

CALIFORNIA COASTAL COMMISSION

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April 25, 2000

Marc Beyeler
State Coastal Conservancy
1330 Broadway, Suite 100
Oakland, California 94612

Re: Carbon/La Costa Beach Public Beach Access Dedication, File No. 00-033

Dear Mr. Beyeler:

As you know, on April 12, 2000, the Coastal Commission approved an amendment to three coastal permits (4-99-146 Broad, 4-99-185 Gamma, and 4-99-266 Daly) that allowed for an off-site mitigation program. The Commission action included a revision to staff proposed conditions. Attached, for your files, is a copy of the conditions, as we believe the Commission adopted them. The attachment is stamped "draft", as the final findings and conditions must still be submitted for Commission review and approval. You will note that condition #3.B requires the permittee to submit revised project plans that provide for: removal of the existing fence and construction/installation of a new fence, gate (which provides for public access during daylight hours by such method as use of a time lock gate) and public access signs. Once the plans have been approved by the Commission's Executive Director, the fence removal and new public improvements must be installed, by the permittee, within 90 days of permit issuance. Therefore, the costs associated with these public access improvements will be borne by the permittees. Additionally, these improvements must be installed, by the permittee, within 90 days of the permit issuance. Condition #3.C requires the accepting agency to agree to allow these improvements to be constructed.

If the Conservancy accepts dedication of the mitigation parcel, the property transfer will occur prior to the construction of the permittee required public access improvements. Therefore, we suggest that the Conservancy staff recommendation be amended to not only authorize acceptance of the property but also to include authorization to allow the permittee to construct these improvements. Our suggested language is: "The Conservancy agrees the fence, gate and signage that is required pursuant to the amendments approved by the Coastal Commission for coastal permits 4-99-146, 4-99-185, and 4-99-266 may be constructed on the property, in accordance with the conditions of the amended permits".

Please do not hesitate to call me if you have any questions.


Linda Locklin
Manager, Coastal Access Program

Cc: Chairwoman Wan
Chuck Damm, Senior Deputy Director

Draft 4/24/00

3. Public View Corridor Mitigation and Public Access Program

The deed restrictions previously required by Special Condition Eight (8) of Coastal Development Permits 4-99-146 and 4-99-185 and Special Condition Nine (9) of Coastal Development Permit 4-99-266 for the provision of a public view corridor on the subject sites shall be deemed null and void and may be extinguished. Special Condition Eight (8) of Coastal Development Permits 4-99-146 and 4-99-185 and Special Condition Nine (9) of Coastal Development Permit 4-99-266 are replaced in their entirety as follows:

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director, for review and approval, evidence that:

- A. Applicants have dedicated to the State of California, or its appropriate public agency, the parcel located at 21704 Pacific Coast Highway, Malibu, Los Angeles County (APN 4451-003-033) ("the parcel") to be held in perpetuity for public view and public access purposes. The dedication of the parcel shall be in fee simple and free and clear of all liens and encumbrances. Dedication of the parcel shall be in lieu of providing public view corridors across their properties. The parcel shall be opened and used for public access, both visual and physical. A deed conveying title to the parcel and a deed restriction restricting the parcel to use for public view and public access purposes in perpetuity shall be held in escrow by a mutually agreeable escrow agent. If the sixty days statute of limitations (Public Resource Code Section 30801) to challenge the Commission's decision on this permit amendment expires and no litigation is filed, the escrow agent shall release the deed to the parcel and deed restriction to the State of California or its appropriate agency. In the event of litigation challenging the Commission's decision on this amendment, the applicants agree to cooperate in the defense of such litigation. If, at the final conclusion of such litigation, the Commission prevails, the escrow agent shall release the deed to the parcel and the deed restriction to the State of California or its appropriate agency. In the event that litigation precludes the parcel from being opened to public access, either visually or physically or both, the deed to the parcel and the deed restriction will be returned to the applicants by the escrow agent and the applicants shall pay to the California Coastal Conservancy the greater of \$1,000,000 or, in the event the applicants sell the parcel within one year of the return of the deed, the net sales proceeds; this money shall be used to open public accessways in Malibu or to obtain public access in Malibu. Nothing in this condition is intended to or will affect any sovereign rights or public trust rights that may exist in the parcel located at 21704 Pacific Coast Highway, Malibu, Los Angeles County (APN 4451-003-033).

In the event applicants are precluded from dedicating the parcel located at 21704 Pacific Coast Highway, Malibu, then applicants shall pay to the California Coastal Conservancy \$1,000,000 to be used to open public accessways in Malibu or obtain public access in Malibu.

The deed restriction required above shall reflect that:

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- (1) The entire parcel, as measured from the Pacific Coast Highway right-of-way line seaward to the ambulatory mean high tide line, shall be available for public recreation and both vertical and lateral public access to the beach and ocean on and across the entire site. Any future development or improvements on the parcel will require a new coastal development permit and shall be limited to those improvements necessary to provide adequate public recreation and access. New development such as gates, stairs, fences, signs, and locks may be approved, subject to the issuance of a coastal development permit, if the Commission finds that such improvements are appropriate to regulate public access on the site.
- (2) The entire parcel shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean. No structures, vegetation, or obstacles which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted on site. Vegetation on site shall be limited to low-lying vegetation of no more than 2 ft. in height. Fencing within the public view corridor shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials). Fencing shall be limited to no more than 6 ft. in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than 1 inch in thickness/width and shall be placed no less than 12 inches in distance apart. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.
- (3) No signs shall be posted on the parcel which (1) explicitly or implicitly indicate that any portion of the subject site (APN: 4451-003-033) is private or (2) contain similar messages that attempt to prohibit public use of this portion of the beach. In no instance shall signs be posted which read "Private Beach" or "Private Property." In order to effectuate the above prohibitions, prior to the issuance of the coastal permit as amended, the permittee/landowner is required to submit to the Executive Director for review and approval prior to posting, the content of any proposed signs as consistent with Part B of this condition. After the permit has been issued, new signs limiting the time that the subject site is available for public use (such as limiting public access on the site to daylight hours) may be approved, subject to the issuance of a coastal development permit, if the Commission finds that such are appropriate to regulate public access on the site.
- (4) The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

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- B. All existing fencing on the subject site has been removed. The applicant shall submit, for the review and approval of the Executive Director, revised project plans for the construction/installation of a new fence and gate consistent with the requirements of Part A, Subparts (1), (2), and (3) of this condition. The plans must also include a time-lock mechanism or other means to allow public access to the site during daylight hours and must be designed in consultation with the California Coastal Conservancy. The revised plans shall also include the provision of signage indicating the availability of public access on the site. The approved signage must be maintained at the site. After the revised project plans have been approved by the Executive Director, the fence, gate, and signage must be constructed/installed in accordance with the approved plans within 90 days of issuance of the Amended Coastal Development Permit.
- C. The Coastal Conservancy, or other appropriate agency, has agreed to allow construction of the new fence, gate and signage on the parcel in accordance with the plans approved by the Executive Director pursuant to Section B. above.

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