

COASTAL CONSERVANCY

Staff Recommendation
December 6, 2012

MALIBU COASTAL ACCESS PUBLIC WORKS PLAN

Project No. 12-024-01

Project Managers: Joan Cardellino and Kara Kemmler

RECOMMENDED ACTION: Authorization to disburse up to \$470,000 to the Mountains Recreation and Conservation Authority to prepare a Malibu Coastal Access Public Works Plan for selected sites in the City of Malibu, Los Angeles County.

LOCATION: City of Malibu, Los Angeles County

PROGRAM CATEGORY: Public Access

EXHIBITS

- Exhibit 1: [Project Location and Site Map](#)
- Exhibit 2: [Map of Existing, Open Vertical Accessways in Malibu](#)
- Exhibit 3: [Proposed Public Works Plan Project Site Locations](#)
- Exhibit 4: Proposed Public Works Plan Site-Specific Information (Map, Current Photos and Nature of Property Interest)
- (A) [Las Tunas Beach](#): 19016 Pacific Coast Highway (“PCH”);
 - (B) [Las Tunas Beach](#): APNs: 4449-007-013, -014, -015, -016 and -017;
 - (C) [Las Flores Beach](#): 20802 PCH;
 - (D) [La Costa Beach](#): 21554 PCH;
 - (E) [La Costa Beach](#): 21664 PCH;
 - (F) [Carbon Beach](#): 22030 PCH;
 - (G) [Carbon Beach](#): 22466 PCH;
 - (H) [Malibu Cove Beach](#): 26834 Malibu Cove Colony Road;
 - (I) [Escondido Beach](#): 27348 and 27400 PCH ;
 - (J) [Escondido Beach](#): 27700 PCH;
 - (K) [Escondido Beach](#): 27910 and 27920 PCH;
 - (L) [Lechuza Beach](#): APNs 4470-021-900; 4470-028-900

through 918; 4470-001-900, 4470-024-900, 901; other easements along West and East Sea Cliff Drive and over 31736 Broad Beach Rd.

Exhibit 5: [Project Letters](#)

Exhibit 6: [Proof of Service of Mailing](#) Notice to all Malibu Property Owners City-Wide and Publication in Malibu Times Newspaper

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31111 and 31400 *et seq.* of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes disbursement of up to four hundred seventy thousand dollars (\$470,000) to the Mountains Recreation and Conservation Authority (MRCA) to prepare a Malibu Coastal Access Public Works Plan, subject to the following conditions:

1. Prior to the disbursement of funds, MRCA shall submit for the review and approval of the Conservancy’s Executive Officer a work program, including budget and schedule, for the project and any contractors to be retained.
2. To the extent appropriate, the Malibu Coastal Access Public Works Plan shall incorporate the guidelines of the Conservancy’s ‘Standards and Recommendations for Accessway Location and Development’ and shall be consistent with the requirements of all applicable federal and state laws governing barrier-free access for persons with disabilities .”

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 November 10, 2011 Project Selection Criteria and Guidelines.
 2. The proposed authorization is consistent with the purposes and objectives of Chapter 9 of Division 21 of the Public Resources Code, regarding public access.
 3. The proposed project will serve greater-than-local needs.”
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PROJECT SUMMARY:

Staff recommends disbursement of up to four hundred seventy thousand dollars (\$470,000) to the Mountains Recreation and Conservation Authority (MRCA) for the purpose of preparing a Malibu Coastal Access Public Works Plan (Public Works Plan).

In connection with its statutory mandate to promote public accessways to and along the coast, the Conservancy aids in the planning for public accessways to the Malibu beaches. Currently, in

addition to state and county beaches, there are over 30 public accessways in Malibu, many of which were created by deed restrictions or the acceptance of an offer to dedicate an easement over private property required as a condition of a California Coastal Commission coastal development permit. MRCA holds and manages most of these easement accessways; the Conservancy continues to hold only a handful of the easement accessways, along with the State Lands Commission and the County of Los Angeles.

There are two types of public accessways to and along the Malibu coast. The first type is a “lateral” accessway, that is, the accessway runs along the length of a beach, from the mean high tide mark landward. These lateral accessways generally require no improvements to be publicly usable (and, typically require no or limited management). The other type is a “vertical” accessway, which provides access to the coast from the first street landward of the ocean. In Malibu, with some limited exception (for this proposed plan, exceptions include Lechuza Beach), the first street landward of the ocean is Pacific Coast Highway. Currently, 8 of these vertical accessways are developed and in use (See Exhibit 2.) Twelve vertical accessways are undeveloped for public use due to lack of necessary public improvements and in many of these cases, the vertical accessways face some barrier to full public use (such as encroachments, lack of signage, or physical barriers).

Development of public accessways to the Malibu beaches continues to be a long, hard process. In great part, this is due to delays and impediments in the form of regulatory issues and permitting as well as landowner or homeowner association legal challenges.

The Conservancy and MRCA seek to explore the feasibility of developing, and, if determined feasible, to develop these remaining undeveloped or impeded accessways in Malibu as expeditiously as possible, in order to satisfy the objectives of the Coastal Act and the Conservancy’s statutory mandate, both of which require maximum public coastal access. In order to do so effectively, a comprehensive plan is required, covering all potential projects that might be accomplished over a reasonable period of time. The proposed Public Works Plan is intended to serve that purpose.

As with any development along the coast, each of the proposed accessway development projects under the Public Works Plan is subject to review for consistency with the policies of the Coastal Act. As a general rule, where there is an approved local coastal plan, this would usually take the form of a project-by-project review by the local government for consistency with its Coastal Commission-certified local coastal program. However, in order to promote greater efficiency for the planning of any “public works development”, the Coastal Act authorizes the Coastal Commission to comprehensively review all public works development projects proposed under a public works plan, rather than requiring piecemeal review by a local government. “Public works development” as used in the Coastal Act extends to “all publicly financed recreational facilities [and] all projects of the State Coastal Conservancy” and, thus would cover this Public Works Plan, which is both a Conservancy public works project and a publicly financed recreational facilities project of the MRCA and Conservancy. The rationale for the inclusion of all projects of the Conservancy as public works development is due to the Conservancy’s statewide mandate to provide maximum public coastal access.

Preparation of the Public Works Plan also enables the Conservancy and MRCA to achieve efficiency in the permitting phase. Absent a comprehensive plan, a coastal development permit is required for each individual access project, including individual environmental documentation, a lengthy and expensive process. Under the Public Works Plan one programmatic environmental document will be prepared, and once the Public Works Plan and the environmental documentation receive Coastal Commission approval, the subsequent review and approval of the individual projects is streamlined.

At the same time as streamlining the process, using the Public Works Plan approach preserves full opportunity for local input. Where the Coastal Commission has certified a local government's local coastal program, which is the case with the City of Malibu program, the Commission reviews the public works plan for consistency with that certified program, in full consultation with the local government.

In order to determine consistency with the policies of Chapter 3 of the Coastal Act regarding coastal resources planning and management, all public works plans must contain sufficient information regarding the kind, size, intensity and location of development activity that the agency proposing the plan intends to undertake. Those information requirements include:

- Specific type of activity or activities proposed to be undertaken;
- Maximum and minimum intensity of activities proposed to be undertaken;
- Maximum size of facilities proposed to be constructed and the proposed timetable for precise definition of all projects and any phasing of development activity;
- Service area for the proposed activity or activities;
- Proposed method of financing; and
- Proposed location or alternative locations considered for any development.

The proposed Public Works Plan will describe each accessway intended for public use development, along the Malibu coast between Lechuza Beach and Las Tunas Beach. (See Exhibits 1, 2, 3 and 4). As the first step in the process, MRCA will develop or refine conceptual site plans sufficiently to analyze site feasibility and any potential environmental impacts. The conceptual site plans will analyze public use site development necessary to enable the public to pass over and through land to the coast, which may include, but is not limited to, construction or re-construction of stairways, at-grade paths and gates, viewing platforms, bridges, restrooms, parking areas, and signage.

MRCA is particularly well-suited to carry out this Public Works Plan project. MRCA is familiar with the requirements of the public works planning process. Recently, MRCA completed one other public works plan for the Santa Monica Mountains Conservancy (SMMC). Additionally, MRCA and the Conservancy are longstanding project partners, working together on public access in Malibu. In fact, MRCA holds the public property interest in the vast majority of Malibu public accessways, including those already open to the public. Finally, as a joint powers agency comprised of two regional park districts and the SMMC, the MRCA has a direct interest and commitment to providing public access to coastal lands. Formed in 1985 to manage lands for public use and wildlife habitat in Los Angeles and Ventura counties, the MRCA has constructed numerous park and access facilities. It operates and manages almost 60,000 acres of public lands, including managing the Conservancy's accessway at Escondido Beach (formerly

known as “Seacliff”). The MRCA also holds the public access easements at two other Malibu coastal access properties, Carbon Beach Accessway (formerly known as “Geffen”) and Latigo Shores. At Escondido Beach, the MRCA holds an easement for public open space and resource protection, just downcoast of the privately-owned Paradise Beach, dedicated as a condition of a Coastal Commission coastal development permit. Additionally along the Malibu coast, the MRCA holds property in fee and easements for public access at Lechuza Beach and at Las Tunas Beach.

Site Description: The proposed Public Works Plan involves the following properties, over which the Conservancy or MRCA holds either fee title or an easement for public access, or where there is a deed restriction in favor of public access (See Exhibits 3 and 4):

- (A) **Las Tunas Beach:** 19016 Pacific Coast Highway (“PCH”); fee owner Harner; deed restriction in favor of public access; 19020 PCH; fee owner: Hundley; public access easement owner: MRCA.
- (B) **Las Tunas Beach:** no street address: Los Angeles County Assessor Parcel Nos: 4449-007-013, -014, -015, -016 and -017; fee owner: MRCA.
- (C) **Las Flores Beach:** 20802 PCH; fee owner: Lent; public access easement owner: State of California for benefit of the Conservancy.
- (D) **La Costa Beach:** 21554 PCH; fee owner: Wayne; deed restriction in favor of public access.
- (E) **La Costa Beach:** 21664 PCH; fee owner Conservancy.
- (F) **Carbon Beach:** 22030 PCH; fee owner Pozzo/Keith; deed restriction in favor of public access.
- (G) **Carbon Beach:** 22466 PCH; fee owner: Ackerberg; public access easement owner: MRCA.
- (H) **Malibu Cove Beach:** 26834 Malibu Cove Colony Road; fee owner: Toberman; deed restriction in favor of public access.
- (I) **Escondido Beach:** 27400 PCH (aka “Geoffreys Restaurant”); fee owner: Holiday House, LLC and 27348 PCH; fee owner Finer Space Malibu LLC; vertical public access easement owner: MRCA. (NOTE: easement begins at Geoffreys Restaurant, passes across Escondido Beach Road (private street) and continues over 27348 Pacific Coast Highway (residential parcel on the beach).
- (J) **Escondido Beach:** 27700 PCH; fee owner Dick Clark; deed restriction in favor of public access;
- (K) **Escondido Beach:** 27910 PCH; fee owner: Wildman; parking access easement owner: Conservancy; also at adjacent property 27920 PCH; fee owner: Mancuso; vertical public access easement owner: Conservancy.
- (L) **Lechuza Beach:** no street addresses available for Los Angeles County Assessor Parcel Nos (APNs): 4470-021-900; 4470-028-900 through 918; 4470-001-900, 4470-024-900, 901; fee owner for public access: MRCA; easements over West Sea Level Drive and East Sea Level Drive, APNs 4470-021-008, 009; easement owner: MRCA; APNs 4470-001-003, 004, 005,006, 008, 012, 013; lateral beach access easement owner: MRCA; and 31736 Broad Beach Rd; fee owner: Barbara J. Page, trustee; vertical public access easement owner: Conservancy.

Litigation:

There is pending litigation against or by the Conservancy on three of the accessways included in the proposed Public Works Plan: At Carbon Beach, Ackerberg (*Ackerberg v. California Coastal Commission et al.*, Los Angeles Superior Court Case No. BS122006, , California Court of Appeal, Second Appellate District, Division 1, Case No. B235351, and related litigation, including *Access for All v. Ackerberg*, Los Angeles Superior Court Case No. BC405058); at Lechuza Beach (*Malibu-Encinal Homeowners Association v. Mountains Recreation and Conservation Authority, et al*, Los Angeles County Superior Court, Case No. BS 431798); and at Escondido Beach, Wildman (*Wildman v. California Coastal Commission*, Los Angeles Superior Court Case No. SC111748). (For more details, see Conservancy public records maintained at <http://scc.ca.gov/webmaster/ftp/malibu/>).

Historically, there has been litigation on almost every one of the accessways included in the proposed Public Works Plan. (See <http://scc.ca.gov/webmaster/ftp/malibu/>). Since the late 1970's, the Conservancy and the Coastal Commission have spent approximately \$1.5 million in litigation costs defending the public interest in all Malibu public accessways, including the accessways in the proposed Public Works Plan.

Project History:

In order to meet its legislative mandate of maximum coastal public access, the Conservancy has endeavored to provide public access to Malibu beaches for decades. Historically, many Malibu residents have not welcomed public use of the local beaches, and the City, once it formed in 1990, was similarly reluctant. Additionally, the Conservancy's efforts were stymied by the lack of a local partner, which could hold and manage these public accessways. On September 20, 1995, the Conservancy authorized a management agreement with the MRCA for public access management at Escondido Beach. Then in 2002, the MRCA again filled this role by purchasing with Conservancy funds, fee and easement interests for public access purposes at Lechuza Beach. Most recently, the MRCA accepted the public access easements formerly held by Access For All, and in July of 2012, the MRCA acquired fee title to property for public access at Las Tunas Beach. MRCA now manages public access properties at Carbon, Escondido and Lechuza Beaches, and will construct a public access stairway on the Conservancy's Malibu Road property (24038 Malibu Road), tentatively scheduled for construction in summer 2013 (please note that this project is not included in this proposed Public Works Plan).

For some accessways included in the proposed Public Works Plan, the Conservancy's endeavors to provide public access over its (or its public partner's) easements and fee properties have met with inordinate local opposition and decades of attempts have still not resulted in the opening of these properties to full public access. Below is a summary of the Conservancy's attempts to provide public access amenities at certain locations and the current status of those efforts. This summary provides the Conservancy rationale for including these properties in its proposed Public Works Plan project.

Carbon Beach (property owner: Ackerberg; public access easement owned by MRCA) The Ackerberg easement was created by the acceptance of an offer to dedicate (required of Ackerberg as a condition to a local coastal development permit) by a nonprofit organization, Access for All (AFA), in December 2003. In accepting ownership of the easement, AFA agreed to first survey the easement for encroachments, then plan for the development of the accessway and subsequently to develop and open the easement for public access. AFA undertook a survey

in September 2005, which identified a number of improvements that Ackerberg had made without permits in the easement area.

In December 2005, the Commission initiated the administrative enforcement process, notifying Ackerberg of the encroachments and requiring their removal. The administrative enforcement process was delayed by Ackerberg's numerous requests for additional time and for hearing continuances and by serial litigation, including a lawsuit by a neighbor (*Roth v. Commission et al.*), challenging the validity of the offer to dedicate and the resulting easement. A lawsuit by AFA against Ackerberg (*AFA v. Ackerberg*) sought removal of the encroachments, but was settled by AFA without involvement or approval by the Conservancy or Commission on terms which compromised the viability of the easement. Finally, Ackerberg sued (*Ackerberg v. Commission, et al.*) challenging the Commission's "cease and desist order" that was issued following a hearing in July 2009.

The challenge to the easement by the *Roth v. Commission* case was rejected by the trial court and again on appeal and, in July 2008, the California Supreme Court refused to review the Court of Appeal decision. Ackerberg's challenge to the Commission order to remove encroachments in *Ackerberg v. Commission et al.* was likewise rejected by the trial court and then by the Court of Appeal, whose decision was issued in August 2012, and, just recently, Ackerberg's petition for review was denied by the California Supreme Court. The Commission and the Conservancy brought a motion to intervene and vacate the agreed judgment entered in *AFA v. Ackerberg*, as contrary to the public interest and to the obligations of AFA to preserve, develop and open the easement.

At its September 2011 meeting, the Conservancy determined that AFA had failed to carry out its agreed obligations to preserve, develop and open the easement and, accordingly, authorized the transfer of the easement to another qualified entity. MRCA subsequently accepted and is the current holder of the easement. (For history, see <http://scc.ca.gov/webmaster/ftp/malibu/>)

Lechuza Beach: (Fee and easement ownership by MRCA): Owned by MRCA since 2002, MRCA and the Conservancy attempted to co-author a management plan with the local Homeowner's Association, MEHOA. In 2007, the MRCA submitted its coastal development permit for access improvements on its Lechuza Beach property to the City of Malibu; that permit application remains incomplete due to continuing changes in the project plan resulting from attempts to satisfy the continuing but changing concerns of MEHOA over location of and design for disabled parking access, restroom, and signage as well as management terms and conditions. In 2009, MEHOA sued the Conservancy and the MRCA. (For history, see <http://scc.ca.gov/webmaster/ftp/malibu/>)

Escondido Beach: (Property owners: Mancuso(vertical)/Wildman (parking); vertical and parking easements owned by Conservancy): In July 1996, Frank Mancuso sued the Conservancy after the Conservancy, at its September 20, 1995 public meeting provided a grant to the MRCA for management of accessways at Escondido Beach, including the vertical accessway over the Mancuso (formerly known as Chiate) property and the complementary public access parking easement over the adjacent Donahue Wildman property. Mr. Wildman signed the 1998 settlement agreement along with Mr. Mancuso, settling this litigation over notice and access to Mancuso/Wildman properties for public access feasibility studies on the easements over the fee

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

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

PROJECT FINANCING

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

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

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

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

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

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

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

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

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

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

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

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

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

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

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:

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

Required Criteria

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

Additional Criteria

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

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

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

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

COMPLIANCE WITH CEQA:

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

consideration and granting of coastal development permits under the California Coastal Act of 1976 and pursuant to 14 California Code of Regulations Section 15251(c). With respect to the fee title properties, these properties were analyzed for their environmental effects as public accessways at the time the properties were funded for public acquisition for public access purposes. On all of the properties included in the proposed Public Works Plan, the statute of limitations under CEQA for challenges to the acceptance, acquisition or use of the easement property or fee title property interests as a public accessway has expired in all cases, and in most cases, the statute of limitations expired decades ago.

Consistent with Section 15262, and as part of the proposed authorization and in connection with preparation of the Public Works Plan, MRCA will undertake and prepare all environmental documentation related to the future implementation actions proposed under the Plan. At the time of the subsequent adoption of the Plan by the Conservancy and MRCA or the permit approval by the Coastal Commission, that environmental documentation will be considered and available for public review and comment as provided under CEQA.

Upon approval, staff will file a Notice of Exemption for this project.