

CALIFORNIA COASTAL COMMISSION

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



F22b

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original staff report

ADDENDUM

DATE: April 14, 2015
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item 22b, Friday, April 17, 2015, Coastal Development Permit
Application Number 4-12-057

The purpose of this addendum is to make minor revisions to the text of Special Condition Four (4), Part B in order to clarify its intent. Additionally, the applicant has revised the proposed project description to remove unpermitted wires located on the pier, and an ex parte communication from Commissioner Groom has been added.

Note: ~~Strikethrough~~ indicates text deleted from the March 26, 2015 staff report pursuant to this addendum, and underline indicates text added to the March 26, 2015 staff report pursuant to this addendum.

- 1) In order to clarify its intent, of Part B of Special Condition Four (4) Signage Program, shall be modified as follows:
 - B. No signs shall be posted on the subject site which may be interpreted as prohibiting or deterring use of the public areas of the site, including ~~all~~ areas of the ~~sandy~~ beach below the mean high tide line, the public access pathway from the Pacific Coast Highway to the beach, and all areas of the pier.
- 2) The applicant has revised the proposed project description to include the removal of unpermitted wires, which were installed in order to deter birds from landing on the pier, within 30 days from the date of Commission action. As such, the project descriptions throughout the report shall be modified to reflect this change.
- 3) Ex parte communication from Commissioner Groom (attached).

APR 14 2015

EX PARTE COMMUNICATION DISCLOSURE FORM

California Coastal Commission
South Central Coast District

Filed by Commissioner: Carole Groom

1) Name or description of project: Item F22b - Application No. 4-12-057 (Kissel Company)

2) Date and time of receipt of communication: April 7, 2015 at 10:00 a.m.

3) Location of communication: Telephone

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication: Sara Wan

5) Identity of person(s) on whose behalf communication was made: Kissel Company
(applicant)

6) Identity of persons(s) receiving communication: Carole Groom

7) Identity of all person(s) present during the communication: Sara Wan, Carole Groom

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Representative indicated that applicant is in agreement with staff and that they will complete signage following completion of work (special condition 4).

April 13 2015
Date

Carole Groom
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

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F22b

Filed: 3/16/15
180th Day: 9/12/15
Staff: J. Blaugrund-V
Staff Report: 3/26/15
Hearing Date: 4/17/15

STAFF REPORT: REGULAR CALENDAR

Application No.: 4-12-057

Applicant: The Kissel Company, Inc.

Agent: Sara Wan and Jeff Holt

Location: Paradise Cove Pier, Paradise Cove Road, City of Malibu, Los Angeles County

Project Description: Replace twelve timber pier pilings and install signs prohibiting alcohol, pets, and diving off pier. The proposed project also includes a request for after-the-fact approval of pier maintenance activities, including the replacement of pier decking, and the removal of an unpermitted gate and four unpermitted steel pier pilings.

Staff Recommendation: Approval with Conditions.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed development with **ten (10) special conditions** regarding (1) revised plans, (2) project timing, (3) public access program, (4) signage program, (5) construction responsibilities and debris removal, (6) disposal of construction debris, (7) conformance with the requirements of the resource agencies, (8) assumption of risk, (9) removal of unpermitted gate, and (10) condition compliance.

The Kissel Company, Inc. is proposing to replace twelve timber pier pilings and install signs prohibiting alcohol, pets, and diving off pier. The proposed project also includes a request for after-the-fact approval of pier maintenance activities, including the replacement of pier decking, and the removal of an unpermitted gate and four unpermitted steel pier pilings.

The Paradise Cove Pier is located in the City of Malibu, west of Ramirez Canyon, and east of Kanan Dume Road. Ramirez Creek flows into the ocean west of the pier, and the Paradise Cove Trailer Park and a restaurant are located immediately landward of the pier.

As mentioned above, Commission staff recommends approval of the permit with conditions to prevent impacts to water quality and the marine environment and to minimize interference with public access during project construction. Due to the location of the pier directly above the waters of the Pacific Ocean, the potential exists for construction debris and materials to fall or be discharged into the marine environment. To protect water quality and prevent these materials from entering the ocean during the project, staff recommends Special Condition Five (5) to require the applicant to implement best management practices during construction activities. Furthermore, in order to ensure that impacts to public access and recreation are minimized to the maximum extent possible, staff recommends Special Condition Two (2), which requires that the applicant undertake construction activities only during weekdays and non-holidays after Labor Day and before Memorial Day each year. Special Condition Two (2) is necessary to ensure that public access to the pier is only impacted in the non-summer months, when the pier receives fewer visitors.

Although the Commission has previously certified a Local Coastal Program (LCP) for the City of Malibu, the proposed project will be located within an area where the Commission has retained jurisdiction over the issuance of coastal development permits. Thus, the standard of review for this project is the Chapter Three policies of the Coastal Act, with the applicable policies of the City of Malibu LCP as guidance. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Vicinity Map
Exhibit 2 – Aerial Photograph
Exhibit 3 – Project Plans
Exhibit 4 – Unpermitted Gate

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 4-12-057 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit 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 a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter Three 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 Three. 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 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. Revised Plans

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, two full size sets of final revised project plans (i.e. site plan, elevations, cross-sections, etc.) which shall delete the use of creosote as a treatment material.
- B. The Permittee 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. Project Timing.

BY ACCEPTANCE OF THIS PERMIT, the applicant agrees that construction activities shall be undertaken during weekdays between Labor Day and Memorial Day. In no case may project activities be undertaken during weekend days or public holidays. The Executive Director may extend the time allowed to complete authorized activities upon a showing of good cause.

3. Public Access Program.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a Public Access Program that describes the methods (including signs, fencing, posting of security guards, etc.) by which safe public access to or around construction areas, shall be maintained during all project operations. The applicant shall maintain public access pursuant to the approved version of the report. Any proposed changes to the approved program shall be reported to the Executive Director. No change to the program shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.
- B. The applicant shall post each construction site with a notice indicating the expected dates of construction and/or public access or parking lot closures.

4. Signage Program.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a

signage plan, which describes the location, number, size, and contents of signs to be placed at the property subject to this permit. At a minimum, two signs located at the entrance to the pier and at the entrance to the pedestrian trail at Pacific Coast Highway shall indicate that the pier is available for public access. Prior to posting, the permittee/landowner shall submit the content of any proposed signs to the Executive Director for review and approval. The signs shall be installed by the applicant in the manner described in the approved signage plan.

- B. No signs shall be posted on the subject site which may be interpreted as prohibiting or deterring use of the public areas of the site, including all areas of the sandy beach, the public access pathway from the Pacific Coast Highway to the beach, and all areas of the pier.
- C. The signs indicating the availability of public access shall be installed by the applicant in the manner described in the approved signage plan within 90 days of issuance of the coastal development permit, or within such additional time as the Executive Director may grant for good cause, and shall be maintained in good condition onsite.

5. Construction Responsibilities and Debris Removal.

BY ACCEPTANCE OF THIS PERMIT, the applicant agrees to comply with the following construction-related requirements:

- A. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave or tidal action, erosion, or dispersion.
- B. Any and all debris resulting from construction activities shall be removed from the site within twenty-four (24) hours of completion of construction and disposed of at an appropriate location.
- C. If turbid conditions are generated during construction, a silt curtain shall be utilized to control turbidity.
- D. Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day.
- E. Divers shall recover non-buoyant debris discharged into coastal waters as soon as possible after loss.
- F. The applicant shall dispose of all construction debris resulting from the proposed project at an appropriate location outside the coastal zone. If the disposal site is located within the coastal zone, a separate coastal development permit shall be required before disposal can take place.
- G. Reasonable and prudent measures shall be taken to prevent any discharge of fuel or oily waste from heavy machinery or construction equipment into coastal waters. The applicant and applicant's contractors shall have adequate equipment available to contain any such spill immediately.

- H. All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day.
- I. Any wood treatment used shall conform to the specifications of the American Wood Preservation Association for saltwater use. Wood treated with Creosote, CCA (Chromated Copper Arsenate), or ACA (Ammoniacal Copper Arsenate) is prohibited. No wood treated with ACZA (Ammoniacal Copper Zinc Arsenate) shall be used where it could come into direct contact with the water.
- J. The applicants shall use the least damaging method for any activity that will disturb benthic sediments. The applicant shall limit, to the greatest extent practicable, the suspension of benthic sediments into the water column.

6. Disposal of Construction Debris.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all debris removed from the project 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 material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of material.

7. Conformance with the Requirements of the Resource Agencies.

The applicants shall comply with all permit requirements, and mitigation measures of the California Department of Fish and Game, State Water Quality Control Board, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and the marine environment. Any change in the approved project which may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

8. Assumption of Risk.

BY ACCEPTANCE OF THIS PERMIT, THE APPLICANT ACKNOWLEDGES AND AGREES (i) that the site may be subject to hazards from storm waves, tsunamis, surges, erosion, and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

PRIOR TO COMMENCEMENT OF DEVELOPMENT, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

9. Removal of Unpermitted Gate

Although 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 applicant shall remove the existing gate shown on Exhibit 4 within 30 days of the issuance of the permit. The Executive Director may grant additional time for good cause.

10. 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

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The Kissel Company, Inc. is proposing to replace twelve timber pier pilings and install signs prohibiting alcohol, pets, and diving off pier. The proposed project also includes a request for after-the-fact approval of pier maintenance activities, including the replacement of pier decking, and the removal of an unpermitted gate and four unpermitted steel pier pilings.

The Paradise Cove Pier and is located at Paradise Cove in the City of Malibu and was originally constructed during the 1950's. Landward of the pier is the Paradise Cove Trailer Park and a restaurant, as depicted on Exhibit Two. The Applicant has been granted a lease by the California State Lands Commission for the operation and maintenance of the Paradise Cove Pier. This lease requires that public access be maintained to and through the leased area. Thus, the public has the right to access all areas of the pier from Pacific Coast Highway free of cost. However, the applicant has constructed a gate at the entrance of the pier without the required coastal development permit, which has restricted access. On October 31, 2014, Commission staff sent a Notice of Violation to the applicant that described violations at the project site, and in response, the applicant opened the subject gate and restored access. As mentioned above, the removal of this unpermitted gate is proposed as a component of the subject coastal development permit. The applicant is proposing to replace 12 deteriorated timber pilings as a component of the subject coastal development permit. In addition, the applicant installed four temporary steel

support pilings, without the required coastal development permit or emergency permit. The proposed project includes the removal of these temporary steel support pilings in conjunction with the replacement of the 12 damaged timber pilings. In addition, in 2008, the decking of the pier was also replaced without the required coastal development permit. The applicant is; therefore, also requesting after-the-fact approval of this work in the subject coastal development permit.

The proposed pilings will replace existing pilings and will not expand the existing development footprint beyond its existing permitted configuration and specifications.

As mentioned above, the proposed project involves repair work to the Paradise Cove Pier that will not result in an addition to, or enlargement or expansion of, the pier or the structures on the pier. However, Section 13252 of the Commission's regulations requires a coastal development permit for certain extraordinary methods of repair and maintenance enumerated in the regulation. The proposed development involves work to a structure located within 20 feet of coastal waters and the work will include the presence of both mechanized equipment and construction materials. The proposed repair and maintenance work therefore requires a coastal development permit under Section 13252(a)(1) of the Commission's regulations.

Although the Commission has previously certified a Local Coastal Program (LCP) for the City of Malibu, the proposed project will be located within an area where the Commission has retained jurisdiction over the issuance of coastal development permits. Thus, the standard of review for this project is the Chapter Three policies of the Coastal Act, with the applicable policies of the City of Malibu LCP as guidance. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

B. PUBLIC ACCESS

Coastal Act Section 30210 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 of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

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

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

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

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected.

Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Coastal Act Section 30220 states:

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

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 2.2 of the Malibu LUP states in part:

New development shall minimize impacts to public access to and along the shoreline and inland trails.

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 2.73 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. Section 30212(a) of the Coastal Act provides that adequate public access to the sea be provided in new development projects. Section 30220 protects coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas for such uses. 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 Paradise Cove Pier is a popular recreational facility for residents and visitors to the City of Malibu. The landward most portion of the pier contains visitor-serving commercial uses including a restaurant. These facilities will remain open throughout proposed construction periods. The Applicant has been granted a lease by the California State Lands Commission for the operation and maintenance of the Paradise Cove Pier. This lease requires that public access be maintained to and through the leased area. Thus, the public has the right to access all areas of the pier from Pacific Coast Highway free of cost. However, the applicant has constructed a gate at the entrance of the pier without the required coastal development permit, which has restricted access. On October 31, 2014, Commission staff sent a Notice of Violation to the applicant that described violations at the project site, and in response, the applicant opened the subject gate and restored access. As mentioned above, the removal of this unpermitted gate is proposed as a component of the subject coastal development permit. In order to ensure that the applicant's proposal is adequately implemented and ensure that public access to the pier is maintained at all times, **Special Condition Nine (9)** requires the applicant to remove the existing gate shown on Exhibit 4 within 30 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

In addition, the replacement of piles will be conducted from the pier and will require temporary closure of the pier during construction activities. Thus, the project will result in some temporary unavoidable adverse impacts to public access on the pier itself. However, in order to ensure that impacts to public access and recreation are minimized to the maximum extent possible during peak use periods by the public, **Special Condition Two (2)** requires the applicant to agree, by acceptance of the permit, to undertake construction activities only during weekdays between Labor Day and Memorial Day. **Special Condition Two (2)** is necessary to ensure that public access to the pier is only impacted in the non-summer months, when the pier receives fewer visitors, and to weekdays as proposed by the applicant. Furthermore, to ensure the safety of recreational users of the project site and to ensure that the interruption to public access of the project site is minimized, the Commission requires the applicant to submit a public access plan, pursuant to **Special Condition Three (3)**, to the Executive Director for review and approval. **Special Condition Three (3)** requires a description of the methods (including signs, fencing, posting or security guards, etc.) by which safe public access to and around the project area shall be maintained during all project operations.

As mentioned above a component of the subject project includes the installation of signs that prohibit alcohol and pets on the beach and that prohibit diving off the pier. 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)** requires the applicant submit a signage plan, which indicates which describes the location, number, size, and contents of signs to be placed at the property subject to this permit. Special Condition Four (4) also requires that no signs shall be posted on the subject site which may be interpreted as prohibiting or deterring use of the public areas of the site, including all areas of the sandy beach, the public access pathway from the Pacific Coast Highway to the beach, and all areas of the pier. In addition, to ensure that the public access to the pier is maintained at all times, **Special Condition Four (4)** also requires that at a minimum, two signs located at the entrance to the pier and at the entrance to the pedestrian trail at Pacific Coast Highway shall indicate that the pier is available for public access and that these signs shall be maintained in good condition onsite for the duration of the project.

Therefore, as conditioned, the proposed project is consistent with Coastal Act Policies 30210, 30211, 30212, and 30220, and City of Malibu LUP policies.

C. MARINE RESOURCES AND WATER QUALITY

Coastal Act Section 30230 states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health.

Section 30233(a) of the Coastal Act states in part:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

Section 30240 of the Coastal Act States:

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

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

City of Malibu LUP Policy 3.8 states:

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

City of Malibu LUP Policy 3.1 states in part:

New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected.

Section 30230 requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes. Further, Section 30231 requires that the biological productivity and quality of coastal waters be maintained. Section 30233 limits development in open coastal waters to boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas shall be protected and that development within or adjacent to such areas must be designed to prevent impacts which could degrade those resources. Lastly, City of Malibu LUP policies states that environmentally sensitive habitat areas shall be protected, and that new development shall be sited and designed to avoid impacts to sensitive habitat areas.

The proposed project includes replacing existing timber piles and removing the unpermitted temporary steel support piles. As all work on the pier will be conducted from the existing decking, the construction activities will not require permanent or temporary use or occupation of the sandy beach. A survey conducted beneath the Paradise Cove Pier in June 2013 by Vantuna Research Group found an absence of noxious algae (*Caulerpa taxifolia*), eelgrass, or surfgrass around the pier pilings targeted for replacement.

The proposed pile replacement portion of the project does constitute “fill” within the meaning of Section 30233 of the Coastal Act. However, the replacement is “in-kind” in that the new piles will be comprised of the same material as the existing piles, will be of the same size, and will occupy the same area as the existing piles. Thus, the proposed project will not result in any new

fill of coastal waters. Furthermore, the Commission notes that the proposed fill (replacement of existing pilings) is specified as an allowable use under Coastal Act Section 30233(a)(4) (i.e., recreational piers providing public access and recreational activities) when adverse effects to the marine environment are minimized.

The proposed project has been designed in a manner to minimize adverse effects to the coastal and marine resources on and adjacent to the subject site. However, the proposed project may result in potential adverse effects to surrounding habitat due to unintentional disturbance from construction equipment, materials, and/or debris. Construction activities associated with the proposed project could result in the generation of debris and/or presence of equipment, materials and hazardous substances that could be subject to run-off and wind dispersion into the marine environment. The presence of construction equipment, building materials, and debris on the subject site could pose hazards to sensitive marine organisms if construction site materials were discharged into the marine environment or left inappropriately on the project site. In addition, such potential discharges and disturbances to the marine environment could result in adverse effects to offshore habitat from increased turbidity and pollutants of coastal waters. In order to avoid adverse construction-related impacts upon marine resources, **Special Condition Five (5)** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. To further minimize the potential for unintended transport of debris or hazardous substances into coastal waters, **Special Condition Six (6)** of the subject permit requires that all construction debris be disposed of at an appropriate debris disposal site, and requires the applicant to provide evidence to the Executive Director of the disposal site prior to issuance of the CDP.

Furthermore, marine resources and water quality can also be adversely affected by the use of toxic chemicals used to treat wood products that come into contact with the water. The toxic chemicals can leach out of treated wood and poison marine organisms. Some wood treatments can be used if the wood does not come into contact with the water. Therefore, **Special Condition Five (5)** also requires that any wood treatment used shall conform with the specifications of the American Wood Preservation Association for saltwater use. Wood treated with Creosote, CCA (Chromated Copper Arsenate), or ACA (Ammoniacal Copper Arsenate) is prohibited. No wood treated with ACZA (Ammoniacal Copper Zinc Arsenate) shall be used where it could come into direct contact with the water. However, the applicant has submitted plans for the proposed project which include the proposal to treat the new wood pilings with creosote, which is a prohibited treatment material. As such, **Special Condition One (1)** requires the applicant to submit revised plans which delete the use of creosote.

Lastly, **Special Condition Seven (7)** is required to ensure that the permittees comply with all permit requirements and mitigation measures of the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project which may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Section 30230, 30231, 30233, and 30240, as well as the City of Malibu LUP policies.

D. HAZARDS AND GEOLOGIC STABILITY

Section 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 or contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction or protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Policy 4.2 of the City of Malibu LUP states:

All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.

Section 30253 of the Coastal Act mandates that new development shall minimize risks to life and property in areas of high geologic and flood hazard. Policy 4.2 of the certified LUP mandates that new development be sited and designed minimize risks to life and property in areas of high geologic, flood, and fire hazard.

The proposed development is located in an area of the Coastal Zone that has been identified as subject to potential hazards from wave action during the winter storm season. The pier has previously been subject to substantial damage as the result of storm occurrences. Although the proposed project will increase the stability of the developed portions of the subject site in relation to wave caused erosion, there remains some inherent risk to development on such sites. The Coastal Act recognizes that certain types of development, such as the proposed project to replace damaged pilings and cross braces on the pier, may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the owner's property rights. As such, the Commission finds that due to the unforeseen possibility of liquefaction, storm waves, surges, erosion, the applicant shall assume these risks as a condition of approval. Therefore, **Special Condition Eight (8)** requires the applicant to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development. The applicant's assumption of risk will demonstrate that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Section 30253, and Policy 4.2 of the City of Malibu LUP.

E. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without the required coastal development permit. The subject application includes the request for after-the-fact approval of pier maintenance activities, including the replacement of pier decking, and the removal of an unpermitted gate and four unpermitted steel pier pilings. No evidence can be found that the above mentioned development received a coastal permit from this Commission. In order to ensure that the unpermitted development component of this application is resolved in a timely manner, **Special Condition Ten (10)** requires 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.

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 will evaluate further actions to address this matter.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

The Commission incorporates its findings on 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 project, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures which will minimize all adverse environmental impacts have been required as special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed 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

Paradise Cove Pile Survey, dated February 10, 2012; Engineering Geologic Reconnaissance Report, dated August 24, 2012, by Mountain geology Inc.; Biological Survey of Paradise Cove Pier, dated June 2013, by Vantuna Research Group; California state Lands Lease PRC 391.1; Coastal Development Permit (CDP) No. 4-04-126; CDP No. 4-02-212; CDP No. 4-98-293; CDP No. 4-01-198; CDP No. 4-01-134.



Exhibit 1
4-12-057
Vicinity Map



Paradise Cove Pier

Exhibit 2
4-12-057
Aerial Photograph



Exhibit 4
4-12-057
Unpermitted Gate