

## **ANGEL LAW**

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December 12, 2012

City of Malibu  
Attn: Stephanie Danner, Senior Planner  
23825 Stuart Ranch Road  
Malibu, CA 90265

Via Personal Delivery and Email to [sdanner@malibucity.org](mailto:sdanner@malibucity.org)

Re: Objections to Staff's Recommended CEQA Exemption for 24024 Malibu Road Project

Dear Ms. Danner:

On behalf of Save Open Space Santa Monica Mountains (SOSSMM), the Damavandi family, as well as other concerned Malibu residents, we strenuously object to your conclusion that the Tavangarians' project at 24024 Malibu Road (Project) is categorically exempt from the California Environmental Quality Act. (CEQA; Pub. Resources Code, § 21000 et seq.) We request that the City prepare and circulate an initial CEQA study, among other things, to determine whether Project review by the City's decision makers, affected state agencies and the public requires preparation of an environmental impact report (EIR), or may proceed with a mitigated negative declaration (MND).

The Project envisions development of a 4,277 square foot single-family residence on a beachfront lot which (based on data provided by the Tavangarians) has a gross lot area of 0.1-acre (4,525 square feet). An onsite wastewater treatment system requires a 450 square-foot drain field and shoreline armoring (the proposed bulkhead). The lot is in a FEMA-identified Coastal High Hazard Area -- Zone "VE," i.e., the highest flood risk zone in the Significant Flood Hazard Areas delineated on the community's official Flood Insurance Rate Map. The lot also borders on Malibu Road, which the Malibu Local Coastal Program (MLCP) designates as a scenic road, thereby triggering strict coastal regulations set forth in Chapter 6 of the MLCP's local implementation program (MLIP). A beach lot acquired by the State Coastal Conservancy (SCC) in 2002, for which the City approved a public accessway in 2010, is located just upcoast (west of the site), at 24038 Malibu Road. This public beach is one of six contiguous beach lots all in open space (see Slide No. 2 of our PowerPoint

submitted December 3, 2012), a unique circumstance along 2.6-mile long Malibu Road. These six lots are among the very few, last remaining undeveloped beach lots on Malibu Road and beyond.<sup>1</sup> Less than 3,000 feet downcoast (east of the site) is Malibu Lagoon and Surfrider Beach, a major coastal recreation destination. (See <http://maps.digitalmapcentral.com/production/VECommunityView/cities/Malibu/index.aspx> [as of Dec. 12, 2012].)<sup>2</sup>

As seen from the beach, the “two-story” Project has three stories (the third story being the second story as viewed and measured from the higher elevation of Malibu Road). Building a 4,277 square foot private residence on this minuscule 0.1-acre lot, in this specific location of our coastline, will have significant environmental impacts that call for review under CEQA. This conclusion obtains pursuant to section 15300.2, subdivision (c) of the State CEQA Guidelines (Guidelines; Cal. Code Regs., tit. 14, § 15000 et seq.), which reads as follows:

“A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”

### Class 3 Categorical Exemption Inapplicable.

We disagree that the Class 3 categorical exemption staff relies on, set forth in Guidelines section 15303, subdivision (a), applies to begin with.

CEQA exemptions must be construed narrowly and are reserved for structures that actually carry no significant environmental effects. (See *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966.) The introductory language of Guidelines section 15303 makes clear that the Class 3 exemption applies only to the construction of “**small** facilities or structures; installation of **small** new equipment and facilities in **small** structures; and the conversion of existing **small** structures from one use to another where only minor modifications are made in the exterior of the structure.” (Emphasis added.) The Project is designed for **maximum** permissible height (28 feet). It is not a “small” structure in terms of volumetric mass either, especially when compared to the miniscule size of its lot. Under the City’s total development square footage (TDSF) regulations, which would apply if the Project were not located on a beachfront lot, it would be **impermissibly**

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<sup>1</sup> The public beach lot is separated from the Project site by only one extremely narrow lot. (*Id.*)

<sup>2</sup> The documents or information accessible via the Web pages cited in this comment letter (indicating the URL of the specific Web page where the document is located) must be included in the official record of the City’s proceedings in this case. (See *Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 724-225.) The same is true of all emails pertaining to the Project, generated or received by staff. (See Pub. Resources Code, § 21167.6, subd. (e).) “[W]ritten evidence” or “written materials” (*id.*) in the form of emails generated or received by staff are public records that must be preserved and included in the record of the proceedings of this case. (See Gov. Code, §§ 6252, subd. (g), 6253.9, 34090, subd. (c).)

**large**, and would have to be downsized. In fact, for reasons undisclosed in the staff report, Project size has twice increased, first from 3,234 square feet to 3,580 square feet, then to the current 4,277 square feet -- a 20% increase in development square footage compared to the immediately preceding 3,580 square foot plan. This size does not include decking area on all three floors, associated hardscape and an illegal staircase to the beach -- or to the rocky shore or into the coastal waters, depending on tide conditions. Project size also stands in contrast to the two adjacent beach homes and other homes in close vicinity, which are substantially smaller.<sup>3</sup> The Project simply does not fit the Class 3 categorical exemption for small structures.

Exception from Categorical Exemption: Guidelines Section 15300.2, subdivision (c).

Even if the Class 3 categorical exemption did apply, CEQA environmental review is still required under the “unusual circumstances” exception of Guidelines section 15300.2 (quoted at page 2, above). This provision prohibits the use of a categorical exemption “where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” Importantly, when unusual circumstances are shown, no more than a “reasonable possibility” of a significant environmental effect is necessary to trigger CEQA. Evidence of certainty of such an effect is unnecessary. “Unusual circumstances” exist when “ ‘ the circumstances of a particular project ... differ from the general circumstances of the projects covered by a particular categorical exemption ... ’ [Citation.]” (*Voices for Rural Living v. El Dorado Irrigation Dist.* (2012) 209 Cal.App.4th 1096, 1111.)

Here, we witness a confluence of unusual, if not unique, circumstances that establish a reasonable possibility that the Project will have a significant effect on scenic public views, public access and recreation, and other environmental conditions, thus requiring CEQA review. Unusual circumstances predominate because the Project borders on the beachside of a scenic road with panoramic public views of not only the Pacific Ocean, the Palos Verdes Peninsula and Catalina Island, but also three of Malibu’s most iconic surf breaks -- Colony Point, “Old Joe’s” and Surfrider Beach (3<sup>rd</sup> Point at the mouth of Malibu Lagoon) -- and Malibu Colony; **and** is located almost immediately adjacent to a public beach lot with a planned visitor-serving viewing deck (at street level), a beach accessway and public parking, facilities that ensure long-term enjoyment of those exceptional ocean and shoreline views for Malibu residents and tens of thousands of annual out-of-town visitors. Already, the public enjoys these views. As noted by the SCC, “Part of the appeal of the site is the views it affords from the street level, and in these intervening years the site has been regularly used by visitors who sit at the top of the bluff and enjoy the views.” (Executive Officer San Schuchat, letter to City of Malibu Planning Commission, Nov. 28, 2012.) In 2010, when the SCC approved the transfer of jurisdiction of its beach property to another state agency, the Santa Monica Mountains Conservancy (SMMC), it emphasized that by providing access directly to the coast and the ocean “for the enjoyment of visitors to Malibu in an area underserved by coastal

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<sup>3</sup> The closest adjacent developed beachfront parcels are: 24056 Malibu Road (2,124 square foot residence, .13 acre lot); and 24016 Malibu Road (1,412 square foot residence, 0.12 acre lot).

access,” the planned accessway will “promote access to and enjoyment of coastal resources ... consistent with the Conservancy’s enabling legislation [citation].” (State Coastal Conservancy, Malibu Road Accessway-Transfer and Stairway Construction (Oct. 21, 2010) p. 4).<sup>4</sup> Scenic and visual qualities of coastal areas, of course, are “coastal resources.” They “shall be considered and protected as a resource of public importance[,]” especially when “views to **and along** the ocean” are at stake. (Pub. Resources Code, § 30251, emphasis added.) In enacting the California Coastal Act of 1976 (Pub. Resources Code, § 30000 et seq.), the Legislature found that the permanent protection of the state’s scenic resources “is a paramount concern to present and future residents of the state and nation.” (*Id.*, § 30001, subd. (b); see also *id.*, § 21001, subd. (b).)

Looking at the storypoles for the comparatively smaller, abandoned 3,580 square foot version of the Project, depicted below, it is indisputable that a 28-foot high residential development of that size alone would significantly obstruct scenic views from Malibu Road, i.e., cause “a substantial, or potentially substantial, adverse change in the environment.” (Pub. Resources Code, § 21068.)<sup>5</sup> Evidently, increasing volumetric mass increases public view obstruction.<sup>6</sup>



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<sup>4</sup> We have attached as Exhibit 1 to these comments, a true copy of the SCC’s 2010 report. At this time, transfer of jurisdiction has yet to occur, and so the SCC still owns the public beach lot.

<sup>5</sup> This quoted CEQA provision defines the concept of “Significant effect on the environment.” Public views and objects of aesthetic significance are considered part of the “environment.” Thus, “Any substantial negative effect of a project on view and other features of beauty could constitute a significant environmental impact under CEQA.” (*Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist* (2002) 116 Cal.App.4th 396, 401; see *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1603-1604 [“any substantial, negative aesthetic effect is to be considered a significant environmental impact for CEQA purposes”; case involving interference with “panoramic ocean views” from county-owned public park]; see also § 21060.5; Guidelines, appen. G, § 1.)

<sup>6</sup> This explains our request for compliance with the MLIP regulations that mandate erection of story poles for the 4,277 square foot Project, as actually proposed.

As illustrated by the next photograph, the impacts on the scenic vistas **to the East**, enjoyed by visitors to the SCC's beach parcel, its blufftop parking area and, in the nearby future, the public viewing deck, and by countless daily walkers, joggers, bikers and cars headed east along the SCC's approximately 100 linear feet (or more) of street frontage, are even more unusual and significant. As the SCC commented on November 28, 2012, "The proposed development at 24024 Malibu Road is so large that it will block all views downcoast from our site: Malibu Lagoon, most of Surfrider Beach, even the Palos Verdes peninsula will be completely obscured."



Because the project would eliminate these significant scenic coastline vistas **from the only state-owned property on the entire Amarillo Beach and 2.6-mile long scenic Malibu Road**, there is a reasonable possibility that the Project will have a significant effect on the environment due to unusual circumstances. Therefore, the City will prejudicially abuse its discretion under CEQA if it proceeds to approve the Project without CEQA review. (Guidelines, § 15300.2.)

In addition to the significant visual and scenic impacts, the Project, as sited and designed, collides with many policies of the MLCP's Land use Plan (MLUP) and the plan's implementing regulations in the MLIP. First, because Malibu Road is a scenic road, a fair argument can be made (to say the least) that the Project is in direct conflict with MLUP policy 6.5, which provides that "New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas **to the maximum feasible extent.**" (Emphasis added.) The Tavangarians could build a smaller house, including a one-story house, like many houses on Malibu Road, including the homes of their beachfront and landside neighbors. To construct at maximum allowable height while incrementally increasing volumetric mass cannot possibly be found to "minimize" visual and scenic impacts "to the maximum feasible extent." In fact, as we noted in our PowerPoint, the MLCP specifically requires **reducing building size and height** as design measures to minimize adverse impacts to the maximum feasible extent. Here, the staff

report, in its cursory alternatives review, ignores those measures and Project alternatives based thereon. Failure to reduce building size and height to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas, as here, violates MLUP policy 6.5.

Second, the Project directly contradicts the MLUP's and MLIP's development standards for new development on parcels located on the ocean side of public roads. To preserve public ocean views, MLUP policy 6.17 and MLIP section 6.5 enunciate stringent development standards specifically applicable to projects located on the ocean side of Malibu Road and other designated scenic roads. By MLIP section 6.5 (E)(1)(b), "Where the topography of the project site descends from the roadway, new development shall be sited and designed to preserve bluewater ocean views **over** the approved structures by incorporating the following measures [¶] Structures shall not exceed one story in height, as necessary, to ensure bluewater views are maintained over the entire site." (Emphasis added; see also MLUP policy 6.17 [same].) Why does staff recommend approval of maximum two-story height when rather than preserving horizon bluewater views, such height obliterates them? How does such a recommendation help the Planning Commission to make a decision that conforms with certified MLCP? (See MLIP, § 13.9.)

Third, cognizant that the loss of coastal recreation opportunities resulting from development occurring over past decades "represents a significant adverse impact to the availability of public access and recreation in Malibu[.]" (MLUP chapter 2, subpart A), the California Coastal Commission, in enacting the MLCP, required that "New development shall be sited and designed to minimize impacts to public access and recreation along the shoreline and trails." (MLUP policy 2.5.) Sadly, again, staff's cursory alternatives review -- which but rationalizes the Project as desired by the applicant, without regard to legitimate, countervailing statewide public access interests -- completely sidesteps MLUP policy 2.5, including its further requirement that when all access impacts cannot be avoided, "then the alternative that would result in the least significant adverse impact shall be required." On a more fundamental level, the staff report ignores the need to determine the most landward surveyed mean high tide line, while purporting to determine legally mandated development setbacks on the beach by slavishly relying on stringline rules that predate the MLCP and, as applied, may sanction violations (and set precedents encouraging further violations) of state law or MLCP-mandated shoreline development setback requirements. This manner of proceeding is erroneous; it ignores the pivotal MLIP development standard that "**All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line.**" (MLIP, § 10.4 (B), emphasis added.) And, by ignoring this mandatory standard, it forecloses or skews investigation into the least environmentally damaging alternative for public access, recreation and tidelands protection purposes.<sup>7</sup>

Here, a fair argument can be made, based on substantial evidence (photographs and citizen observations of ocean conditions, digital massing of Project as built, as well as up-to-date expert

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<sup>7</sup> The Planning Commission may not approve the Project, unless it is "the least environmentally damaging alternative." (MLIP, § 13.9 (C).)

and scientific evidence) that as designed and sited, the Project and substantial project activities (including construction) will fail to conform with MLUP policy 2.5 and the development standard of MLIP section 10.4 (B), if not trespass and encroach much of the time on sovereign lands of the State -- the public tidelands and coastal waters.



As is emphatically stated in the MLCP:

“To understand the importance of protecting and maximizing public access, it is critical to know that the public already possesses ownership interests in tidelands or those lands below the mean high tide line. Because the mean high tide line varies, **the extent of lands in public ownership also varies with the location of the mean high tide line.** By virtue of its admission into the Union, California became the owner of all tidelands, submerged lands and all lands lying beneath inland navigable waters. These lands are held in the State’s sovereign capacity and are subject to the common law public trust. The use of these lands is limited to public trust uses, such as navigation, fisheries, commerce, public access, water-oriented recreation, open space, and environmental protection. **The protection of these public areas and the assurance of access to them lies at the heart of Coastal Act policies requiring both the implementation of a public access program and the minimization of impacts to access through the regulation of development.**”

(MLUP, chapter 2, subpart (A), emphasis added.) Staff’s botched alternatives review and reliance on a nondescript lateral access easement as mitigation for public access impacts it has neglected to investigate, fails to appreciate the importance of protecting and maximizing public access, or that the public already possesses ownership interests in tidelands. What “lateral access easement” can

the Tavangarians dedicate when the servient land is submerged or seaward of the ambulatory mean high tide line, and hence already belongs to the public? How can the public have lateral beach access to Colony Point, a heavily visited, very popular surf break, or enjoy the unusual recreational experience of walking from the SCC beach access to Malibu Lagoon or visiting the historic Malibu Pier or Adamson House adjacent to the lagoon, when the project interposes a massive, 28-foot high barrier to passage on dry (or wet) sand? The mean high tide line, which separates private property from the sovereign lands of the State, is not a fixed line on the Tavangarians' site plan; rather, it is "an ambulatory line formed by the intersection of the ordinary high tide plane and the shifting shoreline." (*Lechuza Villas West v. California Coastal Com.* (1997) 60 Cal.App.4th 218, 242 [the mean high tide line is not established by reference to a fixed line on a map; denial of coastal development permit is thus appropriate when the applicant fails to establish the line].)

The Project's close proximity to the SCC beach lot clearly exacerbates the Project's adverse impacts on public access and recreation. The State is planning to develop an accessway on that lot. For more intrepid beach users it already is, and for many more it "will be the only public access point between Malibu Lagoon State Beach and Amarillo Beach." (State Coastal Conservancy, Malibu Road Accessway-Transfer and Stairway Construction, *supra*, at p. 3.) The SCC has long viewed this vertical access as "a unique opportunity" that will open up public access not only to the easterly portion of Amarillo Beach, but also to Malibu Colony which has no public access. (State Coastal Conservancy, Malibu Road Offer to Dedicate (Aug. 8, 2002) p. 3-1.) Colony Point, just east of the Project site, is a prime coastal recreation area, used by surfers and kayakers year-round. Even absent an improved accessway, as the SCC has observed "intrepid visitors scramble down the bluff, many carrying surfboards or kayaks." (State Coastal Conservancy, Malibu Road Accessway-Transfer and Stairway Construction, *supra*, p. 3.) Thus, access to Amarillo Beach and the exclusive stretch of sandy beach along Malibu Colony will serve "a significant contribution to the coastal trail in Malibu," which substantially advances the Coastal Act's and the MLCP's public access and recreation objectives. (State Coastal Conservancy, Malibu Road Offer to Dedicate, *supra*, p. 3-14.) These opportunities will be significantly impaired if the Project is allowed to proceed as currently designed, with portions of the completed building extending into or cantilevered over the dry sand, rocky shore or coastal waters, depending on varying tide conditions. This interferes with the public's ability to reach, and its historic rights of access to, Colony Point and Malibu Colony beach east of the Project. (See Pub. Resources Code, § 30211.)

Last but not least, the Project's substantial, or potentially substantial, adverse changes to public access and recreation will only be exacerbated by future sea level rise over the 100 year economic life of the structure that must be assumed under the MLCP. Other local government planners in California have long since begun to account for storm tides and sea-level rise. (See Helvarg, *California Confronts a Sea Change*, L.A. Times (Nov. 27, 2012) p. A13, col. 1)<sup>8</sup> Malibu's City

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<sup>8</sup> We have attached as Exhibit 2 to these comments, a true copy of this article.



planners should end their pro-passive stance of *laissez-faire* and follow suit. Project applicants cannot dictate to them or the community how the MLCP is to be applied (or misapplied). As stated in MLIP section 10.4 (A):

“Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered and its potential impact on beach erosion, shoreline retreat, and bluff erosion rates shall be evaluated. Development shall be set back a sufficient distance landward and elevated to a sufficient finished floor height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.”

(See also MLUP policy 4.22.) The staff report for the scheduled Planning Commission hearing of December 3, 2012 recommended placement of the proposed bulkhead 17 feet further seaward than was ordered by a 2010 City Council decision. This troubling oversight inspires no confidence that staff's recommendations in this case consider acceleration of the historic rate of sea level rise and its potential impact on beach erosion, shoreline retreat, or bluff erosion rates. CEQA compliance, which involves consultation with state agencies, would help to address those factors. Certainly, the staff report does not do so, much less disclose the additive effects of Project siting and design on scour and erosion, public access, public safety (including ocean safety), floodborne debris or water pollution in future storm and high-velocity wave action conditions produced by the confluence of large waves, storm surges and high tides in El Niño events. Yet, as evidenced by a recent, peer-reviewed study, released by a National Research Council expert committee established as a result of California Executive Order S-13-08, the reasonably foreseeable adverse impacts of climate change-induced sea-level rise and El Niño events will be significant, especially for coastal development on the California coastline from Cape Mendocino to the Mexican border. This scientific study, which California Executive Order S-13-08 requested to inform the planning for sea-level rise and coastal impacts, predicts a rise in sea level of 42–167 cm (17–66 in) for Southern California by 2100;<sup>9</sup> 12–61 cm (5–24 in) by 2050; and 4–30 cm (2–12 in) by 2030. (Committee on Sea Level Rise in California, Oregon and Washington, *Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future* (2012) Summary, pp. 4-7.)<sup>10</sup> In addition to this long-term trend, the frequency and magnitude of extremely high coastal wave events may increase. (Committee on Sea Level Rise in California etc., Summary, *supra*, p. 6.) Yet, “Even if storminess does not increase in the future, sea-level rise will magnify the adverse impact of storm surges and high waves on the coast.” (*Id.*, p. 7; see also National Academy of Sciences, Division on Earth & Life Sciences (2012) *Sea-level Rise for the Coasts of California*,

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<sup>9</sup> This is at least 12 years **before** the end of the 100 year economic life of the Project that must be assumed under the MLCP.

<sup>10</sup> We have attached as Exhibit 3 to these comments, a true copy of this summary.

Oregon, and Washington: Past, Present, Future, at <http://dels.nas.edu/Materials/Videos/Sea-level-Rise> [as of Dec. 12, 2012].)

There is no evidence that the applicants or staff took into account this new data. The Wave Uprush Study was prepared in March 2008, and its most recent Addendum Report is dated March 11, 2010. A failure to account for the full extent of future changes in sea level and storm surges, or high waves magnified by sea-level rise, not only impacts the Project but the public. As Malibu Road residents have observed over the years, the Project site and immediate vicinity has unstable geology. The road close to the Project site collapsed into a large sinkhole during a 1998 El Niño event, forcing residents to enter and exit through the narrow, one-way westerly top end of the road.

The Project's documented failures to comply with planning policies and regulations directly germane to site planning and design are further grounds for CEQA review. When there is substantial evidence supporting a fair argument that a project conflicts with a local government's land use policies or regulations, CEQA review may not be avoided. (See *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 930.) Especially in light of its detrimental impacts on public views, access to coastal resources and public safety, all of which run afoul of important MLCP provisions, the Project must undergo CEQA review before progressing any further. By exempting it from CEQA, the City will violate CEQA. Therefore, at a minimum, the City must prepare and circulate for public review an initial CEQA study. (See Guidelines, § 15063.)

Sincerely,

ANGEL LAW



Frank P. Angel

ANGEL LAW



Jessica Cheng

Encs: 3

cc: Joyce Parker-Bozylinski (via email to [jparkerbozylinski@malibucity.org](mailto:jparkerbozylinski@malibucity.org))

Exhibit 1

Coastal Conservancy, Staff Recommendation: Malibu Road Accessway –  
Transfer and Stairway Construction (Oct. 21, 2010)

(Highlights Added)

COASTAL CONSERVANCY

Staff Recommendation

October 21, 2010

**MALIBU ROAD ACCESSWAY –  
TRANSFER AND STAIRWAY CONSTRUCTION**

Project No.09-013-02

Project Manager: Joan Cardellino

**RECOMMENDED ACTION:** Authorization to transfer jurisdiction of the property located at 24038 Malibu Road to the Santa Monica Mountains Conservancy; approval of a revised Implementation Plan for the transfer of the property; and authorization to disburse up to \$994,000 to the Mountains Recreation and Conservation Authority for the purpose of constructing a public beach access stairway on the subject property in Malibu.

**LOCATION:** 24038 Malibu Road, City of Malibu, Los Angeles County

**PROGRAM CATEGORY:** Public Access

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**EXHIBITS**

Exhibit 1: [Project Location](#)

Exhibit 2: [Implementation Plan \(Revised October 2010\)](#)

Exhibit 3: [Stairway Design](#)

Exhibit 4: [August 2002 Staff Recommendation](#)

Exhibit 5: [June 2009 Staff Recommendation](#)

Exhibit 6: [Mitigated Negative Declaration](#)

Exhibit 7: [Addendum, Mountains Recreation and Conservation Authority, Malibu Road Beach Accessway, September 2010](#)

Exhibit 8: [Project Letters](#)

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**RESOLUTION AND FINDINGS:**

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31400 - 31410 of the Public Resources Code:

“The State Coastal Conservancy hereby:

1. Modifies its prior authorization of June 4, 2009 by:
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***[MALIBU ROAD ACCESSWAY--TRANSFER AND  
STAIRWAY CONSTRUCTION]***

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- a. Approving the Implementation Plan, as revised October 2010 (attached as Exhibit 2 to the accompanying staff recommendation), for the Malibu Road Beach Accessway Property (the real property), located at 24038 Malibu Road, Malibu (Los Angeles County Assessor's Parcel Number 4458-009-900), acquired by the Conservancy through acceptance of an offer to dedicate.
  - b. Directing the Executive Officer to take all steps necessary to transfer jurisdiction of the real property to the Santa Monica Mountains Conservancy (SMMC), another state agency, under the terms and requirements of the Implementation Plan, as revised October 2010, for the real property.
2. Authorizes disbursement of up to \$994,000 (nine hundred ninety-four thousand dollars) to the Mountains Recreation and Conservation Authority (MRCA) to construct a public access beach stairway (depicted in Exhibit 3 to the accompanying staff recommendation) on the real property, subject to the following conditions:
- a. Prior to disbursement of any funds, MRCA shall submit for the review and approval of the Executive Officer:
    - i. An agreement between MRCA and SMMC authorizing MRCA to construct the stairway and manage the real property on behalf of SMMC.
    - ii. A work program for the construction of the public access beach stairway, including schedule and budget.
    - iii. The names of any contractors MRCA intends to use to complete the project.
  - b. In carrying out the construction, MRCA shall comply with all applicable mitigation and monitoring measures that are identified in the 'Initial Study/Mitigated Negative Declaration' adopted by the Conservancy on August 8, 2002."

Staff further recommends that the Conservancy adopt the following findings:

"Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed project remains consistent with the current Project Selection Criteria and Guidelines.
2. The proposed authorization remains consistent with the purposes and objectives of Chapter 9 of Division 21 of the Public Resources Code, regarding public access.
3. The Conservancy has independently reviewed and considered the *Addendum, Mountains Recreation and Conservation Authority, Malibu Road Beach Accessway, September 2010* ("Addendum"), attached to the accompanying staff recommendation as Exhibit 7, and finds that the new information regarding greenhouse gas emissions associated with the proposed project may be appropriately addressed in an addendum under the California Environmental Quality Act (CEQA), because there is no substantial evidence that the project's greenhouse gas emissions will give rise to new or significant environmental effects not previously considered in the 'Initial Study/Mitigated Negative Declaration' (the "Mitigated Negative Declaration"), previously adopted by the Conservancy on August 8, 2002; or a substantial increase in the severity of the significant effects previously identified in the Mitigated

***[MALIBU ROAD ACCESSWAY--TRANSFER AND  
STAIRWAY CONSTRUCTION]***

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Negative Declaration. As detailed in the Addendum, neither the project construction activities nor the increased traffic associated with the use of the accessway, once constructed, are expected to create greenhouse gas emissions that are significant.”

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**PROJECT SUMMARY:**

Staff recommends authorization to transfer jurisdiction of the property located at 24038 Malibu Road to the Santa Monica Mountains Conservancy (SMMC), another state agency, and authorization to disburse up to nine hundred ninety-four thousand dollars (\$994,000) to the Mountains Recreation and Conservation Authority (MRCA) for the purpose of constructing a public beach access stairway on the subject property in Malibu.

The Conservancy holds fee title to the property on Malibu Road, as a result of the Conservancy’s acceptance in 2002 of a Coastal Act Offer to Dedicate. (See Conservancy staff recommendation of August 8, 2002, Exhibit 4). In 2002, the Conservancy authorized the development of plans for the construction of a beach access stairway on the property. Pursuant to that authorization, Conservancy staff retained a landscape architect who prepared a nearly complete set of plans and specifications for the beach access stairway.

As described below, the Malibu Road project will create a new accessway in Malibu that will allow the public to access Amarillo and Malibu Colony beaches. When completed, this project will be the only public access point between Malibu Lagoon State Park and Amarillo Beach. The property has an extremely steep slope and 30-foot bluff that drops down to a narrow beach. Currently there is no developed access to the site and intrepid visitors scramble down the bluff, many carrying surfboards or kayaks. Other visitors simply sit at the top and enjoy the view, or check the surf conditions. MRCA is currently managing this interim use of the project site by picking up trash.

The proposed public accessway, as designed, consists of a steel piling supported stairway with poured-in-place concrete walls, a viewing deck, a transparent fence, a timed-lock gate, three parking spaces, installation of signage and a trash receptacle. The design for the stairway has undergone extensive review both for its feasibility and cost. The Malibu Road Accessway project has also undergone environmental review (Initial Study/Mitigated Negative Declaration adopted by the Conservancy on August 8, 2002 – see Exhibit 6) and has been approved by the Office of the State Architect for compliance with wheelchair accessibility. In March 2009, the City of Malibu issued a Coastal Development Permit for construction of the project. The proposed grant will pay for the cost of construction and associated project management.

As noted above, the Conservancy currently holds title to the property on which the accessway will be built. In June 2009, the Conservancy approved an Implementation Plan for the property that recommended that fee title to the property be transferred to MRCA in order to allow MRCA to construct and subsequently manage the property for public access, tasks to which it is particularly well-suited (see June 2009 staff Recommendation, Exhibit 5). In the interim, Conservancy staff, in consultation with SMMC, has concluded that it would make sense for a state agency, with a presence in the area in which the property is located, to continue to hold title

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to the property. SMMC is a state agency based in Los Angeles, the property is within its jurisdiction and SMMC is willing to take over jurisdiction and control of the property. MRCA will continue to undertake construction and future operation and management of the property under an agreement with SMMC. MRCA is a joint powers agency formed in 1985 to manage open space and parkland, watershed lands, trails and wildlife habitat in Los Angeles and Ventura counties. MRCA has constructed numerous park and access facilities and provides ranger services for almost 60,000 acres of public lands, including managing the Conservancy's access way on Escondido Beach and providing minimal site management at two other Conservancy-owned coastal properties in Malibu.

**Site Description:** The project site is a vacant lot on the south side of Malibu Road in the City of Malibu. It is one of four vacant properties between single-family residences at 24056 and 24034 Malibu Road. The project site is within the Coastal Zone, and is bounded by Malibu Road on the north and Amarillo Beach on the south. Currently, the project site consists of a gravel and dirt parking area, and a 30-foot beach-facing slope partially covered in riprap used for slope stability. Malibu Bluffs Park is approximately .25 mile northwest of the project site. Even in its unimproved condition, the site is used by surfers and kayakers who can navigate down the steep slope to reach the surf, and by others who want to stroll along the beach. Less adventurous visitors simply enjoy the view from the top of the bluff.

**Project History:** Project history prior to 2009 can be found in the June 2009 staff recommendation attached as Exhibit 5.

Pursuant to the grant provided by the Conservancy in June 2009, MRCA contracted for additional environmental analysis to account for greenhouse gas emissions during construction and the potential effects of sea level rise on the project. That analysis was completed in the summer of 2010, and forms the basis of the CEQA Addendum discussed in the Compliance with CEQA section, below. Additionally, MRCA obtained an updated cost estimate for the project.

## **PROJECT FINANCING**

<b>Coastal Conservancy</b>	\$994,000.00
<b>Total Project Costs</b>	\$994,000.00

Funds for this project are expected to come from a variety of sources. The largest amount (approximately \$575,000) will come from an appropriation to the Conservancy in fiscal year 2008-09 from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84). Proposition 84 authorizes the use of bond funds for projects that promote access to and enjoyment of coastal resources and that are consistent with the Conservancy's enabling legislation (Public Resources Code Section 75060). The proposed accessway will provide access directly to the coast and the ocean for the enjoyment of visitors to Malibu in area underserved by coastal access. Further, the project is consistent with the Conservancy enabling legislation as detailed below.

The second funding source is expected to be the Coastal Trust Fund, Coastal Program Account. Within that Account are two sub-accounts that have funds designated for use in Malibu. The

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larger of the two subaccounts, the Malibu Road Coastal Access Account, is funded through fees generated by the Coastal Commission and is specifically designated for this Malibu Road stairway. This subaccount was used to fund the initial preconstruction activities under the Conservancy 2002 authorization, involving primarily the applications for permits from the Coastal Commission and from the City. Approximately \$415,000 remains in that subaccount and will be used for construction. A smaller sub-account (totaling \$25,000) comes from a donation of litigation settlement proceeds received from a nonprofit organization called Save Open Space Santa Monica Mountains, and restricts the funds to the development of a public coastal access project within the City of Malibu.

**CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:**

For the reasons specified in the August 8, 2002 staff recommendation (Exhibit 4), the transfer of the property to SMMC and the construction of a public access stairway on the property remain consistent with Chapter 9 of the Conservancy's enabling legislation (Public Resources Code Sections 314000, et seq.), regarding the provision of public access ways to and along the coast.

**CONSISTENCY WITH CONSERVANCY'S 2007  
STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):**

Consistent with **Goal 2, Objective 2c** of the Conservancy's 2007 Strategic Plan, the proposed project will make an almost completely inaccessible beach accessible to the general public.

**CONSISTENCY WITH CONSERVANCY'S  
PROJECT SELECTION CRITERIA & GUIDELINES:**

The project is consistent with the Conservancy's Project Selection Criteria and Guidelines adopted in June 2009, in the following respects

**Required Criteria**

1. **Promotion of the Conservancy's Statutory Programs and Purposes:** As discussed above, this proposed project is consistent with the purposes of Division 21 of the Public Resources Code by developing the necessary improvements to make the site useable by the public.
2. **Consistency with Purposes of the Funding Source:** As discussed above, the source of funds for this project is expected to be a combination of Proposition 84 funds and Coastal Trust funds specifically designated for construction of access ways in Malibu.
3. **Support from the Public:** Letters of support are included in Exhibit 8.
4. **Location:** The Malibu Road project is located within the coastal zone.
5. **Need:** Malibu is arguably the most famous section of the California coast, and one of the most popular, yet it has long stretches of coastline with little or no public access. The Conservancy has the opportunity to develop this site now, and open over one mile of beach to the public.



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6. **Greater-than-local interest:** The Malibu coast attracts visitors from all parts of the region, state and nation. Additional coastal access along this popular stretch of coastline will, thus, serve a broad constituency.
7. **Vulnerability from climate change impacts other than sea level rise:** The project has been designed with the understanding that sea levels will rise during the course of its useful life, and it should be able to provide a useful recreational facility even with considerably higher tides.

**Additional Criteria**

13. **Readiness:** If approved, this project is ready to be constructed. It has a Coastal Development Permit and all of the design work is complete.
14. **Realization of prior Conservancy goals:** As shown in Exhibits 4 and 5, the Conservancy has been working on this project since 2002. Increasing access in Malibu has been a priority of the Coastal Conservancy and the Coastal Commission for decades.
17. **Minimization of greenhouse gas emissions:** The project design and construction methods include best management practices to avoid or minimize greenhouse gas emissions to the extent feasible and consistent with the project objectives. See Exhibit 7.

**CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:**

The City of Malibu Certified Local Coastal Program identifies this site as Public Open Space. The proposed project complies with Local Implementation Plan Section 3.5 concerning residential beachfront development standards; Section 8.3 regarding grading, and Section 11 regarding archaeological resources. The City of Malibu issued a Coastal Development Permit for this project in March 2009.

**COMPLIANCE WITH CEQA:**

Project Construction: The Conservancy previously authorized the disbursement of funding for the Malibu Road Accessway project at its meeting of August 8, 2002 (see Exhibit 4) and, at that time adopted an “Initial Study/Mitigated Negative Declaration (the “Mitigated Negative Declaration”, Exhibit 6). The details of the project have not changed in any substantive way. The design and specifications for the proposed accessway remain the same. Since the project, including potential environmental effects and mitigation measures, remains materially unchanged, the proposed authorization remains consistent with the CEQA findings adopted by the Conservancy in connection with its prior authorizations.

However, since 2002, through legislation, Attorney General’s opinion, litigation and revised CEQA guidelines, it is clear that CEQA analysis must now consider or analyze the climate change-related impacts of a project. The Mitigated Negative Declaration did not consider or analyze the climate change impacts of the project, including greenhouse gas emissions generated by future use of the accessway. The following provides this analysis and conclusions.

The CEQA Guidelines (found at 14 Cal. Code Regs., Sections 15000 et seq.) specify the process for determining whether new information (here, the effects of greenhouse gas emissions from the

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project) requires additional environmental documentation (see Guidelines Sections 15164(a) and 15162). Section 15164(a) of the Guidelines specify that the an “addendum” to a previously adopted Negative Declaration, may satisfy CEQA, without the need for further environmental review, so long as none of the conditions described in Guidelines Section 15162 calling for preparation of a subsequent environmental document have occurred. According to Section 15162, subsequent documentation shall not be prepared for the project unless the Conservancy determines, based on substantial evidence in light of the whole record, that the new information demonstrates new significant effects not previously considered in the Mitigated Negative Declaration or will result in a substantial increase in the environmental effects previously considered.

In order to answer the question of whether the accessway project’s greenhouse gas emissions would trigger new or increased environmental effects, MRCA commissioned a detailed evaluation of potential greenhouse gas emissions, undertaken by ICF International. The results of that evaluation are detailed in the *Addendum, Mountains Recreation and Conservation Authority, Malibu Road Beach Accessway, September 2010* (the “Addendum”), attached as Exhibit 7, which includes Appendix A, *Malibu Road Beach Accessway: Traffic Impact Assessment* and Appendix B, *Malibu Road Beach Accessway: Greenhouse Gas Technical Memorandum*.

The Addendum assessed both the construction-related greenhouse gas emissions and the emissions attributable to post-construction use of the accessway (such as vehicles carrying visitors to and from the accessway). Based on the traffic study (Addendum, Appendix B), the Addendum concluded that proposed project would not result in operational emissions of greenhouse gases because it would not generate any more than negligible additional traffic or require additional energy to operate. Under the analysis in Appendix B, the Addendum concludes that construction emissions, amortized over the conservative estimate of the useful life of the accessway (30 years) would be approximately 3.85 metric tons CO<sub>2</sub> equivalent per year. When this annual emission figure is compared to thresholds being considered for projects within the South Coast Air Quality Management District (SCAQMD), the air district in which the project is located, it is apparent that the proposed project’s emissions are well below those considered “significant” under CEQA, either individually or cumulatively.

Based on these conclusions, Conservancy staff determined that an Addendum to the Mitigated Negative Declaration, rather than a subsequent environmental document, was the appropriate vehicle under CEQA to document and analyze the greenhouse gas emissions attributable to the project.

Accordingly, Conservancy staff recommends that the Conservancy find, for all of the reasons set forth in the Addendum, that the projects greenhouse gas emissions will not give rise to new significant environmental effects not considered in the Mitigated Negative Declaration, nor to a substantial increase in the severity of the significant effects previously identified in the Mitigated Negative Declaration.

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Transfer of jurisdiction of the property.

The proposed transfer of the real property is categorically exempt under Section 15325 of Title 14 of the California Code of Regulations which exempts projects that, as here, involve a transfer of land to preserve open space or lands for park purposes.

Exhibit 2

David Helvarg, *California Confronts a Sea Change*, Los Angeles Times (Nov. 27, 2012)

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Op-Ed

## California confronts a sea change

*The state isn't waiting to plan for rising sea levels. In Superstorm Sandy's wake, other states should look west for inspiration on how to prepare.*

November 27, 2012 | By David Helvarg

Governors Andrew Cuomo of New York and Chris Christie of New Jersey don't need to wait on gridlocked Washington to confront future risks from climate-change intensified storms. They can instead look at how California is already moving forward on common-sense adaptations, and do it themselves. With 3.5 million Californians living within three feet of sea level, and the best available science projecting a 3- to 5-foot rise in sea level for the state by 2100, doing nothing would be irresponsible.

In Northern California, rising sea levels are projected to affect more than a quarter of a million people and threaten more than \$60 billion in infrastructure in the San Francisco Bay/Delta region, putting power stations, water-treatment plants, roads, buildings and the San Francisco and Oakland airports (both built on filled wetlands) at risk. In Southern California, scientists point to the loss of 3,000 beachfront homes to major El Niño winter storms in the 1980s as suggestive of what climate change has in store.

In fact, for the next few decades it will be extreme storms, with their accompanying waves and king tides, not sea-level rise per se that will have the most impact in the state, according to U.S. Geological Survey testimony last year to the California Ocean Protection Council, the state's umbrella agency for coordinating its response to rising seas.

### **PHOTOS: Greenland's ice sheet in a changing world**

For starters, California is ahead of most states in its attempts to address the problem at its source by reducing greenhouse gas emissions. Over half of U.S. venture capital investment in clean technology is now taking place in California, and energy conservation and efficiency programs already in place have helped keep the state's per capita energy consumption steady over 30 years (in the rest of the nation, it has increased 40%). But climate change is happening, so adaptation, as well as prevention, is going to be essential.

A number of local and state efforts are underway. This year, the San Francisco Bay Conservation and Development Commission, the state's original coastal protection group, amended its long-standing San Francisco Bay Plan to make sure projected sea-level rise is taken into account by any new project, such as a planned \$1.5-billion development on Treasure Island in the middle of the bay.

After repeated flooding from winter storms in 2009-10 shut down the Great Highway along the city's share of the Pacific coast, the Army Corps of Engineers proposed pumping dredged sand onto the beach to shore it up and a city think tank suggested "planned retreat" — shrinking and rerouting the highway at a cost of \$343 million — as the best long-term solution. While the options are reviewed, city workers continue armoring the southbound lanes with boulders.

Down the peninsula, on the bay side, a major wetlands restoration project now underway is expected to reduce the impact of sea-level rise and flooding on small, low-income towns such as Alviso as well as on low-lying, high-dollar-value corporate campuses, such as those of Yahoo in Sunnyvale and Google in Mountain View.

In Newport Beach in Southern California, city planners are looking into raising sea walls in waterfront neighborhoods like Balboa Island that are prone to flooding. They may also begin requiring that foundations on new beach properties be raised several feet, a modest start but a start nonetheless.

Governments in San Diego, Ventura and Humboldt counties are also embarking on multi-stakeholder efforts to adjust their zoning and permit systems to account for storm tides and sea-level rise. The city of Ventura has completed the first phase of a managed retreat at Surfer's Point, removing a sea-damaged parking lot and moving a bike trail 65 feet inland. About half the towns along California's coast have begun developing climate adaptation policies.

"It's not uncertainty about the science keeping them from acting," says Amber Mace, former California Ocean Protection Council executive director. "It's lack of funding, lack of staff and a lack of support from outside."

Part of the council's job is to provide coastal communities with high-resolution seafloor maps and updated intertidal and shoreline maps that are basic to sea-rise and storm-surge planning. The council also provides links to scientists who are working to downscale the projections of climate impacts from the 200-mile grids used by the U.N.'s Intergovernmental Panel on Climate Change so that they can be applied to zoning, beachfront management and other land-use decisions.

The council, with strong backing from Gov. Jerry Brown and Gov. Arnold Schwarzenegger before him, has worked to persuade other agencies to incorporate sea-level rise and other climate change projections into their work.

For example, the California Coastal Commission is expected to require all waterfront communities to include extreme flooding and sea-level-rise planning in their local coastal plans. The state is also considering withholding some funds from communities until they have a comprehensive climate-change adaptation policy in place.

The state Water Resources Control Board is another state agency that is responding to expected flooding due to more extreme weather patterns. It has established tougher standards for storm water runoff, which again will force coastal communities to plan for climate change impacts.

It's worth remembering that after the 1906 San Francisco earthquake, California set new standards for fire and building safety, many of which eventually became national standards. Now the state is poised to do the same with its planning for climate change.

Certainly if there's any place on the globe where there's been the convergence of scientific knowledge and inquiry, entrepreneurial spirit and a public willingness to lead the world in new directions, it's in California. But the common-sense lessons being learned here about coastal adaptation need to be applied from sea to shining sea.

*David Helvarg is executive director of the Blue Frontier Campaign. His next book, "The Golden Shore — California's Love Affair with the Sea," will be published in February.*