

## CALIFORNIA COASTAL COMMISSION

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

# Item W16a



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original staff report

## ADDENDUM

**DATE:** August 10, 2015

**TO:** Commissioners and Interested Parties

**FROM:** South Central Coast District Staff

**SUBJECT:** Agenda Item No. W 16a, Coastal Development Permit Amendment 5-84-791-A2 (Carbonview Limited, LLC), Wednesday, August 12, 2015

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Staff recommends that the following modification be made to Special Condition No. 1 on Page 6 of the staff report. The change will add clarity to the timing of recordation for the amendment to the lateral access easement. Additions are shown in underline and deletions are shown in strikethrough.

### 1. Amendment to Lateral Public Access Easement

A. ONCE ALL OF THE FOLLOWING THREE ACTIONS HAVE BEEN COMPLETED: 1) THE COASTAL DEVELOPMENT PERMIT AMENDMENT HAS BEEN ISSUED; 2) A DETERMINATION HAS BEEN MADE BY THE CITY OF MALIBU THAT THE APPLICATION FOR A COASTAL DEVELOPMENT PERMIT FOR THE VERTICAL ACCESS IMPROVEMENTS AT 20516 PACIFIC COAST HIGHWAY IS COMPLETE; AND 3) PARAGRAPH B HAS ALSO BEEN SATISFIED, the landowner(s) may record 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 as proposed. 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 lateral access easement.

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**ITEM W16a**

Filed: 5/15/15  
 180<sup>th</sup> Day: 11/11/15  
 Staff: J. Blaugrund-V  
 Staff Report: 7/30/15  
 Hearing Date: 8/12/15

**STAFF REPORT: PERMIT AMENDMENT**

**Application No.:** 5-84-791-A2

**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:** Modification of Special Condition One (1) relating to timing of recordation of amendment to lateral public access easement, and Special Condition Six (6) regarding condition compliance.

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **approval** of the proposed Coastal Development Permit Amendment with **three (3) special conditions** regarding: (1) the timing of the amendment of the lateral public access easement; (2) payment of monies to the Mountains Recreation and Conservation Authority; and (3) condition compliance.

The proposed amendment is a request to modify one of the timing requirements for recordation of the amendment to the existing lateral public access easement, which requirement is specified in Special Condition One (1) of Coastal Development Permit Amendment 5-84-791-A1 (Amendment A1). As adopted by the Commission in July of 2014, this condition requires that prior to recordation of the amendment to the lateral access easement, the vertical access improvements required pursuant to Special Condition Three (3) of Amendment A1 must be constructed and open to the public. The applicant has proposed to modify this language to state that the subject amendment may be recorded subsequent to a determination by the City of

Malibu that the application for a coastal development permit for the construction of the improvements is deemed complete.

At the July 10, 2014 Commission hearing, several Commissioners expressed the importance of assuring the implementation of the access improvements given that the identification of the two potential projects was at a preliminary stage. The Commission's concerns included whether the funds provided by the applicant would be sufficient to complete the construction and the timing of the recordation of the revised lateral access easement document relative to the completion of the accessway construction. During the hearing, staff modified its recommendation to require that the accessway improvements funded by the applicant's payment be constructed and the accessway opened before the applicant could record the revised lateral access easement document (Special Condition One).

Following the July 2014 hearing, the applicant worked closely with Coastal Commission, California Department of Parks and Recreation (State Parks), and Mountains Recreation and Conservation Authority (MRCA) staff to identify the vertical access site that would be developed, to evaluate the feasibility of constructing access improvements, and to develop conceptual plans for necessary improvements. Through the course of this work, an additional potential access site was identified. This identified site is an approximately 12,800 sq. ft. parcel located at 20516 Pacific Coast Highway, which is located on Las Flores Beach in the eastern portion of Malibu. The applicant and MRCA staff determined that this site could be opened to public use in a timely manner with relatively few improvements being necessary to allow the public to utilize a view area adjacent to PCH as well as the beach area below. The applicant has developed a plan for the construction of the improvements that would allow public access to the site, both at street level as well as access to the beach area on the property. Specifically, the proposed vertical access improvements include the construction of a stairway leading from PCH down to the beach, a viewing area, sidewalk, and provision of shoulder parking along PCH, including one accessible parking space. The construction of these improvements is subject to the approval of a coastal development permit by the City of Malibu. The applicant has indicated that a Coastal Development Permit (CDP) application will be submitted to the City of Malibu within approximately 60 days after the Commission's August 2015 hearing.

Given that the applicant has coordinated with State Parks and the MRCA to reach agreement on a final vertical access site, developed a plan for constructing improvements at that site that will exhaust the entire \$400,000 set aside for that purpose pursuant to Special Condition Three (3) of Amendment A1, and prepared a coastal development permit application package for submittal to the City of Malibu, the implementation of the access improvements facilitated by the applicant's payment of \$400,000 is much more assured than at the time the Commission considered CDP 5-84-791-A1. As such, it is appropriate to allow the applicant to record the amended lateral access easement after a determination has been made by City of Malibu staff that the application for the vertical access improvements at 20516 Pacific Coast Highway is complete. **Special Condition One (1)** has been modified to reflect this timing requirement. Furthermore, **Special Condition Three (3)** has been revised to reflect the additional detail regarding access improvement implementation, namely that MRCA will be the entity to accept the funds, construct the improvements and manage the access property. Finally, **Special Condition Six (6)** is modified to

require the applicant to satisfy all conditions within 180 days of Commission action on the subject amendment.

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.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION .....</b>	<b>5</b>
<b>II. STANDARD CONDITIONS.....</b>	<b>5</b>
<b>III. SPECIAL CONDITIONS.....</b>	<b>6</b>
1. Amendment to Lateral Public Access Easement .....	6
3. Payment of Monies to the Mountains Recreation and Conservation Authority .....	6
6. Condition Compliance .....	7
<b>IV. FINDINGS AND DECLARATIONS .....</b>	<b>7</b>
<b>A. AMENDMENT DESCRIPTION AND BACKGROUND.....</b>	<b>7</b>
<b>B. PUBLIC ACCESS AND RECREATION.....</b>	<b>8</b>
<b>C. CALIFORNIA ENVIRONMENTAL QUALITY ACT .....</b>	<b>14</b>

## APPENDICES

Appendix 1 - Substantive File Documents

## EXHIBITS

Exhibit 1 – Vicinity Map of 5-84-791-A1 Project Area

Exhibit 2 – Aerial Photograph of 5-84-791-A1 Project Area

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

Exhibit 4 – Vicinity Map of 20516 Pacific Coast Highway

Exhibit 5 -- Aerial Photograph of 20516 Pacific Coast Highway

Exhibit 6 -- Site Plan of Anticipated Improvements at 20516 Pacific Coast Highway

## 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 the certified City of Malibu Local Coastal Program. 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

All Special Conditions of CDP 5-84-791-A1 shall remain in full force and effect, except for Special Conditions 1, 3 and 6, which shall be modified as described below.

A. The following Special Condition One (1) shall substitute for Special Condition One (1) as approved in CDP 5-84-791-A1:

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

- A. ONCE A DETERMINATION HAS BEEN MADE BY THE CITY OF MALIBU THAT THE APPLICATION FOR A COASTAL DEVELOPMENT PERMIT FOR THE VERTICAL ACCESS IMPROVEMENTS AT 20516 PACIFIC COAST HIGHWAY IS COMPLETE AND PARAGRAPH B HAS ALSO BEEN SATISFIED, the landowner(s) may record 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 as proposed. 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 lateral access easement.

B. The following Special Condition Three (3) shall substitute for Special Condition Three (3) as approved in CDP 5-84-791-A1:

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

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit evidence that the applicant has deposited \$400,000 (four hundred thousand United States dollars) into an interest bearing account

established and managed by the Mountains Recreation and Conservation Authority (MRCA), pursuant to a Memorandum of Understanding with the Coastal Commission. The purpose for the account shall be to construct new public beach access improvements at 20516 Pacific Coast Highway in the City of Malibu, including costs (not to exceed 10 percent of the total funds) incurred and documented by the MRCA (after Commission action on CDP-5-84-791-A2) in the course of obtaining a complete City of Malibu CDP application for the beach access improvements. The account shall be structured to ensure that the entire fee and any accrued interest shall be used for the above-stated purpose within five years of the fee being deposited into the account. Any portion of the fee remaining in the account after five years shall be directed to other MRCA (or another public agency acceptable to the Executive Director) sponsored public beach access improvement projects in the City of Malibu pursuant to a new Memorandum of Understanding with the Coastal Commission.

**C. The following Special Condition Six (6) shall substitute for Special Condition Six (6) as approved in CDP 5-84-791-A1:**

**6. Condition Compliance**

Within 180 days of Commission action on CDP 5-84-791-A2, 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 amendment. Failure to comply with this requirement may result in the expiration of this coastal permit amendment 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 currently proposed amendment is a request to modify the timing for recordation of the amendment to the existing lateral public access easement required pursuant to Special Condition One (1) of Coastal Development Permit 5-84-791, as amended by CDP Amendment 5-84-791-A1. As approved by the Commission on July 10, 2014, this condition requires that prior to recordation of the amendment to the lateral access easement; the vertical access improvements required pursuant to Special Condition Three (3) must be constructed. The applicant has proposed to modify this language to state that the subject amendment may be recorded subsequent to a determination by the City of Malibu that the application for a Coastal Development Permit for the construction of the improvements is deemed complete.

On December 13, 1984, the Commission approved Coastal Development Permit 5-84-791 for the extension of an existing bulkhead by 36 linear feet to protect an 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 foot wide lot (APN 4451-006-019, also described by



APNs 4451-006-036 and 4451-006-037) 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.

On July 10, 2014 the Commission approved an amendment to Coastal Development Permit 5-84-791 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 properties described above 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).

Coastal Development Permit Amendment 5-84-971-A1 was approved with six special conditions, which included Special Condition One (1) amendment to lateral public access easement, and Special Condition Three (3) payment of monies to the Mountains Recreation and Conservation Authority. Special Condition One (1) requires that before the existing lateral public access easement may be modified, the vertical access improvements required pursuant to Special Condition Three (3) must be constructed. Specifically, 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, and that 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.

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

The following Coastal Act Policies are incorporated as policies of the Malibu Local Coastal Program:

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.*

Additionally, the following City of Malibu Local Coastal Program Policies apply:

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 2.48 of the Malibu LCP states:

*The frequency of public access locations shall vary according to localized beach settings and conditions as set forth below. Vertical access standards and related dedication requirements may range from none in areas of major public beach holdings to one accessway per 1,000 feet of shoreline unless otherwise specified in Policy 2.86. This requirement shall not preclude the provision or requirement of vertical accessways at less than 1,000 feet separation if a public agency or private landowner offers to dedicate such access or if a project related impact warrants such access (offer-to-dedicate) as a condition of approval.*

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.*

The Chapter Three policies of the Coastal Act have been incorporated as policies of the certified City of Malibu Local Coastal Program (LCP). Specifically, 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 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, detailed above, 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.

As described above, the currently proposed amendment is a request to modify the timing for recordation of the amendment to the existing lateral public access easement required pursuant to Special Condition One (1) of Coastal Development Permit 5-84-791-A1. As adopted by the Commission on July 10, 2014, this condition requires that prior to recordation of the amendment to the lateral access easement; the vertical access improvements required pursuant to Special Condition Three (3) must be constructed. The applicant has proposed to modify this language to state that the subject modification of the lateral access easement may be recorded subsequent to a determination by the City of Malibu that the application for a coastal development permit for the construction of the improvements is deemed complete.

There were two identified potential 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. One was located on La Costa Beach (owned by the California Coastal Conservancy) and it was 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 identified was located on Big Rock Beach and immediately adjacent to a 65-foot wide parcel owned and utilized by the California

Department of Transportation (Caltrans) as a Vista Point. It was anticipated that this site would be dedicated to the MRCA, and vertical public access improvements, such as a stairway, could then be constructed. While these two sites are suitable for the construction of public access improvements and management as public accessways, no plans for such construction had been prepared for either site. The MRCA estimated that the \$400,000 provided by the applicant would be adequate to provide for the construction of access improvements at either one of these two sites.

At the July 10, 2014 Commission hearing, several Commissioners expressed the importance of assuring the implementation of the access improvements given that the identification of the two potential projects was at a preliminary stage. The Commission's concerns included whether the funds provided by the applicant would be sufficient to complete the construction and the timing of the recordation of the revised lateral access easement document relative to the completion of the accessway construction. During the hearing, staff modified its recommendation to require that the accessway improvements funded by the applicant's payment be constructed and the accessway opened before the applicant could record the revised lateral access easement document (Special Condition One). The applicant's representative verbally agreed to Special Condition One as revised.

Following the July 2014 hearing, the applicant worked closely with Commission, State Parks, and MRCA staff to identify the vertical access site that would be improved, to evaluate the feasibility of constructing access improvements, and to develop conceptual plans for necessary improvements. Through the course of this work, an additional potential access site was identified. This site is an approximately 12,800 sq. ft. parcel located at 20516 Pacific Coast Highway, which is located on Las Flores Beach in the eastern portion of Malibu. In 1983, the subject property was transferred from the California Department of Transportation to the California Department of Parks and Recreation to be utilized for public access. The applicant and MRCA staff determined that this site could be opened to public use in a timely manner with relatively few improvements necessary to allow the public to utilize a view area adjacent to PCH as well as the beach area below. The applicant has developed a plan for the construction of the improvements that would allow public access to the site, both at street level as well as access to the beach area on the property. Specifically, the proposed vertical access improvements include the construction of a stairway leading from PCH down to the beach, a viewing area, sidewalk, and provision of shoulder parking along PCH, including one accessible parking space, as depicted on Exhibit 6. As mentioned above, the applicant has coordinated with State Parks and MRCA, and both agencies support the proposed access improvements. The construction of these improvements is subject to the approval of a coastal development permit by the City of Malibu. The applicant has indicated that a Coastal Development Permit (CDP) application will be submitted to the City of Malibu within approximately 60 days after the August 2015 hearing.

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. Vertical access improvements such as those proposed at the subject greatly enhance public beach access. This is 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.

Policy 2.86 of the City of Malibu Land Use Plan outlines specific vertical accessway standards, including the desired distance between vertical access locations. The location where the proposed vertical access improvements are proposed to be located is between La Costa Beach and Big Rock Beach. Parts p and q of Policy 2.86 indicate that one vertical accessway every 1,000 feet of shoreline should be located in these areas. However, the closest open vertical accessway located upcoast (west) of the subject site is the “Carbon Beach East” Accessway, is 2 miles, or 10,560 feet, from the subject site. Additionally, the closest open vertical accessway located downcoast (east) of the subject site is at Big Rock Beach, which is approximately .8 miles, or 4,224 feet, from the site. Therefore, construction of the proposed access improvements at the proposed State Parks site will serve to add a new formal vertical access point along an approximately 3 mile long portion of the Malibu shoreline. In addition to providing a vertical accessway, the proposed improvements will provide public access to approximately 150 feet of beach frontage on the site.

The applicant’s representative has expressed concern that even though significant work has occurred to coordinate with State Parks and MRCA, to prepare plans, and to compile coastal development permit application materials, there could be delays beyond the applicant’s control regarding when all permits will be obtained and the proposed improvements constructed. So, the applicant has proposed, in the subject amendment, to modify the timing restrictions outlined in Special Condition One (1). The existing Special Condition One (1) requires that the amendment to the lateral access easement on the applicant’s property can only be recorded after all access improvements have been constructed and the accessway opened. The applicant proposes that the timing restriction would state that the amendment to the lateral public access easement on the applicant’s property may be recorded subsequent to a determination by the City of Malibu that the application for a CDP for the construction of the improvements at 20516 PCH is deemed complete.

Given that the applicant has coordinated with State Parks and the MRCA to reach agreement on a final vertical access site, developed a plan for constructing improvements, and prepared a coastal development permit application package for submittal to the City of Malibu, the implementation of the access improvements facilitated by the applicant’s payment of \$400,000 is much more assured than at the time the Commission considered CDP 5-84-791-A1. As such, the Commission finds that it is appropriate to allow the applicant to record the amended lateral access easement after a determination has been made by City of Malibu staff that the application for the vertical access improvements at 20516 Pacific Coast Highway is complete. **Special Condition One (1)** has been modified to reflect this timing requirement. Furthermore, **Special Condition Three (3)** has been revised to reflect the additional detail regarding access improvement implementation, namely that MRCA will be the entity to accept the funds, construct the improvements and manage the access property. Finally, **Special Condition Six (6)** is modified to require the applicant to satisfy all conditions within 180 days of Commission action on the subject amendment.

Therefore, the Commission finds that in this very unique circumstance, the project, as amended, and as conditioned will serve to enhance public access and recreational opportunities consistent with the policies and provisions of the certified City of Malibu Local Coastal Program.

### **C. 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 Condition One (1) and Three (3)** of CDP Amendment 5-84-792-A2 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:**

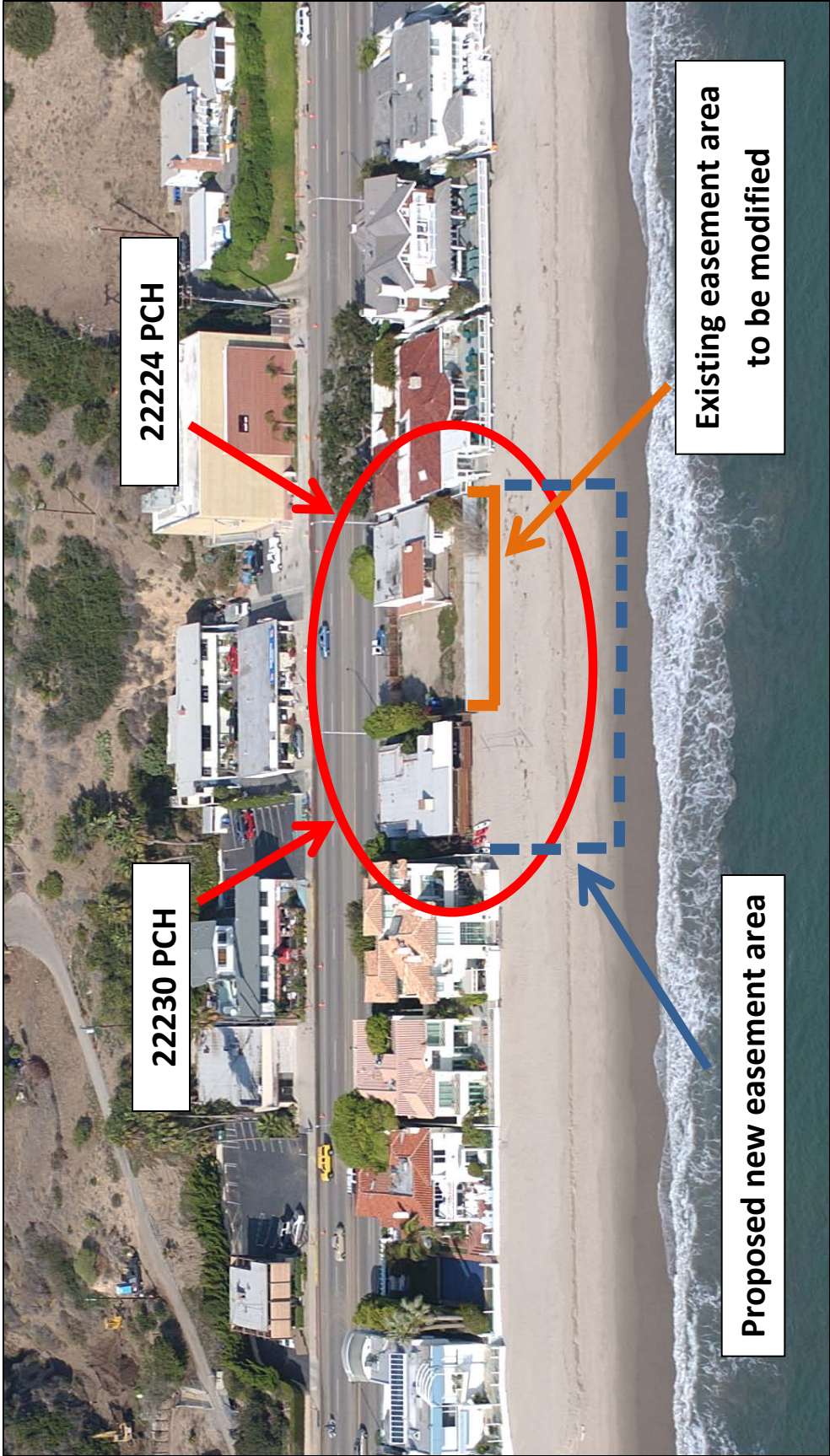
Certified City of Malibu Local Coastal Program; Coastal Development Permit 5-84-791; Coastal Development Permit Amendment 5-84-791-A2; 4-00-057-A3 and 4-01-100-A4; Coastal Development Permit Waiver 4-96-080-W and 4-97-118-W; and Agreement for the Transfer of Control and Possession of State-Owned Real Property 83-379451.



**Project Site**

Exhibit 1  
5-84-791-A2  
Vicinity Map





22224 PCH

22230 PCH

Existing easement area  
to be modified

Proposed new easement area

Exhibit 2  
5-84-791-A2  
Aerial Photograph

**LATERAL ACCESS  
EASEMENT OVERLAY**

Sheet Title

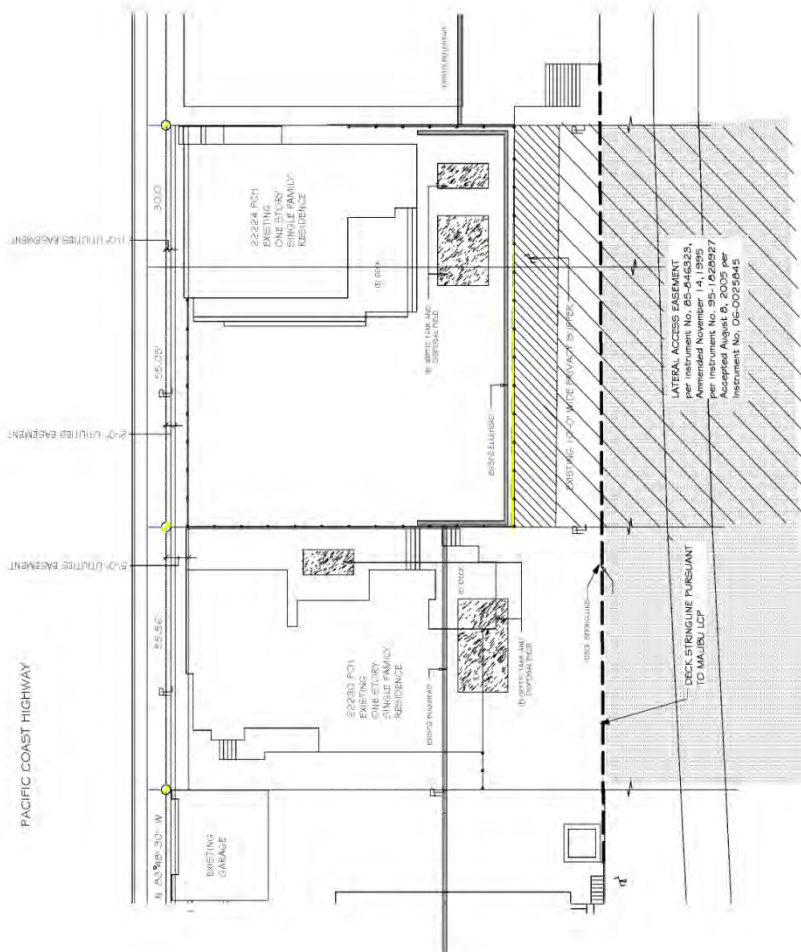
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architecture & design  
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Malibu, California 90265  
Tel: 310.427.7845  
Cell: 310.292.8084

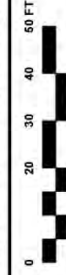
Project  
22224-30 PACIFIC COAST  
HIGHWAY  
MALIBU, CA

Date  
15-APR-2014

Sheet Number



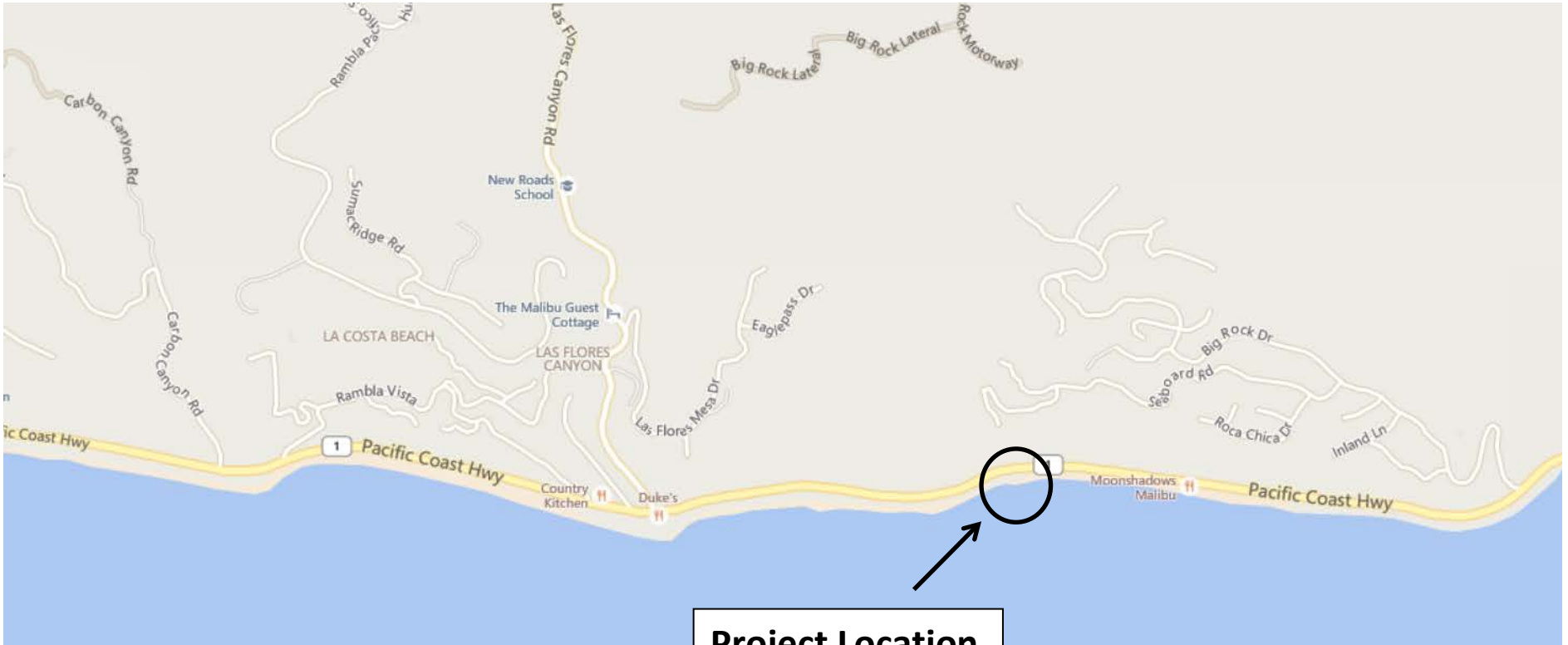
**LATERAL ACCESS EASEMENT OVERLAY**



**LEGEND**

- SEPTIC FACILITIES
- SEA WALLS AND BULKHEADS
- EXISTING PRIVACY BUFFER
- EXISTING LATERAL ACCESS EASEMENT
- PROPOSED LATERAL ACCESS EASEMENT

Exhibit 3  
5-84-791-A2  
Proposed and Existing Lateral  
Public Access Easements



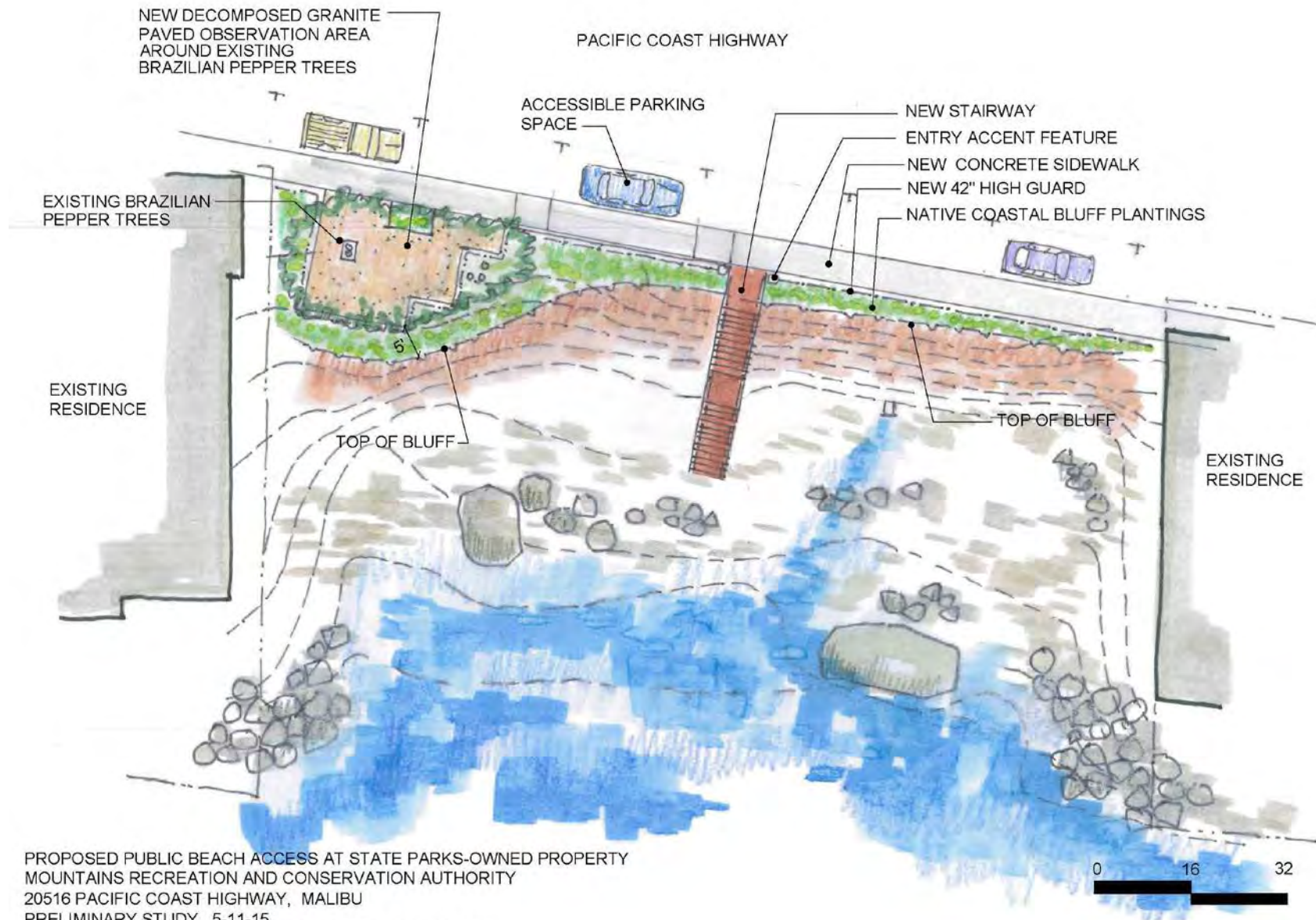
**Project Location**

Exhibit 4  
5-84-791-A2  
Vicinity Map of 20516 PCH



**Subject Site**

Exhibit 5  
5-84-791-A2  
Aerial Photograph of  
20516 PCH



PROPOSED PUBLIC BEACH ACCESS AT STATE PARKS-OWNED PROPERTY  
 MOUNTAINS RECREATION AND CONSERVATION AUTHORITY  
 20516 PACIFIC COAST HIGHWAY, MALIBU  
 PRELIMINARY STUDY 5-11-15  
 JORDAN, GILBERT, & BAIN, LANDSCAPE ARCHITECTS INC.



Exhibit 6  
 Site Plan of Access  
 Improvements  
 5-84-791-A2