

*MALIBU COASTAL ACCESS PUBLIC WORKS PLAN*

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properties. In December 1998, the Conservancy completed a feasibility study for public access improvements for the vertical accessway and the parking access. Subsequently, and as they had done previous to the lawsuit, the landowners' representatives attempted to perfect "trades" for the public access easements over their respective properties, including locating the accessways over other properties along the Malibu coast and in 2001, a transportation program for bringing urban youth to the coast. To date, the accessways remain undeveloped and closed.

In 2011, Wildman sued the Conservancy alleging that the Conservancy's acceptance of the Offer to Dedicate the Parking Easement over his property was not timely made. In 2012, the trial court sustained the Conservancy's demurrer. Wildman appealed. The Court of Appeal will hear the matter on December 20, 2012, with a ruling expected in early 2013. (For history, see <http://scc.ca.gov/webmaster/ftp/malibu/>)

**PROJECT FINANCING**

<b>Coastal Conservancy</b>	\$470,000
<b>Santa Monica Mountains Conservancy (in kind services)</b>	<u>\$20,000</u>
<b>Total Project Costs</b>	\$490,000

The anticipated source of Conservancy funds for the proposed grant is the 2010/11 Fiscal Year appropriation to the Conservancy from Proposition 40, the "California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Act of 2002". Proposition 40 funds may be used for development of land resources in accordance with the provisions of the Conservancy's enabling legislation, Division 21 of the Public Resources Code. The proposed project serves to assist in the development of land-based public access and, as discussed in the section found immediately below, the project is consistent with Chapter 9 of Division 21. Proposition 40 also requires the Conservancy to give priority to grant projects with matching funds (Public Resources Code Section 5096.651). The project is supported by a commitment by the Santa Monica Mountains Conservancy to provide in-kind staff services, the value of which is estimated at \$20,000.

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

The Conservancy would undertake the preparation of the Public Works Plan pursuant to Public Resources Code (PRC) Section 31111 and Sections 31400 *et seq* (Chapter 9 of Division 21 of the Conservancy's enabling legislation).

Section 31111 broadly authorizes the Conservancy to fund or provide grants to public agencies for the preparation of plans and feasibility studies, as appropriate to implement the objectives of Division 21, the Conservancy's enabling legislation.

Chapter 9 of Division 21 specifically authorizes the Conservancy to undertake coastal access projects and to take a principal role in the implementation of a system of public accessways to and along the state's coastline (PRC Section 31400). More precisely, PRC Section 31400.1 permits the Conservancy to award grants to any public agency to develop, operate or manage lands for public access purposes. Consistent with Section 31400.1, preparation of the Public

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Works Plan is an integral step in developing and subsequently constructing and operating public accessways along the Malibu coast. As also required by this section, the development of public access in Malibu will serve more than local needs, as detailed in the "Consistency with Conservancy's Project Selection Criteria & Guidelines" section, below, under "Required Criteria", subsection "6. Greater-than-local interest". Similarly, the proposed project is consistent with PRC Section 31400.3 which allows the Conservancy to provide whatever assistance is necessary to aid public agencies in establishing a system of public coastal accessways. The Public Works Plan will provide a blueprint for establishing a comprehensive system of public coastal accessways in Malibu that will subsequently be implemented by MRCA and the Conservancy. Finally, consistent with PRC Section 31401, the Conservancy and MRCA will ensure that the Public Works Plan incorporates the relevant guidelines of the Conservancy's "Standards and Recommendations for Accessway Location and Development" and meets the requirements of applicable federal and state laws governing barrier-free access.

### **CONSISTENCY WITH ADDITIONAL PUBLIC NOTICE PROVISIONS BEYOND OPEN MEETING ACT PROVISIONS:**

In 1998, the Conservancy signed a Settlement Agreement in the matter of *Mancuso v. Coastal Conservancy et al.*, Los Angeles County Superior Court Action No. BS040197. One provision of the settlement agreement requires that additional notice beyond that required under the Open Meeting Act for Conservancy public meetings is given in the case of certain public access projects. That provision (Para. IV.2. of the Agreement) is as follows:

"With respect to any proposed Conservancy action related to the development, enhancement, maintenance, restoration, or closing of public access on, over or across real property located between the first public road and the Pacific Ocean, the Conservancy shall give the owners of the subject real property and the owners of record of real property located adjacent to the boundaries of the subject property ten (10) days direct mail notice of any meeting or action in which such matters will be considered by the Conservancy. In addition, such notice shall also be provided to the owners of record of the real property bordering the adjacent real properties. In addition, the Conservancy will give notice of any such proposed action to any individual or entity previously expressing any interest in access on, over or across the subject property. This obligation to provide notice shall survive the termination of this Agreement notwithstanding any other provision hereof."

Staff has complied with this additional notice provision for all the properties contemplated in this proposed Public Works Plan project by mailing on regular business days from November 13 through November 21, 2012 by direct mail to all owners of public record of all real property in the City of Malibu, which includes all owners of public record of real property affected by the proposed project or previously expressing any interest in access on, over or across the subject properties in compliance with this additional notice requirement. (See Exhibit 6).

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

Consistent with **Goal 2, Objective C** of the Conservancy's 2007 Strategic Plan, the proposed project will contribute toward the opening of coastal areas owned by the public that are currently inaccessible to the public.

Consistent with **Goal 2, Objective D**, the proposed project would facilitate the development and opening for public use easements or fee properties derived from offers to dedicate interests for public access to comply with the Coastal Act.

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

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines, last updated on November 10, 2011, in the following respects:

**Required Criteria**

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.
3. **Support of the public:** Letters of support are included in Exhibit 5.
4. **Location:** The proposed project is located within the coastal zone of the City of Malibu.
5. **Need:** In order to plan efficiently and effectively for a comprehensive approach to opening several public accessways, preparation of a public works plan is essential. The Conservancy and MRCA will work together to accomplish this objective and this collaboration is necessary to a successful outcome. On the one hand, the Conservancy greatly benefits from MRCA's on-the-ground and practical experience in developing and managing coastal access properties and, on the other hand, MRCA is unable to carry out the project without financial assistance from the Conservancy.
6. **Greater-than-local interest:** Malibu's coastline stretches for 27 miles, which is a significant component of Los Angeles County's coast. For residents of inland communities especially those in the San Fernando and Conejo Valleys, Malibu offers the closest beaches. Additionally, thousands of visitors from all over the state and out-of-state visit Malibu annually, as it is a popular vacation destination.
7. **Sea level rise vulnerability:** All of the project sites included in the proposed Public Works Plan project are potentially vulnerable to future sea level rise. The proposed planning process will consider a range of sea level rise scenarios for each potentially vulnerable project for the years 2050 and 2100 in order to assess project vulnerability and, to the extent feasible, reduce expected risks and increase resiliency to sea level rise.

**Additional Criteria**

8. **Innovation:** The proposed approach of using a public works plan to broadly and comprehensively address the statewide interest in public access to Malibu beaches is an innovative approach that will provide a cost-effective means of developing regional public access of statewide importance.
9. **Readiness:** MRCA is prepared and willing to immediately initiate plan development.
10. **Realization of prior Conservancy goals:** See "Project History" above.
11. **Minimization of greenhouse gas emissions:** Project design under the Public Works Plan will include measures to avoid or minimize greenhouse gas emissions to the extent feasible and consistent with the project objectives.

**CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:**

Chapter 2 of the City of Malibu Local Coastal Program Land Use Plan (Malibu LUP) addresses public access and recreation. Policy 2.7 states that the property interests derived through the Coastal Commission's coastal development permit process and conditions to comply with the Coastal Act for public access should be accepted with the purpose of being developed for public use, and such development should occur within 5 years of acceptance. Most of the accessways included in the Public Works Plan are derived from the Coastal Commission's permit conditions for a coastal development permit. But the public access development of most of the accessways subject to the proposed Public Works Plan was not accomplished in this five year period (the Malibu LUP was adopted in 2002) and 10 years later in 2012, still remain undeveloped. As such, the public access policy of the Malibu LUP has been thwarted. This is due to the various factors described in the Project Summary section above, including permitting issues, efforts to impede public access development, litigation and other external factors. The proposed Public Works Plan seeks to move the process of development and opening of accessways forward as quickly as possible in order to meet the policy objectives of the LUP.

Additionally, Malibu LUP Policy 2.86 identifies specific vertical accessways in Malibu that should be opened. These include a number that will be addressed by the Public Works Plan: Escondido Beach (Policy 2.86[i]), Carbon Beach (Policy 2.86[o]), La Costa/Las Flores Beaches (2.86[p]), and Las Tunas Beach (Policy 2.86[r]).

**COMPLIANCE WITH CEQA:**

The proposed Public Works Plan project is statutorily exempt from the California Environmental Quality Act (CEQA) under 14 California Code of Regulations Section 15262 as it involves only planning or feasibility studies for possible future actions which have not yet been approved and the Public Works Plan will consider environmental factors. Until adopted, the Public Works Plan does not have a legally binding effect on any later activities. Additionally, with respect to the public access easements which originate from a condition of a coastal development permit issued by the California Coastal Commission, these properties were formerly analyzed for their environmental effects as public accessways at the time of the dedication of these easement property interests under the regulatory program of the Coastal Commission regarding the