

COASTAL CONSERVANCY

Staff Recommendation
November 8, 2007

MALIBU ACCESS IMPROVEMENTS/CARBON BEACH EAST

File No. 04-093-02
Project Manager: Joan Cardellino

RECOMMENDED ACTION: Authorization to disburse to Access For All the total amount in the Conservancy Coastal Trust Fund, Malibu Access Sub-Account dedicated to the Geffen easement (currently \$125,000), plus accrued interest, for operating and maintaining its public beach access easements on Carbon Beach in Malibu.

LOCATION: 22126-22132 Pacific Coast Highway, City of Malibu, Los Angeles County

PROGRAM CATEGORY: Public Access

EXHIBITS

Exhibit 1: [Project Location](#)

Exhibit 2: [Site Photo](#)

Exhibit 3: [Settlement Agreement and Mutual Release](#)

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31400-31409. of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes the disbursement to Access For All (AFA) of up to the total amount (including accrued interest) in the Conservancy Coastal Trust Fund, Malibu Access Sub-Account dedicated to the Geffen easement (currently \$125,000) for the purpose of operating and maintaining its public beach access easements located at 22126-22132 Pacific Coast Highway subject to the following conditions:

1. Prior to the disbursement of any Conservancy funds, AFA shall submit for the review and approval of the Conservancy’s Executive Officer a work program, including schedule and budget, and the names of any contractors it intends to use to complete the project.
 2. In the event Mr. Geffen transfers ownership of the property on which the easements are located, at the request of the Conservancy AFA shall utilize up to the then-remaining balance of grant funds to replace the existing gates on the vertical accessway with gates that provide visual access to the coast and that have an automatic, timed locking mechanism and any subsequently remaining grant funds shall be repaid to Mr. Geffen.”
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Staff further recommends that the Conservancy adopt the following findings:

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

1. The proposed project is consistent with the Project Selection Criteria and Guidelines last updated by the Conservancy on September 20, 2007.
 2. The proposed authorization is consistent with the purposes and objectives of Chapter 9 of Division 21 of the Public Resources Code, regarding establishing a system of public coastal access ways.
 3. Access For All is a nonprofit organization, existing under the provisions of Section 501(c)(3) of the Internal Revenue Code, whose purposes, which include the preservation and restoration of land for public access and recreation, are consistent with Division 21 of the California Public Resources Code.”
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PROJECT SUMMARY:

Staff recommends a grant of \$125,000 (plus accrued interest) to Access for All (AFA) for operating and managing the public beach access easements located on the residential property at 22126-22132 Pacific Coast Highway (PCH) in Malibu. (See Exhibit 1.) AFA holds one vertical easement and 4 lateral easements. The vertical easement extends from the sidewalk on PCH to the high tide line, and there are gates at the sidewalk entrance and at the end of a cement passageway leading to the beach. (See Exhibit 2). Both gates need to be opened at dawn and locked at dusk, and signs need to be posted on the gates indicating hours of operation and rules for beach use. These funds will be used by AFA to fabricate and maintain the needed signs, open and close the gate daily, provide weekly trash pickup, and be available as a management contact should issues arise related to the accessways.

AFA accepted the vertical and 3 lateral access easements in January 2002, but was prevented from opening the easement to public use because of a lawsuit brought by the property owner, David Geffen, in July 2002. The lawsuit was effectively resolved in April 2005 (although the formal settlement agreement wasn't signed until January 2006; see Exhibit 3). The vertical accessway (and, thus, direct access to the sandy beach covered by the lateral easements) was subsequently opened to the public on Memorial Day weekend 2005. AFA has been managing the site since that time, using funds granted by the Coastal Conservancy in December 2004 and October 2005.

The settlement funds paid by Mr. Geffen for the easement maintenance and operation have been deposited in the Conservancy's Coastal Trust Fund, in a separate, interest-bearing subaccount. On-going costs incurred by AFA to install signage and manage and monitor the easement would be paid for through this grant. Average monthly maintenance costs should be about \$1,500. Setting aside some funding for fabricating signs, the grant should pay for about 5 years of management. In addition, pursuant to the terms of the Settlement Agreement (Exhibit 3), if Mr. Geffen should transfer ownership of the property, then the Conservancy is permitted to use the then-remaining funds for replacing the existing gates with new gates that would be transparent and would provide views of the coast and which would have a timed mechanism, eliminating at

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least one aspect of daily maintenance. By way of condition on the grant of funds, the Conservancy will retain the possibility of taking this action, should the property be transferred.

Site Description: The vertical easement is 9 feet wide and approximately 200 feet long. It runs along the western property boundary. The lateral easements connect to the vertical and lie on the sandy beach.

Project History: Since the agency's inception, the Conservancy has been working to open public coastal access in Malibu. Currently the Conservancy holds 14 public access easements in Malibu, some of which are open to the public, and others are currently in development. In the absence of any local public agency willing to accept, open and manage these easements, AFA has accepted thirty-five access easements, most of which are in Malibu, including 5 verticals.

In December 2004 the Conservancy authorized a grant of \$35,000 to AFA for a variety of site planning and management tasks on coastal access easements, including the one across David Geffen's property. In spring 2005, Mr. Geffen made a settlement offer to resolve the 3-year-old lawsuit against AFA, the Coastal Commission and the Conservancy, and dismissed the action. As a result, AFA was able to open the accessway on Mr. Geffen's property in May, 2005. Since then, AFA has been managing public access on the Geffen easement with the help of Conservancy funding.

PROJECT FINANCING:

Coastal Conservancy	\$125,000 plus accrued interest
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As required by the "Settlement Agreement and Mutual Release" (Exhibit 3) entered into by the parties to the case of *Geffen et al. v. State Coastal Conservancy, et al.*, Los Angeles County Superior Court, No. BC277034, in July 2007 David Geffen provided to the Conservancy funds in the amount of \$125,000. Those funds were deposited into an interest bearing subaccount of the Coastal Trust Fund. Under the terms of the Settlement Agreement and Mutual Release, the funds may be used, as proposed here, for "the purpose of providing funds to pay for the daily opening and closing of the gates and related maintenance" of the access easements on the Geffen property. The current balance of the subaccount is \$125,000. Any balance in the subaccount will earn interest on a quarterly basis. The proposed grant is for the total of \$125,000 plus any accrued interest.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

This project is consistent with Chapter 9 of the Conservancy enabling legislation regarding the provision and development of coastal access and, in particular, with Public Resources Code Section 31400.1, which allows the Conservancy to provide grants to nonprofit organizations to operate or manage lands for public access purposes. AFA will use this grant to perform management tasks as described in the settlement agreement.

CONSISTENCY WITH CONSERVANCY'S 2007

STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 2, Objective 2C**, this project ensures that a public access easement to an otherwise nearly inaccessible beach will be maintained.

**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 September 20, 2007, 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:** Coastwalk, the Sierra Club Coastal Programs, Tuna United Neighborhood Association, in addition to many individuals, support this project.
4. **Location:** The proposed project would be located within the coastal zone of the City of Malibu.
5. **Need:** Management funds are difficult to find. The settlement agreement ensures that funds will be available for management and maintenance for the next several years.
6. **Greater-than-local interest:** Residents and visitors to the greater Los Angeles area would enjoy these Malibu shoreline easements, once they are opened for public use.

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

Shoreline Access Policy 2.70 of the City of Malibu LCP states that Offers to Dedicate public access shall be accepted with the express purpose of developing them and opening them to the public. This project is consistent with this policy, since AFA accepted the OTDs and is now preparing to develop the sites for public use.

COMPLIANCE WITH CEQA:

Providing funds for the purpose of maintaining existing facilities with no change in use is categorically exempt under Section 15301 of the California Environmental Quality Act. Upon approval, staff will file a Notice of Exemption.