This page is part of your document - DO NOT DISCARD

05 1944940

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
08/15/05 AT 08:00am

TITLE(S) : DEED

LEAD SHEET

FEE

FREE 00

D.T.T.

2pg.

CODE
20

CODE
19

CODE
9____

Assessor's Identification Number (AIN)
To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

4451-003-033

001

THIS FORM IS NOT TO BE DUPLICATED

8/15/05

EQUITY TITLE

05 1944940

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL GRANT DEED AND TAX STATEMENTS TO:

State Coastal Conservancy
1330 Broadway, Suite 1100
Oakland, CA 94612
Attention: Elena Eger, Counsel

Documentary Transfer Tax $-0-. The attached deed represents a transfer from the undersigned to the State of California on behalf of the State Coastal Conservancy. Therefore, no Documentary Transfer Tax is due pursuant to Section 11922 of the California Revenue and Taxation Code which states, "[a]ny deed, instrument or writing to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this part when the exempt agency is acquiring title."

APN # : 4451-003-033

GRANT DEED

THIS **GRANT DEED** (**"Deed"**) is dated as of March 2, 2005 and by Eli Broad, Trustee of the Eli Broad Revocable Trust dated 8/21/98, as to an undivided 1/3 interest, Nancy M. Daly, Trustee of the Nancy M. Daly Living Trust dated 5/23/97, as to an undivided 1/3 interest, and Matthew G. Krane and Samuel N. Fischer, Trustees of the Gamma Family Trust dated 10/30/97, as to an undivided 1/3 interest (collectively, the "**Grantors**") in favor of the State of California on behalf of the State Coastal Conservancy ("**Grantee**").

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, Grantors hereby **GRANT** unto Grantee, the real property described in Exhibit A, attached hereto and incorporated herein by this reference, together with all improvements (if any) located thereon and all rights, privileges, easements and appurtenances thereto, and all right, title and interest of Grantors in, to and under adjoining streets, rights of way and easements (the "**Property**"), subject to all building codes and other applicable laws, ordinances and governmental regulations affecting the Property, all taxes and assessments affecting the Property not yet due and payable, all easements, covenants, conditions and restrictions of record as of the date Grantors acquired title to the Property, and all other matters of record as of the date Grantors acquired title to the Property, but subject to no liens or encumbrances.

[SIGNATURE PAGE FOLLOWS]

DOCUMENT TRANSFER TAX $ Ø
X COMPUTED ON FULL VALUE OF PROPERTY CONVEYED
___ OR COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE.

Signature of Declarant or Agent determining tax. Firm Name

3

IN WITNESS WHEREOF, this Deed is executed by Grantors as of the date first above written.

Eli Broad, Trustee of the Eli Broad
Revocable Trust dated 8/21/98

Nancy M. Daly, Trustee of the
Nancy M. Daly Living Trust dated 5/23/97

Mathew G. Krane, Trustee of the
Gamma Family Trust dated 10/30/97

Samuel N. Fischer, Trustee of the
Gamma Family Trust dated 10/30/97

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

On June 30, 2000, before me, Rachel Smookler, a Notary Public in and for said State, personally appeared Eli Broad, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he~~/she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

Signature Rachel Smookler (Seal)

RACHEL SMOOKLER
Commission # 1232311
Notary Public - California
Los Angeles County
My Comm. Expires Aug 15, 2003

05 1944940

8/15/05

5

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

On June 30, 2000, before me, Rachel Smookler, a Notary Public in and for said State, personally appeared Nancy M. Daly, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Rachel Smookler (Seal)

RACHEL SMOOKLER
Commission # 1232311
Notary Public - California
Los Angeles County
My Comm. Expires Aug 15, 2003

05 1944940

8/15/05

6

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

On July 5th, 2000, before me, Kathy Hoffman, a Notary Public in and for said State, personally appeared Matthew Krane, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Kathy Hoffman (Seal)

KATHY HOFFMAN
Commission # 1225018
Notary Public - California
Los Angeles County
My Comm. Expires Jun 18, 2003

05 1944940

8/15/05

7

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

On July 6, 2000, 2000, before me, Carolyn Rochelle, a Notary Public in and for said State, personally appeared Samuel N. Fischer, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Carolyn Rochelle (Seal)

CAROLYN ROCHELLE
Commission # 1259235
Notary Public - California
Los Angeles County
My Comm. Expires Apr 2, 2004

05 1944940

8/15/05

8

ACCEPTANCE OF GRANT DEED

This is to certify that the interest in real property conveyed by the deed dated March 2, 2005 ~~2000~~ from Eli Broad, Trustee of the Eli Broad Revocable Trust dated 8/21/98, as to an undivided 1/3 interest, Nancy M. Daly, Trustee of the Nancy M. Daly Living Trust dated 5/23/97, as to an undivided 1/3 interest, and Matthew G. Krane and Samuel N. Fischer, Trustees of the Gamma Family Trust dated 10/30/97, as to an undivided 1/3 interest to the State of California on behalf of the State Coastal Conservancy, a governmental agency is hereby accepted by resolution of the State Coastal Conservancy on _____, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: 4/18/05

By: Samuel Schuchat
Name: Samuel Schuchat

(See attached certificate)

05 1944940

8/15/05

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Alameda } ss.

On April 18th, 2005 (Date), before me, HONG LE TRUONG, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared SAMUEL SCHUCHAT (Name(s) of Signer(s)),

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

HONG LE TRUONG
COMM. #1553761
Notary Public - California
Alameda County
My Comm. Expires Feb. 19, 2009
NRO1 NRO1

WITNESS my hand and official seal.

Hong le Truong
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document: Grant Deed

Document Date: 3/02/2005 Number of Pages: 6

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer
Signer's Name: Samuel Schuchat

☐ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☒ Other: State of California Agency

Signer Is Representing: State Coastal Conservancy, Executive Officer

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

© 1999 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.nationalnotary.org Prod. No. 5907 Reorder: Call Toll-Free 1-800-876-6827

05 1944940

8/15/05

13

Exhibit A

THE LAND REFERRED TO IN THIS POLICY IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT PORTION OF RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY OF MALIBU, AS CONFIRMED TO MATTHEW KELLER, BY PATENT RECORDED IN BOOK 1 PAGE 407, ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT ENGINEERS CENTER LINE STATION 1069 PLUS 63.96 FEET OF THAT CERTAIN CENTER LINE COURSE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN DEED FROM T. R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS; SAID 80 FOOT STRIP ALSO BEING SHOWN AS PACIFIC COAST HIGHWAY ON COUNTY SURVEYOR'S MAP NO. 8658, AS FILED IN THE OFFICE OF THE COUNTY ENGINEER OF SAID COUNTY; THENCE NORTH 77° 25' 30" EAST, 50.02 FEET; THENCE AT RIGHT ANGLES, 40.10 FEET MORE OR LESS TO THE SOUTH LINE OF SAID 80 FOOT STRIP; THENCE SOUTH 13° 18' 45" EAST 133.00 FEET MORE OR LESS TO THE MEAN HIGH TIDE LINE; THENCE WESTERLY ALONG SAID MEAN HIGH TIDE LINE TO THE INTERSECTION OF THAT CERTAIN COURSE SHOWN AS SOUTH 12° 24' 34" EAST AS SHOWN ON SAID COUNTY SURVEYOR'S MAP NO. 8658 PASSING THROUGH THE POINT OF BEGINNING; THENCE NORTH 12° 24' 34" WEST IN A DIRECT LINE TO THE POINT OF BEGINNING.

INCLUDING THAT PORTION LYING 30.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM SAID COURSE SHOWN AS SOUTH 12° 24' 34" EAST ON SAID COUNTY SURVEYOR'S MAP NO. 8658.

EXCEPT THAT PORTION LYING WITHIN SAID PACIFIC COAST HIGHWAY.

EXCEPT ALL WATER, MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER AND THAT MAY BE PRODUCED FROM SAID LANDS, AND EVERY PART THEREOF, PROVIDED, HOWEVER, THAT THIS EXCEPTION SHALL NEITHER RESERVE NOR SHALL IT BE CONSTRUCTED AS RESERVING UNTO GRANTOR THE RIGHT TO GO UPON THE SURFACE OF SAID LANDS TO EXTRACT SAID SUBSTANCES, BUT THERE IS EXPRESSLY RESERVED UNTO GRANTOR, ITS SUCCESSORS AND ASSIGNS, THE SOLE AND EXCLUSIVE RIGHT TO DRILL INTO, UNDER, ACROSS AND THROUGH SAID LANDS AT DEPTHS BELOW 500 FEET FROM THE SURFACE OF SAID LANDS FOR THE PURPOSE OF TAKING, RECOVERING AND REMOVING SAID SUBSTANCES IN, ON, WITHIN, UNDER AND THAT MAY BE PRODUCED FROM SAID LANDS, AND EVERY PART THEREOF, AND IN, ON, WITHIN, UNDER AND THAT MAY BE PRODUCED FROM ANY OTHER LAND IN THE AREA, AS RESERVED IN A DEED RECORDED DECEMBER 9, 1977 AS INSTRUMENT NO. 77-1359913.

ALSO EXCEPT THEREFROM THOSE PORTIONS OF SAID LAND, ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL, OTHER MINERAL AND HYDROCARBON SUBSTANCES AND WATER LYING IN, ON, WITHIN, UNDER AND THAT MAY BE PRODUCED OR EXTRACTED FROM SAID PROPERTY AND EVERY PART THEREOF; PROVIDED, HOWEVER, THAT THIS EXCEPTION SHALL NEITHER RESERVE THE RIGHT TO GO UPON THE SURFACE OR WITHIN THE UPPER 500 FEET MEASURED VERTICALLY DOWNWARD FROM THE SURFACE OF SAID PROPERTY, BUT THERE IS EXPRESS RIGHT TO DRILL INTO, UNDER, ACROSS AND THROUGH SAID PROPERTY AT DEPTHS BELOW 500 FEET FROM THE SURFACE FOR THE PURPOSE OF TAKING, RECOVERING AND REMOVING SAID SUBSTANCES IN, ON, WITHIN, UNDER AND THAT MAY BE PRODUCED OR EXTRACTED FROM SAID PROPERTY, EVERY PART THEREOF AND ANY OTHER PROPERTY IN THE AREA, AS RESERVED IN DEED RECORDED DECEMBER 21, 1989 AS INSTRUMENT NO. 89-2051124.

This page is part of your document - DO NOT DISCARD

05 1944941

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
08/15/05 AT 08:00am

TITLE(S) :

LEAD SHEET

FEE

FEE $ 100 JJ
DAF $ 20
C-20 32

D.T.T.

CODE
20

CODE
19

CODE
9____

Assessor's Identification Number (AIN)
To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

THIS FORM IS NOT TO BE DUPLICATED

2

RECORDING REQUESTED BY:

05 1944941

WHEN RECORDED MAIL TO:

California Coastal Commission
89 S. California St, Ste 200
Ventura, CA 93001

TITLE

Deed Restriction

8/15/05

3

EQUITY TITLE

05 1944941

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001-2801

Attn: Legal Division

APN: 4451-003-033

DEED RESTRICTION

I. WHEREAS, Eli Broad, Trustee of the Broad Revocable Trust dated 8/21/98, (which trust is incorrectly titled (1) "Eli Broad Revocable Trust dated 8/21/98," in that certain Grant Deed recorded on March 28, 2000 as Instrument Number 00 0457208; and (2) "Broad Revocable Trust dated 8/12/98," in that certain Grant Deed recorded on March 16, 1999 as Instrument Number 99 0429500, both of the Official Records of Los Angeles County), ("Broad") is the record owner of the real property located at 21958 Pacific Coast Highway, Malibu, CA ("Broad Property"); and

II. WHEREAS, Nancy M. Daly, Trustee of the Nancy M. Daly Living Trust dated 5/23/97 ("Daly") is the record owner of the real property located at 22338 Pacific Coast Highway, Malibu, CA ("Daly Property"); and

III. WHEREAS, Haim Saban and Cheryl Lynn Saban, and their successors, as Trustees of the Alpha Family Trust dated May 5, 1997, as amended ("Alpha") are the record owners of the real property located at 22368 Pacific Coast Highway, Malibu, CA ("Alpha Property"); and

IV. WHEREAS, Broad, Daly and Alpha shall hereinafter be collectively referred to as the "Owners"; and

V. WHEREAS, the Broad Property, Daly Property and Alpha Property shall be hereinafter collectively referred to as the "Owners' Properties"; and

VI. WHEREAS, Broad, Daly, and Samuel N. Fischer, Trustee of the Gamma Family Trust dated 10/18/97 (which trust is incorrectly dated "10/30/97" in that certain Grant Deed recorded on

March 28, 2000 as Instrument Number 00 0457208 in the Official Records of Los Angeles County), ("Gamma"), hereinafter collectively referred to as the "Restricted Property Owners" are the record owners of the real property located at 21704 Pacific Coast Highway, Malibu, CA, ("Restricted Property"), more particularly described in **EXHIBIT A** attached hereto and incorporated herein by reference"; and

VII. WHEREAS, the California Coastal Commission, (the "Commission") is acting on behalf of the People of the State of California; and

VIII. WHEREAS, the Owners' Properties and the Restricted Property are located within the coastal zone as defined in § 30103 of Division 20 of the California Public Resources Code, hereinafter referred to as the "California Coastal Act of 1976," the "Act"); and

IX. WHEREAS, pursuant to the Act, the Owners and Restricted Property Owners applied to the Commission for coastal development permits ("CDP"s) and CDP Amendments, respectively, on the Owners' Properties; and

X. WHEREAS, CDP Amendment 4-99-185-A1 (the "Broad Property Amended Permit"), CDP Amendment 4-99-266-A1 (the "Daly Property Amended Permit,") and CDP Amendment 4-99-146-A2 (the "Alpha Property Amended Permit"), hereinafter collectively referred to as the "Amended Permits," were granted on April 12, 2000, by the Commission in accordance with the provisions of the Revised Findings, attached hereto as **EXHIBIT B** and herein incorporated by reference; and

XI. WHEREAS, the Amended Permits are subject to the terms and conditions including, but not limited to, the following condition:

8. (CDPs 4-99-146 and 4-99-185 as amended by CDP Amendments 4-99-146-A2 and 4-99-185-A1, respectively) and
9. (CDP 4-99-266 as amended by CDP Amendment 4-99-266-A1)

Public View Corridor Mitigation and Public Access Program

. . . 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:

(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.

. . .

XII. WHEREAS, the Commission found that but for the imposition of the above condition, the proposed development on the Owners' Properties could not be found consistent with the provisions of the Act and that the Permits could therefore not have been granted; and

XIII. WHEREAS, the Restricted Property Owners have elected to comply with the conditions imposed by the Permits and execute this Deed Restriction so as to enable the Owners to undertake the developments on the Owners' Properties authorized by the Permits.

NOW THEREFORE, in consideration of the granting of the Permits to Owners by the Commission, the Restricted Property Owners hereby irrevocably covenant with the Commission that there be and hereby is created the following restrictions on the use and enjoyment of said Restricted Property, to be attached to and become a part of the deed to the Restricted Property.

7

1. **COVENANT, CONDITION, AND RESTRICTION**. The Restricted Property Owners, for themselves and for their heirs, assigns, and successors in interest, covenant and agree that:

a. The Restricted Property, 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.

b. Any future development or improvements on the Restricted Property will require a new coastal development permit and shall be limited to those improvements necessary to provide adequate public recreation and access.

c. 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 Restricted Property.

d. The Restricted Property shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.

e. No structures, vegetation, or obstacles that result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted on the Restricted Property.

f. Vegetation on the Restricted Property site shall be limited to low-lying vegetation of no more than 2 feet in height.

g. Fencing on the Restricted Property shall:

i. be limited to visually permeable designs and material (e.g. wrought iron or non-tinted glass materials); and

ii. be limited to no more than 6 feet in height.

iii. utilize bars, beams, or other non-visually permeable designs and materials only if said designs and materials are no more than 1 inch in thickness/width and placed no less than 12 inches in distance apart.

iv. utilize alternative designs only if the Executive Director of the Commission determines that such designs are consistent with the intent of special condition 8 of the Broad Property Amended Permit and Alpha Property Amended Permit, and special condition 9 of the Daly Property Amended Permit, and serve to minimize adverse effects on public views.

h. No signs shall be posted on the Restricted Property that:

05 1944941

i. explicitly or implicitly indicate that any portion of the Restricted Property is private, or

ii. contain similar messages that attempt to prohibit public use of the Restricted Property..

iii. read "Private Beach" or "Private Property."

i. The content of all signage placed on the Restricted Property shall be limited to that described in the revised project plans approved by the Executive Director of the Commission pursuant to special condition 8 of the Broad Property Amended Permit and the Alpha Property Amended Permit and special condition 9 of the Daly Property Amended Permit, on file and available for inspection at the Commission's Ventura district office located at 89 S. California Street, Suite 200, Ventura, CA 93001-2801.

j. New signs limiting the time that the Restricted Property is available for public use (such as limiting public access on the Restricted Property to daylight hours) may be approved subject to the issuance of a coastal development permit, if the Commission finds that such signs are appropriate to regulate public access on the Restricted Property.

2. **DURATION**. This Deed Restriction shall restrict the Restricted Property for public view and public access purposes in perpetuity.

3. **TAXES AND ASSESSMENTS**. It is intended that this Deed Restriction is irrevocable and shall constitute an enforceable restriction within the meaning of a) Article XIII, § 8, of the California Constitution; and b) § 402.1 of the California Revenue and Taxation Code or successor statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to the Restricted Property within the meaning of § 3712(d) of the California Revenue and Taxation Code, or successor statute, which survives a sale of tax-deeded property.

4. **RIGHT OF ENTRY**. The Commission or its agent may enter onto the Restricted Property at times reasonably acceptable to Restricted Property Owners to ascertain whether the use restrictions set forth above are being observed.

5. **REMEDIES**. Any act, conveyance, contract, or authorization by the Restricted Property Owners whether written or oral which uses, or would cause to be used, or would permit use of the Restricted Property contrary to the terms of this Deed Restriction will be deemed a violation

9

and a breach hereof. The Commission and the Restricted Property Owners may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Deed Restriction. In the event of a breach, any forbearance on the part of either party to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

6. SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any reason becomes unenforceable, no other provision shall be affected or impaired.

Dated: 3-1, 2005

Eli Broad, Trustee of the Broad Revocable Trust dated 8/21/98

Nancy M. Daly, Trustee of the Nancy M. Daly Living Trust dated 5/23/97

Samuel N. Fischer, Trustee of the Gamma Family Trust dated 10/18/97

** NOTARY ACKNOWLEDGMENTS ON THE NEXT PAGE **

10

STATE OF CALIFORNIA

COUNTY OF Los Angeles

On March 1, 2005, before me, Rachel Smookler, a Notary Public personally appeared Eli Broad, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Rachel Smookler

RACHEL SMOOKLER
Commission # 1431066
Notary Public - California
Los Angeles County
My Comm. Expires Aug 15, 2007

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On MARCH 14TH, 2005 before me, JAN Z. OLEKSYSZYN, a Notary Public personally appeared NANCY M. DALY, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jan Z. Oleksyszyn

JAN Z. OLEKSYSZYN
Commission # 1406641
Notary Public — California
Los Angeles County
My Comm. Expires Mar 22, 2007

This is to certify that the deed restriction set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. 4-99-185-A1; 4-99-266-A1; and 4-99-146-A2 on April 12, 2000, and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: Feb. 10, 2005

CALIFORNIA COASTAL COMMISSION

John Bowers

~~JOHN BO~~WERS, Staff Counsel

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On 02.10.05, before me, Jeff G. Staben, a Notary Public, personally appeared JOHN BOWERS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jeff G. Staben

JEFF G. STABEN
Comm. # 1449647
NOTARY PUBLIC - CALIFORNIA
City and County of San Francisco
My Comm. Expires Dec. 3, 2007

JEFF G. STABEN
Comm. # 1449647
NOTARY PUBLIC - CALIFORNIA
City and County of San Francisco
My Comm. Expires Dec. 3, 2007

05 1944941

8/15/05

12

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of LOS ANGELES } ss.

On MARCH 8, 2005 (Date) before me, MEGAN H. BYRNE (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),
personally appeared SAMUEL N. FISCHER (Name(s) of Signer(s)),

☑ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

MEGAN H. BYRNE
Commission # 1444320
Notary Public - California
Los Angeles County
My Comm. Expires Oct 7, 2007

WITNESS my hand and official seal.

Megan H. Byrne
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

© 1999 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.nationalnotary.org Prod. No. 5907 Reorder: Call Toll-Free 1-800-876-6827

05 1944941

13

EXHIBIT A

DESCRIPTION OF RESTRICTED PROPERTY

Exhibit A

THE LAND REFERRED TO IN THIS POLICY IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT PORTION OF RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY OF MALIBU, AS CONFIRMED TO MATTHEW KELLER, BY PATENT RECORDED IN BOOK 1 PAGE 407, ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT ENGINEERS CENTER LINE STATION 1069 PLUS 63.96 FEET OF THAT CERTAIN CENTER LINE COURSE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN DEED FROM T. R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS; SAID 80 FOOT STRIP ALSO BEING SHOWN AS PACIFIC COAST HIGHWAY ON COUNTY SURVEYOR'S MAP NO. 8658, AS FILED IN THE OFFICE OF THE COUNTY ENGINEER OF SAID COUNTY; THENCE NORTH 77° 25' 30" EAST, 50.02 FEET; THENCE AT RIGHT ANGLES, 40.10 FEET MORE OR LESS TO THE SOUTH LINE OF SAID 80 FOOT STRIP; THENCE SOUTH 13° 18' 45" EAST 133.00 FEET MORE OR LESS TO THE MEAN HIGH TIDE LINE; THENCE WESTERLY ALONG SAID MEAN HIGH TIDE LINE TO THE INTERSECTION OF THAT CERTAIN COURSE SHOWN AS SOUTH 12° 24' 34" EAST AS SHOWN ON SAID COUNTY SURVEYOR'S MAP NO. 8658 PASSING THROUGH THE POINT OF BEGINNING; THENCE NORTH 12° 24' 34" WEST IN A DIRECT LINE TO THE POINT OF BEGINNING.

INCLUDING THAT PORTION LYING 30.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM SAID COURSE SHOWN AS SOUTH 12° 24' 34" EAST ON SAID COUNTY SURVEYOR'S MAP NO. 8658.

EXCEPT THAT PORTION LYING WITHIN SAID PACIFIC COAST HIGHWAY.

EXCEPT ALL WATER, MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER AND THAT MAY BE PRODUCED FROM SAID LANDS, AND EVERY PART THEREOF, PROVIDED, HOWEVER, THAT THIS EXCEPTION SHALL NEITHER RESERVE NOR SHALL IT BE CONSTRUCTED AS RESERVING UNTO GRANTOR THE RIGHT TO GO UPON THE SURFACE OF SAID LANDS TO EXTRACT SAID SUBSTANCES, BUT THERE IS EXPRESSLY RESERVED UNTO GRANTOR, ITS SUCCESSORS AND ASSIGNS, THE SOLE AND EXCLUSIVE RIGHT TO DRILL INTO, UNDER, ACROSS AND THROUGH SAID LANDS AT DEPTHS BELOW 500 FEET FROM THE SURFACE OF SAID LANDS FOR THE PURPOSE OF TAKING, RECOVERING AND REMOVING SAID SUBSTANCES IN, ON, WITHIN, UNDER AND THAT MAY BE PRODUCED FROM SAID LANDS, AND EVERY PART THEREOF, AND IN, ON, WITHIN, UNDER AND THAT MAY BE PRODUCED FROM ANY OTHER LAND IN THE AREA, AS RESERVED IN A DEED RECORDED DECEMBER 9, 1977 AS INSTRUMENT NO. 77-1359913.

ALSO EXCEPT THEREFROM THOSE PORTIONS OF SAID LAND, ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL, OTHER MINERAL AND HYDROCARBON SUBSTANCES AND WATER LYING IN, ON, WITHIN, UNDER AND THAT MAY BE PRODUCED OR EXTRACTED FROM SAID PROPERTY AND EVERY PART THEREOF; PROVIDED, HOWEVER, THAT THIS EXCEPTION SHALL NEITHER RESERVE THE RIGHT TO GO UPON THE SURFACE OR WITHIN THE UPPER 500 FEET MEASURED VERTICALLY DOWNWARD FROM THE SURFACE OF SAID PROPERTY, BUT THERE IS EXPRESS RIGHT TO DRILL INTO, UNDER, ACROSS AND THROUGH SAID PROPERTY AT DEPTHS BELOW 500 FEET FROM THE SURFACE FOR THE PURPOSE OF TAKING, RECOVERING AND REMOVING SAID SUBSTANCES IN, ON, WITHIN, UNDER AND THAT MAY BE PRODUCED OR EXTRACTED FROM SAID PROPERTY, EVERY PART THEREOF AND ANY OTHER PROPERTY IN THE AREA, AS RESERVED IN DEED RECORDED DECEMBER 21, 1989 AS INSTRUMENT NO. 89-2051124.

15

Exhibits 1 through 3 of the Staff Recommendation and Findings (Exhibit B) for CDP Nos. 4-99-146-A2, 4-99-185-A1 and 4-99-266-A1 are on file and available for inspection at the Commission's South Central Coast office, 89 South California Street, Suite 200, Ventura, California, 93001-2801.

Content of Exhibits

Exhibit 1	Area Map
Exhibit 2	Location Map
Exhibit 3	Mitigation Site Parcel Map

16

EXHIBIT B

STAFF RECOMMENDATION AND FINDING

8/15/05

Tu 25 (d,e,& f)

11

STATE OF CALIFORNIA – THE RESOURCES AGENCY

GRAY DAVIS, Gov

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

Filed:	3/28/00
49th Day:	N/A
180th Day:	N/A
Staff:	S. Hudson
Staff Report:	5/25/00
Hearing Date:	6/13/00
Commission Action:	

STAFF REPORT: PERMIT AMENDMENT
Revised Findings

APPLICATION NOs.: 4-99-146-A2 (Gamma), 4-99-185-A1 (Broad), and 4-99-266-A1 (Daly)

APPLICANTS: Gamma Family Trust; Eli Broad, Trustee of the Broad Revocable Trust; and Nancy M. Daly, Trustee of the Nancy M. Daly Living Trust

PROJECT LOCATION: 22368 (Gamma), 21958 (Broad), 22338 (Daly), and 21704 (Mitigation Site) Pacific Coast Highway, Malibu (Los Angeles County)

COMMISSION DECISION: Approved with Three Special Conditions

DATE OF COMMISSION ACTION: April 12, 2000 in Long Beach

COMMISSIONERS ON PREVAILING SIDE: Commissioners Daniels, Desser, Dettloff, Estolano, Hart, Kruer, McClain-Hill, Nava, Potter, Reilly, Wooley, and Wan.

DESCRIPTION OF PROJECTS PREVIOUSLY APPROVED: Demolition of six existing single family residences and construction of three new single family residences. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of each lot as measured from the dripline of the proposed deck to the mean high tide line and the construction of a 6 ft. wide public sidewalk between Pacific Coast Highway and the proposed development on each project site.

DESCRIPTION OF AMENDMENTS: Modify Special Conditions 1, 2, and 8 of Coastal Permits 4-99-146 and 4-99-185 and Special Conditions 1, 2, and 9 of Coastal Permit 4-99-266 to allow for offsite mitigation of the required public view corridor on each subject site by provision of public views and public access to the ocean from Pacific Coast Highway over the entire parcel at 21704 Pacific Coast Highway (APN: 4451-003-033). In addition, the amendments also include modifications to the previously approved project plans to allow for new development within the previously identified public view corridors on each project site.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits 4-99-146 (Gamma), 4-99-185 (Broad), and 4-99-266 (Daly).

05 1944941

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission **adopt** the following revised findings in support of the Commission's decision on April 12, 2000, to **approve** the proposed project subject to three (3) special conditions regarding revised plans, landscaping plan, and a public view corridor mitigation and public access program. The Commission found that the proposed project is consistent with the applicable Chapter Three policies of the Coastal Act.

Because additional language was added to Special Condition Three (3) during the public hearing, revised findings are necessary to reflect the action taken by the Commission. Staff recommends, therefore, that the Commission adopt the following resolution and revised findings in support of its action to approve this permit with conditions. Comments from the public concerning the findings will be limited to discussion of whether the findings reflect the action of the Commission.

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

1) ***The Executive Director determines that the proposed amendment is a material change,***

2) ***Objection is made to the Executive Director's determination of immateriality, or***

3) ***The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.***

In this case, the proposed amendment will affect a permit condition required for the purpose of protecting a coastal resource. If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

I. STAFF RECOMMENDATION

MOTION: ***I move that the Commission adopt the revised findings in support of the Commission's action on April 12, 2000, concerning approval of Coastal Development Permit Amendments 4-99-146-A2, 4-99-185-A1, and 4-99-266-A1.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the April 12, 2000, hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for approval of Coastal Development Permit Amendments 4-99-146-A2, 4-99-185-A1, and 4-99-266-A1 on the ground that the findings support the Commission's decision made on April 12, 2000, and accurately reflect the reasons for it.

II. Special Conditions

***NOTE:** All standard and special conditions attached to the previously approved permits remain in effect to the extent not otherwise modified herein.*

1. Revised Plans

Special Condition One (1) of Coastal Development Permit 4-99-185 (Broad) and Special Condition One (1) Subpart (b) of Coastal Development Permits 4-99-146 and 4-99-266 regarding the submittal of revised plans to reflect development restrictions within the previously identified public view corridor are modified as follows:

> ***PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, AS AMENDED, the applicant shall submit, for the review and approval of the Executive Director, revised project plans for any new development proposed within the previously identified public view corridor. No new grading, retaining walls, or seawalls shall be allowed (other than the construction of return walls necessary to protect adjacent properties).***

2. Landscaping Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, AS AMENDED, the applicants shall submit, for the review and approval of the Executive Director, revised landscaping plans consistent with the following modifications:

Special Condition Two (2) Subparts (a)-(c) of Coastal Permits 4-99-146, 4-99-185, and 4-99-261 are modified as follows:

(a) The portion of the project site that is not sandy beach (or subject to wave action) located within the portion of the site between the proposed residence and Pacific Coast Highway shall be planted within (60) days of receipt of the certificate of occupancy for the residence. Any portion of the site that is subject to wave action shall be maintained as sandy beach area. To minimize the need for irrigation, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Invasive, non-indigenous plan species which tend to supplant native species shall not be used.

(b) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.

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:

(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.

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.

III. Findings and Declarations

A. Project Description and Background

The applicants are requesting to modify Special Conditions 1, 2, and 8 of Coastal Permits 4-99-146 and 4-99-185 and Special Conditions 1, 2, and 9 of Coastal Permit 4-99-266 to allow for offsite mitigation of the required public view corridor on each subject site by provision of public views and public access to the ocean from Pacific Coast Highway over the entire parcel at 21704 Pacific Coast Highway (APN: 4451-003-033). In addition, the amendments also include modifications to the previously approved project plans to allow for new development within the previously identified public view corridors on each project site.

The three project sites are beachfront lots located on the seaward side of Pacific Coast Highway in the Carbon Beach area in Malibu (Exhibit 1). The proposed mitigation site is a beachfront lot located on the seaward side of Pacific Coast Highway in the La Costa Beach area of Malibu immediately east of Carbon Beach (Exhibit 1). Both Carbon Beach and La Costa Beach are characterized as built-out beachfront areas of Malibu consisting of residential development.

Coastal Development Permits (CDPs) 4-99-146 (Gamma) [*Note: Gamma Family Trust was previously approved under the name Saban/Alpha Family Trust*], 4-99-185 (Broad), and 4-99-266 (Daly) were previously approved by the Commission with special conditions requiring the provision of a public view corridor on each project site. The purpose of the required public view corridors was to provide unobstructed public views of the beach and ocean from Pacific Coast Highway over a portion each project site to mitigate the adverse effects to public views that result from new development along the coast. In addition, Coastal Development Permits 4-99-185 and 4-99-266 specifically provided that the applicants may obtain an amendment to the coastal permit to delete the required public view corridor on site if the applicants provided for offsite mitigation consisting of both a public view corridor and a public vertical accessway across another parcel in the vicinity of Carbon Beach.

The proposed amendments involve the deletion of three separate public view corridors (with a combined width of 80 ft.) previously required by the Commission on portions of three separate project sites. The applicants propose to mitigate the loss of public views resulting from the deletion of the public view corridors on each project site by providing for the protection of public views and public access across a separate 80 ft. wide undeveloped beachfront parcel. The proposed mitigation site will be deed restricted to provide for public views and public access to the ocean from Pacific Coast Highway across the entire 80 ft. wide parcel and ownership of the parcel will be transferred to the California Coastal Conservancy or other appropriate public agency. The proposed offsite mitigation parcel is the same width (80 ft.) as the combined width of the three separate public view corridors previously required by the Commission [CDP 4-99-146 (Gamma) provided for a 24 ft. wide view corridor; CDP 4-99-185 (Broad) provided for a 20 ft. wide view corridor; and CDP 4-99-266 (Daly) provided for a 36 ft. wide view corridor)].

B. Visual Resources and Public Access

The Coastal Act requires that new development be sited and designed in order to protect the visual qualities of coastal areas. Section **30251** of the Coastal Act states that:

> ***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.***

In addition, the Coastal Act mandates the provision of maximum public access and recreational opportunities along the coast. The Coastal Act contains several policies which address the issues of public access and recreation along the coast. Coastal Act Section **30210** states that:

> ***In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.***

Coastal Act Section **30211** states:

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

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

> ***(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.***
>
> ***(2) adequate access exists nearby, or,***
>
> ***(3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.***

Section **30220** of the Coastal Act states that:

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

Coastal Act Section 30251 requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. In addition, Coastal Act sections 30210 and 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. Likewise, section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches.

Further, to assist in the determination of whether a project is consistent with Section 30251 of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the previously certified Los Angeles County Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. The LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. For instance, in concert with Section 30251 of the Coastal Act, Policy 138 of the LUP provides that "buildings located on the ocean side of and fronting Pacific Coast Highway shall occupy no more than 80% of the lineal frontage of the site." Policy 141 of the LUP provides that "fencing or walls to be erected on the property shall be designed and constructed to allow for view retention from scenic roadways."

1. **Adverse Effects to Visual Resources**

The original three project sites are located on Carbon Beach, a built-out area of Malibu primarily consisting of residential development. The Commission notes that the visual quality of the Carbon Beach area in relation to public views from Pacific Coast Highway has been significantly degraded from past residential development. Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast Highway and the ocean. Specifically, the Commission notes that when residential structures are located immediately adjacent to each other, or when large individual residential structures are constructed across several contiguous lots, such development creates a wall-like effect when viewed from Pacific Coast Highway. This type of development limits the public's ability to view the coast or ocean to only those few parcels which have not yet been developed. Such development, when viewed on a regional basis, results in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

Therefore, in past permit actions, in order to protect public views of the ocean from public viewing areas and to enhance visual quality along the coast, the Commission has required that new residential development, such as the proposed projects, be

designed consistent with the provision of a public view corridor of no less than 20% of the width of the lineal frontage of the subject site to provide for views of the beach and ocean from Pacific Coast Highway [Montanaro (4-99-154), and Ioki (4-99-153 and 155)]. In this case, the three underlying permit applications, Coastal Development Permits (CDPs) 4-99-146 (Gamma), 4-99-185 (Broad), were previously approved by the Commission with special conditions requiring the provision of a public view corridor on each project site. In addition, CDP Application 4-99-266 (Daly) is scheduled to be heard at the Commission's April 2000 hearing in Long Beach (staff is recommending approval of this related item with the same special condition regarding the provision of a public view corridor on the project site). The intent of the public view corridors required by the Commission was to provide unobstructed public views of the beach and ocean from Pacific Coast Highway over a portion of each site to mitigate the adverse effects to public views that result from new development along the coast. The proposed amendment is intended to provide for offsite mitigation of the previously required public view corridors on the three original subject sites.

2. **Offsite Mitigation**

The proposed amendment involves the deletion of three separate public view corridors (with a combined width of 80 ft.) required by the Commission on portions of three separate project sites. The applicants propose to mitigate the loss of public views resulting from the deletion of the public view corridors on each project site by providing for the protection of public views and public access across a separate 80 ft. wide undeveloped beachfront parcel. The proposed mitigation site will be deed restricted to provide for public views and public access to the ocean from Pacific Coast Highway across the entire 80 ft. wide parcel and ownership of the parcel will be transferred to the California Coastal Conservancy or other appropriate public agency. The proposed offsite mitigation parcel is the same width (80 ft.) as the combined width of the three separate public view corridors previously required by the Commission [CDP 4-99-146 (Gamma) provided for a 24 ft. wide view corridor; CDP 4-99-185 (Broad) provided for a 20 ft. wide view corridor; and CDP 4-99-266 (Daly) provided for a 36 ft. wide view corridor)].

The Commission notes that Special Condition Eight (8) of Coastal Development Permit (CDP) 4-99-185 (Broad) and Special Condition Nine (9) of CDP 4-99-266 (Daly) specifically provided that as an alternative to maintaining a public view corridor on each subject site, the applicant may:

> ***Obtain an amendment to the coastal development permit to be reviewed and approved by the Commission that provides for offsite mitigation of the public view corridor condition by provision of an offsite public view corridor, of the same or greater width than the view corridor required on the subject site, and an offer to dedicate a vertical public access way in the vicinity of Carbon Beach.***

As such, the Commission notes that the proposed amendment to mitigate adverse effects to visual resources from the underlying development through the provision of both public views and public access at a separate offsite location is generally consistent with the intent of Special Conditions Eight and Nine of CDPs 4-99-185 and 4-99-266. The Commission further notes that, although CDP 4-99-146 (Gamma) did not specifically include the above referenced language as part of Special Condition Eight (which required the provision of a public view corridor on site), the proposed provision of public views and public access at an offsite location is generally consistent with the intent of Special Condition Eight of CDP 4-99-146 in regards to the protection and provision of public views along the coast and with Commission's previous actions regarding CDPs 4-99-185 and 4-99-266.

The Commission further notes that although the proposed amendment will not serve to protect public views of the ocean along Carbon Beach, this amendment will provide for the protection of public views over a parcel of land equal in size to the combined width to the separate public view corridors. In addition, this amendment will also provide for public vertical access from Pacific Coast Highway to the beach and ocean on the same parcel of land. CDP 4-99-185 (and CDP 4-99-266 as recommended by Staff to be approved at the April 2000 hearing) specifically allowed for the provision of offsite mitigation of the required public view corridor through the provision of both public views and public access on a separate mitigation parcel to be located within the vicinity of the original subject site. As such, the Commission notes that the proposed amendment is consistent with the intent of the conditions of the underlying permits to provide for public views along the coast.

In addition, the Commission notes that the proposed mitigation site constitutes a unique opportunity to provide a broad uninterrupted view corridor, in addition to public access, in an area of Malibu where public views and public access to the beach have been significantly limited by private residential development. In regards to concerns that the provision of public access and views at the proposed mitigation site would result in potential traffic and pedestrian hazards, the Commission notes that, due to the nature of Pacific Coast Highway as a relatively hazardous roadway, no beachfront area in Malibu along Pacific Coast Highway is without the potential for hazard. In the case of the proposed mitigation site, the Commission notes that the site is located along a relatively straight section of the highway with adequate sight distance and that there is adequate area for parking along the beachfront side of the street. In addition, a stop light with a pedestrian crossing is located a few hundred feet to the west of the site. The Commission further notes that the subject site is typical for beachfront lots along Pacific Coast Highway and that use of the mitigation site for public access and viewshed presents no greater hazard to traffic and pedestrians than the use of any other public vertical accessways which are open and available for public use which are located along Pacific Coast Highway in the Malibu area. Further, in regards to concerns that the coastal waters near the proposed mitigation site are subject to hazardous currents and that, therefore, the mitigation site is not suitable for the provision of public access to the beach from the highway, the Commission notes that

the offshore currents near the subject site are substantially similar to other areas of the Malibu coastline. Therefore, the Commission finds that the availability of public access to the sandy beach at the subject site does not constitute a greater hazard than the provision of public access to the sandy beach anywhere else along the Malibu coastline.

A coastal development permit application has been previously submitted for the construction of a single family residence on the subject site. Coastal Development Permit Application 4-98-310 (Pepperdine University) was submitted in 1998 for the construction of a single family residence on the proposed mitigation site. However, no evidence regarding the location of public tide lands in relation to private land on the subject site was submitted and the application was returned for reasons of incompleteness. In the case of this application, however, the Commission notes that, regardless of what portions of the site are actually private land or public land, the proposed amendment will serve to confer ownership of the entire parcel to a public agency and ensure that the entire site would be available for public views and access.

A minor rocky promontory is located along the coast between Carbon Beach and the proposed mitigation site. Due to the presence of the promontory, access to Carbon Beach from the mitigation site is limited during higher tidal conditions when the passable segment of the beach around the promontory is inundated. However, the proposed mitigation site will provide for vertical public access to La Costa Beach under all tidal conditions. Although the proposed mitigation site is located only approximately 750 ft. west (upcoast) and 0.5 miles east (downcoast) of the nearest public vertical coastal accessways that have been previously offered for dedication by the property owners, the Commission notes that these vertical accessways have not yet been accepted by any public agency and; therefore, have not been opened for public use. The Commission further notes that the nearest existing public vertical accessways to the beach that are actually open for use by the public are located approximately 1.3 miles west (upcoast) and 1.7 miles east (downcoast) of the proposed mitigation site. As such, the Commission notes that the proposed mitigation site will provide for public vertical access to the beach in an area where such access does not now exist.

The proposed amendment includes the offer to provide for public access and public views of the beach and ocean from Pacific Coast Highway across the entire 80 ft. wide mitigation parcel in order to mitigate for deletion of the three previously required public view corridors (with a combined width of 80 ft.) on the original project sites. Therefore, to ensure that adverse effects to public views on the original project sites are adequately mitigated, Special Condition Three (3) requires that, prior to issuance of the permit as amended, a deed restriction is recorded which states that the mitigation site 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.

In addition, the Commission notes that the existing chainlink/barbwire fence on the mitigation site is not consistent with the types of fencing previously allowed by the Commission within designated public view corridors (or previously allowed in the required public view corridors on the original project sites) and that the existing fence, in addition to preventing members of the public from accessing the site, will result in adverse effects to public views of the beach and ocean from Pacific Coast Highway. Therefore, in order to ensure that adverse effects to public views are eliminated, Special Condition Three (3) also requires the applicant to remove the existing chainlink/barbwire fence prior to the issuance of the coastal permit as amended. However, California Coastal Conservancy staff (as the public agency assuming ownership of the site) have indicated to Commission staff that some type of fencing with a gate on site is necessary to regulate public access. The Commission finds that it is appropriate to allow for controlled access to the site so that public use of the site may be limited to daylight hours. Therefore, to ensure that the proposed mitigation site is consistent with both the requirements of the California Coastal Conservancy and with the provision of public views and public access, Special Condition Three (3) also requires the applicant to submit, for the review and approval of the Executive Director, revised project plans for the construction/installation of a new fence, gate, and signage consistent with the requirements of Part A, Subparts (1), (2), and (3) of this condition. The revised plans shall also include the provision of signage indicating the availability of public access on the site. After the revised project plans have been approved by the Executive Director, the fence, gate, and signage shall be constructed/installed within 90 days after issuance of the permit amendments. The placement of new fencing on site shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials) which will not result in an obstruction of public views of the ocean from Pacific Coast Highway.

In addition, as discussed in detail above, the applicants are also proposing to provide for public access (in addition to the protection of public views) to the beach and ocean from Pacific Coast Highway on the mitigation site. Therefore, in order to implement the applicant's offer to provide public access on the mitigation site, Special Condition Three (3) also requires that, prior to issuance of the permit as amended, a deed restriction is recorded which provides that the mitigation site, in its entirety, shall be available for public recreation and both vertical and lateral public access to the beach and ocean on and across the entire site. However, the Commission notes that the although the proposed mitigation site is primarily undeveloped, an existing chain link/barbwire fence has been previously installed on site along Pacific Coast Highway. The Commission further notes that the existing chainlink/barbwire fence, if not removed, will eliminate the public's ability to access the beach from Pacific Coast Highway; thereby, negating the intent of this amendment to provide public access on the mitigation site. Therefore, Special Condition Three (3) requires that the existing chainlink/barbwire fence on site be removed prior to the issuance of the coastal permit as amended. However, California Coastal Conservancy staff (as the public agency assuming ownership of the site) have indicated to Commission staff that some type of fencing with a gate on site is necessary to regulate public access. The Commission finds that it is appropriate to

allow for controlled access to the site so that public use of the site may be limited to daylight hours. Therefore, to ensure that the proposed mitigation site is consistent with both the requirements of the California Coastal Conservancy and with the provision of public access and public views, Special Condition Three (3) also requires the applicant to submit, for the review and approval of the Executive Director, revised project plans for the construction/installation of a new fence, gate, and signage consistent with the requirements of Part A, Subparts (1), (2), and (3) of this condition. The revised plans shall also include the provision of signage indicating the availability of public access on the site. After the revised project plans have been approved by the Executive Director, the fence, gate, and signage shall be constructed/installed within 90 days after issuance of the permit amendments. The revised plans must also provide for 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. Further, to ensure implementation of the applicant's proposal, Special Condition Three (3) also requires that the applicant submit evidence that ownership of the proposed mitigation site has been transferred to the California Coastal Conservancy or other appropriate agency approved by the Executive Director.

Further, the Commission notes that chronic unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on public access have occurred on beachfront private properties in the Malibu area. These signs have an adverse effect on the ability of the public to access public trust lands. The Commission has determined, therefore, that to ensure that applicants, and all future landowners, clearly understand that such postings are not permitted without a separate coastal development permit, Special Condition Three (3) requires that such signs are not posted on or near the proposed project site. The Commission notes that Special Condition Three (3) will still allow the applicant to submit, for the review and approval of the Executive Director, revised project plans for the installation of new signs limiting the time that the subject site is available for public use (such as limiting public access to the site to daylight hours) consistent with the requirements of Part A, Subparts (1), (2), and (3) of this condition. After the revised project plans have been approved by the Executive Director, the signage must be installed within 90 days after issuance of the permit amendment. As such, the Commission finds that if implemented, Special Condition Three (3) will protect the public's right of access to the sandy beach on the proposed mitigation site.

In addition, in order to ensure that adverse effects to public views on the original subject site are adequately mitigated in the event of potential litigation, Special Condition Three (3) also requires that 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.

Further, the Commission notes that the proposed mitigation site was recently purchased by the applicants for approximately $1,000,000. Thus, in the event that litigation precludes the parcel from being opened to public or dedicated to the California Coastal Conservancy, the Commission finds that, in order to ensure that adverse effects resulting from the loss of the previously required public view corridors are adequately mitigated, it would be necessary for the applicants to pay at least $1,000,000 (the approximate value of the proposed mitigation parcel) to the California Coastal Conservancy for use to open or obtain other public accessways in the Malibu area. Therefore, Special Condition Three (3) also requires that 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. This provision ensures that, in the event that a court precludes opening of the proposed mitigation site at 21704 Pacific Coast Highway (APN: 4451-003-033) to the public, adverse effects to public views resulting from the underlying residential projects, as amended, will still be adequately mitigated.

The proposed amendment will also allow for the construction of structural improvements (decks and buildings supported on a caisson foundation) within those areas of the original project sites that were previously identified as public view corridors. The applicants have indicated that such improvements are intended as part of this amendment application. However, project plans adequate to show the proposed modifications have not been submitted. Staff notes that Coastal Permit Amendment Applications 4-99-185-A1 and 4-99-266-A1 did not include the submittal of any revised plans and that, although a revised site plan has been submitted as part of Coastal Permit Amendment Application 4-99-146-A2, the plan is not adequate to indicate the extent of the proposed modifications or whether such modifications will be consistent with the findings and applicable previously required conditions of the underlying permit. Therefore, to ensure that the proposed changes to the previously approved plans are consistent with all other applicable previously required conditions, Special Condition One (1) requires the applicant to submit, for the review and approval of the Executive Director, revised project plans for any new development proposed within the previously identified public view corridors. No new grading, retaining walls, or seawalls shall be allowed. In addition, the proposed amendment will also result in changes to the previously approved landscaping plans for the original project sites. Therefore, Special Condition Two (2) has been required to ensure that the applicants submit a revised landscaping plans which reflect all proposed changes to development on site.

As such, the Commission notes that the proposed amendment to provide for public views, in addition to public vertical and lateral access, to and along the beach and ocean from Pacific Coast Highway at the proposed mitigation site will provide adequate mitigation for adverse effects to public views that will result from the approved development. Therefore, for the reasons stated above, the Commission finds that the proposed amendments, as conditioned, will not lessen the intent of any of the special conditions required by Coastal Permits 4-99-146, 4-99-185, and 4-99-266 as originally required, and are consistent with Sections 30251, 30210, 30211, 30212, and 30220 of the Coastal Act.

C. Local Coastal Program

Section 30604 of the Coastal Act states that:

> ***(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200).***

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed amendment, as conditioned, will not prejudice the City of Malibu's ability to prepare a Local Coastal Program for this area of Malibu that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

D. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of 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 which the activity may have on the environment.

The Commission finds that, the proposed amendment, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. There are no feasible alternatives or mitigation measures that would substantially lessen any significant adverse effects that the activity may have on the environment. Therefore, the proposed amendment, as conditioned, is determined to be consistent with CEQA and the policies of the Coastal Act.

SMH-VNT

File: smh/material amendments/4-99-146-a2, 4-99-185-A1