

**CALIFORNIA COASTAL COMMISSION**

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# Th18a

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## STAFF REPORT: PERMIT AMENDMENT

**Application No.:** 5-84-791-A1

**Applicant:** Carbonview Limited, LLC

**Agent:** Drew D. Purvis, DP Planning and Development, Inc.

**Location:** 22224 and 22230 Pacific Coast Highway, Malibu, Los Angeles County. (APNs: 4451-006-036, 4451-006-037, and 4451-006-018)

**Amendment Description:** Recombination of two beachfront parcels (APNs 4451-006-036 and 4451-006-037) into one lot; modification of a previously recorded lateral public access easement on the recombined lot, recordation of a new lateral public access easement on an adjacent beachfront parcel (APN 4451-006-018), and dedication of four hundred thousand dollars to the Mountains Recreation and Conservation Authority to be used for the construction of public vertical accessway improvements within the Coastal Zone of the City of Malibu.

## SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed Coastal Development Permit Amendment with **six (6) special conditions** regarding: (1) amendment to lateral public access easement, (2) lateral public access easement on Parcel 4451-006-018, (3) payment of monies to the Mountains Recreation and Conservation Authority, (4) sign restriction, (5) lot combination, and (6) condition compliance. The proposed amendment includes the modification of an existing lateral public access easement to remove an approximately 1,609 square foot portion of an existing lateral public access easement, on

an existing beachfront lot, recorded pursuant to Special Condition One (1) of coastal development permit (CDP) 5-84-791 and offer to dedicate a new lateral public access easement on the adjacent upcoast 55 ft. wide parcel as depicted on Exhibit 3. The new access easement will connect the existing lateral public access easement described above to other existing recorded lateral public access easements on neighboring properties resulting in a contiguous 245 linear ft. area of the beach that will be available for lateral public access, as depicted on Exhibit Four. Therefore, in order to ensure that the applicant's proposal is effectively implemented, **Special Condition Two (2)** requires that prior to the issuance of the coastal development permit amendment, the landowner record a document which irrevocably offers to dedicate a lateral access easement for lateral public access and passive recreation between the mean high tide line and development stringline on APN 4451-006-018.

Additionally, the proposed amendment includes the donation of \$400,000 dollars to the Mountains Recreation Conservation Authority (MRCA) for the construction of public vertical accessway improvements within the Coastal Zone of the City of Malibu. **Special Condition Three (3)** requires that prior to issuance of the coastal development permit amendment the applicant shall submit a plan to establish a Public Beach Vertical Accessway Fund to be administered by the MRCA. Additionally, prior to the expenditure of any funds from this account, the Executive director shall review and approve the proposed use of the funds pursuant to a memorandum of understanding with the MRCA.

In past permit actions, the Commission has typically not approved amendments to coastal development permits that would allow for the elimination of all, or any portion, of a previously required public access easement. However, in this unique case, although the proposed amendment includes removal of an approximately 1,609 sq. ft. portion of an existing lateral public access easement, the recordation of the new proposed adjacent lateral access easement on the adjacent upcoast parcel will substantially increase the area of the subject site that is available for public access by an additional 55 linear feet. As a result, the proposed amendment would provide for a contiguous 245 linear ft. section of Carbon Beach to be covered by recorded lateral public access easements. Moreover, the relatively small 1,609 sq. ft. of easement area to be removed (which primarily consists of a privacy buffer which does not allow for public use unless no other dry areas of beach are available) would facilitate future development on site consistent with the other development provisions of the certified LCP, including the City's stringline policy which effectively limits the seaward encroachment of new development on beachfront parcels. Additionally, the donation of \$400,000 to the MRCA will provide for the enhancement and opening of a new public vertical accessway, as described above. As such, the Commission finds that in this very unique circumstance, the proposed project, in conjunction with the above referenced special conditions will serve to enhance public access and recreational opportunities consistent with the policies and provisions of the Coastal Act.

Although the subject parcels are 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 is processing the subject amendment requests because the proposed amendment involves modifying a specific permit condition of the Commission-issued permit [Malibu LIP Section 13.10.2 (B)(2)]. The standard of review for the proposed amendment is the policies and provisions of the certified 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 – Aerial Photograph

Exhibit 3 – Existing and Proposed Lateral Public Access Easement on APNs 4451-006-036 and 4451-006-037

Exhibit 4 – Proposed Lateral Access Easement on APN 4451-006-018

Exhibit 5 – Existing Lateral Public Access Easements on Carbon Beach

Exhibit 6 – La Costa Beach Vertical Accessway

Exhibit 7 – Morton Vertical Accessway

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. 5-84-791 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 Chapter 3 of the Coastal Act and 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. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

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

### **III. SPECIAL CONDITIONS**

#### **1. Amendment to Lateral Public Access Easement**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the landowner(s) shall record and execute a document in a form and content acceptable to the Executive Director, modifying the lateral public access easement created by recordation of the Irrevocable Offer to Dedicate Public Access Easement recorded as Instrument No. 85-846323 and the Certificate of Acceptance recorded as Instrument No. 06-0025845. The recorded document shall reflect the revised location of the lateral public access easement, as generally shown on Exhibit Three. The applicant shall also submit a metes and bounds legal description and corresponding graphic depiction, both prepared by a licensed surveyor for review and approval of the Executive Director, of the revised easement area. The document shall be recorded free of prior liens and encumbrances, except for tax liens, which the Executive Director determines may affect the interest being conveyed.
  
- B. **PRIOR TO MODIFYING THE LATERAL PUBLIC ACCESS EASEMENT** created by recordation of the Irrevocable Offer to Dedicate Public Access Easement recorded as Instrument No. 85-846323 and the Certificate of Acceptance recorded as Instrument No. 06-0025845, the landowner(s) shall submit evidence to the Executive Director that the California State Lands Commission authorizes the approved modification of the of the lateral access easement.

#### **2. Lateral Public Access Easement on Parcel 4451-006-018**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The area of dedication shall consist of the entire width of the property from the mean high tide line to the deck stringline. The recorded document shall include legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the landowner shall ensure that the offer to dedicate a lateral public access easement pursuant to Part A above, has been accepted by a public agency or private association approved by the Executive Director.
- C. Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to this coastal development permit. This requirement shall be reflected in the provisions of the offer.

**3. Payment of Monies to the Mountains Recreation and Conservation Authority**

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the Permittee shall submit to the Executive Director for review and written approval, a plan to establish a Public Beach Vertical Accessway Enhancement Fund. Subsequent to Executive Director approval of the plan, a sum of \$400,000 (Four Hundred Thousand) United States Dollars shall be deposited by the Permittee into an interest bearing account, to be established and managed by the Mountains Recreation and Conservation Authority or other entity if approved by the Executive Director. The permittee shall deposit the entire fee in the account within 60 days after approval of the plan by the Executive Director, unless additional time is granted by the Executive Director for good cause. The purpose of the account shall be to construct new access improvements within undeveloped public beach vertical accessways within the Coastal Zone in the City of Malibu, as authorized by the Executive Director. The account shall be structured to ensure that entire fee and any accrued interest shall be used for the above-stated purpose, in consultation with the Executive Director, within five years of the fee being deposited into the account. Any portion of the fee that remains after five years shall be donated to the Mountains Recreation and Conservation Authority (MRCA) or other organization acceptable to the Executive Director, for the purpose of constructing new public beach vertical accessways within the Coastal Zone of the City of Malibu.
- B. The fund shall also be structured to ensure that, **PRIOR TO EXPENDITURE OF ANY FUNDS CONTAINED IN THIS ACCOUNT**, the Executive Director shall, in consultation with the California State Lands Commission, review and approve, in writing, the proposed use of the funds as being consistent with the intent and purpose of this condition. In addition, the entity accepting the funds required by this condition shall enter into a memorandum of understanding (MOU) with the Commission, which shall include, but not be limited to, the following: (1) a description of how the funds will be used to construct public beach vertical accessways in the Coastal Zone in the City of Malibu; (2) a requirement that the entity accepting the funds must preserve these newly constructed public beach vertical accessways in perpetuity; and (3) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including, but not limited to, a coastal development permit for development of the public beach vertical accessways required by this condition.

#### **4. Sign Restriction**

No signs shall be posted on the properties subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach on the subject site located seaward of the development stringline is private or otherwise not open to the public or (b) contains similar messages that attempt to prohibit public use of this portion of the beach. In no instance shall signs be posted which read “*Private Beach*” or “*Private Property*.” Prior to posting, the permittee/landowner shall submit the content of any proposed signs to the Executive Director for review and approval.

#### **5. Lot Combination**

- A. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns with respect to the subject property, that: (1) All portions of the land currently known as APNs 4451-006-036 and 4451-006-037 shall henceforth be considered and treated as a single parcel of land for all purposes, including but not limited to sale, conveyance, lease, development, taxation or encumbrance; and (2) the single parcel so described shall not be divided, and none of the subareas to which separate assessor’s parcel numbers were assigned at the time of this permit approval shall be alienated from each other or from any portion of the unified parcel hereby recognized.
  
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction against the entire property at issue, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. To the extent there is any question that the areas identified by the separate assessor’s parcel numbers listed above constitute separate parcels for Subdivision Map Act (SMA) purposes, this action shall function to recombine and unify those parcels for purpose of the SMA. The deed restriction shall include a legal description and graphic depiction of the entire property at issue. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

#### **6. Condition Compliance**

Within 180 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. 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**

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

The proposed amendment to Coastal Development Permit 5-84-791 is for the recombination of two beachfront parcels (APNs 4451-006-036 and 4451-006-037) into one lot; modification of a

previously recorded lateral public access easement on the recombined lot, recordation of a new lateral public access easement on an adjacent beachfront parcel (APN 4451-006-018), and dedication of four hundred thousand dollars to the Mountains Recreation and Conservation Authority to be used for the construction of public vertical accessway improvements within the Coastal Zone of the City of Malibu.

The subject site consists of three parcels at 22224 and 22230 Pacific Coast Highway (APNs: 4451-006-036, 4451-006-037, and 4451-006-018) which are developed with two single family residences (one on APN 4451-006-037 and 4451-006-018), and are located between Pacific Coast Highway (“PCH”) and the beach, in an area of Malibu known as Carbon Beach. Along Carbon Beach, contiguous residential development fronts the highway and separates it from the beach both physically (i.e., the public cannot reach the beach from the road except at existing public vertical accessways) and visually (the public cannot see the beach from the road).

On December 13, 1984, the Commission approved Coastal Development Permit 5-84-791 for the extension of an existing bulkhead on the subject site by 36 linear ft. to protect the existing single family residence at 22224 Pacific Coast Highway (PCH). Pursuant to Special Condition One (1) of Coastal Development Permit 5-84-791, a lateral access easement “offer to dedicate” (OTD) was recorded across the beachfront portion of the 85 ft. wide lot (APN 4451-006-019) extending from the mean high tide line to the seaward edge of the bulkhead. The easement was subsequently accepted by the California State Lands Commission in 2005. However, it appears that at some point in time after 1984, a previous property owner subdivided the lot (APN 4451-006-019) without the required coastal development permit into two separate lots (APNs 4451-006-036 and 037) approximately 30 ft. and 55 ft. in respective widths. Thus, in order to resolve the outstanding violation on site, the applicant is proposing to recombine the two separate lots (APNs 4451-006-036 and 037) into a single 85 ft. wide lot.

In addition, the proposed amendment also includes the request to modify the footprint of the recorded lateral public access easement required pursuant to CDP 5-84-791 to shift the landward limit of the easement approximately 19 ft. further seaward in order to align the easement with the development stringline of the adjacent residentially developed lots, effectively resulting in the removal of approximately 1,609 sq. ft. of area from the recorded easement. To offset the loss of this area, the applicant is also proposing to offer to dedicate a new lateral public access easement between the mean high tide line and the dripline of the deck on the immediately adjacent upcoast 55 ft. wide residentially developed parcel at 22230 PCH (APN 4451-006-018). The applicant is also proposing the donation of \$400,000 dollars to the Mountains Recreation and Conservation Authority (MRCA) for the enhancement of public access in Malibu through the construction of public vertical accessway improvements.

Although the proposed modification of the recorded lateral public access easement at 22224 PCH will result in an approximately 1,600 sq. ft. reduction of easement area on that property, approximately 850 square feet of the 1,600 square foot area is comprised of the 10 ft. wide privacy buffer, which limits the public’s ability to pass and repass only when no other areas of dry beach are available for such use. Moreover, the proposed recordation of a new lateral public access easement on the 55 ft. wide lot at 22230 PCH, in addition to the existing easement on the 85 ft. wide lot at 22224 PCH, will result in a combined 140 linear ft. lateral public access



easement across the applicant's site. Moreover, as shown on Exhibit Five, the new 55 ft. wide lateral access easement will serve to connect the existing easement on the applicant's parcel with two more previously recorded lateral public access easements located immediately upcoast creating a contiguous 245 linear ft. section of beach with recorded lateral public access.

## **B. PUBLIC ACCESS AND RECREATION**

Coastal Act Policies:

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30214 of the Coastal Act states:

*(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.*

Section 30221 of the Coastal Act states:

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

City of Malibu Local Coastal Program Policies:

Policy 2.1 of the Malibu LCP states:

*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.*

Policy 2.17 of the Malibu LCP states:

*Recreation and access opportunities at existing public beaches and parks shall be protected, and where feasible, enhanced as an important coastal resource. Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities. Limitations on time of use or increases in use fees or parking fees, which effect the intensity of use, shall be subject to a coastal development permit.*

Policy 2.38 of the Malibu LCP states:

*To help finance the construction and maintenance of new accessways, the use of private or public grants or other local, State, or Federal funding sources should be utilized.*

Policy 2.63 of the Malibu LCP states:

*Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.*

Policy 2.67 of the Malibu LCP states:

*Facilities to complement public access to and along the shoreline should be provided where feasible and appropriate. This may include parking areas, restroom facilities, picnic tables,*

*or other such improvements. No facilities or amenities, including, but not limited to, those referenced above, shall be required as a prerequisite to the approval of any lateral or vertical accessways OTDs or as a precondition to the approval or construction of said accessways.*

Policy 2.73 of the Malibu LCP states:

*Maximum public access shall be provided in a manner which minimizes conflicts with adjacent uses.*

Policy 2.81 of the Malibu LCP states:

*No signs shall be posted on a beachfront property or on public beach unless authorized by a coastal development permit. Signs which purport to identify the boundary between State tidelands and private property or which indicate that public access to State tidelands or public lateral access easement areas is restricted shall not be permitted.*

Coastal Act Section 30210 and Coastal Act Section 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. Additionally, Coastal Act Section 30214 requires that the provision of public access opportunities take into account site geology and other characteristics, protection of natural resources, and the need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter. Lastly, Section 30221 of the Coastal Act requires that oceanfront land suitable for recreational use be protected for recreational use.

Additionally, 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.

Carbon Beach, where the project site is located, is situated in the eastern portion of the City of Malibu, downcoast of the Malibu Pier. It is generally a wide and sandy beach, that is approximately 1 ½ miles in length. Carbon Beach is lined by private residences, and like the subject properties, all are located between Pacific Coast Highway and the beach. Currently, there are two existing open vertical accessways on Carbon Beach. "Carbon Beach West" Access Way, which is also known as the "Zonker Harris" Access Way, is located approximately 3,000 feet west of the project site, and "Carbon Beach East" Access Way is located approximately 570 feet east. Numerous lateral public access easements also exist on Carbon Beach, and those located immediately adjacent to the subject parcels can be seen on Exhibit Five.

In addition to the formally recorded public access easements, the State also owns tidelands, which are those lands below the Mean High Tide Line as it exists from time to time. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are

subject to the 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.

The subject existing lateral public access easement, located at 22224 Pacific Coast Highway (APNs 4451-006-036 and 4451-006-037), was recorded pursuant to Special Condition One (1) of CDP 5-84-791, and extends from the Mean High Tide Line to the seaward edge of the existing bulkhead, as depicted on Exhibit Three. In that permit action, the Commission determined that the approved project (construction of a 36 foot easterly extension of an existing bulkhead and return wall) would result in potential increased beach erosion which would result in the loss of beach area available to the public and the resultant blockage or impediment of public access along the shoreline, and that such impediments to public access must be mitigated in order to determine that the proposed development was not in conflict with the public access policies of the Coastal Act. As such, the Commission required the recordation of the subject lateral public access easement along the beach in order to mitigate adverse effects to public access from increased beach erosion. This easement provides for public access along the entire beach, under all tidal conditions as measured seaward from the seaward face of the approved bulkhead to the mean high tide line. Special Condition One (1) of CDP 5-84-791 also allowed for a privacy buffer, which extends from the seaward face of the bulkhead ten feet seaward, and comprises approximately 850 square feet of the total easement area. Within the privacy buffer area, lateral public access is restricted to pass and repass only when no other dry beach area is available.

As a component of the currently proposed amendment, the applicant has requested a modification to the footprint of the recorded lateral public access easement required pursuant to CDP 5-84-791 to shift the landward limit of the easement approximately 19 ft. further seaward in order to align the easement with the development stringline of the adjacent residentially developed lots, effectively resulting in the removal of approximately 1,609 sq. ft. of area from the recorded easement. Approximately 850 square feet of the subject 1,609 square foot area is comprised of the privacy buffer described above, and approximately 750 square feet is easement area that is available for access and passive recreational use by the public with no additional use restrictions. To offset the loss of this area, the applicant is also proposing to offer to dedicate a new lateral public access easement between the mean high tide line and the dripline of the deck on the immediately adjacent upcoast 55 ft. wide residentially developed parcel at 22230 Pacific Coast Highway (APN 4451-006-018). The applicant is also proposing the donation of \$400,000 dollars to the Mountains Recreation and Conservation Authority (MRCA) for the enhancement of public access in Malibu through the construction of public vertical accessway improvements.

Moreover, the proposed recordation of a new lateral public access easement on the 55 ft. wide lot at 22230 PCH, in addition to the existing easement on the 85 ft. wide lot at 22224 PCH, will result in a combined 140 linear ft. lateral public access easement across the applicant's site. Additionally, as shown on Exhibit Five, the new 55 ft. wide lateral access easement will serve to connect the existing easement on the applicant's parcel with two more previously recorded lateral public access easements located immediately upcoast creating a contiguous 245 linear ft. section of beach with recorded lateral public access.

**Limiting Seaward Encroachment by New Development**

As a means of controlling seaward encroachment of residential structures on a beach to ensure maximum access, protect public views and minimize wave hazards as required by Coastal Act Sections 30210, 30211, 30251, and 30253, the seaward extent of build out must be controlled. The Malibu LCP requires that development must be located at least ten feet landward of the mean high tide line. The LCP also includes policies and provisions that require for “infill” beachfront development, such as the project site which is located between other residentially developed properties, that the rear-yard, or beach-side extent of new development shall be limited by a “stringline” from the most seaward extent of existing adjacent development. As applied to beachfront development, the stringline limits extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks to a similar line drawn between the nearest corners of the adjacent decks. Specifically, this development stringline rule is defined by Section 3.6(G)(3) of the City of Malibu LIP as follows:

...

*3. Rear. Setbacks for infill development are determined by the stringline rule. Separate setback standards apply to dwellings and decks, as indicated below. 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, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible.*

*a. Dwellings. For a dwelling, new construction shall not extend seaward of a stringline drawn from a point on the closest upcoast and downcoast dwelling. The stringline point shall be located on the nearest adjacent corner of the upcoast and downcoast dwelling.*

*b. Decks and patios. For a deck or patio, new construction shall not extend seaward of a stringline drawn from a point on the closest upcoast and downcoast deck or patio. The stringline point shall be located on the nearest adjacent corner of the upcoast and downcoast deck or patio.*

...

The Subject Site consists of two residentially developed properties at 22224 Pacific Coast Highway (APNs: 4451-006-036 and 4451-006-037) and 22230 Pacific Coast Highway (APN 4451-006-018). As seen on Exhibit Two, the existing development on either side (both up and downcoast) of the subject site extends approximately 19 ft. further seaward than the existing residential development on the subject site itself. The portion of the easement that the applicant is requesting to remove would not extend further than 19 ft. seaward of the existing development on site and would be located entirely landward of the deck stringline. New residential development within the easement area would not be consistent with the terms of the lateral access easement and would therefore be prohibited. Although no physical development is proposed as part of this amendment, removal of the 1,609 sq. ft. area from the lateral public

access easement would allow for future residential development within this area to be approved in conformance with both the reconfigured lateral public access easement and with the stringline established by existing adjacent development, provided that all new development would also comply with the provision of the Malibu LCP requiring that new development be located a minimum of 10 ft. landward of the mean high tide line.

The beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicate that demand for recreational sites will continue to increase significantly in the future. Lateral access easements such as the subject existing recorded easement provide for public beach access. This particularly important in beach areas where there is private development that may have impacts on the public's ability to gain access to the coast. In fact, the subject easement was required to reduce or mitigate any public access impacts from the development of a seawall on the property. The removal of any portion of an existing public access easement inherently raises issue with regard to impacts to public access and recreational opportunities. However, in this unique case, the portion of the easement that the applicant is requesting to remove constitutes a relatively small area of the site, which extends approximately 19 feet landward of existing adjacent development (in an area that could potentially be developed pursuant to the LCP stringline provisions), and approximately half of its area is comprised of privacy buffer area that has public access restrictions.

However, removal of the 1,609 sq. ft. portion of the easement area from public use would still result in adverse impacts to public access and recreational opportunities. Therefore, in this case, the applicant is also proposing to offer to dedicate a new lateral public access easement between the mean high tide line and the dripline of the deck on the immediately adjacent upcoast 55 ft. wide residentially developed parcel at 22230 Pacific Coast Highway (APN 4451-006-018). The applicant is also proposing the donation of \$400,000 dollars to the Mountains Recreation and Conservation Authority (MRCA) for the enhancement of public access in Malibu through the construction of public vertical accessway improvements.

Further, the proposed recordation of a new lateral public access easement on the 55 ft. wide lot at 22230 PCH, in addition to the existing easement on the 85 ft. wide lot at 22224 PCH, will result in a combined 140 linear ft. lateral public access easement across the applicant's site. Moreover, as shown on Exhibit Five, the new 55 ft. wide lateral access easement will serve to connect the existing easement on the applicant's parcel with two more previously recorded lateral public access easements located immediately upcoast, creating a contiguous 245 linear ft. section of beach with recorded lateral public access. Therefore, in order to ensure that the applicant's proposal is effectively implemented, **Special Condition Two (2)** requires that prior to the issuance of the coastal development permit amendment, the landowner record a document which irrevocably offers to dedicate a lateral access easement for lateral public access and passive recreation between the mean high tide line and development stringline on APN 4451-006-018. Special Condition Two (2) also requires that prior to modifying the public access easement, the applicant shall submit evidence to the Executive Director that the California State Lands Commission authorizes the approved modification of the of the lateral access easement.

Moreover, as discussed above, the applicant has also proposed to donate \$400,000 dollars to the Mountains Recreation Conservation Authority (MRCA) for the construction of vertical public

access improvements within the City of Malibu. The MRCA is a public agency that represents a partnership between the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Simi Recreation and Park District. The MRCA is dedicated to the preservation and management of open space, parkland, watershed lands, trails, and wildlife habitat.

In order to determine the appropriate amount of the proposed donation to be included as part of the applicant's project proposal, the applicant retained Voltz Commercial Reality Advisors, Inc. to conduct a Restricted Use Appraisal Report. The value of the subject easement area was determined by a comparison of the estimated value of the remainder of the property which is encumbered by the easement in the before condition (without the easement) less the estimated value in the after condition (with the easement). The difference results in the value of the easement based upon a private market transaction model. This valuation, however, does not necessarily represent the value of the subject easement area to the public, which could be much greater.

In order to determine the land value of APNs 4451-006-036 and 4451-006-037, land sales within the City of Malibu from 2001 to 2013 were analyzed by the sales comparison approach. However, because there are so few vacant land sales within the City of Malibu, a residual land value analysis was also completed. The residual land value of a property is indicated after subtraction of an estimated cost of the improvements from the overall sale price, leaving an estimated value of the land only. Based on the price per square foot derived from both analyses, it was determined that \$800 per square foot was an accurate estimate for the subject site, which corresponds to a total value of \$12,544,000 for the subject site. After subtracting the subject easement area, the value of the site was reduced to \$11,256,800. As such, the value of the easement was calculated to be \$1,287,200 (the value without the easement - the value with the easement).

Based upon the development stringline rules of the City's certified LCP, it was determined that 99% of the 1,609 sq. ft. easement area to be removed (approximately 1,593 square feet) is located landward of the deck stringline, and that 1% of the existing easement area to be removed (approximately 16 square feet) was located landward of the residential structure stringline. The determination of the diminution of value that the easement area places on the value of the subject property was determined to be 30% for 99% of the easement area (the portion located landward of the deck stringline) and 100% for 1% of the easement area (located landward of the residential structure stringline). As such, the value of the easement area landward of the residential structure stringline was calculated to be \$12,920 and the value of the easement area landward of the deck stringline was calculated to be \$383,644, for a total valuation of approximately \$400,000.

There are two potential identified project sites located within the City of Malibu, where the funds proposed to be donated to the MRCA by the applicant could be utilized to open a vertical accessway. The La Costa Beach site is owned by the California Coastal Conservancy and is located at 21664 Pacific Coast Highway, as depicted on Exhibit Six. This site is located approximately 0.7 miles east of the subject project site, and approximately 0.5 miles east of the Carbon Beach East vertical accessway. It is anticipated that at this location a stairway leading

from Pacific Coast Highway down to the sandy beach could be constructed, and a viewing platform and restroom could also potentially be constructed. The second potential site is located at 19862 Pacific Coast Highway, also within the Coastal Zone in the City of Malibu, as depicted on Exhibit 7. This site is located approximately 3 miles from the subject project site, and is immediately adjacent to a 65-foot wide parcel owned by the State of California and is utilized by the California Department of Transportation (Caltrans) as an ocean-front public viewing platform known as Vista Point. Pursuant to coastal development permit amendments 4-00-057-A3 and 4-01-100-A4, this site was identified as view corridor parcel. Currently there is an existing residence located on this site; however the owner has submitted a coastal development permit to the City of Malibu to demolish this development. It is anticipated that this site would then be dedicated to the MRCA, and vertical public access improvements, such as a stairway, could then be constructed. In order to ensure that the funds proposed by the applicant are donated to the MRCA and specifically utilized for the construction of public vertical accessways within the City of Malibu, **Special Condition Three (3)** requires that prior to issuance of the coastal development permit amendment the applicant shall submit a plan to establish a Public Beach Vertical Accessway Fund to be administered by the MRCA. Additionally, prior to the expenditure of any funds from this account, the Executive director shall review and approve the proposed use of the funds pursuant to a memorandum of understanding with the MRCA.

Lastly, the Commission notes that numerous 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 Four (4)** also provides that no 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."

In conclusion, in past permit actions, the Commission has typically not approved amendments to coastal development permits that would allow for the elimination of all, or any portion, of a previously required public access easement. However, in this unique case, although the proposed amendment includes removal of an approximately 1,609 sq. ft. portion of an existing lateral public access easement, the recordation of the new proposed adjacent lateral access easement on the adjacent upcoast parcel will substantially increase the area of the subject site that is available for public access by an additional 55 linear feet. As a result, the proposed amendment would provide for a contiguous 245 linear ft. section of Carbon Beach to be covered by recorded lateral public access easements. Moreover, the relatively small 1,609 sq. ft. of easement area to be removed (which primarily consists of a privacy buffer which does not allow for public use unless no other dry areas of beach are available) would facilitate future development on site consistent with the other development provisions of the certified LCP, including the City's stringline policy which effectively limits the seaward encroachment of new development on beachfront parcels. Additionally, the donation of \$400,000 to the MRCA will provide for the enhancement and opening of a new public vertical accessway, as described above. As such, the Commission finds that in this very unique circumstance, the proposed project, in conjunction with the above referenced special conditions will serve to enhance public access and recreational opportunities 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, and therefore the project is consistent with the public access policies of the adopted Malibu LCP and Chapter 3 of the Coastal Act.

### **C. CUMULATIVE IMPACTS**

Section 30250(a) of the Coastal Act states:

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

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

*[T]he incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.*

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area, particularly those of subdivisions, multi-family residential development, and second residential units, all of which result in increased density. It is particularly critical to evaluate the potential cumulative impacts of increased density given the existence of thousands of undeveloped and poorly sited parcels in the mountains that were created decades ago in antiquated subdivisions. The future development of the existing undeveloped parcels in conjunction with any increased density will result in tremendous increases in demands on road capacity, services, recreational facilities, beaches, and associated impacts to water quality, geologic stability and hazards, rural community character, and contribution to fire hazards. In addition, future build-out of many lots located in environmentally sensitive areas will create adverse cumulative impacts on coastal resources.

The subject site currently consists of three parcels at 22224 and 22230 Pacific Coast Highway (APNs: 4451-006-036, 4451-006-037, and 4451-006-018) which are developed with two single family residences (one on APN 4451-006-037 and 4451-006-018), and are located between Pacific Coast Highway ("PCH") and the beach, in an area of Malibu known as Carbon Beach. However, it appears that two parcels (APNs: 4451-006-036 and 4451-006-037) were created at some point in time after 1984 by a previous property owner who subdivided a lot (APN 4451-

006-019) without the required coastal development permit into two separate lots (APNs 4451-006-036 and 037). Thus, in order to resolve the outstanding violation on site, the applicant is proposing to recombine the two separate lots (APNs 4451-006-036 and 037) into a single 85 ft. wide lot.

### **Regulation of Land Divisions**

In order to determine if the date and method of the creation of a parcel was in compliance with the laws and ordinances in place at the time, it is necessary to review the applicable regulations that govern the division of property in Los Angeles County, both at present and in the past.

The Subdivision Map Act (SMA) [Cal. Gov't Code §§66410 *et seq.*] is a state law that sets statewide standards for the division of land that are implemented by local governments through their ordinances. Among other requirements, the SMA currently requires that all divisions of land must be approved by the local government through a parcel map (for the division of four or fewer parcels) or a tract map (for the division of five or more parcels). Prior to legislative changes to the SMA that were effective March 4, 1972, the SMA did not require approval for divisions of fewer than five parcels (although the division of five or more parcels did require a tract map approval).

However, prior to March 4, 1972, the SMA did provide that a local government could adopt ordinances to regulate the division of fewer than five parcels, so long as the provisions of such an ordinance were not inconsistent with the SMA. The County of Los Angeles adopted Ordinance No. 9404 (effective September 22, 1967) to regulate land divisions of fewer than five parcels. This ordinance required the approval of a "Certificate of Exception" for a "minor land division", which was defined as: "...any parcel or contiguous parcels of land which are divided for the purpose of transfer of title, sale, lease, or financing, whether present or future, into two, three, or four parcels...". This ordinance provided standards for road easements, and other improvements. After March 4, 1972, when the SMA included a statewide requirement for the approval of a parcel map for divisions of fewer than five parcels, the County of Los Angeles abandoned the "Certificate of Exception" requirement and began requiring the approval of a parcel map instead.

The SMA contains provisions that prohibit the sale, lease, or finance of any parcels for which a final map approval is required until such map is approved and recorded. The SMA also provides that any owner of property may request that the local government determine whether the property complies with the provisions of the SMA and local subdivision ordinances. If the local government, in this case, Los Angeles County, determines that the property complies, then the County shall issue a "certificate of compliance" (C of C) which will be recorded<sup>1</sup>. If the County determines that the property does not comply with the SMA or local ordinances, then it shall issue a "conditional certificate of compliance"<sup>2</sup>. The conditional C of C will be subject to

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<sup>1</sup> This type of certificate of compliance issued pursuant to Gov't Code § 66499.35(a) is commonly known as an "exempt" C of C, in that it indicates that the parcel was created legally or before there were regulations.

<sup>2</sup> This type of certificate of compliance is issued pursuant to Gov't Code § 66499.35(b).

conditions that would have been applicable to the division of the property at the time that the owner acquired it. If the applicant was the owner who divided the property in violation of the SMA, then the County may impose any conditions that would be applicable to a land division at the time the C of C is issued.

The Coastal Act requires a coastal development permit prior to undertaking “development”, which includes: “...change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits...” (Coastal Act Section 30106). The subject division of land that created the parcel that is the project site occurred prior to the effective date of the Coastal Act (January 1, 1977). The vested rights exemption allows the completion or continuance of development that was commenced prior to the Coastal Act without a coastal development permit only if, among other things, all other necessary and required permits were obtained. However, in this case, the unpermitted subdivision of land cannot be considered vested or “grandfathered” development because it did not occur in compliance with the applicable laws and regulations (including the SMA and Los Angeles County subdivision ordinances) and with the required approvals. As such, the application of the property owner for a C of C and the subsequent issuance of a conditional C of C, after the effective date of the Coastal Act, which “legalized” this lot for purposes of the Subdivision Map Act, is considered a land division that requires a coastal development permit, pursuant to the provisions of the Coastal Act, to be effective. No CDP was obtained for this land division.

In this case, in order to resolve the outstanding violation on site, the applicant is proposing to recombine the two separate lots (APNs 4451-006-036 and 037) into a single 85 ft. wide lot. Thus, as determined in the findings above, to assure the project’s consistency with Section 30250 of the Coastal Act, **Special Condition Five (5)** has been required to ensure that the applicant’s proposal to recombine the two parcels (APNs 4451-006-036 and 037) is effectively implemented.

The Commission finds that, as conditioned, the proposed project is consistent with Section 30250 of the Coastal Act.

#### **D. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without the required coastal development permit including the subdivision by a previous property owner of the 85 ft. wide beachfront lot (APN 4451-006-019) without the required coastal development permit into two separate lots (APNs 4451-006-036 and 037) approximately 30 ft. and 55 ft. in respective widths. In order to resolve the outstanding violation on site, the applicant is proposing to recombine the two separate lots (APNs 4451-006-036 and 037) into a single 85 ft. wide lot.

In order to ensure that the unpermitted development component of this application is resolved in a timely manner, the Commission finds it necessary to require the applicant to fulfill all of the Special Conditions that are a prerequisite to the issuance of this permit, within 180 days of

Commission action. Therefore, **Special Condition Six (6)** is required to assure the project's consistency with all applicable Chapter 3 policies of the Coastal Act:

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit. The Commission's enforcement division retains its authority to pursue further actions to address this matter.

## **E. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, the proposed amendment, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures which will minimize all adverse environmental effects have been required as special conditions. **Special Conditions One (1) through Six (6)** of CDP Amendment 5-84-791 are required to assure the project's consistency with Section 13096 of the California Code of Regulations.

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 project, 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 A**

### **Substantive File Documents:**

Certified City of Malibu Local Coastal Program; Restricted Use Appraisal Report, Voltz Commercial Realty Advisors, dated November 25, 2013; Coastal Development Permit 5-84-791; 4-00-057-A3 and 4-01-100-A4; and Coastal Development Permit Waiver 4-96-080-W and 4-97-118-W.