under the provisions of this section and provided that the easement holder uses the services of a licensed contractor, Respondent also agrees to indemnify and hold the easement holder harmless against any claims arising out of or related to the construction of improvements. Regardless of who undertakes construction of the improvements under the CDP amendment, all Respondent's obligations under this Consent Agreement and Amended Order remain in effect, and Respondent shall undertake all work required herein to ensure that the Removal and Accessway Improvement Plans are implemented, consistent with the terms and conditions of this Consent Agreement and Amended Order.

#### 8.4 Opening of Public Accessway – Final Removal

A. Within 20 months of the effective date of this Consent Agreement and Amended Order or within 90 days of the date that Respondent no longer occupies the subject property if the construction of the accessway is completed consistent with the Accessway Improvement Plan, whichever occurs first, Respondent shall commence removal of the 9-foot high wall within the vertical public access easement, located on the Pacific Coast Highway side of the subject property, fully install the public accessway gate, consistent with the Accessway Improvement Plan, and open the accessway for public access and use. Respondent shall completely remove the portion of the 9-foot high wall within the vertical public access easement and install the public accessway gate within 15 days of commencement of removal and installation.

B. Within 7 days of completion of final removal/installation activities, Respondent shall submit evidence of the completion to the Executive Director for his review and approval. After review of the evidence, if the Executive Director determines that not all of the unpermitted development has been removed or that the vertical and lateral public access easements are not open and available to the public, in whole or in part, he shall specify any measures necessary to ensure that the removal complies with the approved Removal Plans, approved Accessway Improvement Plan, this Consent Agreement and Amended Order, the amended CDP(s), and the Coastal Act.



Respondent shall implement any specified measures, within the timeframe specified by the Executive Director.

9.0 OPERATION AND MAINTENANCE COSTS OF ACCESSWAY

Respondent shall pay the holder of the vertical public access easement the costs of operating and maintaining the easement for a period of 10 years, starting from the date the accessway is made open and available to the public. Respondent shall pay the easement holder \$35,000 per year for 10 years and shall submit such payments in annual payments no later than December 31 of each year beginning the year the accessway is made open and available to the public. Each \$35,000 payment shall include a cover letter indicating that this payment is being made pursuant to this Consent Agreement and Amended Order. Concurrent with the deliverance of the payment, Respondent shall mail a copy of such check and transmittal correspondence to: Aaron McLendon, California Coastal Commission, 200 OceanGate, 10<sup>th</sup> Floor, Long Beach, CA 90802. If, at any time, the easement holder cannot accept such a payment, Respondent shall submit the annual \$35,000 payment amount in accordance with the deadlines set forth above to the attention of Aaron McLendon of the Commission, payable to the California Coastal Commission/State Coastal Conservancy Violation Remediation Account or into such account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director.

10.0 PAYMENT OF MONIES TOWARD PUBLIC ACCESS IN MALIBU

- 10.1 In light of the intent of the parties to resolve these matters through this Consent Agreement and Amended Order and to help improve public access to the coast, Respondent has agreed to make monetary payments that will go specifically towards the improvement, enhancement, and maintenance of public access elsewhere in the Malibu area. First, Respondent shall pay the sum of \$350,000, which shall be divided into three installments as follows: (a) \$116,666.67 due on or before ten (10) business days after the effective date of this Agreement; (b) \$116,666.67 due on or before December 31, 2013; and (c) \$116,666.66 due on or before December 31, 2014. Second, Respondent shall pay \$160,000 for each year, or a proportional amount for any fraction of a year, from January 1, 2013 through the date on which the public access easements on the subject property are open and available to the public. Respondent shall pay by December 31, 2015, the amount that has accrued up to that point. If the Accessway Improvement Plan has not been fully implemented and the public access easements are not open and available to the public by December 31, 2015, accrual of days subject to this section will continue and such additional payment shall be paid within 10 days from the date the Accessway Improvement Plan is fully implemented and the public access easements are open and available to the public. Accrual of days for which Respondent is required to make payments as indicated above will cease once the Accessway Improvement Plan is fully implemented and the public access easements are open and available to the public,

with the exception that if Respondent's actions cause the access easements once again to be blocked and/or unavailable for general public use, such accrual of days, and the penalties associated with this accrual, will begin again, in addition to stipulated penalties pursuant to Section 10.3, below, and Respondent shall pay such amount(s) within 10 days of the date the access easements are made open and available to the general public. If delays in opening of the public access easement or subsequent unavailability of the public accessway easement for public use are caused solely as a result of fire, flood, earthquake, storm, hurricane, tsunami, or other natural disaster, or environmental or other concerns determined by the Executive Director that make it impossible to undertake work associated with the opening of the public access easement or that make it impossible for the public accessway to remain open, accrual of days for which Respondent is required to make payments as indicated above will cease until such time as it is possible to continue work on the opening of the public access easement. Respondent shall submit evidence, for the review and written approval of the Executive Director, that such act(s) prevented Respondent from carrying out the terms and conditions of this Consent Agreement and Amended Order.

- 10.2 The payments described in Section 10.1 shall be deposited in the Violation Remediation Account of the California State Coastal Conservancy Fund (see Public Resources Code section 30823) or into such other public account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director. Respondent shall submit the payment amount in accordance with the deadlines set above to the attention of Aaron McLendon of the Commission, payable to the California Coastal Commission/State Coastal Conservancy Violation Remediation Account or into such account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director.
- 10.3 Strict compliance with this Consent Agreement and Amended Order by all parties subject thereto is required. Respondent's failure to comply with any term or condition of this Consent Agreement and Amended Order, including any deadline contained in the Consent Agreement and Amended Order, unless the Executive Director grants an extension under Section 12.0, below, will constitute a violation of this Consent Agreement and Amended Order and will result in Respondent being liable for stipulated penalties in the amount of \$500 per day per violation. Respondent shall pay stipulated penalties within 10 days of receipt of written demand by the Commission for such penalties regardless of whether Respondent has subsequently complied. If Respondent violates this Consent Agreement and Amended Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with this Consent Agreement and Amended Order.

11.0 ACCESS FOR ALL V. ACKERBERG AND THE EASEMENT

Respondent and the Commission shall cooperate in seeking prompt dismissal of the lawsuit captioned Access For All v. Lisette Ackenberg Trust, et al., in Los Angeles County Superior Court, Case Number BC 405058 ("AFA v. Ackenberg") by March 29, 2013, if AFA does not seek dismissal of the lawsuit or does not accomplish it by that date.

12.0 MODIFICATION OF DEADLINES

Prior to the expiration of any of the deadlines established by the Consent Agreement and Amended Order, Respondent may request from the Executive Director an extension of any such deadlines. Such a request shall be made in writing 10 days in advance of the deadline and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director shall grant an extension of deadlines upon a showing of good cause if the Executive Director determines that Respondent has diligently worked to comply with her obligations under the Consent Agreement and Amended Order but cannot meet deadlines due to unforeseen circumstances beyond her control.

13.0 SITE ACCESS

Respondent shall provide Commission staff and staff of any agency having jurisdiction over the work being performed under the Consent Agreement and Amended Order with access to the areas of the property described below at reasonable times upon 24 hour notice. For safety and security purposes, such persons shall make their presence known to the on-site contractor, foreman, or supervisor conducting work under the Consent Agreement and Amended Order before entering such areas. Nothing in the Consent Agreement and Amended Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission and other relevant agency staff may enter and move freely about the following areas: (1) the portions of the subject property on which the violations are located and (2) any areas where work is to be performed pursuant to the Consent Agreement and Amended Order or pursuant to any plans adopted pursuant to the Consent Agreement and Amended Order or pursuant to any development approved through a CDP, for purposes including but not limited to inspecting records, operating logs, and contracts relating to the property and overseeing, inspecting, documenting (including by photograph and the like), and reviewing the progress of Respondent in carrying out the terms of the Consent Agreement and Amended Order; provided that, because of security concerns, no photographs shall be taken directly of Respondent's house.

14.0 REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables required under the Consent Agreement and Amended Order, and the Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, within ten days of receipt of a modification request from the Executive Director. The Executive Director may extend the time for submittals upon a written request and a showing of good cause, pursuant to Section 12.0 of the Consent Agreement and Amended Order.

15.0 PERSONS SUBJECT TO THE CONSENT AGREEMENT AND AMENDED ORDER

Lisette Ackenberg and the Lisette Ackenberg Trust, her and its successors, heirs, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of this Consent Agreement and Amended Order that are applicable to them, and as applicable shall undertake work required herein according to the terms of this Consent Agreement and Amended Order; provided, however, that this Consent Agreement and Amended Order does not itself subject employees, agents, contractors, and persons acting in concert with them to liability for any monetary amounts or penalties provided for in this Consent Agreement and Amended Order. Notwithstanding the above, Lisette Ackenberg and the Lisette Ackenberg Trust are responsible for all the requirements of this Consent Agreement and Amended Order.

16.0 IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is subject to this Consent Agreement and Amended Order is described as follows:

Approximately .95 acres of oceanfront property, located along Carbon Beach at 22466 and 22500 Pacific Coast Highway in Malibu, Los Angeles County, and identified by the Los Angeles County Assessor's Office as APNs 4452-002-011 and 4452-002-013.

17.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

This Consent Agreement and Amended Order resolves disputed claims. The unpermitted development that has occurred on the property includes but is not limited to the erection and/or placement of rock riprap, a 9-ft high concrete wall, concrete slab and generator, fence, railing, planter, light posts, and landscaping. In addition to being unpermitted, these items are located within vertical and/or lateral public access easements (created in response to permit conditions), are obstructing public access to the beach and along the beach seaward of the residence, and are therefore inconsistent with the conditions of the CDPs and the terms of the easements established pursuant

to the CDPs. By entering into this Consent Agreement and Amended Order, Respondent does not concede or admit to any violation of any law or permit, but agrees, for the purposes of resolving this matter amicably, that the factual prerequisites to the Commission's jurisdiction to issue and enforce this Consent Agreement and Amended Order are satisfied.

18.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of these alleged Coastal Act violations under Public Resources Code Section 30810. Respondent has agreed not to and shall not contest the Commission's jurisdiction to issue or enforce this Consent Agreement and Amended Order at a public hearing or any other proceeding by or before the Commission, any other governmental agency, any administrative tribunal, or a court of law.

19.0 SETTLEMENT OF MATTER PRIOR TO HEARING

In light of the intent of the parties to resolve these matters in settlement, Respondent has agreed not to contest the legal and factual bases and the terms and issuance of the Consent Agreement and Amended Order, including the allegations of Coastal Act violations contained in the Notice of Intent letter, dated April 27, 2007.

20.0 EFFECTIVE DATE AND TERMS OF THE CONSENT AGREEMENT AND AMENDED ORDER

The effective date of this Consent Agreement and Amended Order is the date this Consent Agreement and Amendment is issued by the Commission. This Consent Agreement and Amended Order shall remain in effect permanently unless and until rescinded by the Commission.

21.0 FINDINGS

This Consent Agreement and Amended Order is issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Findings for Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-01-A." The activities authorized and required under the Consent Agreement and Amended Order are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in the Consent Agreement and Amended Order as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

22.0 GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by

Respondents in carrying out activities pursuant to the Consent Agreement and Amended Order, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to the Consent Agreement and Amended Order.

23.0 DISMISSAL OF CLAIMS AND ATTORNEY'S FEES

- 23.1 Respondent will not challenge in any way the Judgment that was entered by the Los Angeles County Superior Court in Case No. BS 122006. Further, in light of the desire to settle this matter and avoid litigation, pursuant to the agreement of the parties as set forth in the Consent Agreement and Amended Order, Respondent hereby waives whatever right they may have to seek a stay or to challenge the issuance and enforceability of this Consent Agreement and Amended Order in a court of law or equity.
- 23.2 Within five business days of issuance of this Consent Agreement and Amended Order, Respondent shall deliver to Supervising Deputy Attorney General, Jamee Jordan Patterson, California Department of Justice, P.O. Box 85266, San Diego, CA 92186, a certified or cashier's check in the amount of \$170,000 as a full, complete, and final reimbursement to the Commission for all attorney's fees and costs, made out to: "California Department of Justice." Within 24 hours of delivering the check, a copy of such check and transmittal correspondence shall be mailed to: Aaron McLendon, California Coastal Commission, 200 Oceangate, 10<sup>th</sup> Floor, Long Beach, CA 90802.

24.0 SETTLEMENT OF CLAIMS

The Commission and Respondent agree that this Consent Agreement and Amended Order settles the Commission's monetary claims for relief for those violations of the Coastal Act alleged in Section 17.0 of the Consent Agreement and Amended Order (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under Public Resources Code Sections 30805, 30820, and 30822), with the exception that, if Respondent fails to comply with any term or condition of the Consent Agreement and Amended Order, the Commission may seek monetary or other claims for violation of the Consent Agreement and Amended Order. In addition, the Consent Agreement and Amended Order does not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property or elsewhere, other than those specified herein.

25.0 CONTRACTUAL OBLIGATION

The Consent Agreement and Amended Order constitute both administrative orders issued to Respondent personally and a contractual obligation between Respondent and the Commission, and therefore shall remain in effect until all terms are fulfilled,

regardless of whether Respondent owns or lives in the property upon which the violations exist.

26.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 12.0, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondents, the Consent Agreement and Amended Order may be amended or modified only in accordance with the standards and procedures set forth in section 13188(b) of the Commission's administrative regulations.

27.0 GOVERNMENTAL JURISDICTION

This Consent Agreement and Amended Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

28.0 NO LIMITATION OF AUTHORITY

- 28.1 Except as expressly provided herein, nothing in the Consent Agreement and Amended Order shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with the Consent Agreement and Amended Order.
- 28.2 Correspondingly, Respondent has entered into the Consent Agreement and Amended Order and agreed not to contest the factual and legal bases for issuance of the Consent Agreement and Amended Order, and the enforcement thereof according to its terms. Respondent has agreed not to contest the Commission's jurisdiction to issue and enforce the Consent Agreement and Amended Order.

29.0 INTEGRATION

The Consent Agreement and Amended Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in the Consent Agreement and Amended Order.

30.0 STIPULATION

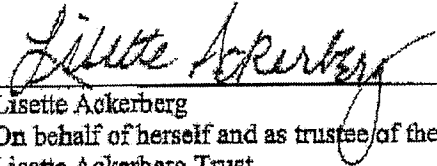
Respondent and her representatives attest that they have reviewed the terms of the Consent Agreement and Amended Order and understand that their consent is final and stipulate to its issuance by the Commission.



31.0 EXECUTION IN COUNTERPARTS

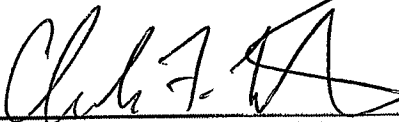
The parties agree that this agreement may be executed in counterparts and each shall be treated as the original.

IT IS SO STIPULATED AND AGREED:  
On behalf of Respondent:

  
\_\_\_\_\_  
Lisette Ackerberg  
On behalf of herself and as trustee of the  
Lisette Ackerberg Trust

2-8-13  
Date

Executed in San Diego, CA on behalf of the California Coastal Commission and thereby issued:

  
\_\_\_\_\_  
Charles Lester, Executive Director  
California Coastal Commission

3/7/13  
Date