

CALIFORNIA COASTAL COMMISSION

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Submitted: 1/31/07
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Staff Report: 6/21/07
Hearing Date: 7/9/07



M15a

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STAFF REPORT: APPEAL OF EXECUTIVE DIRECTOR DETERMINATION

DISPUTE RESOLUTION NO.: A-220-80-A2-EDD

APPLICANTS: Graham and Brenda Revell

PROJECT LOCATION: 32340 Pacific Coast Highway, (APN 4473-014-009), City of Malibu, Los Angeles County

EDD APPEAL DESCRIPTION: Appeal of the Executive Director's Determination to Reject Coastal Development Permit Amendment Application A-220-80-A2, which sought to delete Special Condition Two of the underlying permit as previously amended in order to eliminate the requirement that the applicant construct public accessway improvements along the shoreline, including two stairways necessary to provide public access along and over a headland bluff.

MOTION & RESOLUTION: Page 9

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **concur** with the Executive Director's determination to reject the proposed amendment pursuant to 14 C.C.R. Section 13166. The standard of review for the appeal of the Executive Director's rejection of an amendment application requires the Commission to overturn the Executive Director's Determination if the Commission finds that either: (1) the proposed amendment would not lessen or avoid the intended effect of an approved or conditionally approved permit or (2) the applicant has presented newly discovered material information, that could not, with reasonable diligence, have been discovered and produced before the permit was granted.

The subject property is developed with a single-family residence, pool, and tennis court located on top of a coastal bluff. A headland bluff on the property extends from the base of the coastal bluff into the ocean, cutting off lateral beach access at most tide levels. This promontory is a rare geological outcropping and prior to unpermitted development, contained sensitive coastal bluff habitat. The property is located approximately 0.2 miles upcoast from El Matador State Beach and approximately 0.8 miles downcoast from El Pescador State Beach.

The residence, pool, and unlit tennis court on the bluff top were approved under Coastal Development Permit (CDP) No. P-10-20-77-2107 in 1978 and subsequently amended by CDP Amendment A-220-80 on November 19, 1980. CDP Amendment A-220-80 was issued on August 20, 1982. In its approval of CDP Amendment A-220-80, the Commission found that the proposed deletion of the previously required offer to dedicate a vertical public accessway could only be found consistent with the Chapter 3 policies of the Coastal Act because the applicant was proposing to expand the lateral public access easement required under the original permit and actually construct the stairways necessary to provide public access up and over the headland. Stairway plans for the headland accessway were approved in 1986 (Exhibit 4). The residential development has reportedly been occupied since September 1987.

CDP Amendment A-220-80 included provisions for a lateral public access easement across the beach-front portion of the property and construction of public access improvements to reach the headland accessway. Special Condition Two of CDP Amendment A-220-80 required the construction of public access improvements, from the shoreline to the headland accessway and back to the shoreline, to occur prior to occupancy of the residence. Though the residential development was constructed and is currently occupied, the public access improvements were not completed as required. Instead, an unpermitted private wooden stairway was built on the upcoast side of the headland to provide private beach access, and an unpermitted locked gate and fence were constructed at the top of the headland which prevents public access across the headland (Exhibit 13).

In December 2006, the owners of the subject property requested an amendment to delete Special Condition Two of CDP Amendment A-220-80 (hereinafter, sometimes referred to as "Special Condition 2"), thereby to eliminate the property owners' responsibility to construct public access improvements up and over the headland to facilitate lateral public access across the full width of the property (Exhibit 10).

On January 17, 2007, Commission staff issued a letter reporting the Executive Director's determination pursuant to Section 13166(a) of the Commission's regulations and rejecting the amendment application (Exhibit 9). The standard the Executive Director applied in deciding to reject the application is provided in Section 13166(a) of the Commission's regulations and states as follows:

The executive director shall reject an application for an amendment . . . if he or she determines that the proposed amendment would lessen or avoid the intended effect of [a] permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

The Executive Director rejected the application because he determined that it would lessen or avoid the intended effect of the existing permit to provide both an access easement and access improvements over the headland, and because the applicant did not present any newly discovered material information.

In this appeal (Exhibit 8), the applicants argue that the amendment request to delete the requirement for access improvements leading up and over the headland is justified by the fact that there are "changed circumstances" that have occurred between the time the

Commission approved the first CDP Amendment (November 19, 1980)¹ and the date the current property owners (Graham and Brenda Revell) purchased the property (May 13, 2004). As a result of these alleged changes, the applicants contend that compliance with Special Condition Two is “impractical from a construction perspective and unnecessary for the purpose of ensuring lateral access.” The applicants go on to assert the following changes that they contend specifically support their appeal (Alan Block, January 31, 2007; Exhibit 8):

- Assertion 1. “Significant loss of sand at the base of the Headland”
- Assertion 2. “Significant vertical drop associated with any potential lateral accessway improvement, raising serious safety concerns”
- Assertion 3. “Construction, engineering and geologic concerns which cannot be overcome, except at exorbitant expense”
- Assertion 4. “Wave rush-up at high tide”
- Assertion 5. “Availability of lateral access through existing sea cave”

These five assertions are discussed in detail in Section F of this report. Staff could find no “changed circumstances” on the property and no new material information in any of the applicant’s submittals.

Assertion 1. The applicants appear to be suggesting that, as a result of the loss of sand, compliance with Special Condition 2 would not result in any additional lateral access. This is an outgrowth of the applicant’s position that the existing obligation under Special Condition 2 is only to construct public access improvements to the exact specifications in the 1986 approved project plans. This is not a valid argument under Section 13166 for the following reasons: (1) the fluctuating distance between the top of the headland and the surface of the sand was occurring at the time the Commission approved A-220-80, has always been occurring, and continues to occur, and it was known to be occurring at the time the Commission approved A-220-80, so this allegation asserts no new information; (2) there is no indication that this distance has been unexpectedly increased as a result of significant or unforeseen coastal or geologic factors; (3) the approved plans show accessway stairs anchored on a pile- or caisson-supported foundation, which would not move as seasonal sand level fluctuations occur and (4) the assertion that public access would not be provided is based on a faulty premise, as the applicants are required to implement a stairway design that reaches the beach in order to implement the original proposal and satisfy the requirements of Special Condition 2. Thus, if the applicants construct the improvements as required, the normal fluctuations in sand levels will not diminish the degree to which those improvements provide public access.² In sum, information regarding fluctuations in the sand level is neither new nor material.

¹ The applicant erroneously cites a slightly earlier date (September 19, 1980), on which the Commission accepted direct jurisdiction over the amendment application. It was two months later that the Commission approved the amendment application.

² The alternative interpretation of this assertion is that it acknowledges the requirement to build the stairs from the Headland to the surface of the sand, and the loss of sand is relevant simply in that it makes the project more expensive and more difficult. This interpretation is addressed in the response to Assertion 3.

Assertion 2. As in the applicants' first assertion of changed circumstances, reported above, the reference to a significant "vertical drop" appears to be based on the erroneous assumption that the only requirement imposed upon the applicants is to build stairs 14 feet down from the headland. For the same reasons articulated in Assertion 1, this is not the case. Thus, this entire assertion is based on a false premise. For all of the reasons stated in the discussion of assertion 1, compliance with the existing permit would not result in stairs suspended in mid air or any other "vertical gap," and therefore would not result in any safety concern. Thus, this assertion does not present any new, relevant information or any changed circumstance.

The assertion that there could be a public safety issue raised in the future by the possibility of gaps developing between the bottom of the stairway and the sand level obviously does not present any changed circumstances, and it is not a valid argument under Section 13166 for the following reasons: (1) the anticipated fluctuations in the sand level and the impact of waves on the stairway are not new information, for reasons stated in the discussion of assertion 1; and (2) the easement holder, *Access for All*, will be responsible for maintenance of the stairway after its initial construction and would address unsafe gaps between the bottom of the stairway and the fluctuating sand level as well as unsafe deterioration of the stairway itself.

Assertion 3. The third bullet point asserts that there are "[c]onstruction, engineering, and geologic concerns which cannot be overcome except at exorbitant expense." As an initial matter, this statement does not allege, or even imply, any changed circumstances or new information. It simply asserts that the requirements of the permit are difficult and expensive to satisfy. Thus, this allegation does not support overturning the Executive Director's determination and accepting this amendment application. Nevertheless, the Commission explores this allegation further, by reference to other materials submitted by the applicant.

Interpreted most favorably to the applicant, this statement could be an assertion of newly discovered information in the form of unpredictable changes to the applicable regulatory requirements. However, this is not a valid argument under Section 13166 for the following reasons: (1) the applicants have presented no evidence to suggest that Los Angeles County (the City of Malibu was not incorporated in 1980) would not have taken the exact same position in 1980; (2) the applicants have supplied no evidence to show that relevant regulatory requirements (whether in the form of UBC provisions or otherwise) have changed since the permit amendment was approved, and the Commission is not aware of any such changes; (3) even if such changes had occurred, information about such changes would not be material, as there is no indication that the regulatory burdens associated with the construction of an accessway onto the headland was of any concern to the Commission in 1980; (4) even if such changes had occurred, and the increased burden would have been significant to the Commission in 1980, these changes would not justify acceptance of an amendment because they would be a direct consequence of a more than 20-year delay in compliance with the previously required conditions of approval³. Thus, this assertion raises no relevant changed circumstances and no newly discovered material information.

³ Similarly, any increased cost of the project due to inflation does not constitute new material information because it would be expected and is also a result of the voluntary delay in implementation, and there is no evidence that the Commission considered cost to be a relevant factor in the first place.

Assertion 4. The applicants assert that there are changed circumstances with respect to wave “rush-up” at high tide. The applicants have made no specific claims as to how wave up-rush conditions have changed. From the supporting documents, staff interprets the applicants’ assertions regarding wave up-rush to mean that the foundation for stairways could contribute toward erosion of the sandy beach, cliff, sea caves or headland by exposing the area to increased wave reflection and erosive forces. However, the assertion that the construction of the stairways would negatively impact the bluff or beach erosion patterns at the site is not a valid argument under Section 13166 because: (1) the applicants have not submitted any evidence that would suggest that there are changed circumstances with wave up-rush that was not available when the underlying permit was approved and (2) the offshore rocks and headlands cause the nearshore wave climate to be very complicated at this location and it will not be possible to predict or monitor whether the stairs will slow or accelerate the on-going enlargement of the caves and arches.

Assertion 5. The assertion that there are changed circumstances on the site that have resulted in adequate lateral access through sea arches is not a valid argument under Section 13166 because: (1) the sea “caves” or “arches” are not passable under many tidal conditions and are not a safe or reliable option for public access and therefore do not constitute adequate lateral access; and (2) use of sea arches does not meet the Special Condition 2 requirement for public viewing from the headland accessway. Further, staff has confirmed during site visits that only the seaward-most “cave,” which is located toward the seaward-most point of the headland is actually passable to pedestrians (and then only during low tide conditions). Further, due to the fact that the seaward “cave” is located at the seaward-most point of the headland, use of this “cave” does not provide any additional public access (Exhibit 13). The landward “cave” located in approximately the middle of the headland is typically only accessible during extreme low-tide events, and then only by crawling on one’s stomach. Thus, formation of caves, even if new, is not material.

In sum, the applicants’ assertions are based in large part on three conclusions: (1) the sand level is not the same as shown in the 1986 Commission-approved stairway plans, (2) they are only required to complete the stairways exactly as approved in the 1986 project plans (Exhibit 4), and (3) adequate alternative lateral access is allegedly available. The first conclusion presents no newly discovered material information and the latter two are erroneous conclusions.

With regard to the first conclusion, the beach is a naturally dynamic environment that is subject to periodic fluctuations in sand elevations due to waves, storms tidal conditions and seasonal changes. Such fluctuations were understood and expected to occur when the Commission approved A-220-80 in 1980 and do not constitute newly discovered information or a “changed circumstance” affecting the condition of the site. The variable distance between the top of the headland and the sand level is a consequence of these sand fluctuations and similarly does not constitute a changed circumstance or new material information that could not have been discovered and produced before the permit was granted. Furthermore, the sand level is irrelevant to the feasibility of constructing the stairways because the stairway foundations would be anchored by a pile- or caisson-supported foundation, as shown in the approved plans.

The second conclusion focuses on the erroneous premise that the only responsibility that the applicants bear under the existing permit is to construct the 1986-approved design

(Exhibit 4). That is not true. Even if the 1986 plans would have worked at that time they were approved, and physical changes made that previously approved plan no longer viable, unless and until an amendment is approved, the applicants have the responsibility for fulfilling the obligations of the original 1980 proposal and of Special Condition 2 rather than relying on the conceptual plan previously submitted by the applicant, which is merely a tool to facilitate condition implementation. The applicant for the 1980 amendment proposed, and Special Condition 2 requires, the construction of public access improvements from the shoreline to the headland accessway and back to the shoreline. Public access up and over the headland was found by the Commission to be requisite in the approval of the residential development. The 1986-approved plans are just one means of fulfilling the requirements of Special Condition 2. Other stairways similar to the 1986 design, or alternative design, could be implemented to meet the requirement of Special Condition 2 for public access improvements from the shoreline to the headland accessway and back to the shoreline.

Because the previous and current property owners have effectively delayed implementation of Special Condition 2 for more than 20 years, and the sand level is known to be part of the fluctuating beach environment, it is wholly unremarkable, and indeed foreseeable, that an updated design might be necessary to accommodate a change in sand level. Additionally, it is not unexpected that the regulatory requirements regarding stairway design may have changed in 20 years. Both of these situations are likely to require changes to the 1986 approved plans, and they are a consequence of delaying construction of the stairways for more than 20 years.

The third conclusion is the assumption that adequate lateral access already exists. This is addressed under Assertion 5 of the applicants appeal. Adequate lateral access does not exist at the site because the headland provides a barrier during medium and high tide levels and the purported sea "caves" are not passable under many tidal conditions and are not a safe or reliable option for public access. Therefore, neither passage around the headland, nor traversing the sea caves constitutes adequate lateral access.

Staff recommends that the Commission *concur* with the Executive Director Determination to reject the subject amendment application, A-220-80-A2, which requests the deletion of Special Condition 2 of CDP Amendment A-220-80. The appeal of the Executive Director's determination to reject Amendment Application A-220-80-A2 must be denied pursuant to the requirements of Section 13166 of the Commission's regulations because: (1) the proposed amendment to eliminate Special Condition 2 of CDP Amendment A-220-80 would lessen or avoid the intended effect of the permit and (2) the applicants have not presented any newly discovered material information that could not, with reasonable diligence, have been discovered and produced before the permit was granted.

PROCEDURAL NOTE: The project is located within the limits of the City of Malibu. The Commission certified a Local Coastal Program (LCP) for the City of Malibu (Land Use Plan and Implementation Ordinance) on September 13, 2002. However, pursuant to the certified document, the Coastal Commission retains jurisdiction over projects that would lessen or negate the purpose of (1) any specific special condition of a coastal development permit previously approved by the Coastal Commission, (2) any recorded

offer to dedicate or grant of easement or (3) any other mitigation. Specifically, LCP Policy 13.10.2.B of the Local Implementation Plan states:

B. The Commission retains authority over coastal development permits issued by the Commission including condition compliance. Where either new development, or a modification to existing development, is proposed on a site where development was authorized in a Commission-issued coastal development permit either prior to certification of the LCP or through a de novo action on an appeal of a city-approved coastal development permit and the permit has not expired or been forfeited, the applicant shall apply to the City for the coastal development permit except for:

1) Requests for extension, reconsideration and revocation of the Commission-issued permits;

2) Development that would lessen or negate the purpose of any specific permit condition, any mitigation required by recorded documents, any recorded offer to dedicate or grant of easement or any restriction/limitation or other mitigation incorporated through the project description by the permittee, of a Commission-issued coastal permit.

In any of these circumstances, the applicant must seek to file an application with the Coastal Commission for an amendment to the Commission-issued coastal development permit and authorization for the proposed new development or modification to existing development. The Coastal Commission will determine whether the application for amendment shall be accepted for filing pursuant to the provisions of Title 14 California Code of Regulations, Section 13166.

TABLE OF CONTENTS

I. STAFF RECOMMENDATION.....	9
CONCUR WITH EXECUTIVE DIRECTOR’S DETERMINATION.....	9
II. STANDARD OF REVIEW.....	9
III. AUTHORITY FOR EXECUTIVE DIRECTOR DETERMINATION AND PROCEDURAL PROVISIONS.....	10
IV. FINDINGS AND DECLARATIONS.....	11
A. LOCATION AND BACKGROUND	11
B. PAST COMMISSION ACTION.....	13
1. <i>Original CDP (1978) and Litigation</i>	13
2. <i>Amended CDP A-220-80 (1980)</i>	14
3. <i>Violations</i>	16
C. AMENDMENT REQUEST A-220-80-A2.....	18
D. EXECUTIVE DIRECTOR’S DETERMINATION.....	18
E. APPLICANTS’ APPEAL OF EXECUTIVE DIRECTOR DETERMINATION.....	21
F. ANALYSIS OF THE APPLICANTS’ APPEAL WITH RESPECT TO SECTION 13166.....	22
1. <i>Would the Amendment Lessen or Avoid Any of The Intended Effects of the Permit?</i> ...	22
2. <i>Have Newly Discovered Material Facts Been Presented?</i>	24
Assertion 1. Significant loss of sand at the base of the headland.....	25
Assertion 2. Significant vertical drop associated with any potential lateral accessway improvement, raising serious safety concerns.....	31
Assertion 3. Construction, engineering and geologic concerns which cannot be overcome, except at exorbitant expense.....	33
Assertion 4. Wave rush-up at high tide	43
Assertion 5. Availability of lateral access through existing sea cave.	46
G. CONCLUSION	48

EXHIBITS

- Exhibit 1. Vicinity Map**
- Exhibit 2. Parcel Map**
- Exhibit 3. Headland (2007)**
- Exhibit 4. Commission Approved Stairway Plans (1986)**
- Exhibit 5. Amended Irrevocable Offer To Dedicate Public Access Easement**
- Exhibit 6. State Lands Commission Access Easement Acceptance**
- Exhibit 7. Access Easement Transfer to *Access For All***
- Exhibit 8. January 31, 2007 Applicants’ Appeal of E.D. Determination**
- Exhibit 9. January 17, 2007 Executive Director Letter Rejecting Amendment**
- Exhibit 10. December 8, 2006 Amendment Application No. A-220-80-A2**
- Exhibit 11. September 5, 1980 Amendment Application No. A-220-80**
- Exhibit 12. Sr. Coastal Engineer, Lesley Ewing Memorandum May 31, 2007**

- Exhibit 13. Site Photos
Exhibit 14. Applicants' Correspondence, June 4, 2007
Exhibit 15. Sr. Coastal Engineer, Lesley Ewing Memorandum June 20, 2007,
Addressing Applicants' June 4, 2007
Exhibit 16. Other Stairways
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I. STAFF RECOMMENDATION

CONCUR WITH EXECUTIVE DIRECTOR'S DETERMINATION

MOTION: *I move that the Commission overturn the Executive Director's decision to reject Coastal Development Permit Amendment Application No. A-220-80-A2.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote on the motion, thus rejecting it. Rejection/failure of this motion will result in the Commission upholding the Executive Director's determination and rejecting the amendment application and in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO CONCUR WITH THE E.D.'S DETERMINATION:

The Commission hereby concurs with the Executive Director's determination to reject Coastal Development Permit Amendment Application No. A-220-80-A2 on the grounds that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit and that there is no newly discovered material information which, in the exercise of reasonable diligence, could not have been discovered and produced before the permit was granted.

II. STANDARD OF REVIEW

The standard of review for the appeal of the Executive Director's rejection of an amendment application requires the Commission to overturn the Executive Director's rejection of the amendment application if the Commission finds that either: (1) the proposed amendment would not lessen or avoid the intended effect of an approved or conditionally approved permit or (2) the applicant has presented newly discovered material information that could not, with reasonable diligence, have been discovered and produced before the permit was granted. (14 C.C.R, Section 13166(a)(1))

III. AUTHORITY FOR EXECUTIVE DIRECTOR DETERMINATION AND PROCEDURAL PROVISIONS

The authority for the Commission's determination is provided by California Code of Regulations (C.C.R.), Title 14, Section 13166(a) (Amendments to Permits Other Than Administrative Permits), which states:

(a) The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

(1) An applicant may appeal the executive director's determination to the commission. The appeal must be submitted in writing and must set forth the basis for appeal. The appeal must be submitted within 10 working days after the executive director's rejection of the amendment application. If timely submitted, the executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable and shall provide notice of the hearing to all persons the executive director has reason to know may be interested in the application.

(2) If the commission overturns the executive director's determination, the application shall be accepted for processing in accordance with subsection (c) below.

After Commission approval of a coastal development permit, Title 14 of the C.C.R., Section 13166 requires the Executive Director to reject any amendment application that would lessen or avoid the intended effect of the permit unless the applicant presents newly discovered material information that he could not, with reasonable diligence, have discovered and produced before the permit was granted. Rejection of an amendment application discontinues any further processing of the amendment application.

Within 10 working days after the Executive Director's rejection of an amendment application, the applicant may appeal the Executive Director's determination. If the applicant appeals this determination, the Executive Director is required to schedule a hearing on the appeal at the next Commission hearing or as soon thereafter as practicable. If the Commission overturns the Executive Director's determination, the application shall be accepted for processing.

In this case, the Executive Director notified the applicants in a letter dated January 17, 2007 (Exhibit 9), that coastal development permit amendment application A-220-80-A2 (Exhibit 10), to delete Special Condition Two of the underlying permit, which requires the construction of public accessway improvements along the shoreline, must be rejected pursuant to Commission regulations, 14 C.C.R. Section 13166. The applicants responded within the 10 working day appeal period in a letter dated January 31, 2007, that the applicants do not agree with the Executive Director's determination and

therefore request the Commission follow the procedures provided by Section 13166(a)(1) of Title 14 of the California Code of Regulations and schedule a hearing to appeal the determination (Exhibit 8).

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. LOCATION AND BACKGROUND

The property is located at 32340 Pacific Coast Highway in the City of Malibu, Los Angeles County (Exhibit 1). The property, identified by APN 4473-014-009 (Exhibit 2), is a 4.39-acre parcel located on a coastal bluff, approximately 0.2 miles upcoast from El Matador State Beach and approximately 0.8 miles downcoast from El Pescador State Beach. A headland on the property extends from the base of the coastal bluff into the ocean, cutting off lateral beach access (Exhibit 3; Exhibit 13). The headland is a rare geological outcropping and prior to unpermitted development, contained sensitive coastal bluff habitat. The top of the headland and adjacent bluff face were vegetated with coastal sage scrub prior to the undertaking of unpermitted development on the property. The Commission has found in past actions (Cease and Desist Order CCC-05-CD-13 and Restoration Order CCC-05-RO-09) that the bluff face and headland constitute environmentally sensitive habitat area (ESHA).

The property contains a single-family residence, pool, and tennis court, all of which are located on top of a coastal bluff and were authorized by the underlying permit amendment, A-220-80, which established the currently applicable public access provisions. The applicants indicate that the residence has been occupied since 1987. Stairs along the eastern property boundary lead down the bluff to the base of a headland. The headland obstructs lateral beach access at most tide levels. Except at low tides, the only means by which to travel from the beach on one side of the headland to the beach on the other side, is to walk out into the ocean around the headland, walk out into the ocean to access the larger sea cave, or crawl through unsafe sea caves, all of which would not be accessible during certain tides.

Violations of the Coastal Act have occurred on the subject site in the forms of development undertaken without the required coastal permit, development that violates the provisions of the existing CDP, and failure to undertake development required by that existing CDP: native vegetation has been removed from the top of the headland and replaced with landscaping, including an irrigated lawn, without the required coastal permit. Additionally, a metal locked gate and fence, with razor wire wrapped around both ends, were constructed on the top of the headland along with a poorly maintained private wooden stairway which extends from the top of the headland to the beach (Exhibit 13).

Beach Characterization Of The Subject Site

Sand levels change regularly from season to season and year to year. At the time of the original permit, the applicant voiced concern about the stairs and noted that there was almost a 30' difference in elevation from the headland to the beach at that time; the beach elevation has risen and fallen many times since this observation by the initial permit applicant. This dynamic nature of the beach causes changes in the distance between the sand level and the top of the cliff and headland.

The Beach Erosion And Response (BEAR) Guidance Document, prepared by a Commission Task Force in 1999, summarizes this dynamic environment as follows:

Sand beaches have been studied extensively and many of the general characteristics are well understood. Sand is a mobile substance, and it moves both up and down coast, as well as on and offshore. The accumulation of sand along the shoreline is strongly influenced by the width of the continental shelf, and the offshore, wave-cut platform that develops immediately seaward of coastal bluffs.

...

The movement of sand is strongly dependent on wave energy, wave direction, and prevailing winds. Sand movement typically varies with season. During mild wave periods (such as midspring to mid-fall) small, low-energy waves carry sand on shore and down coast. The result is a wide beach characterized by a well-developed berm and smooth offshore profile (See Figure 2- 1). These broad sand beaches, commonly called summer beaches, provide obvious recreational opportunities, and also protect the backshore areas from wave erosion.

During storm periods with large, high-energy waves, sand is often carried away from the dry beach and deposited offshore in small bars or submerged berms, leaving behind a narrow "winter" beach (See Figure 2-1). The submerged berms store sand and protect the backshore area by causing large waves to break and release some of their energy offshore, on the bars, rather than directly against the backshore. Ideally, there will be enough sand left on the beach to absorb the energy from the waves which get past the bars. On many California beaches, there is often not enough sand to maintain a dry beach during the entire year, and storm waves will break on the back shore, potentially damaging whatever they hit.

Additionally, the Army Corps of Engineers produced a study of issues regarding shore protection, storm damage reduction, and other purposes along the shores of Southern California from Point Mugu to the San Pedro Breakwater. The reconnaissance included overview of various reaches of the City of Malibu and Los Angeles County coast, including the reach of beach where the subject site is located. This study characterizes the shoreline as follows (US ACOE, 1994, Sect. 3.0):

Malibu Coastline. Development and infrastructure has encroached upon a historically narrow and sediment limited beach environment. Shoreline fortification, resistant bluff formations and rocky outcrops generally restrict long-term recession. Sandy beaches fluctuate in response to the variability in

winter runoff such that episodes of retreat followed by recovery are common. The relatively narrow beach widths that predominate together with the history of building on or near the backshore has exposed the older and lower lying improvements to recurrent episodes of storm damages. This scenario will continue into the future. (page 3-1) (emphasis added)

...

...the shoreline segment between the Ventura County/Los Angeles County line and Lachuza [Lechuza] Point, which is generally characterized by narrow beaches backed by high bluffs. For the most part, development is limited with State and County park facilities dominating the west portions of the reach. Low-density private homes are generally set back atop the high bluff except for a limited number that are low lying along the central portion and a concentrated backshore grouping over a short length west of Lachuza [Lechuza] Point. (page 3-2)

Both of these studies denote the natural oscillation in beach sand at the subject site.

B. PAST COMMISSION ACTION

The project site has been the subject of past Commission actions regarding the residential development. The principal actions taken by the Coastal Commission with respect to the subject property are summarized below. The original 1978 coastal development permit for residential development and the amended coastal development permit (1980) are described below, followed by a summary of the more recent enforcement items.

1. Original CDP (1978) and Litigation

On January 16, 1978, the South Coast Regional Commission⁴ approved CDP No. P-10-20-77-2107, for the development of a single-family residence, detached 2-car garage, swimming pool, and unlit tennis court on the property, with special conditions providing for lateral and vertical public access. Special Condition 1 of this CDP required development to be set back 25 feet from the top of the bluff and a minimum of 10 feet from the “top of bank,” and also required all structures and landscaping to be set below center grade of Pacific Coast Highway. Special Condition 2 required the recordation of offers to dedicate: (1) a 10-ft wide vertical public access easement across the property from Pacific Coast Highway to the ocean and (2) a lateral public access easement across the property extending 25-ft inland from the mean high tide line, including “the right to cross the headland at the base of the cliff by an accessway designated the applicant.” Special Condition 2 also required that the recorded offer to dedicate public

⁴ Until July of 1981, the Commission took most actions through “regional” commissions, and the State Commission served primarily as an appellate body. After June of 1981, the regional commissions were eliminated, and the State Coastal Commission (generally referred to herein as the “Commission”) succeeded to all of the former authority and duties of the regional commissions. See Cal. Pub. Res. Code § 30305; Stats. 1981, chap. 1173.

access easements include a requirement that no development shall occur seaward of a setback line of 25 feet from the top of the sea cliff and that no structure or landscaping shall extend above the center grade of Pacific Coast Highway. The third, and final, Special Condition of this permit required the applicant to submit drainage plans for a system that would discharge post-development drainage at a rate equal to the level that existed prior to development.

The property owner at that time appealed the permit (Appeal No. 27-78, Benton) to the State Commission, asserting that: (1) the vertical access condition resulted in an unlawful taking of property without compensation; (2) the vertical access condition was discriminatorily applied and denied the applicant equal protection of the laws; (3) the height limitation deprived the applicant of lawful use of the airspace over his property and took airspace to create a view easement for the public; (4) the vertical access requirement was unnecessary because the state was about to acquire El Matador and El Pescador beaches nearby; and (5) the aggregate of all of the special conditions was “totally unreasonable.”

The State Commission denied the appeal on the grounds that no substantial issue was raised. The landowner then filed a Petition for a Writ of Mandate challenging the permit conditions.

On September 5, 1980, after more than two years of litigation, a loss in the superior court, and an appeal to the California Court of Appeals, the landowner (Mr. Benton) submitted a permit amendment application to the South Coast Regional Commission as part of an offer of settlement of his pending appeal (Exhibit 11). In September, 1980, the State Commission “removed” the amendment application from the regional commission pursuant to what was then section 30333.5 of the Coastal Act, thus assuming direct review of the amendment request, and it was re-numbered A-220-80.⁵ In November, 1980, the State Commission approved CDP Amendment A-220-80 subject to three special conditions. In April of 1982, after Mr. Benton had filed all documents necessary to satisfy the conditions of A-220-80, and the Commission had accepted them, the parties to the still-pending litigation filed a Stipulation for Dismissal of Appeal, ending the litigation. The Commission issued A-220-80 in August of that year.

2. Amended CDP A-220-80 (1980)

Amendment application A-220-80, submitted on September 5, 1980, was expressly described as being “to permit Mr. Benton to construct two stairways located at the easterly and westerly side of the headland . . . to provide public access across such headland,” in exchange for the removal of the requirement to dedicate a vertical accessway (Sherman Stacey, September 5, 1980; Exhibit 11). CDP Amendment A-220-80 also requested a reduction in the size of the approved residence to 3,500 sq. ft.,

⁵ Although in the Commission’s current numbering system, initial “A”s generally denote appeals, the initial A in A-220-80 may have been added to indicate that it was an amendment. In numbering the subject second amendment, the initial A has been retained and a terminal “A2” (indicating that this would be the second amendment) added, resulting in the number A-220-80-A2.

relocation of the tennis court, and construction of a security wall along the Pacific Coast Highway boundary.

On November 19, 1980, the Commission approved CDP Amendment A-220-80 with three special conditions regarding public access, construction of accessway improvements, and submittal of revised plans. These three special conditions superseded and replaced the previous special conditions required under P-10-20-77-2107. The three Special Conditions required by CDP Amendment A-220-80 are as follows:

Special Condition 1, Public Access. *Prior to issuance of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement shall extend from the mean high tide line to the base of the bluff for the width of the project site and shall include an easement area, conforming to the plans attached in Exhibit 2, over the headland on the site for pedestrian access and viewing. Such easements shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.*

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

Special Condition 2, Accessway Improvements. *Prior to issuance of the permit, the applicant shall submit plans, for the review and approval in writing of the Executive Director, showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with approved plans shall be completed prior to occupancy of the residence approved herein.*

Special Condition 3, Revised Plans. *The applicant shall submit revised plans, for the review and approval in writing of the Executive Director, showing that the proposed wall is sited so as not to interfere with public views from Pacific Coast Highway. All construction shall be in conformance with the plans submitted through this condition.*

Coastal Development Permit Amendment A-220-80 was issued on August 20, 1982. In its approval of CDP Amendment A-220-80, the Commission found that the proposed deletion of the previous requirement to offer to dedicate a vertical public accessway could only be found consistent with the Chapter 3 policies of the Coastal Act because two other accessways had opened nearby and because the applicant was proposing to expand the lateral public access easement and actually construct the stairways

necessary to provide public access up and over the headland for access and viewing. Special Condition 1 of CDP Amendment A-220-80 required the recordation of an irrevocable offer to dedicate (OTD) a lateral public access easement from the mean high tide line to the base of the bluff and over the headland, prior to issuance of the permit. The prior owner recorded the initial OTD, pursuant to the existing permit, on June 2, 1982. (An amended OTD was later recorded on January 8, 1987 to correct an inadequate legal description of the easement (Exhibit 5).) State Lands Commission accepted the easement on July 1, 2002 (Exhibit 6). The easement was transferred from State Lands Commission to *Access for All* on January 5, 2006 (Exhibit 7). *Access for All* is ready to open and manage the easement, but is precluded from doing so because unpermitted development obstructs the easement area and the required accessway improvements have not been constructed.

On August 15, 1986, the Commission approved plans to build two stairways, one on either side of the headland, providing public access from the beach to the headland and back down to the beach, pursuant to the permit requirements (Exhibit 4).

3. Violations

Development, including a locked metal gate, a metal fence wrapped at both ends with razor wire, wooden stairs, removal of native bluff-top vegetation, and landscaping has occurred on the subject property. The development violates the Coastal Act because it was undertaken without a CDP and is inconsistent with the terms and conditions of the underlying Coastal Development Permit Amendment A-220-80 in that it obstructs an accepted lateral public access easement. In addition, the applicants have failed to construct the required public access improvements up and over the headland on the subject property, as required under the Coastal Development Permit Amendment A-220-80.

The unpermitted locked gate and fence, located at the top of the headland, prevent lateral public access to and across the headland in direct conflict with Special Conditions 1 and 2 of the underlying permit which specifically require an easement upon and over the headland for "pedestrian access and viewing" and improvements to facilitate such access (CDP Amendment A-220-80). Presently, there is only private access for the property owner to the headland due to the locked gate and fence; whereas Special Condition 2 specifically required access improvements to be completed prior to occupancy of the residence, which would allow the public access upon and over the headland from the shore.

In addition, as stated above, the underlying permit (CDP Amendment A-220-80) required the construction of public access improvements, allowing the public to travel from the beach on one side of the headland, across the headland, to the beach on the other side. The plans for the construction of the improvements to facilitate public access, as required by the permit, were submitted to the Commission and approved (Exhibit 4), but the improvements have not been constructed. The unpermitted private wooden stairs currently located on the upcoast side of the headland are within the lateral public access easement and do not comply with permit conditions. Furthermore,

due to the locked gate and fence with razor wire at the top of the stairs, access to the beach from the headland is at the behest of the Revells and limited to persons with a key to the locked gate. The staircase required to be constructed on the downcoast side of the headland is completely absent.

On November 17, 2005, the Commission issued Cease and Desist Order CCC-05-CD-13 and Restoration Order CCC-05-RO-09 (“the Orders”) directing the applicants to: 1) cease and desist from construction and/or maintenance of unpermitted development, 2) remove all unpermitted development from the property, 3) restore areas of the property that have been negatively impacted by unpermitted development to the condition they were in before Coastal Act violations occurred, and 4) allow public use of the easement and construct the public access improvements up and over the headland in compliance with the terms and conditions of the existing permit and the accepted offer to dedicate that was recorded pursuant to the permit. The Orders require the applicants to submit a Removal Plan (for the removal of all unpermitted development), a Restoration Plan (requiring removal of all non-natives from the headland), and an Accessway Improvement Plan (for construction of the stairs and accessway).

To date, the applicants have not resolved any of the violations and are therefore not in compliance with the Orders.⁶ Other than litigation, the applicants have taken two actions in response to the Commission’s 2005 Cease and Desist and Restoration Orders: (1) submittal of a Restoration Plan for the Headland, prepared by Forde Biological Consulting and dated February 10, 2007; and (2) submittal of an amendment application requesting that the CDP requirement to construct public access improvements be eliminated. On March 22, 2007, the applicants submitted the February 10, 2007 Restoration Plan for the headland. Though presently under review, it should be noted that the Restoration Plan does not propose to fully remove non-native plant species as required in the Restoration Order.

The Cease and Desist Order and the Restoration Order specified that the Accessway Improvement Plan should include: (1) a Geologic Report recommending the acceptable location for the stairway foundations and method of anchoring into bedrock; (2) plans for the required stairways, with modifications as needed; and (3) construction procedures such as a timeline, hours of operation, equipment storage location, a contingency plan; plan for transport and disposal of debris, and measures to protect water quality. Although the applicants did submit reports from a geologist and an engineer with this amendment application, these reports do not address the information required to be included in the Accessway Improvement Plan. Further, the applicant has not resolved any other of the Coastal Act violations on the property.

⁶ The applicants have submitted a Restoration Plan with respect only to the headland on the property and have removed the landscaped lawn on the top of the headland. However, they have not removed the landscaping located along the perimeter of the headland and have proposed in the Restoration Plan to retain this unpermitted development. Thus, the unpermitted landscaping violation has not been resolved.

C. AMENDMENT REQUEST A-220-80-A2

The proposed amendment to Coastal Development Permit A-220-80 dated December 8, 2006, and received in the California Coastal Commission's Ventura office on December 18, 2006, requested "deletion of Special Condition No. 2 Requiring the Construction of Accessway Improvements from the Shoreline to the Headland Accessway & Back to the Shoreline." (Exhibit 10)

The amendment did not seek to eliminate Special Condition 1 wherein a lateral public access easement was placed across the length of the property from the mean high tide to the bluff, including an easement area over the headland for pedestrian access and viewing.

D. EXECUTIVE DIRECTOR'S DETERMINATION

In response to amendment request A-220-80-A2, a letter transmitting the Executive Director's Determination, dated January 17, 2007, explained that the proposed amendment must be rejected pursuant to Section 13166 of the California Coastal Commission Regulations (California Code of Regulations, Title 14, Division 5.5) because deletion of Special Condition Two would avoid the intended effect of the permit and no newly discovered information was submitted as part of the amendment application that could not, with reasonable diligence, have been produced before the permit was granted. (Exhibit 9)

The Executive Director's Determination explained the permit history of the site and reasoning as to why the previous amendment, CDP Amendment A-220-80, was accepted for review even though it resulted in deletion of the requirements of a Special Condition on the original CDP (P-10-20-77-2107). That original CDP authorizing construction of the existing single family residence on the property was approved by the South Coast Regional Commission subject to several special conditions, specifically including the requirement that the applicant record offers to dedicate both a public vertical access easement from Pacific Coast Highway to the mean high tide line and a public lateral access easement along the entire width of the property along the sandy beach. The Regional Commission had found that the proposed development could only be approved subject to the above referenced special conditions regarding the provision of public access.

In 1980, at the request of the owners of the property at the time, the Commission approved an amendment (CDP Amendment A-220-80) to the underlying permit, deleting the requirement to provide public vertical access on site. Although that first amendment authorized the deletion of the requirement to provide public vertical access on site, the amendment application was accepted and approved by the Commission only because the applicant proposed to provide expanded public lateral access along the beach including construction of two public access stairways up and over the headland to mitigate for the loss of that vertical public access and ensure lateral access across the site at all tide levels. Specifically, in order to ensure that the applicants'

proposal to provide additional access improvements was carried out, Special Condition Two required the property owner to submit project plans, for the review and approval of the Executive Director, for the construction of new access improvements to provide public access from the upcoast shoreline up and over the headland itself to the downcoast shoreline and vice versa. Special Condition Two further specifically required the property owner to construct the public access improvements in accordance with the approved plans prior to occupancy of the residence.

Further, the Irrevocable Offer to Dedicate an Easement (OTD), which was recorded for the subject site pursuant to the amended permit, specifically states (As Amended 1987, Exhibit 5):

WHEREAS, the Commission found that but for the imposition of the above condition [for provision of lateral access], the proposed development could not be found consistent with the public access policies of Sections 30210 through 30212 of the California Coastal Act of 1976 and that, therefore, in the absence of such a conditions, a permit could not have been granted.

Thus, the permit required both a lateral public access easement and the actual construction of public access improvements in the easement to facilitate access to and within the easement. These were essential to the Commission's previous approval of the underlying permit and to the Commission's approval of the subsequent amendment to that permit deleting the requirement to provide a public vertical access easement.

In this case, although construction of the residence on site has been completed and occupancy of the residence has already occurred, the construction of the previously approved public access improvements, which was specifically required by Special Condition Two of the permit as mitigation for that development, has not yet been completed. The condition requires the permittee to construct access improvements. Removal of the condition would eliminate this requirement and thereby avoid the intended effect of the permit,⁷ as previously amended and conditioned, which is to provide access along the beach and across the headland for access and viewing purposes by requiring that the permittee provide both an access easement and actual access improvements.

The letter from Alan Block, dated December 8, 2006 (Exhibit 10), and submitted as part of the December 18, 2006 amendment application, asserted that the proposed amendment is requested "in light of physical changes to the property (changed circumstances) which have occurred between the time of the Commission's approval of

⁷ Technically, the requirement to provide the stairways would continue to exist, even in the absence of Special Condition 2, since it was a central part of the applicant's proposal in the first amendment. However, Special Condition 2 does independently require the construction of the stairways. Moreover, the clear intent of the subject amendment application is to remove the obligation, so the only reasonable way to interpret this amendment application is as seeking to make all the necessary changes to accomplish that objective. Therefore, the Executive Director's analysis of the impact of elimination of Special Condition 2 appropriately assumed that it would have that effect, and the Commission's analysis employs the same approach.

the CDP...and the date the Revell's purchased the property." The letter further asserted that the headland effectively "rose" in height from approximately 14 ft. above the surface of the beach to approximately 23 ft. in height above the beach due to changes in the sand level on the beach and that the change in sand level makes construction of the previously required public access improvements infeasible. No evidence of any changes to sand levels on site or the infeasibility of constructing the required public access improvements was submitted as part of the amendment application (nor has any such evidence been submitted subsequently). The plans approved in 1986 do not constitute such evidence because: (1) they were not designed to report height, (2) there is no indication of whether or how the height was measured, and, perhaps most significantly, (3) even if the numbers are accurate, they are within the expected range of sand levels due to natural fluctuations.

The Executive Director's Determination goes on to explain that the beach is a naturally dynamic environment which is subject to periodic fluctuations in sand elevations due to tidal conditions and seasonal changes; such fluctuations are expected to occur and do not constitute "changed circumstances" to the condition of the site. The fluctuations in sand level were a known aspect of the sandy beach environment at the time the Commission approved the underlying permit and do not, in any manner, constitute "newly discovered" information that could not have been "discovered and produced before the permit was granted." Nor is such information material, in that any potential past, present, or future changes (either periodic or permanent in nature) to the sand elevations on the beach fronting the subject site are irrelevant to the feasibility of constructing the previously approved public access improvements on the subject site in compliance with the required conditions of approval of the underlying permit. As explained in the Executive Director Determination, the 1986 approved plans indicate that the stairway would be anchored on a pile- or caisson-supported foundation. Therefore, changes in sand level sitting atop the bedrock are irrelevant.

The geologic engineering report by Donald Kowalewsky dated December 13, 2005, submitted as part of the amendment application does not indicate that any changes have occurred on site that would prevent compliance with the conditions of approval or negate the relevance of the required improvements. In fact, the report indicates that construction of the required stairs is feasible provided that such stairs are constructed using deepened piles (caissons) extending into the underlying bedrock. Pursuant to the requirements of Special Condition Two, the previous property owner submitted project plans, for the review and approval of the Executive Director, to construct the required public access improvements on site. The approved plans prepared by The Frank Lloyd Wright Foundation dated 2/19/82 and approved by the Executive Director on 8/15/86 indicate that both of the two approved public access stairways would be anchored by a pile- or caisson-supported foundation, which would not move as seasonal sand level fluctuations occur.

As a result of the above facts, the Executive Director rejected CDP Amendment Application A-220-80-A2.

E. APPLICANTS' APPEAL OF EXECUTIVE DIRECTOR DETERMINATION

The applicants appealed the Executive Director's Determination in a short letter from their representative, Alan Block, dated January 31, 2007, requesting that the Commission follow the procedures provided by Section 13166 of Title 14 of the California Code of Regulations ("14 C.C.R.") and schedule a hearing on the determination (Exhibit 8). Despite the reference to 14 C.C.R. section 13166, the applicants' appeal does not discuss the standard listed in that section, which relates to the intended effect of the existing permit and the presentation of newly discovered material information. Instead, the applicants simply assert that there are "physical changes to the property (changed circumstances) which have occurred," as specified in a list of five bullet points. Construing the appeal in the light most favorable to the applicants, the Commission interprets these bullet points as an assertion of newly discovered material information that could not have been presented at the time of the underlying coastal development permit application.

The applicants assert that the relevant physical changes occurred between the time of the approval of the coastal development permit amendment in 1980 and the date the Revells purchased the property on May 13, 2004 (Exhibit 8). As a result of these physical changes, the applicants contend that compliance with Special Condition Two is "both impractical from a construction perspective and unnecessary for the purpose of ensuring lateral access." The five bullet points in the applicants appeal that allegedly list changed circumstances state:

- Assertion 1. "Significant loss of sand at the base of the headland"
- Assertion 2. "Significant vertical drop associated with any potential lateral accessway improvement, raising serious safety concerns."
- Assertion 3. "Construction, engineering and geologic concerns which cannot be overcome, except at exorbitant expense"
- Assertion 4. "Wave rush-up at high tide"
- Assertion 5. "Availability of lateral access through existing sea cave"

The applicant submitted a coastal engineering report prepared by David Weiss, dated April 15, 2007 and a geologic engineering report by Donald Kowalewsky dated December 13, 2005 which provide additional information in support of the applicants' claims. The applicants submitted additional correspondence on June 4, 2007 which included a bid by Anacapa Construction, dated May 31, 2007, to build a stair tower alternative (Exhibit 14). The applicants' appeal of the Executive Director's determination is analyzed in the following section.

F. ANALYSIS OF THE APPLICANTS' APPEAL WITH RESPECT TO SECTION 13166

Pursuant to 14 C.C.R Section 13166, the Executive Director must reject an amendment application if the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless newly discovered material information is presented that, in the exercise of reasonable diligence, could not have been discovered and produced before the permit was granted. Similarly, on appeal, the Commission must overturn the Executive Director's Determination if the it finds that either: (1) the proposed amendment would not lessen or avoid the intended effect of an approved or conditionally approved permit or (2) the applicant has presented newly discovered material information, which could not, with reasonable diligence, have been discovered and produced before the permit was granted.

1. Would the Amendment Lessen or Avoid Any of The Intended Effects of the Permit?

The Commission specifically considered the issue of public access as a result of residential development of the site. In the original coastal development permit, P-10-20-77-2107, the Regional Commission required offers to dedicate vertical and lateral access easements on the property. The public access requirements were reassessed in 1980, as part of Commission review of an amendment application, CDP Amendment A-220-80 (Benton; see Exhibit 11), which requested modification of the access conditions for the development. The amendment application specifically proposed constructing "two stairways located at the easterly and westerly side of the headland . . . to provide public access across such headland" (Sherman Stacey, September 5, 1980; Exhibit 11), and on November 19, 1980, the Commission required an expanded lateral easement, submittal of plans "showing proposed improvements" (stairs providing access to the headlands), and the construction of those access improvements, in lieu of the vertical access easement. Specifically, Special Condition One of CDP Amendment A-220-80 required an irrevocable offer to dedicate an easement for public access and passive recreational use along the shoreline, from the mean high tide line to the base of the bluff for the width of the project site. Further, Special Condition Two of CDP Amendment A-220-80 specifically required the applicants to construct accessway improvements from the shoreline to the headland accessway and back to the shoreline. In its approval of that amendment, the Commission found that the deletion of the previously required public vertical access easement could only be allowed because of the additional public access improvements proposed by the applicant (including construction of the two stairways up and over the headland.).

The Commission made the following findings in the staff report for Amendment No. 220-80 in order to approve the modifications to the access conditions:

However, the inability to pass around the headland would remain an impediment to determining that adequate public access exists on the parcel. The applicant proposes to eliminate this access impediment by enlarging the lateral access way to include the entire sandy beach, and to improve and

dedicate an easement for public access and viewing across the headland. Since vertical access is available to the beaches adjacent to the site and because continuous lateral public access will be provided the Commission finds that this project can be approved without dedication of vertical access. The Commission concludes that as conditioned to require the dedication and provision of lateral access, the project is consistent with Sections 30210-30212 of the Coastal Act.

From findings above, it is clear that the Commission intended the required access improvements, up and over the headland, to provide continuous lateral public access across the width of the property.

The subject amendment application, A-220-80-A2, submitted by the Revell's on December 18, 2006 requests the "deletion of Special Condition No. 2 Requiring the Construction of Accessway Improvements from the Shoreline to the Headland Accessway & Back to the Shoreline." Special Condition Two, requested to be deleted under the subject amendment, states (Exhibit 10):

Special Condition 2, Accessway Improvements. Prior to issuance of the permit, the applicant shall submit plans, for the review and approval in writing of the Executive Director, showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with approved plans shall be completed prior to occupancy of the residence approved herein.

The subject amendment to delete Special Condition Two in its entirety would necessarily avoid the intended effect of the conditionally approved permit (A-220-80) as expressed in Special Condition Two. Elimination of Special Condition Two would render the headland inaccessible to the public for lateral access purposes,⁸ inconsistent with the underlying intent of Special Condition Two. The applicants have not submitted any other alternatives or modifications that would provide for continuous lateral public access and coastal viewing in lieu of the approved headland access improvements.

In addition, the elimination of Special Condition Two would conflict with the additional intended effect of the CDP as expressed in Special Condition One, which requires the following:

Special Condition 1, Public Access. Prior to issuance of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission

⁸ Technically, the requirement to provide the stairways would continue to exist, even in the absence of Special Condition 2, since it was a central part of the applicant's proposal in the first amendment. However, Special Condition 2 does independently require the construction of the stairways. Moreover, the clear intent of the subject amendment application is to remove the obligation, so the only reasonable way to interpret this amendment application is as seeking to make all the necessary changes to accomplish that objective. Therefore, the Executive Director's analysis of the impact of elimination of Special Condition 2 appropriately assumed that it would have that effect, and the Commission's analysis employs the same approach.

irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement shall extend from the mean high tide line to the base of the bluff for the width of the project site and shall include an easement area, conforming to the plans attached in Exhibit 2, over the headland on the site for pedestrian access and viewing. Such easements shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The elimination of Special Condition Two would limit the public's ability to use the lateral access easement, required by Special Condition One of the underlying permit, along the width of the property during medium to high tides. Because the lateral access easement is intended to provide continuous lateral public access across the width of the property, it necessarily (as well as expressly) includes access to the area represented by the headland. However, without the stairs, the public cannot reach the portion of the lateral accessway represented by the headland. Thus, the subject amendment would lessen the intended effect of Special Condition One of the conditionally approved permit.

Furthermore, the elimination of Special Condition Two would eliminate the public's ability to use the headland for coastal viewing purposes, which was also required by Special Condition One of the underlying permit. Because viewing would no longer be provided for the public, the subject amendment would avoid the intended effect of Special Condition One of the conditionally approved permit.

For the above stated reasons, the Commission concurs with the Executive Director's determination that the subject amendment request (A-220-80-A2) would lessen or avoid the intended effect of the previously approved permit, CDP Amendment A-220-80. The next task is to determine whether, in this case, there is new material information with regard to this issue that could not have been reasonably discovered and produced at the time A-220-80 was issued. This second factor is discussed below.

2. Have Newly Discovered Material Facts Been Presented?

The applicants asserted in the subject amendment request (A-220-80-A2; Exhibit 10), and in the appeal of the Executive Director's determination to reject the subject amendment (Exhibit 8), that there are changed circumstances on the property, which the Commission interprets as an assertion of newly discovered material information that could not have been presented at the time of the underlying coastal development permit application, since this would be the standard required under Section 13166 of the Commission's regulations.

The applicants assert that there are physical changes to the property which have occurred between the time of the approval of the coastal development permit

amendment in 1980 and the date the Revells purchased the property on May 13, 2004.⁹ (Exhibit 8) As a result of these physical changes, the applicants contend that compliance with Special Condition Two (construction of stairways on each side of the headland) is “both impractical from a construction perspective and unnecessary for the purpose of ensuring lateral access.” The applicants contend that there are physical changes on the property, including: the loss of sand at the base of the headland; safety concerns regarding a significant vertical drop at bottom of accessway; construction, engineering, and geologic concerns; wave rush-up at high tide; and availability of lateral access through existing sea cave. The Commission’s Senior Coastal Engineer reviewed the materials presented by the applicant, as well as additional materials, in order to assess these claims. She reported her conclusions in her May 31, 2007 memo (hereinafter, “Ewing Memo”), which is hereby incorporated by reference.

The applicants’ assertions are addressed individually below. To date, the applicants have submitted this list of assertions and two coastal reports, which are intended to support the appeal. However, the appeal, as submitted, provides few links between the underlying data and how it is specifically intended to support the assertions. Staff has done its best to interpret the applicants’ assertions by reviewing the subject amendment application (A-220-80-A2) in conjunction with the appeal submittals, as described below.

Assertion 1. Significant loss of sand at the base of the headland

The first bullet point in the appeal of the Executive Director’s rejection of CDP Amendment A-220-80-A2 asserts simply that there is a significant loss of sand at the base of the headland. The letter submitted with the amendment application (Alan Block, dated December 8, 2006; Exhibit 10) states that:

The approved plans for the accessway improvements evidence that the maximum height of the improvements would extend 14 feet above the beach. At the time the Revells purchased the property the headland stood more than 23 feet above sand level. It is higher today. As such, construction of the approved accessway improvements today would not provide the public with the desired lateral access that the Commission sought at the time of its approval of CDP No. A-220-80. (emphasis added)

Various measurements have been provided by the applicant to describe the elevation of the top of the headland above the sand level. The Kowalewsky Report (2005) references a 20- to 30-foot vertical rise in relation to any proposed stairways. Bedrock Engineering, April 13, 2005 (Exhibit 2 of Alan Block letter dated December 15, 2005) references the vertical distance between the top of the headland and beach as follows:

⁹ Although the Commission notes that the applicants are asserting changed circumstances between the date of the Commission’s approval of a CDP for residential development and access improvements in 1980 and the date the Revell’s purchased the property in 2004, there is no Coastal Act relevance to the date the Revell’s purchased the property because the burdens of permits run with the land once the benefits have been accepted. Therefore the responsibility for compliance with the requirements of the coastal development permit resides with the current property owners. The recorded OTD, containing the Special Conditions provided the Revells with notice of this responsibility.

Vertical Drop: The vertical drop between the top of the headland and the beach below is approximately 23'. The stair proposed by the Commission drops 14'. The stair would terminate 9' above the beach below. The length of the stair must be extended to terminate at the sand / rock below.

The Weiss Report (2007) references a 30-foot distance between the scoured beach and the top of the headland:

According to the survey that this office has been provided, there is an approximate thirty foot drop between the top of the bluff and the scoured beach. For that change in elevation, and considering a six inch rise to eleven inch run, the stairs and landings would traverse between sixty and seventy feet in the roughly east/west direction along the length of the cliffs on either side of the promontory. (emphasis added)

The Peak Surveys, Inc. aerial topography survey, dated March 8, 2007, shows the headland to be roughly 23 feet above the sand level in the approximate location of the stairways (Exhibit 3).

From the above statements, the Commission interprets the applicants assertions regarding "significant loss of sand at the base of the headland" to mean that because the approved stairway plans (Exhibit 4) indicate that the stairway would extend 14 feet down from the top of the headland, the approved lower platform foundation would end up being raised approximately 9 feet (23 ft – 14 ft), more or less, above the current sand level, so that use of the stairway would not be viable by the public and would not provide lateral access from the beach to the top of the headland and back to the shore. The applicants appear to be suggesting that, as a result of the loss of sand, compliance with Special Condition 2 would not result in any additional lateral access. This is an outgrowth of the applicant's position that the existing obligation under Special Condition 2 is only to construct public access improvements to the exact specifications in the 1986 approved project plans. This is not a valid argument under Section 13166 for the following reasons: (1) the fluctuating distance between the top of the headland and the surface of the sand was occurring at the time the Commission approved A-220-80, has always been occurring, and continues to occur, and it was known to be occurring at the time the Commission approved A-220-80, so this allegation asserts no new information; (2) there is no indication that this distance has been unexpectedly increased as a result of significant or unforeseen coastal or geologic factors; (3) the approved plans show accessway stairs anchored on a pile- or caisson-supported foundation, which would not move as seasonal sand level fluctuations occur and (4) the assertion that public access would not be provided is based on a faulty premise, as the applicants are required to implement a stairway design that reaches the beach in order to implement the original proposal and satisfy the requirements of Special Condition 2. Thus, if the applicants construct the improvements as required, the normal fluctuations in sand levels will not

diminish the degree to which those improvements provide public access.¹⁰ In sum, information regarding fluctuations in the sand level is neither new nor material.

In essence, the applicants are arguing that, although stairs from the beach to the headland and back down were *proposed* by the prior owner as mitigation for the elimination of the then-existing vertical access condition, and the Commission expressly found those stairs to be necessary to mitigate for that loss; since that owner proposed plans for the stairs that failed to take into account the fluctuating sand levels and then delayed while those levels did in fact fluctuate, that prior owner's failings should relieve the current owner of any obligation to perform that undisputedly essential mitigation. That cannot be correct. The specifics of the applicants' arguments are addressed below.

The Headland Is No Higher and the Distance from the Headland to the Sand May Actually be Smaller Now than in 1980

The applicants have asserted that there has been a change in the distance between the headland and the sand level. The December 8, 2006 letter from Alan Block (Exhibit 10) contends that this change has occurred because the headland is higher. However, there is no evidence of significant coastal uplift along the coast in the period from 1980 to present. In fact, the reports of the elevation of the headland have remained essentially constant. While there are some differences in the actual numbers used to represent that elevation in the 1986 approved project plans (Exhibit 4, showing 26 feet) and the 2007 survey (Exhibit 3, showing about 31 feet), these differences are primarily the result of the fact that the two documents use different reference points as their 0 vertical datum. The 1986 project plans used the Mean High Tide (MHT), whereas the 2007 survey used North American Vertical Datum 88 (NAVD 88). Since the MHT at this location is approximately 4.5 feet above NAVD 88, the difference in the reported elevations is almost entirely explainable by reference to the different reference points, with the remaining difference being attributable to measurement imprecision and the fact that there is about a foot of elevation variation on the top of the headland itself. There is no evidence of any actual change in the elevation of the headland (Exhibit 12 at 4-5). The only significant changes in the difference in elevation between the headland and the surface of the sand are due to the foreseeable seasonal and interannual changes in sand level. Thus, this assertion presents no newly discovered information or changed circumstance.

Moreover, the available evidence regarding the changes in the elevation of the sand surface suggests that the height of the headland above the sand may actually be lower today than it was when the permit was approved. The original applicant, Mr. Benton, referenced a 30-ft distance from the top of the headland to the beach in his 1978 appeal of the original CDP (P-10-20-77-2107). The South Coast Regional Commission

¹⁰ The alternative interpretation of this assertion is that it acknowledges the requirement to build the stairs from the Headland to the surface of the sand, and the loss of sand is relevant simply in that it makes the project more expensive and more difficult. This interpretation is addressed in the response to Assertion 3.

conditionally approved CDP P-10-20-77-2107 on January 16, 1978, and the original applicant (Benton) appealed. In support of this appeal (Appeal No. 27-78, Benton), the following claim was submitted on behalf of the applicant (Sherman Stacey, dated February 3, 1978):

4. The vertical access requested is unnecessary... El Matador Beach lies only 800 ft. east of Mr. Benton's property and El Pescador Beach lies only 1600 ft. to the west. These two public beaches will be separated by less than ½ mile... In addition, it would require an expensive public improvement to construct a safe access. From the beach up to the top of the bluff is not an easy route. Approximately 30 ft. of vertical relief separates the top of the first bluff from the beach. Stairs or some other form of access would be required to get from the beach to the top of the bluff. From that point, an improved and fenced walkway would be required up the drainage canyon to the Pacific Coast Highway. This type of improvement would be visually offensive to the Applicant who plans no changes whatsoever to these portions of his property. (emphasis added)

The Elevation of the Headland Above the Sand Surface is, and Always Has Been, Variable, and This Fact is Not New Information

Another vertical distance was listed by the previous applicant when the stairway plans were approved by the Commission in 1986. The stairway plans submitted by the previous applicant, and subsequently approved, indicate a 14-ft. vertical distance from the top of the headland to the sand (Exhibit 4). However, these plans were prepared by the Frank Lloyd Wright Foundation, and there is no indication of how the distance was determined or even that any measurement was taken, much less that they were prepared or reviewed by a licensed surveyor or engineer to ensure that the height of the headland in relation to the elevation of the sand was accurately depicted.

The various anecdotal discussions of the vertical distance from the headland to the beach indicate a range of sand level that would be expected from a dynamic beach area such as the subject area. At the time of the initial permit, the sand level was apparently quite low and the difference in elevation was close to 30'. In 1986, the sand level may have been somewhat higher, as the plans submitted indicate, with the difference in elevation from the headland to the sand level being approximately 14 feet (Exhibit 4). In the 2007 survey, the difference in elevation from the headland to the sand level is reported as being between 22 and 23 feet (Exhibit 3).

Such changes in the vertical distance between the headland and the sand level are consistent with expected seasonal and annual shifts in sand levels (Exhibit 12 at 2-3). They are not changed circumstances because they are a natural part of the sand cycle on these types of beaches and have been occurring consistently since prior to the original permit approval. Moreover, the fact such changes occur is far from being "new" information, which is the relevant standard here. It was known long before the time of the original permit actions on this site. As the Ewing Memo states, "the concepts that sand is mobile and that beach elevation changes as sand is added or removed from the beach have been basic aspects of coastal study since well before 1980" (Exhibit 12 at

2). It was also well known to the Coastal Commission in particular, as the “dynamic nature of the beach was discussed in the 1975 California Coastal Plan that was a precursor to the California Coastal Act” (Exhibit 12 at 2). Finally, the Ewing Memo states (Exhibit 12, pg 4):

There is every reason to believe that changes in beach sand elevations should have been an anticipated condition for this section of beach even in 1980, and such changes in beach sand elevation should have been considered during the design, engineering and construction of the required access stairs. Moreover, even if neither the Commission nor the applicant did, in fact, anticipate changes in beach sand elevation at the time the approved CDP Amendment A-220-80, there is no doubt that, by exercising reasonable diligence, the applicant could have discovered the phenomenon and produced information about it to the Commission in advance of the Commission’s action.

Thus, the grounds necessary for overturning the Executive Director’s rejection of an amendment application under Section 13166 of the Commission’s regulations have not been satisfied because there was no newly discovered material information that could not, with reasonable diligence, have been presented at the time of the underlying coastal development permit application.

As explained above, the sand level or the height of the sand changes regularly from season to season and year to year. At the time of the original permit, the applicant voiced concern about the stairs and noted that there was almost a 30’ difference in elevation from the headland to the beach at that time; the beach elevation has risen and fallen many times since this observation by the initial permit applicant. This dynamic nature of the beach causes changes in the distance between the sand level and the top of the cliff and headland. This natural oscillation in beach sand was well recognized at the time of the initial permit; therefore, the fluctuating distance from the top of the headland to the sand does not represent new material information, and it certainly is not new information that could not have been produced before the permit was granted.

The Variable Elevation of the Headland Above the Sand Surface is not Material

Next, even if the fact of the changes in sand level were treated as new information that could not have been discovered, which is not the case, the information must also be “material” in order to require the Commission to accept the amendment application. In other words, the information must be relevant to the Commission’s decision on the aspect of the existing permit that the applicant seeks to change. As indicated above, the asserted relevance of the changes in sand level stems from the applicants erroneous assumption that Special Condition 2 only required the applicant to construct the exact stairs shown in the 1986 plans. Relying on that faulty premise, the applicants argue that construction of the public access stairways would not provide lateral access, since the stairways would not reach the beach due to changes in sand supply at the base of the headland, and the new information is therefore material.

This interpretation of the permit requirements is demonstrably inconsistent with the purpose behind the amendment. Nowhere does Special Condition 2 state that a 14-foot stairway was to be constructed. The permit required an easement over the headland for pedestrian access and viewing and improvements to provide access to that headland accessway. Even the application itself made it clear that the proposal was to build stairs from the headlands to the beach (Exhibit 11).

The applicant submitted project plans for the construction of two stairways from the headland to the beach, which were approved by Commission staff in 1986. These plans indicated an adequate concept to implement the requirement of Special Condition 2. That is, the 1986-approved plans (Exhibit 4) show an upper and lower pile- or caisson-supported platform foundation for each stairway and show that the piles or caissons are to be located below-grade. The approved plans do not address the fluctuating sand levels; they do not include any engineering information such as how deep the caissons need to be embedded. Therefore, more precise plans would have been (and are still) required prior to the construction of any improvements. To determine the necessary embedment depths, final stairway designs and engineering calculations would have been required, and field checks may have been necessary as well (Exhibit 12, pg 4-5).

If the applicants had completed final engineered plans and determined that the approved conceptual plans needed to be refined or revised in order to accomplish the goal of building stairs to the beach, then the applicant would have needed to submit revised plans to conform to the physical conditions at the site. The fact that a conceptual plan cannot be implemented exactly as drawn because of actual site conditions that have always existed at the site is not material new information that justifies removal of mitigation. Rather, it requires the applicant to redesign and seek either an amendment to authorize the redesign or concurrence from the Executive Director that an amendment is not necessary. In this case, the permittee is essentially claiming that because a conceptual plan for mitigation submitted by the prior permittee cannot be built exactly as shown, the permittee should be relieved of the requirement to mitigate the project impacts. However, the site conditions are exactly the same as when the prior permittee submitted the conceptual stairway plans; that is, the sand levels fluctuated at the time the conceptual plans were prepared and the sand levels fluctuate today. The permittee's decision to submit a conceptual plan for staff approval rather than engineered plans that take the sand fluctuation into account does not obviate the permittee's requirement to build the stairs.

The requirement is to build stairs to the beach, and there is no indication that the Commission was concerned about how far that distance was. In fact, the only information available on this point is that the Commission apparently regarded a 30-foot distance as perfectly acceptable, since that is the distance the Commission was told existed prior to the approval of the amendment. Thus, the fact that the distance from the headland to the sand varies, and could be greater when the stairs are actually built than that shown in the conceptual plan is immaterial.

In sum, the fluctuating distance from the top of the headland to the sand does not represent new material information which could not have been produced before the permit was granted. Any necessary changes in stairway design from the 1986 plans to extend the stairway to whatever the sand level of the beach is at the time of construction is a result of predictable seasonal fluctuation.

Finally, regardless of the previously approved stairway plans, the applicants have the responsibility for fulfilling the obligations of Special Condition 2 rather than relying on the conceptual plan previously submitted by the applicant, which is merely a tool to facilitate condition implementation. As the Ewing Memo indicates, the Commission “clearly was envisioning stairs,” but whether those stairs would have to span 14 feet, 23 feet, 30 feet or more was immaterial, as there are “[m]any locations along the California coast [that] have public accessways that use stairs that span vertical differences of 30 feet or even higher” (Exhibit 12 at 4). The applicants have presented no evidence that potential past, present, or future changes to the sand elevations on the beach fronting the subject site are outside of the normal, expected range of variation (i.e., that they constitute new information that could not have been discovered), or that they are relevant to the requirement to construct public access improvements on the subject site in compliance with the conditions of approval of the underlying permit (i.e., that they are material). Special Condition 2 requires the construction of public access improvements from the shoreline to the headland accessway and back to the shoreline. Public access up and over the headland was found by the Commission to be requisite in the approval of the residential development. The 1986-approved plans are just one means of fulfilling the requirements of Special Condition 2. There may be other alternative stair designs that would meet the requirements of Special Condition 2 that could be implemented (Exhibit 12 at 4-5). The Weiss Report (2007) itself has described an alternative “stair tower” that might also meet the requirements of Special Condition 2.

As described above, given that the sandy beach is dynamic system, that it was recognized as such when the Commission approved A-220-80 in 1980, and the 1986 stairway was designed and constructed with that variability recognized, the Commission finds that the alleged loss of sand at the headland and the associated change in the vertical distance from the sand level to the headland do not constitute new information, material information, or information that could not have been reasonably discovered and produced at the time the underlying permit was issued.

Assertion 2. Significant vertical drop associated with any potential lateral accessway improvement, raising serious safety concerns.

The second bullet in the appeal of the Executive Director’s rejection of CDP Amendment A-220-80-A2 asserts that there are changed circumstances resulting in a significant vertical drop and related safety concerns. As in the applicants’ first assertion of changed circumstances, reported above, the reference to a significant “vertical drop” appears to be based on the erroneous assumption that the only requirement imposed upon the applicants is to build stairs 14 feet down from the headland. For the reasons articulated above, this is not the case. Thus, this entire assertion is based on a false

premise. For all of the reasons stated above, in the discussion of assertion 1, compliance with the existing permit would not result in stairs suspended in mid air or any other "vertical gap," and therefore would not result in any safety concern. Thus, this assertion does not present any new, relevant information or any changed circumstance.

Apart from the assertion that the stairs would not reach the sand, the applicants seem to have some concern regarding maintenance of the stairway to avoid any unsafe vertical gap developing between the bottom of the stairway and the sand in the future, as well as any unsafe deterioration of the stairway itself. The letter submitted with the amendment application (Alan Block, dated December 8, 2006; Exhibit 10) states that:

As evidenced by Kowalewsky's report and findings, the practical ramifications of the construction of the accessway improvements on the sandy beach have not been adequately considered, if at all. It serves no purpose to mar the landscape with unnecessary structures that could quickly wash away and pose a serious hazardous condition to the public while its remnants desperately cling to the rocks before being fully claimed by the sea. Likewise, a major construction project with extreme negative impacts on the environment is not justified.

The Weiss Report (2007) provides the following site conditions:

Based upon these calculations and the attached plot, it is my opinion that the construction of a stair system on both sides of the promontory for general public access is going to be very difficult. This section of beach is awash almost to the bluff for some part of most days. Photographs 2 and 3 show the beach condition on the date of our site visit. As one can see the sand is packed and wet all the way to the face of the back bluff, showing that there has been uprush to the back bluff. Wave action is constantly undermining the toe of the bluffs, ultimately causing them to collapse. Under those conditions, the connection of the stairs to the top of the bluff will always be in some danger of being destroyed or having to be reinforced because the slope below is being damaged by wave action.

The assertion that there could be a public safety issue raised in the future by the possibility of gaps developing between the bottom of the stairway and the sand level obviously does not present any changed circumstances, and it is not a valid argument under Section 13166 for the following reasons: (1) the anticipated fluctuations in the sand level and the impact of waves on the stairway are not new information, for reasons stated in the discussion of assertion 1; and (2) the easement holder, *Access for All*, will be responsible for maintenance of the stairway after its initial construction and would address unsafe gaps between the bottom of the stairway and the fluctuating sand level as well as unsafe deterioration of the stairway itself.

With regard to potential safety concerns as a result of damage to the stairways after construction, public access stairs have successfully been built in many places along the coast, and they often have to address the design issues raised by a changing sand level, regular impact from waves and bluff retreat (Exhibit 12 at 3-4 and Exhibit 16). The

design issues raised in the reports by Kowalewsky and Weiss are not new. The coast is a dynamic region and the changes that are associated with the coast and that create the dramatic headlands, arches and sea stacks found along this portion of the Malibu coast have been known and considered in coastal design for many years. A variety of designs have been developed to accommodate seasonal and interannual variability in sand level and wave energy. Solid, well embedded foundations or landings would be important, and, in fact, the approved plans do show a pile- or caisson-supported foundation. Transitions from the landings to the beach level can be accomplished by ramps, additional stairs and other options.

It is anticipated that these types of access improvements would require periodic maintenance. As the easement holder, *Access For All* has already accepted responsibility for maintaining the stairway (Exhibit 7). Such maintenance would need to address any public safety concerns with regard to the vertical distance between the bottom of the stairway and the sand or unsafe deterioration of the stairway itself. The Commission's engineer has concluded that the construction of these stairs "does not raise a safety issue" (Exhibit 12, pg 4), and the Commission agrees.

In this case, because the sandy beach was recognized as a dynamic system well before 1980, neither sand elevations nor wave conditions were assumed to be fixed at the time the Commission approved and required the stairway or when the stairway plan was approved in 1986. Further, it is acknowledged that these types of access improvements do require periodic maintenance to ensure public safety. For the above reasons, the Commission finds that this assertion presents no changed circumstances and no new material information with regard to public safety associated with the distance from the bottom of the stairway to the sand, much less any new information that could not have been reasonably discovered and produced at the time the underlying permit was issued.

Assertion 3. Construction, engineering and geologic concerns which cannot be overcome, except at exorbitant expense

The third bullet point in the appeal of the Executive Director's rejection of CDP Amendment A-220-80-A2 asserts that there are "[c]onstruction, engineering, and geologic concerns which cannot be overcome except at exorbitant expense." As an initial matter, this statement does not allege, or even imply, any changed circumstances or new information. It simply asserts that the requirements of the permit are difficult and expensive to satisfy. Thus, this allegation does not even purport to satisfy the criteria for overturning the Executive Director's determination and accepting this amendment application. Nevertheless, the Commission explores this allegation further, once again by reference to other materials submitted by the applicant.

The letter submitted with the amendment application (Alan Block, dated December 8, 2006, quoting Kowalewsky, 2005; Exhibit 10) states that:

The proposed accessway may enhance access... to a limited portion of the beach during high tide, but will at the same time detract from the reason why a person visits the area. Construction of the stairway, will require installation

of several concrete caissons through the beach sand extending into the underlying bedrock a minimum of 10 feet. Excavations to construct the caissons will require heavy drilling equipment on the beach during low to medium tides. Because this type of rock is locally very hard, drilling will be difficult and any one bore hole may not be completed between high tides. Consequently, sand must be excavated and stored as a barrier to wave action so that drilling can continue, and the reinforcing steel placed and concrete poured before the boring is filled with sea water. The rock debris from the drilling must either be removed, or be allowed to erode with wave action.. ... It should be noted that access to the beach by heavy duty drilling rigs is very difficult and may necessitate a barge. I do not know what the actual conditions of the immediate near shore sea floor, however, observation suggests that numerous shallow rocks exist that may prevent a barge from reaching the shoreline... Needless to say, the logistics of drilling caissons on the beach at this location is questionable. Where a cliff stairway was created at El Matador beach, access for equipment was relatively easy from the east where residential construction at beach level exists.

Although construction will clearly require at least temporary beach modification, it must be understood that construction of four concrete caissons will change the erosion pattern due to wave action, at least locally. The individual caissons will periodically deflect, reflect, and otherwise change the flow of waves flowing across the beach. ... the caissons will modify wave erosion, ultimately resulting in a loss of sand due to the reflected wave energy. Because this promontory has an extensive network of eroded sea arches..., increased erosion rates will modify the natural coastline.

Again, nothing in this quotation alleges any changed circumstance or new information. The entire quotation is reducible to a claim that it will be expensive and difficult to build these stairs, but there is no evidence presented of any **increased** expense resulting from changed engineering or geologic circumstances or **increased** difficulty in construction. Even assuming that everything in the above quote is accurate, it would presumably have been true in 1980 as well. As the Ewing Memo indicates “construction of the stairway foundations, whether in 1980 or now, would require essentially the same level of effort” and “the construction constraints are similar to what existed at the time of the initial permit” (Exhibit 12, pg 5).

The Existence of Regulatory Requirements Outside the Coastal Act is Not New

There are only two ways in which the applicants' documents could be interpreted to suggest that construction of the stairs will be more difficult now than in 1980. The first appears in the letter submitted with the amendment application (Alan Block, dated December 8, 2006; Exhibit 10), which states that:

Further, after reviewing the approved plans, the City of Malibu has concluded that it will not issue a building permit for the accessway improvements because they were not designed and/or engineered to meet the minimum requirements of the Uniform Building Code (“UBC”).

Interpreted most favorably to the applicant, this statement could be an assertion of newly discovered information in the form of unpredictable changes to the applicable regulatory requirements. However, this is not a valid argument under Section 13166 for the following reasons: (1) the applicants have presented no evidence to suggest that Los Angeles County (the City of Malibu was not incorporated in 1980) would not have taken the exact same position in 1980; (2) the applicants have supplied no evidence to show that relevant regulatory requirements (whether in the form of UBC provisions or otherwise) have changed since the permit amendment was approved, and the Commission is not aware of any such changes; (3) even if such changes had occurred, information about such changes would not be material, as there is no indication that the regulatory burdens associated with the construction of an accessway onto the headland was of any concern to the Commission in 1980; (4) even if such changes had occurred, and the increased burden would have been significant to the Commission in 1980, these changes would not justify acceptance of an amendment because they would be a direct consequence of a more than 20-year delay in compliance with the previously required conditions of approval. Thus, this assertion raises no relevant changed circumstances and no newly discovered material information.

The Coastal Commission is not now and never has been the exclusive land use regulatory authority in the Coastal Zone. It was always anticipated that the applicant would obtain all necessary approvals from the local government to build the required stairways, as is the case with all projects that the Commission approves. The permit requirement in the Coastal Act specifically states that it is “in addition to obtaining any other permit required by law from any local government.” Cal. Pub. Res. Code § 30600(a). The City of Malibu may require the stairways to meet various local requirements. So may have Los Angeles County, had the permittee moved forward with condition compliance on the timeframe required in the permit. If compliance with those requirements necessitated a change in the plans, Commission staff would have reviewed a revised version of the plans to ensure the alternative presented still complied with the requirements of the permit.¹¹ In any event, the fact that the City of Malibu has indicated that it will not issue a building permit for the accessway improvements in the form indicated in the 1986 plans is not a changed circumstance or newly discovered material information, as there is no indication that this response from the City is materially different from what would have happened in 1980 if the plans were presented to the County.

However, even if there were evidence of changes in regulatory requirements with respect to stairway design, and there were evidence that such changes would have been significant to the Commission in 1980, which there is not, they would still not require acceptance of the amendment application, as they would be the direct consequence of delaying implementation for more than 20 years, in violation of the express terms of the permit. In that span of time, regulatory climates are anticipated to

¹¹ To the extent the applicants intend to argue that they cannot build what the permit requires because the City will not allow it, this is yet another argument based on the erroneous assumption that they are only required to build exactly what was approved in general, conceptual, non-engineered plans approved 1986.

change. In this case, for example, since the time of the approval of the 1986 plans, the site was no longer subject to Los Angeles County regulation, as a result of the incorporation of the City of Malibu.

In connection with the Commission's 2005 enforcement action, the applicants' representative, Alan Block, submitted a letter listing eight ways in which the 1986 plans allegedly fail to meet the requirements of the UBC. However, none of the cited UBC requirements is alleged to be new, so even if these points are true, they do not represent a changed circumstance or new information. Moreover, most of the alleged deficiencies are actually just a reflection of the fact that the 1986 plans were an interim step rather than being final, engineered plans. For example, points 4, 6, 7, and 8 all just require additional information (a report, structural calculations, details regarding anchoring founded into bedrock, and information about the headland rock material). As the Ewing Memo notes, all of this information would have been expected to be provided as part of the normal process going forward (Exhibit 12, pg 4-5). Similarly, if the applicants were required to meet the specifications listed in points 2, 3, and 5 (dampening the steepness, adding a landing, and shrinking the space between the guardrails), all of that could have been done as part of the same process. The only other point is simply another product of the applicants' misinterpretation of the applicable requirements, as it lists the fact that the stairs only span 14 vertical feet as a deficiency. As a result, as reported in the Commission's findings in support of its issuance of its Cease and Desist Order and Restoration Order (November 17, 2005):

the changes allegedly necessary for compliance with the UBC that were outlined in the April 29, 2005 letter from the Revells' attorney are minor, and even if the minor modifications are incorporated, the resulting stairways will substantially conform to the plans that were approved by the Commission in 1986. As Commission staff has previously informed the Revells, these modifications will not require an amendment to the existing permit.

Neither the passage of time resulting from the applicant's failure to previously comply with a required special condition of a permit, nor the natural variation in sand elevation rise to the level of changed circumstances or new material information. Had the previous property owner built the stairway, the easement holder would have been responsible for maintaining the stairs and responding to any changes in sand elevation. However, since the stairways were not constructed, it remains the applicants' responsibility to fulfill the requirements of Special Condition 2 in the context of present physical and legal requirements.

Neither the Cited Regulatory Requirements nor the Identified Geological or Logistical Challenges Preclude Completion of the Required Access Improvements

The Weiss Report (2007) considers two alternatives that would meet current UBC requirements, a straight stair run versus stair tower with switchbacks:

A straight stair run with the appropriate number of intermediate landings (one for ever approximate twelve feet of vertical height). According to the survey

that this office has been provided, there is an approximate thirty foot drop between the top of the bluff and the scoured beach. For that change in elevation, and considering a six inch rise to eleven inch run, the stairs and landings would traverse between sixty and seventy feet in the roughly east/west direction along the length of the cliffs on either side of the promontory.

A stair tower with switchbacks. For a thirty foot change in elevation, this configuration would be approximately eight feet wide and twenty-eight feet long.

For stair tower with switchbacks, the Weiss Report (2007) states the following foundation requirements:

A stair tower would require a foundation consisting of a minimum of four cast in place concrete piles supporting a grid of two foot square grade beams. The piles and the grade beams would have an affect similar to a sea wall. Further study will have to be made to determine the exact affects and how to mitigate them.

The above mentioned stair tower is one potential alternative that could be implemented at this site. The premise for cost and logistical difficulties is in large part based upon the need for an adequately engineered foundation. For instance, the Kowalewsky and Weiss reports indicate that caissons, or piles, need to be embedded 10-ft into bedrock, that heavy equipment might have to work on the beach and that only the cement work might be able to be done from the top of the bluff. If there is equipment on the beach, it might have to be protected from wave run-up, possibly using a sand berm seaward of the work site. The applicant is both identifying possible options that could be used to provide the required access stairs and also obstacles to their use. While such discussion is useful to the consideration of design constraints for the stairs and the foundation, the existence of limitations does not mean that construction is not possible.

The Ewing Memo (May 31, 2007) concludes that stairs “can be built to provide safe public access” and that vertical height “does not raise a safety issue” (Exhibit 12, pg 4). The Commission agrees. These types of public stairways have been built on even taller bluffs in other locations along the southern California coast (Exhibit 16). The May 31, 2007 Ewing Memo (Exhibit 12, pg 4) provides examples of stairways that traverse great vertical distance even where there is wave run-up (see corresponding photos in Exhibit 16):

Many locations along the California coast have public accessways that use stairs that span vertical differences of 30 feet or even higher. Some stairs in Orange and San Diego County provide safe public access up and down 80’ high to 120’ high bluffs (for examples, the stairs at Thousand Steps, Orange County, or the stairs at Grandview and Tide Park in San Diego). The beach level portion of these stairs are exposed to wave action and varying sand levels, similar to the conditions at the subject site. Stairs can be built to provide safe public access and the identified 30’ vertical difference for the full stair access does not raise a safety issue, other than to insure that the stairs are carefully designed, engineered and built.

If the applicant obtains bids for engineering and construction of the stairs, the constraints identified in the Weiss report would be useful to any potential bidders, but they are not indications that engineering and construction is not possible. These constraints would also help potential bidders focus on information gaps that might make the project easier to design and build. For example, if the estimate of embedment depth is of concern, the bidder could obtain field samples and use site specific strength parameters to design the foundation. As outlined in a second Memorandum from Commission Senior Coastal Engineer Lesley Ewing, dated June 20, 2007 (Exhibit 15, pg 2), responding to a June letter from the applicants' representative, a review of the potential foundation designs to-date indicate that there "are no detailed engineering plans for any stairway," and that "the provided reports and Cost Estimates suggest that detailed geologic information about this site and an engineered stairway design are available; however, to my knowledge, there have only ever been some general reports on site conditions and some general concepts for access stairs."

Moreover, regardless of the previously approved stairway design, there is no evidence that any of the engineering or geologic constraints identified by the applicants have changed since the underlying permit was approved. The only asserted change is the variability in sand elevation at the base of the headland. This change, as detailed in the previous two arguments above, is not a changed circumstance but rather a natural part of the beach sand cycle. Furthermore, the approved plans indicate that the stairway would be supported on a pile- or caisson-supported foundation. Thus, none of these constraints reflect any changed circumstances or newly discovered material information.

In sum, there has been no evidence presented of any change in regulatory requirements. Even the requirements the applicants cited are not inconsistent with what could have resulted from proceeding with condition compliance, and they are certainly not inconsistent with the permit requirement, as the applicant has itself presented alternative means of constructing the required stairs consistent with current requirements. Finally, even if new requirements do exist, there is no explanation for why such a change should be considered material, given that the regulatory burden associated with compliance was not considered as a factor by the Commission.

Additionally, since the engineering and geologic constraints appear to be the same, logistical and construction considerations are relatively the same since the time the underlying permit was approved as well. The May 31, 2007 Ewing Memo similarly concludes that, in general, "the construction constraints are similar to what existed at the time of the initial permit" (Exhibit 12, pg 5). Nevertheless, both the Kowalewsky and Weiss reports indicate that construction of stairways would have major logistical implications.

The Kowalewsky Report (2005) indicates:

Construction of the stairway will require installation of several concrete caissons through the beach sand extending into the underlying bedrock a minimum of 10 feet. Excavations to construct the caissons will require heavy

drilling equipment on the beach during low to medium tides. Because this type of rock is locally very hard, drilling will be difficult and any one bore hole may not be completed between high tides. Consequently, sand must be excavated and stored as a barrier to wave action so that drilling can continue, and the reinforcing steel placed and concrete poured before the boring is filled with sea water. The rock debris from the drilling must either be removed, or be allowed to erode with wave action.. ... It should be noted that access to the beach by heavy duty drilling rigs is very difficult and may necessitate a barge. I do not know what the actual conditions of the immediate near shore sea floor, however, observation suggests that numerous shallow rocks exist that may prevent a barge from reaching the shoreline... Needless to say, the logistics of drilling caissons on the beach at this location is questionable. Where a cliff stairway was created at El Matador beach, access for equipment was relatively easy from the east where residential construction at beach level exists.

The Weiss Report (2007) also notes:

The only construction material that might be brought in from the top of the bluff is the concrete for the foundation. [...] if one can get permission to bring concrete trucks over the adjacent private property to the top of the bluff.

Finally, one has to consider a capable contractor to build this project. Experience has shown that using the "lowest bidder" does not necessarily insure the lowest construction cost. Because of the daunting logistic problems, this project requires a contractor that is very experienced with construction in the surf zone. It might be very difficult, or even impossible, to get a "fixed" price bid because there are so many unknowns.

The Impediment Presented by the Presence of the Residence is Not a Newly Discovered Material Fact or a Relevant Changed Circumstance, Nor is it Even a Significant Impediment to the Project

The only other way in which construction of the stairs may be more difficult now than it would have been in 1980 is the direct result of the permittee's actions. One of the construction difficulties noted by the applicants is logistics – equipment access to the site. However, the applicants have not provided any real analysis of whether construction equipment for the stairs can be brought down from the bluff top or whether the presence of the residential development eliminates equipment access across the subject site. No conceptual access plans or routes have been submitted to Commission staff for review. The initial permit condition put construction responsibility on the applicant and this overall condition has not changed. The Weiss Report (2007) asserts the possible need to get permission for equipment access across adjacent private property; however, the analysis has not shown why the subject property and access across the applicant's property would not be adequate for purposes of stairway construction. If site development has diminished construction access, plans for initial construction should have considered all construction access needed.

Even if the existing residential development reduces access through the subject property, alternative strategies have been discussed by both Kowalewsky (2005) and Weiss (2007) to transport materials and equipment via barge or via tracked vehicle, respectively. Additionally, the June 20, 2007 Ewing Memo further explores the possibility that heavy drilling equipment might not be required, that track mounted equipment may be a feasible alternative to the use of a barge, and that some access options for portions of the project may be feasible from the bluff top itself. The June 20, 2007 Ewing Memo states that "If the sand layer can be excavated and stockpiled close by, possibly even placed into sand bags that could be used to construct a temporary berm around the work site, it may be possible that some foundation designs could be constructed with hand tools and portable drill rigs." The use of these alternative measures may provide some assistance to the logistical constraints reported by the applicants.

Moreover, a wide range of specialized equipment has become available in recent years that increases access to confined areas and areas where only portable equipment can be used. This trend in equipment design would suggest that it might be easier to build the stairs now than it would have been in the past.

Cost is Not a Newly Discovered Material Fact or a Relevant Changed Circumstance

The applicants indicate that because construction would be more difficult than originally contemplated, the construction could only be accomplished at great expense. The Weiss Report (2007) notes, "The design of the actual stairway to the beach is beyond the scope of this type of a coastal engineering opinion report." Since there has not been any effort to develop detailed designs or construction plans, there is no basis for saying either that construction could only be accomplished at great expense (Ewing Memo, June 20, 2007, pg 1) or that current geologic and engineering constraints would make the stairways far more costly to design and build than if the work had been undertaken as part of the initial permit. Since there is no evidence of changed circumstances with regard to engineering or geologic constraints, there is no reason to believe that construction would be any more difficult than it would have been at the time the permit was granted. In fact, with the improvement in the types of equipment that can access confined areas, some aspects of construction may actually be easier. Thus the applicants have not presented any evidence that there would be an increase in cost associated with a material change in engineering or geologic circumstances at the site.

Any increased cost of the project due to inflation does not constitute new material information because it would be expected and is also a result of the voluntary delay in implementation, and there is no evidence that the Commission considered cost to be a relevant factor in the first place. Everything is more costly than it was 20 or 25 years ago and many materials, such as steel, have gone up in price faster than overall inflation. Such price changes could have been foreseen, and even if they were not foreseen, they cannot be used to justify changes to the intent of the access condition of the permit. If increased costs over time could result in the deletion of permit conditions, an incentive

is created to delay the compliance with an unwanted condition. Such a scenario could not have been the intent of the Commission when they approved the permit amendment with special conditions.

The accessway was offered as mitigation for a change to the permit conditions. The Commission accepted that offer. The applicant then reaped the benefits of that deal by building and inhabiting the residence. The current owner has reaped the benefit of the residence as well. The permit requires that, in return, the accessway be available. That requirement, and the permit as a whole, runs with the land. The fulfillment of Special Conditions placed upon a permit is the sole responsibility of the applicant, or successor in interest, including any associated cost. In this case, Special Condition 2 required the applicant to construct public access improvements. Delaying 20 years to implement this special condition, at a time when construction costs have risen, is expected to result in greater costs. The benefit to the previous and current property owners has been to privatize the lateral public access easement over the headland for decades. The Revells currently enjoy the benefits of the issued permit, i.e., the development authorized by the permit, without accepting the burdens of complying with the permit's public access requirements.

In the most recent correspondence (Exhibit 14, Alan Block Letter dated June 4, 2007), the applicants assert that the "cost would far outweigh any public benefit created by the construction of the stairs which would permit public access for approximately only another one hundred feet to the east." This assertion brings up several issues. First, as explained in the June 20, 2007 Ewing Memo, the recent cost estimate from Anacapa Engineering of \$1.248 million is based on preliminary stairway design concepts which are not based on field investigations, engineered plans, or verified logistical constraints. As a result, the estimate is based on significant uncertainties. The June 20, 2007 Ewing Memo (Exhibit 15, pg 1) summarize the uncertainties and issues: "There is no detailed geotechnical information; there is no detailed stairway design; and there was never a competitive bid process on any of the provided information. There are a number of uncertainties about the stairway project."

The June 20, 2007 Ewing Memo goes on to discuss specific construction and logistical considerations that could reduce costs: "More site-specific tests might reveal that there are options for installing the stairway foundation that may be significantly less costly than to use heavy drilling equipment;" and "the height of the bluff may make access difficult; however, some access options from the bluff might be possible, and if they are possible, they might provide a less costly construction option." Moreover, "there is nothing in the provided reports that explains either why the recommendation to use track mounted equipment was not possible or why the possible use of a barge became the only option for equipment access."

As further noted in the June 20, 2007 Ewing Memo, "The submitted estimate included \$368,000 for Misc. contingencies, supervision and OH&P. Adding in the \$200,000 for the barge and crane, over half a million dollars of the cost estimate is allocated to

general access and construction, rather than to the stair tower, the pilings or the structural stabs.”

Based on so many uncertainties, this estimate cannot be reasonably accepted. Even if the estimate was reliable, the assertion that the cost would far outweigh any public benefit is an opinion and not a newly discovered material fact or relevant changed circumstance under Section 13166 of the Commission’s regulations. This cost-benefit assertion is based on faulty reasoning: (1) the purpose of the stairway is not just to provide lateral access between El Matador and El Pescador, but also to provide access to the headland for viewing purposes, as well as lateral access across this particular site; (2) the Commission determined that this link in the access chain was necessary with full knowledge of the location of El Matador State Beach and El Pescadero State Beach; (3) the existence of the other promontory is not a changed circumstance or newly discovered information – it was there in 1980; (4) a cost-benefit analysis is not relevant to the Section 13166 analysis and neither the original permit requirement nor the enforcement orders were made contingent on any subsequent cost-benefit analysis; and (5) even if a cost-benefit analysis was relevant, the applicants have not presented any proposed means of quantifying the benefit – just the simple assertion that the cost outweighs the benefit.

With regard to quantifying the benefit of the stairways to the public, the correspondence states that the stairs would only permit public access for approximately only another one hundred feet to the east. First, it is unclear where the applicant has obtained the 100-ft. distance. There is a rock outcropping four properties down from the Revell property. A rough estimate from the assessor parcel map indicates that this rock outcrop is closer to 400 ft downcoast.

It is presumed that supporting information for this assertion is included in the following excerpt (Alan Block, dated December 8, 2006 citing Kowalewsky 2005; Exhibit 10):

The accompanying photographs clearly indicate that the promontory under discussion is not the only impairment to free access to the coastline westerly from El Matador beach. In fact a more severe promontory located to the east ... limits access to the pocket cove between the two promontories such that a person walking the beach could not reach the proposed stairway during any time frame when the proposed stairway would be necessary for continued access to the western beaches. Similarly, a person walking eastward could not reach El Matador beach during high tide even with construction of the proposed stairs.

... During the highest tides when the arches [i.e., Headland on subject site] would be periodically filed with wave runoff, a person who could theoretically use the stairs, could not reach the stairs from El Matador beach and a person who used the stairs from the west would only be able to walk a few hundred additional feet before being forced to turn around.” ...

It is clear from this basic discrepancy in the length of the lateral access to the east, that the Revells have not supported their claims of little or no access benefits with a detailed analysis of the public benefits from the full range of access that would be available to

the public once these stairs are constructed. Additionally, as quoted above, Kowalewsky specifically states that during the highest tides, a person could not reach El Matador beach. It does not address any circumstances less than the highest tides.

In addition to the disputed 100-foot distance, the Commission finds that the downcoast rock outcrop is not a “more severe promontory” as stated by Kowalewsky, since the width of the outcrop is much smaller and the outcrop does not extend as far as the headland on the subject property.

There is at least one empirical staff observation wherein the downcoast rock outcrop was passable but not the headland, which refutes the concept that the public would experience the same access conditions at both the Headland and rock outcrop, at any given time. The Commission’s Senior Coastal Engineer was able to walk from the accessway at El Matador to the headland at 32340 Pacific Coast Highway, but was not able to pass around the headland to access any more of the beach during a site visit on 6 July 2005 (tide level between 2.64’ and 3.6’ MLLW) (Ewing, pers. comm.). Another staff member was able to pass around the downcoast rock outcrop by timing the waves and was also able to pass through the sea caves of the Headland during a site visit by crawling and walking in time with the waves and standing upon interspersed rocks within the caves (Mark Johnsson, pers. comm.).

Furthermore, cost-benefit analysis does not consider the matter of reliable and safe public access, which would surely be of a benefit to the public. As discussed in detail in Assertion 5 below, scampering from rock to rock in time with waves within an enclosed arch or cave at the seaward portion of the headland is not a safe and reliable method of public access.

Assertion 3 Conclusion

Given that there is no evidence that engineering or geologic constraints or regulatory requirements have changed since the time the underlying permit was approved, the Commission finds that there is no newly discovered material information with regard to construction, engineering, or geology that could not have been reasonably discovered and produced at the time the underlying permit was issued. Any rise in costs or changes in building code requirements (which have not been demonstrated) are consequences of delaying the implementation of the stairways for decades.

Assertion 4. Wave rush-up at high tide

The fourth bullet point in the applicants’ appeal of the Executive Director’s rejection of CDP Amendment A-220-80-A2 simply states “Wave rush-up at high tide.” The letter submitted with the amendment application (Alan Block, dated December 8, 2006 citing Kowalewsky, 2005; Exhibit 10) states that:

Although construction will clearly require at least temporary beach modification, it must be understood that construction of four concrete caissons will change the erosion pattern due to wave action, at least locally.

The individual caissons will periodically deflect, reflect, and otherwise change the flow of waves flowing across the beach. ... the caissons will modify wave erosion, ultimately resulting in a loss of sand due to the reflected wave energy. Because this promontory has an extensive network of eroded sea arches..., increased erosion rates will modify the natural coastline.

Additionally, the Weiss Report (2007) provides that there would be effects associated with the construction of a stair tower alternative:

A stair tower would require a foundation consisting of a minimum of four cast in place concrete piles supporting a grid of two foot square grade beams. The piles and the grade beams would have an affect [sic] similar to a sea wall. Further study will have to be made to determine the exact affects and how to mitigate them. (emphasis added)

The applicants assert that the stairways would be subject to wave “rush-up” at high tide. The applicants have made no specific claims as to how wave up-rush conditions have changed or what newly discovered information exists relative to wave up-rush. From the above statements, the Commission interprets the applicants’ assertions regarding wave up-rush to mean that the foundation for the stairways could contribute to erosion of the sandy beach, cliff, sea caves or headland by exposing the area to increased wave reflection and erosive forces.

The assertion that the construction of the stairways would negatively impact the erosion patterns at the site is not a valid argument under Section 13166 because: (1) the applicants have not submitted any evidence that would suggest that there is new information or changed circumstances with respect to wave up-rush that was not available when the underlying permit was approved and (2) the offshore rocks and headlands cause the nearshore wave climate to be very complicated at this location, and it will not be possible to predict or monitor whether the stairs will slow or accelerate the on-going enlargement of the caves and arches.

The Weiss Report (2007) provides calculations of the wave run-up for a range of beach sand levels, wave periods and water elevations, based on equations provided in the 1984 Shore Protection Manual. The Tables used to calculate run-up were actually taken from earlier publications (Saville in 1958, Goda in 1970 and Wiegel in 1972) and very likely had been compiled in the 1978, 3rd edition of the Shore Protection Manual. Therefore, these calculations of wave uprush could have been done at the time of the initial permit, or in 1986 when the plans were approved. It was recognized at the time of the initial permit that when waves break on the beach face or on a vertical wall, there will be uprush -- that the actual elevation of the water will be higher than the still water elevation. The calculations have been refined since the 1984 Shore Protection Manual, but the results are in general agreement with those that resulted from the earlier methodology. The calculated uprush is dependent upon beach elevation and as noted earlier, the beach elevation can be very dynamic. Just as the change in beach elevation could have been anticipated at the time of the original permit, so too would the change to those factors that stem from sand elevation. (Lesley Ewing, pers. comm.)

The Weiss Report (2007) states that “(t)he piles and grade beams would have an effect similar to a sea wall. Further study will have to be made to determine the exact affects and how to mitigate them.” As with the other issues that are asserted as changed conditions, there is nothing “new” about this statement. The facts were the same at the time of the Commission’s action, and the interaction of the stairs and foundation could have been anticipated at the time of the original permit. The offshore rocks and headlands cause the nearshore wave climate to be very complicated at this location. The stair/wave interactions would likewise be complicated. For those beach and wave conditions where the stairs are actually being impacted by waves, the stairs could absorb and reflect some wave energy that might otherwise impact the headland or bluff – thus acting in a manner similar to a protective seawall, as suggested by Mr. Weiss. At other times, the stairs could reflect or focus wave energy into the beach, bluff or headland, augmenting the wave forces that would exist without the stairs. Some localized impacts to the beach could occur seaward of the foundation at times that waves impact the foundation. As noted in the report by Mr. Kowalewsky, caves and arches form readily along this section of coast and such features are already present at the subject headland. These cave and arch features will continue to enlarge, the enlargement does not occur at a gradual or measurable rate such that it would be possible to determine the pre and post stairway enlargement rates. And, as stated earlier, the local topography makes the nearshore wave climate very complicated. It will not be possible to predict or monitor whether the stairs will slow or accelerate the on-going enlargement of the caves and arches. In the design phase for the stairs and foundation, it may be possible to minimize any potential for adverse consequences to the adjacent bluffs through modifications to the foundation orientation, use of rounded corners, or the addition of roughness elements.

The footings described in the approved stairway plan (1986) are anchored with four caissons/pilings, rather than one large caisson. The use of multiple, smaller caissons would lessen energy reflection and would also address concerns that drilling cannot be completed between high tides, as the holes for smaller caissons can be drilled more quickly than holes necessary for larger caissons. Further, there may be additional design parameters available that can be incorporated into alternative stairway designs that would further address the potential focusing additional wave energy onto the beach or adjacent bluffs. (CCC letter to Alan Block, dated January 4, 2006)

Regardless of the stairway design and its potential to impact the beach and headland at the site as a result of wave up-rush during high tides, the applicants have not submitted any evidence that would suggest that there are changed circumstances with wave up-rush or that the information they provided was new or not available when the underlying permit was approved. Additionally, the wave climate is not considered a changed circumstance but rather a natural part of the dynamic beach cycle.

Given that there is no evidence that wave up-rush conditions have changed since the time the underlying permit was approved, the Commission finds that there is no new

material information that could not have been reasonably discovered and produced at the time the underlying permit was issued.

Assertion 5. Availability of lateral access through existing sea cave.

The appeal of the Executive Director's rejection of CDP Amendment A-220-80-A2 asserts that there are changed circumstances with respect to the availability of lateral access through existing sea caves. The letter submitted with the amendment application (Alan Block, dated December 8, 2006; Exhibit 10) states that:

Furthermore, contrary to the apparent lack of access which allegedly surrounded the subject property at the time the Commission considered CDP No. A-220-80, adequate lateral access appears to be available to the public. (emphasis added)

Supporting arguments for this assumed adequate public access include the following (Alan Block, dated December 8, 2006 citing Kowalewsky 2005; Exhibit 10):

The accompanying photographs clearly indicate that the promontory under discussion is not the only impairment to free access to the coastline westerly from El Matador beach. In fact a more severe promontory located to the east ... limits access to the pocket cove between the two promontories such that a person walking the beach could not reach the proposed stairway during any time frame when the proposed stairway would be necessary for continued access to the western beaches. Similarly, a person walking eastward could not reach El Matador beach during high tide even with construction of the proposed stairs.

Proposed more significant is the physical condition of the subject promontory. This promontory is a good example of a complex sea arch with multiple access ways... Although the erosion of this promontory appears to be a series of sea caves, the caves are interconnected in such a manner that they are technically sea arches. Photographs clearly demonstrate that the sea arches are through passages from one side to the other... without the necessity of going around the promontory. In fact, two different passageways are accessible with one requiring crawling while the other allows one to walk standing upright... Because the arches are available for access, with the possible exception of very high tides, I question the need for vertical stairways on either side of the promontory, when these stairs will never be used by the public. If one is walking on the beach, would not that person prefer to walk through a sea arch rather than up a stair with 20 to 30 foot of vertical relief, only to descent another 20 to 30 (vertical) stair. During the highest tides when the arches would be periodically filed with wave runup, a person who could theoretically use the stairs, could not reach the stairs from El Matador beach and a person who used the stairs from the west would only be able to walk a few hundred additional feet before being forced to turn around." ...

The applicants assert that there appears to be adequate lateral access available to the public without having to construct the stairways up and over the headland. The Kowalewsky Report (2005) indicates that the sea caves are acting as arches and are

potential accessways to pass through the headland, one set passable via crawling and one set passable walking upright. The Kowalewsky report further indicates that the sea “arches” are available to the public to get around the headland, with the possible exception of very high tides. However, staff has confirmed during site visits that only the seaward-most “cave,” which is located toward the seaward-most point of the headland, is passable at low tides, with difficulty. Moreover, this route is unreliable and poses a safety hazard to the public. Further, due to the fact that the seaward “cave” is located at the seaward-most point of the headland (Exhibit 13), use of this “cave” does not provide any additional public access over and above walking around the point. Moreover, the landward “cave” located in approximately the middle of the headland is typically only accessible when beach sand levels are low, during extreme low-tide, and then only by crawling on one’s stomach.

The Kowalewsky Report (2005) further questions whether it is necessary for the public to have the ability to get around the headland at high tides since it would be difficult to get to the site from public access points during high tides anyway. However, he notes that it would be possible to get to the site during these high tide conditions from upcoast of the headland, but determined that it would only facilitate public passage on the other side of the headland for “a few hundred additional feet before being forced to turn around.”

The assertion that there are changed circumstances on the site that have resulted in adequate lateral access through sea arches is not a valid argument under Section 13166 because: (1) the sea “caves” or “arches” are not a safe or reliable option for public access and therefore does not constitute adequate lateral access; and (2) use of sea arches does not meet the Special Condition 2 requirement for public viewing from the headland accessway. Further, staff has confirmed during site visits that only the seaward-most “cave,” which is located toward the seaward-most point of the headland is actually passable to pedestrians (and then only during low tide conditions). Further, due to the fact that the seaward “cave” is located at the seaward-most point of the headland, use of this “cave” does not provide any additional public access. The landward “cave” located in approximately the middle of the headland is typically only accessible during extreme low-tide events, and then only by crawling on one’s stomach. Thus, formation of caves, even if new, is not material. Because this assertion is erroneous, it does not constitute a material change in any facts and does not qualify as new material information that could not have been reasonably discovered and produced at the time the underlying permit was issued under Section 13166 of the Commission’s regulations.

The Kowalewsky Report (2005) asserts that sea caves or arches under the headland provide an alternative to construction of the accessway improvements. The sea caves do not provide a safe or reliable public access alternative, as they are subject to tidal action and are often filled with water. If members of the public were able to pass through a sea cave to get to the beach on the other side of the headland, they may not be able to pass back through as the tides change. The next vertical accessway would be either 0.2 or 0.8 miles away and they would then have to walk back along Pacific Coast

Highway to return to their residence or car. This is not a safe and reliable alternative to the access required under the permit amendment.

The sea caves are not adequate to provide public access because this alternative would likely restrict public access on a routine basis depending on tidal conditions, would likely restrict access during certain times of the year depending on sand levels and tides; would be potentially hazardous since the caves are subject to wave action; and would not serve the same general population that would be served by a stairway. Crawling or navigating through sea caves in a manner that requires the skillfulness to avoid wave collision is not an acceptable alternative to the use of a stairway.

Sand levels and wave conditions fluctuate, making passage through sea caves difficult and unsafe during seasonal changes and tidal conditions. While it may be feasible to go around the headland through the sea cave at a very low tide, it is not a safe or reliable option for the public. Additionally, it is probably not an option available year-round as the beach profile changes. Even if the tide were low enough to crawl, you could get caught by a wave in an enclosed cave situation. This does not then serve the general public as would a public access staircase.

In addition, the lateral access provision of the existing permit specifically provides for a public access easement “over the headland on the site for pedestrian access and viewing” per Special Condition One of CDP Amendment A-220-80. The Commission intended the scenic resources of the headland to be enjoyed by the public. The sea caves do not provide access to the views from the headland, and therefore are not a suitable alternative to the stairways.

Given that the sea arches do not provide a safe or reliable means for public access, nor the required coastal viewing, the Commission finds that there is no new material information with regard to lateral access alternatives that could not have been reasonably discovered and produced at the time the underlying permit was issued.

G. CONCLUSION

This appeal of the Executive Director's rejection of CDP Amendment Application A-220-80-A2 to eliminate Special Condition 2 of CDP Amendment A-220-80 does not demonstrate that there are any physical changed circumstances on the site. Physical fluctuations in sand level were anticipated as part of the dynamic beach environment at the time the permit was approved, and therefore the existence of such fluctuation does not constitute new material information that could not have been reasonably discovered and produced at the time the underlying permit was issued. Increased costs and changes in regulatory requirements with respect to stairway design were predictable and are not a material or changed circumstance but rather a consequence of more than a 20-year delay in compliance with the previously required conditions of approval.

The Commission finds that the appeal must be denied because: (1) the proposed amendment would lessen or avoid the intended effect of Special Condition 2 of CDP

Amendment A-220-80 and (2) the applicants have not presented any newly discovered material information that could not, with reasonable diligence, have been discovered and produced before the permit was granted. Thus, the grounds necessary for overturning the Executive Director's rejection of an amendment application under Section 13166 of the Commission's regulations have not been satisfied.

SUBSTANTIVE FILE DOCUMENTS:

1. Memorandum from the Senior Coastal Engineer, Lesley Ewing, California Coastal Commission to the Executive Director regarding Appeal of A-220-80-A2-EDD and 7 June 2007 Memo from Alan Robert Block, dated June 20, 2007.
2. Memorandum from the Senior Coastal Engineer, Lesley Ewing, California Coastal Commission to the Executive Director regarding Appeal of A-220-80-A2-EDD, dated May 31, 2007.
3. Aerial Topography Survey, 32340 Pacific Coast Highway (Peak Surveys, Inc., March 8, 2007)
4. Coastal Engineering Opinion on The Feasibility of Proposed Stairs to Beach at 32340 Pacific Coast Highway, Malibu, CA (David C. Weiss, Structural Engineer & Associates, Inc, April 15, 2007)
5. Restoration Plan for Headland Portion of Revell Property (Malibu), Restoration Order CCC-05-RO-09 (Forde Biological Consulting, February 10, 2007)
6. Correspondence from Alan Block to Jack Ainsworth, CCC, regarding Request for Amendment to Delete Special Condition No. 2 Requiring The Construction of Accessway Improvements From the Shoreline to the Headland Accessway and Back to the Shoreline, dated December 8, 2006.
7. Assignment of Public Access Easement, California State Lands Commission Transfer of Right, Title, and Interest of Public Access Easement to *Access For All*, Recorded January 5, 2006 (Document No. 06 0025846)
8. Correspondence from Peter Douglas to Alan Block, regarding Response to Request for Reconsideration, Violation No. V-4-03-047 (Revell), dated January 4, 2006.
9. Correspondence from Alan Block to California Coastal Commission, c/o Christine Chestnut, regarding Request for Reconsideration, dated December 15, 2005.
10. Discussion Regarding Geologic Characteristics of a Coastal Bluff and Promontory and its Relationship to Proposed Access Stairway (Kowalewsky, December 13, 2005)
11. Cease and Desist Order CCC-05-CD-13 and Restoration Order CCC-05-RO-09 Staff Report (CCC, November 3, 2005);
12. Acceptance Certificate (Document No. 02 2191101)
13. The Beach Erosion And Response (BEAR) Guidance Document, Chapter 2.0 Overview of the California Coast and Beach Erosion (CCC Task Force, 1999)
14. Reconnaissance Report, Malibu/Los Angeles County Coastline, Section 3.0 Problem Identification (U.S. Army Corps of Engineers, April 1994)
15. Amended Irrevocable Offer to Dedicate (Document No. 87 28221)
16. Irrevocable Offer to Dedicate (Document No. 82 557828)

17. Stipulation for Dismissal of Appeal; Order, filed Apr. 1, 1982, in Benton v. South Coast Regional Comm'n, et al., California Court of Appeal, 2d Dist., No. 2d Cv. 58866
 18. The Frank Lloyd Wright Foundation, Accessway Improvements, Permit A-220-80, dated 2/19/1982 and approved by Commission August 15, 1986.
 19. CDP Amendment No. A-220-80
 20. Statement of Facts in Support of Appeal of John Benton, submitted by Sherman Stacey, February 3, 1978.
 21. CDP No. P-10-20-77-2107
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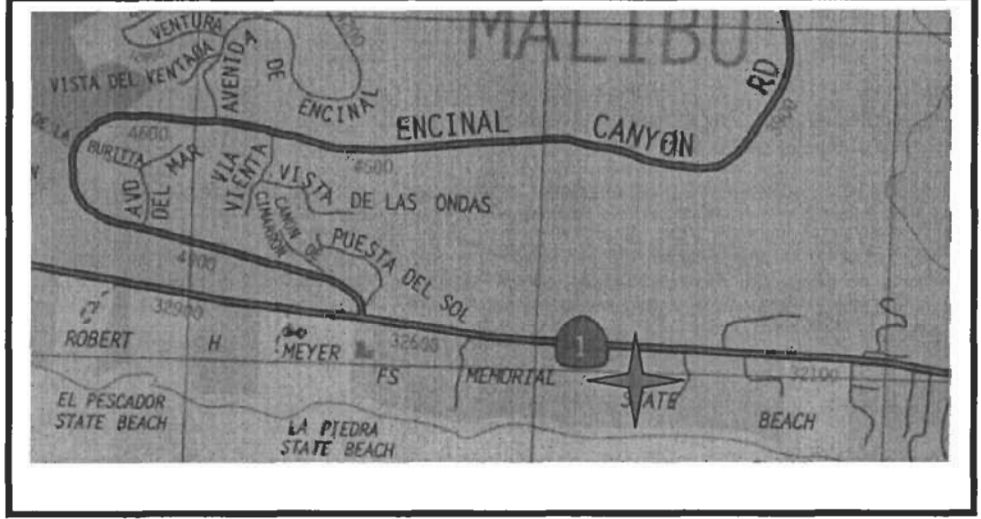
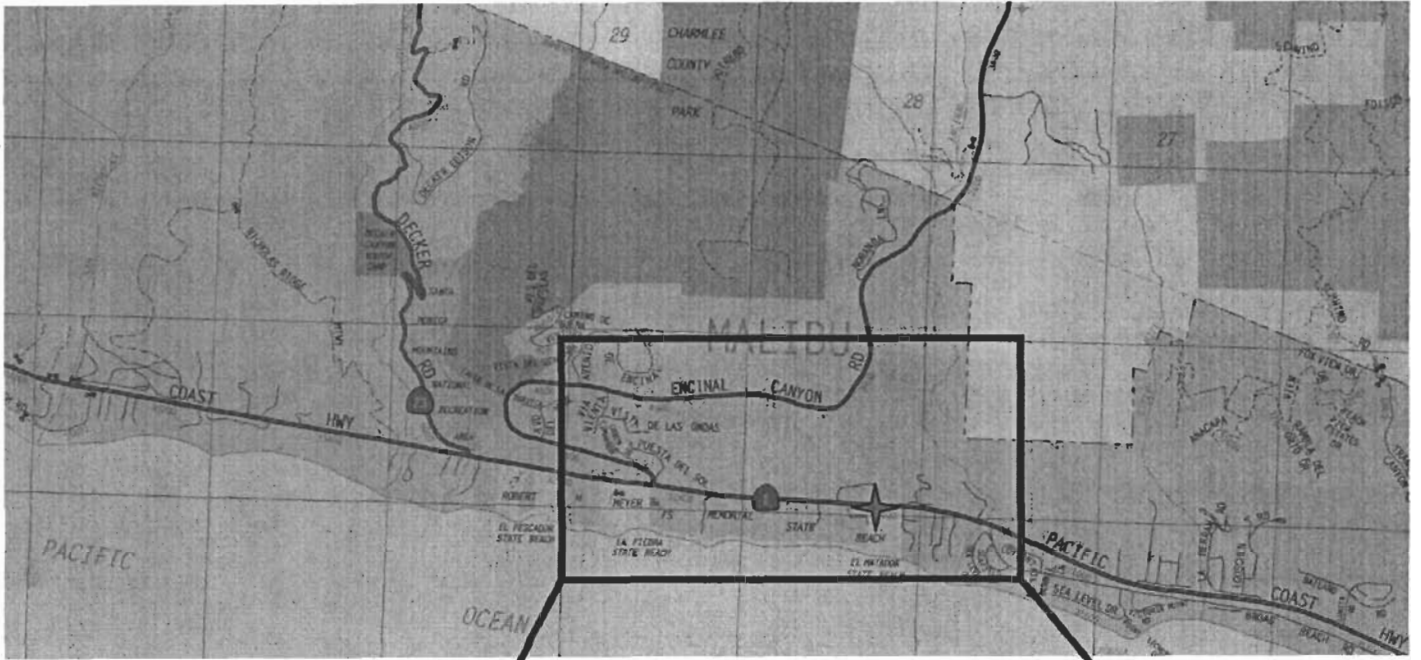


EXHIBIT 1
A-220-80-A2-EDD
Vicinity Map

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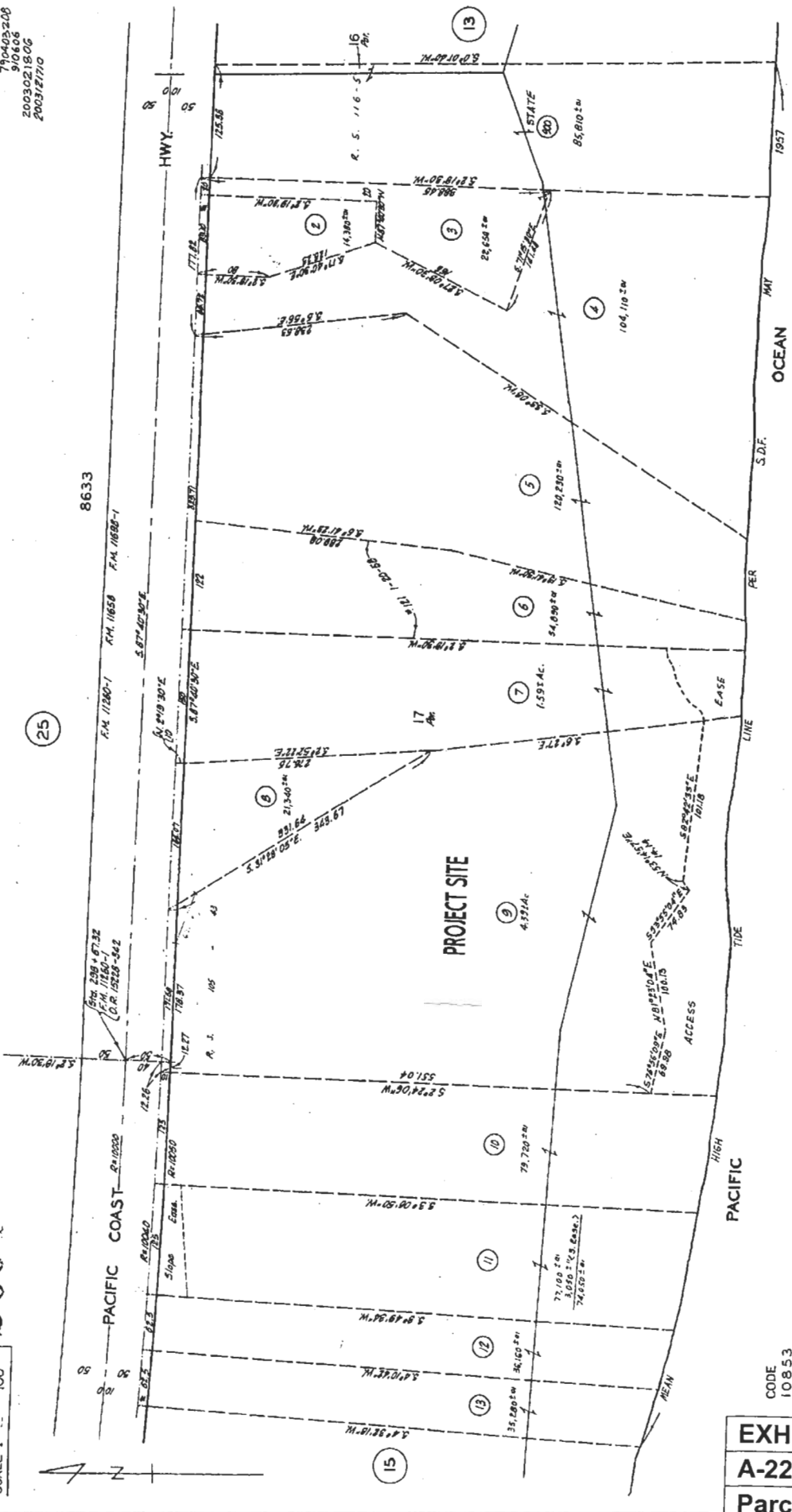


EXHIBIT 2
A-220-80-A2-EDD
Parcel Map

CODE
108.53

FOR PREV. ASSMT SEE:
4470-31

LAND OF MATTHEW KELLER IN THE
RANCHO TOPANGA MALIBU SEQUIT

R.F. 534

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DEC 17 2003

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

EASEMENT DELINEATION
NOT CONFIRMED BY STAFF

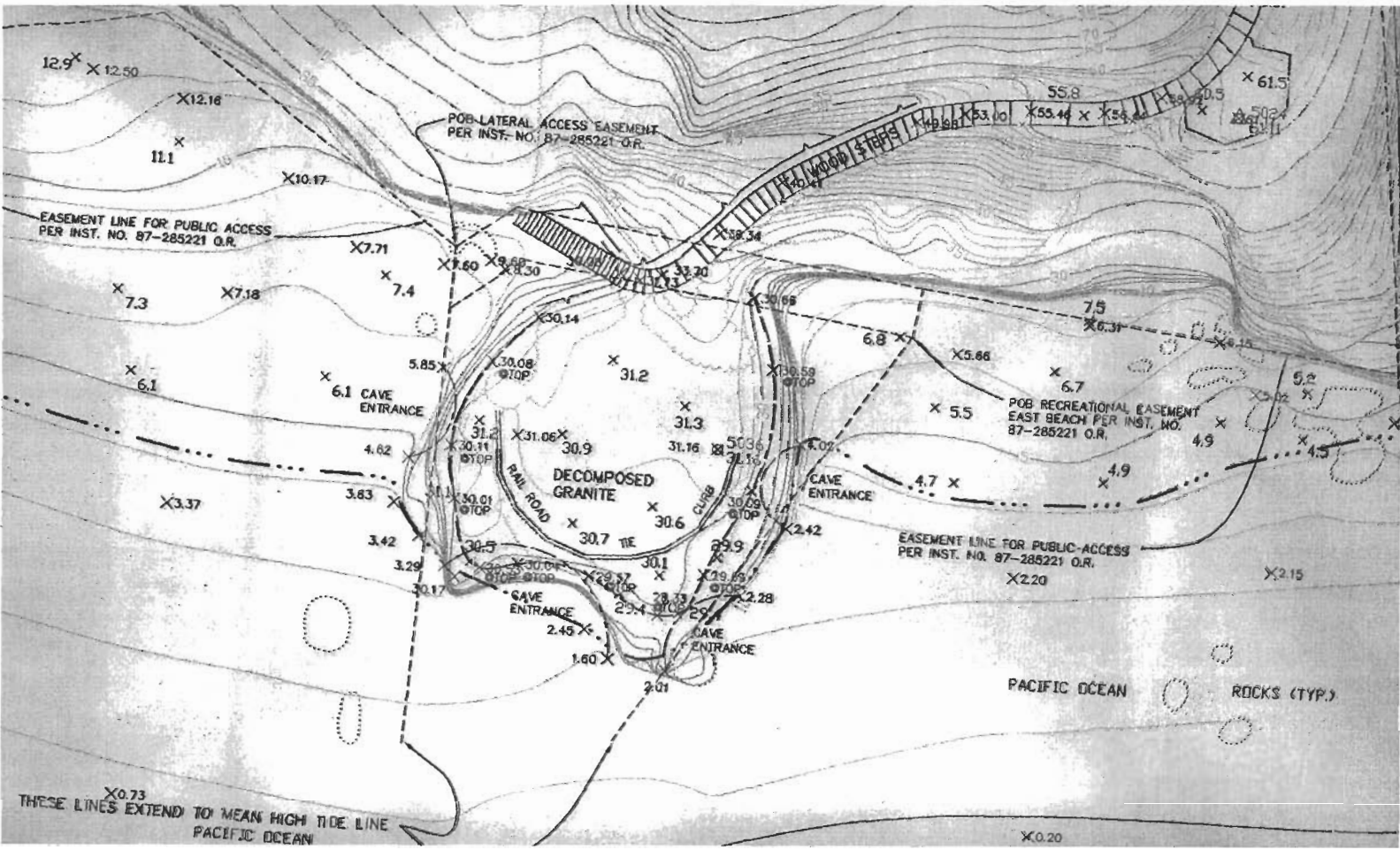
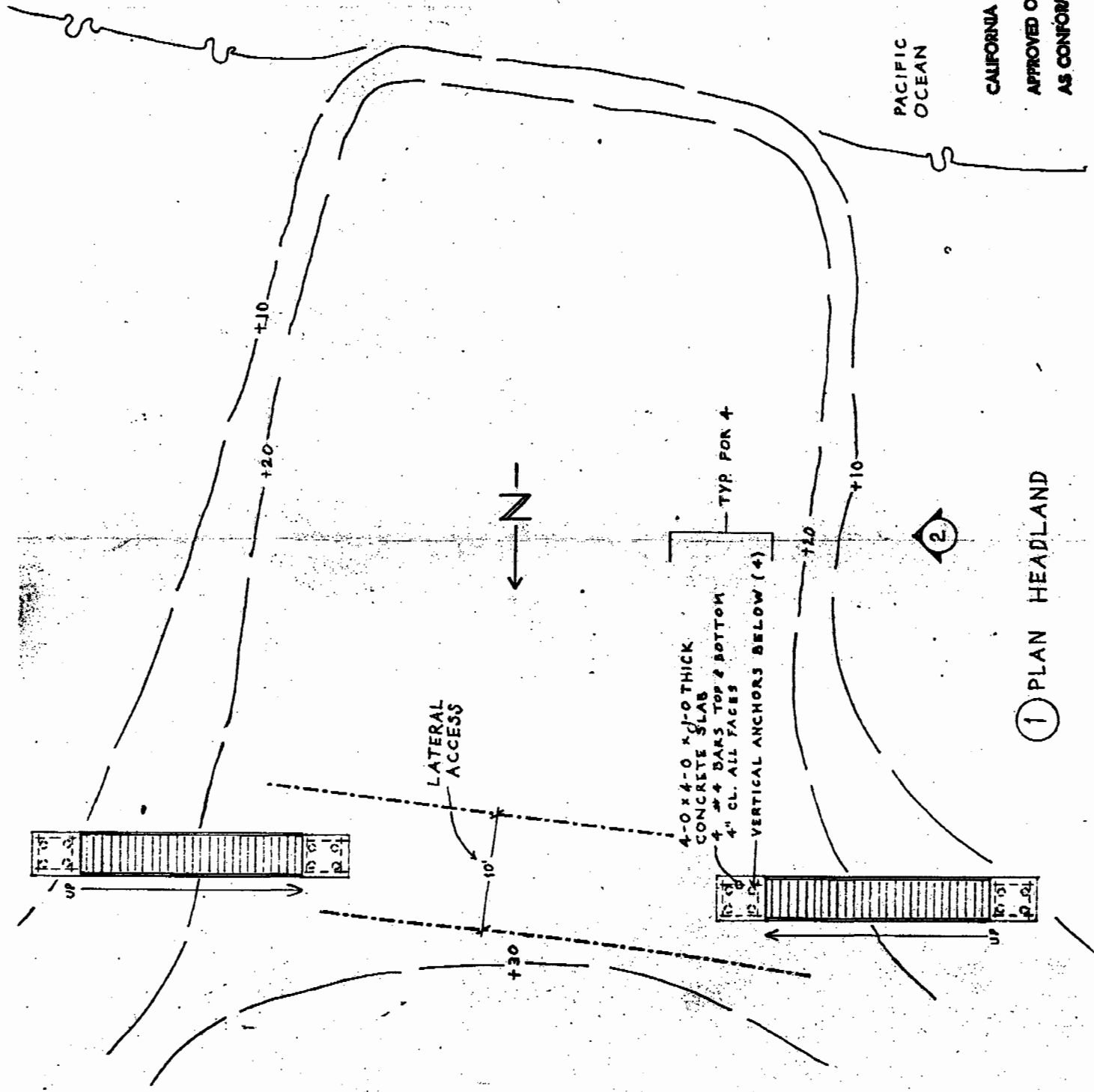


EXHIBIT 3
A-220-80-A2-EDD
Headland Survey (2007)

CALIFORNIA COASTAL COMMISSION
 APPROVED ON August 15, 1986
 AS CONFORMING TO PERMIT # A-220-80

STANDARD 1 REVISION

PACIFIC OCEAN



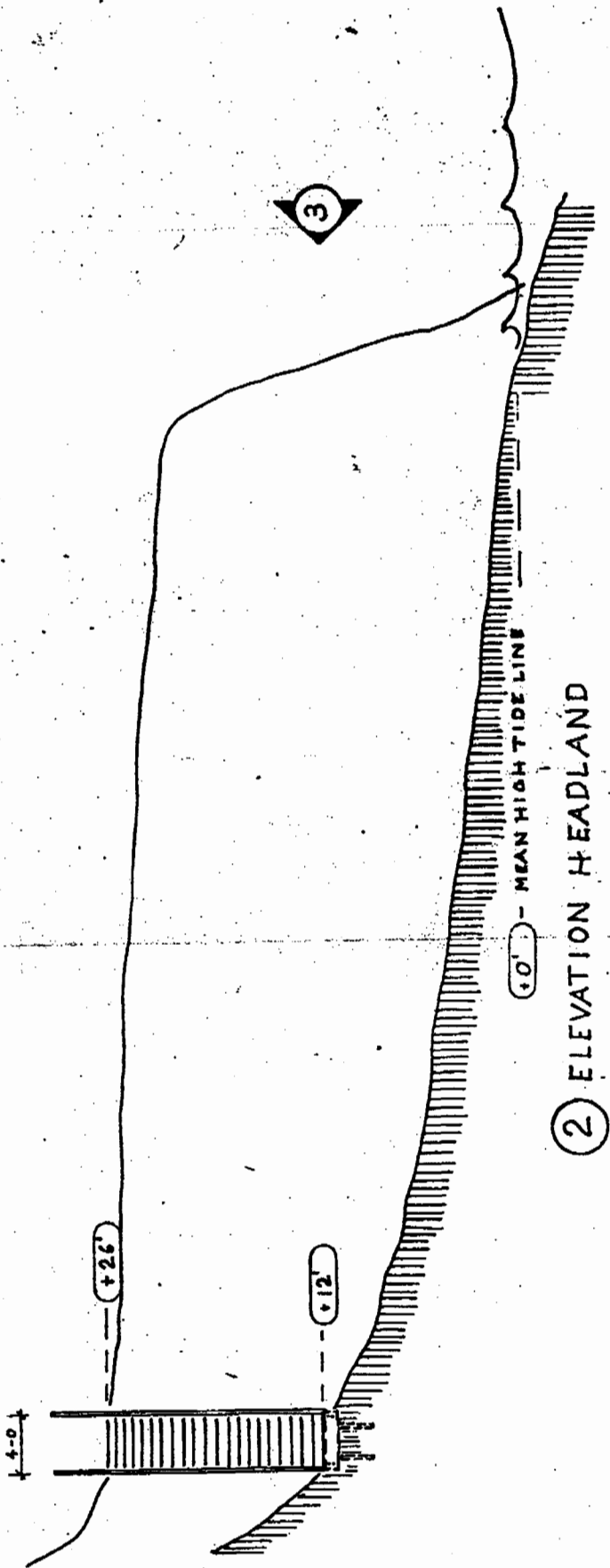
① PLAN HEADLAND

TYP. FOR 4
 4'-0" x 4'-0" x 1'-0" THICK
 CONCRETE SLAB
 4 # 4 BARS TOP & BOTTOM
 4" CL. ALL FACES
 VERTICAL ANCHORS BELOW (4)

LATERAL ACCESS

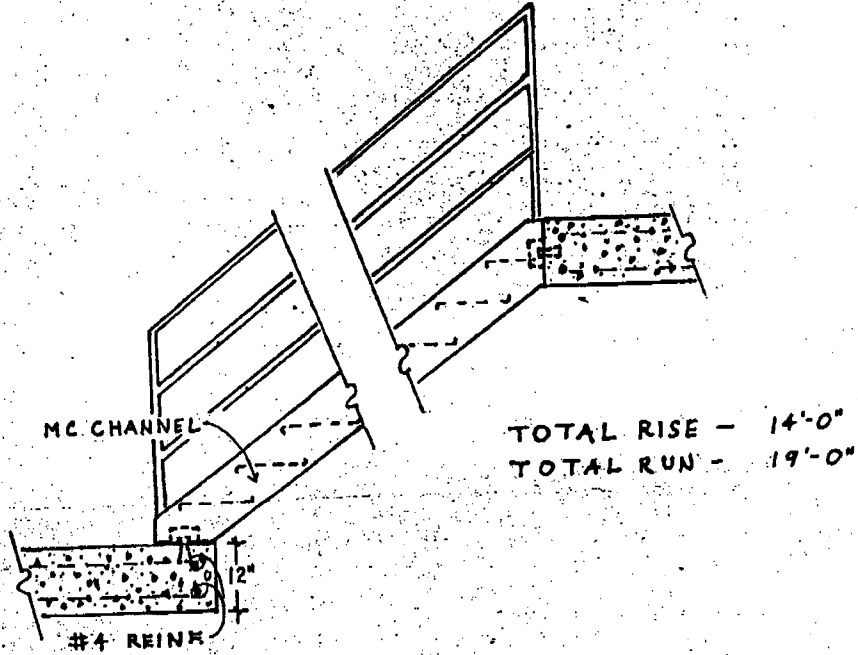
EXHIBIT 4
 A-220-80-A2-EDD
 Approved Stairway
 Plans (1986), 4 Pages

Pg 1 of 4





③ SOUTH ELEVATION HEADLAND



④ DETAIL SCALE: 1/2" = 1'-0"

87 28221

Return Original To and
Recording Requested By:

State of California
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, CA 94105

RECORDED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
31 MIN. 3 PM JAN 8 1987
PAST.

FEE \$ 5100

24

This supercedes Document No. 82-557628
recorded on June 2, 1982 at 8:00 AM at
the Los Angeles County Recorder's office.

AMENDED IRREVOCABLE OFFER TO DEDICATE

I. WHEREAS, JOHN H. BENTON is the record owner ("Owner") of the real property located at 32354 Pacific Coast Highway, Malibu, County of Los Angeles, California, legally described as particularly set forth in the attached Exhibit A hereby incorporated by reference, and hereinafter referred to as the "Property"; and

II. WHEREAS, the California Coastal Commission, hereinafter referred to as the "Commission", is acting on behalf of the People of the State of California; and

III. WHEREAS, the People of the State of California have a legal interest in the lands seaward of the mean high tide line; and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the Owner applied to the Commission for a coastal development permit for a development on the Property; and

V. WHEREAS, a coastal development permit no. A-220-80 was granted on November 19, 1980 by the Commission in accordance with the provisions of the Staff Recommendation and Findings,

EXHIBIT 5

A-220-80-A2-EDD

Offer To Dedicate Public
Access Easement

Exhibit "B" attached hereto and incorporated herein by reference, and subject to the further condition set forth in Exhibit "C" attached hereto and incorporated herein by reference; and

VI. WHEREAS, the Property is a parcel located between the first public road and the shoreline; and

VII. WHEREAS, under the policies of Sections 30210 through 30212 of the California Coastal Act of 1976, public access to the shoreline along the coast is to be maximized, and in all new development projects located between the first public road and the shoreline shall be provided; and

VIII. WHEREAS, the Commission found that but for the imposition of the above condition, the proposed development could not be found consistent with the public access policies of Sections 30210 through 30212 of the California Coastal Act of 1976 and that, therefore, in the absence of such a condition, a permit could not have been granted; and

IX. WHEREAS, on November 2, 1981, Owner executed an Irrevocable Offer to Dedicate ("Offer") certain real property to the People of California for purposes of complying with the public access condition of the coastal development permit; and

X. WHEREAS, the Offer did not include a full and complete legal description of the real property which Owner intended to dedicate to the People of California; and

XI. WHEREAS, Owner has prepared this Amended Irrevocable Offer to Dedicate ("Amended Offer") which supercedes and rescinds the prior Offer; and

XII. WHEREAS, the Commission concurs that the Amended Offer more accurately states a legal description of the real

property which Owner must dedicate to the People of California as a condition of complying with the terms of the coastal development permit; and

XIII. WHEREAS, the Commission agrees that an acknowledgment of the Amended Offer by or on behalf of the Commission shall result in an abandonment of any claim of right pursuant to the previous Offer.

NOW THEREFORE, in consideration of the granting of permit no. 220-80 to the Owner by the Commission, the Owner hereby offers to dedicate to the People of California an easement in perpetuity for the purposes of allowing the public access and passive recreational use of the beach and other areas located on the Property as specifically described in Exhibit "D" attached hereto and incorporated by this reference.

This offer of dedication shall be irrevocable for a period of twenty-one years, measured forward from the date of recordation of this document, and shall be binding upon the owners, their heirs, assigns, or successors in interest to the subject property described above. The People of the State of California shall accept this offer through the County of Orange, the local government in whose jurisdiction the subject property lies, or through a public agency or a private association acceptable to the Executive Director of the Commission or its successor in interest.

Acceptance of the offer is subject to a covenant which runs with the land, providing that the first offeror to accept the

87-028221

easement may not abandon it, but must instead offer the easement to other public agencies or private associations acceptable to the executive director of the Commission for the duration of the term of the original offer to dedicate. The grant of easement once made shall run with the land and shall be binding on the owners, their heirs and assigns.

Executed on the 12TH day of November, 1986, in the City of Santa Monica County of Los Angeles.


JOHN H. BENTON

87- 028221

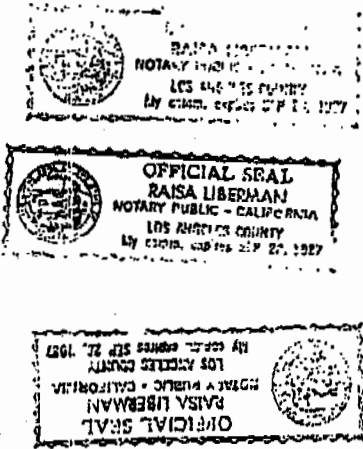
jh bent.off

State of California)
County of Los Angeles) ss.

On November 12, 1986, before me the undersigned, a Notary Public in and for said State, personally appeared JOHN H. BENTON, whose name is subscribed to the within instrument, and acknowledge that he executed the same.

Witness my hand and official seal.

Raisa Liberman
Notary Public in and for said
County and State



87-28221

jhbent.off

This is the certify that the offer of dedication set forth above dated November 12, 1986, and signed by JOHN E. BENTON, owner, 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. A-220-80 on November 19, 1980 and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: December 11, 1986

Judith W. Allen
On Behalf of
California Coastal Commission
Judith W. Allen
Staff Counsel

State of California
County of San Francisco

SS.

On this 11th day of December in the year 1986, before me, Gary Lawrence Holloway, Notary Public, personally appeared Judith W. Allen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the authorized representative of the California Coastal Commission and the person whose name is subscribed to this instrument and acknowledged that she executed it.
IN WITNESS WHEREOF I hereto set my hand and official seal.



Gary Lawrence Holloway
Notary Public

87- 028221

jhbent.off

(Retyped for legibility)

B1019 1154275

R 108
TITLE INSURANCE AND TRUST COMPANY

DESCRIPTION:

PARCEL 1:

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER, BY PATENT, RECORDED IN BOOK 1 PAGE 407, ET SEQ., OF PATENTS, RECORDS OF SAID COUNTY, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF BEGINNING BEING DISTANT SOUTH 2 DEGREES 19 MINUTES, 30 SECONDS WEST 40 FEET AND SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 112.74 FEET FROM ENGINEER'S CENTER LINE STATION 293 PLUS 67.32 AT THE WESTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE DESCRIBED IN SAID DEED AS SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 2044.20 FEET. SAID POINT BEING ALSO IN THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO LOUISA D'ANDELOT CARPENTER, RECORDED JUNE 22, 1944 AS INSTRUMENT NO. 606, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 87 DEGREES 40 MINUTES 30 SECONDS WEST 112.74 FEET ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY, WITH A RADIUS OF 10040 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, 12.26 FEET; THENCE SOUTH 2 DEGREES 24 MINUTES 06 SECONDS WEST TO A POINT IN THE ORDINARY HIGH TIDE LINE OF THE PACIFIC [O]CEAN; THENCE EASTERLY ALONG SAID TIDE LINE TO THE INTERSECTION OF SAID TIDE LINES AND THAT LINE WHICH BEARS SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 2 DEGREES 19 MINUTES 30 SECONDS EAST ALONG THE WESTERLY LINE OF SAID CARPENTER PARCEL AND ITS PROLONGATION TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF THE 100 FOOT STRIP OF LAND DESCRIBED IN DEED FROM MARBLEHEAD LAND COMPANY, TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385, OFFICIAL RECORDS OF LOS ANGELES COUNTY.

ALSO EXCEPTING THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER SAID LANDS, AND EVERY PART THEREOF, BUT WITHOUT SURFACE RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED AUGUST 15, 1944 IN BOOK 21198 PAGE 122, OFFICIAL RECORDS.

ALSO EXCEPT ANY PORTION OF SAID LAND, WHICH AT ANY TIME WAS TIDE OR SUBMERGED LAND AND BECAME UPLAND BY OTHER THAN FROM NATURAL CAUSES.

PARCEL 2:

87- 028221

A PART OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, CONFIRMED TO MATTHEW KELLER BY PATENT, RECORDED IN BOOK 1 PAGES 407, ET SEQ., OF PATENTS, RECORDS OF SAID COUNTY, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T.R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, IN THE

TITLE INSURANCE AND TRUST COMPANY

OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF BEGINNING BEING DISTANT SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST 40 FEET AND SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 112.74 FEET FROM ENGINEER'S CENTER LINE STATION 298 PLUS 67.32 AT THE WESTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE DESCRIBED IN SAID DEED AS SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 2044.20 FEET; THENCE SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 58.94 FEET ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP TO THE NORTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO RAYMOND W. ROESSLER AND WIFE, RECORDED IN BOOK 20706 PAGE 289, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL, SOUTH 31 DEGREES 28 MINUTES 05 SECONDS EAST 343.67 FEET; THENCE SOUTH 6 DEGREES 27 MINUTES 00 SECONDS EAST TO A POINT IN THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN; THENCE WESTERLY ALONG SAID TIDE LINE TO THE INTERSECTION OF SAID TIDE LINE AND THAT LINE WHICH BEARS SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 2 DEGREES 19 MINUTES 30 SECONDS EAST TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER SAID LANDS AND EVERY PART THEREOF, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED JUNE 22, 1944 IN BOOK 21052 PAGE 100, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE 100 FOOT STRIP OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION OF RANCHO TOPANGA MALIBU SEQUIT, AS PER PATENT RECORDED IN BOOK 1 PAGES 407, ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; CONVEYED TO JOHN T. BOND, BY DEED RECORDED IN BOOK 24379 PAGE 137, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF 100 FOOT STRIP OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385 OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE NORTHEASTERLY CORNER OF PARCEL 2 OF THE LAND CONVEYED TO JOHN T. BOND; THENCE ALONG THE SOUTHERLY LINE OF SAID 100 FOOT STRIP; NORTH 87 DEGREES 40 MINUTES 30 SECONDS WEST 45.69 FEET; THENCE SOUTH 68 DEGREES 58 MINUTES 12 SECONDS EAST 62.36 FEET TO THE EASTERLY BOUNDARY OF SAID PARCEL 2; THENCE ALONG SAID EASTERLY LINE, NORTH 31 DEGREES 28 MINUTES 05 SECONDS WEST 24.06 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT ANY PORTION OF SAID LAND WHICH AT ANY TIME WAS TIDE OR SUBMERGED LAND AND BECOME UPLAND BY OTHER THAN FROM NATURAL CAUSES.

87- 028221

9

CALIFORNIA COASTAL COMMISSION
437 Howard Street, San Francisco 94105 — (415) 543-2555

TO: STATE COMMISSION
FROM: JANET TOLK, DIRECTOR, PERMIT APPEALS
SUBJECT: REQUEST FOR AMENDMENT TO PERMIT GRANTED WITH CONDITIONS TO JOHN BENTON
BY SOUTH COAST REGIONAL COMMISSION (NO. 220-80)

Proceedures

In the case of permits issued by the Regional Commission or Commission under the Coastal Act of 1976, the Commission's Regulations (Section 13166) permit applicants to request amendments if it finds that the revised development is consistent with the Coastal Act. The staff recommends that the Commission hold a public hearing on the request, and after closing the public hearing, vote on it.

1. Project History/Amendment Request. On January 16, 1980, the South Coast Regional Commission granted a permit for construction of a single family residence on a five acre parcel on Pacific Coast Highway in Malibu (Exhibit 1). This approval was subject to several conditions, including design restrictions and a requirement that the applicant dedicate easements to provide both vertical and lateral accessways for public use. The applicant appealed this decision to the State Commission, challenging the appropriateness of the conditions requiring the provision of public access and the design limitations on his project. The Commission found that no substantial issue had been raised by the appeal. Since that time, the applicant has been challenging that decision through the judicial process. The Regional Commission's permit decision was upheld by the Los Angeles County Superior Court and is currently pending on appeal before the District Court of Appeal.

The applicant is now requesting an amendment to change the design of the residential structure and to modify the access conditions, deleting the vertical access requirement and expanding the width of the lateral accessway, including construction of an accessway over the headland on the site Attachment 2. The applicant contends that the recent purchase of two State beaches within the vicinity of the project site negates the need to provide vertical access over the subject parcel Attachment 2.

In September 1980, because of litigation currently pending on the subject application, which may be negated by the consideration of the proposed amendment, the State Commission, a party in that litigation, agreed to assume direct review of the subject amendment request. The Commission determined that because of the time limits imposed by the judicial process, an expedited review was crucial to avoiding unnecessary litigation.

STAFF RECOMMENDATION

87- 028221

The staff recommends that the Commission adopt the following resolution:

I. Approval With Conditions

The Commission hereby grants an amendment for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the amended development will be in conformity with the provisions of Chapter 3 of the California Coastal Act

EXHIBIT B

11/19-20/80

of 1976, is located between the sea and the nearest public road and, as conditioned, will be in conformity with the public access and public recreation policies of Chapter 3, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Conditions

This amendment is subject to the following conditions:

1. Public Access. Prior to issuance of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement shall extend from the mean high tide line to the base of the bluff for the width of the project site and shall include an easement area, conforming to the plans attached in Exhibit 2, over the headland on the site for pedestrian access and viewing. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Accessway Improvements. Prior to issuance of the permit, the applicant shall submit plans, for the review and approval in writing of the Executive Director, showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with the approved plans shall be completed prior to occupancy of the residence approved herein.

3. Revised Plans. The applicant shall submit revised plans, for the review and approval in writing of the Executive Director, showing that the proposed wall is sited so as not to interfere with public views from Pacific Coast Highway. All construction shall be in conformance with the plans submitted with this amendment request and as modified through this condition.

III. Findings and Declarations

The Commission finds and declares as follows:

87-028221

1. Project Description and Amendment. The applicant proposes to construct a single family residence on a 5 acre parcel adjacent to Encinal Beach. The parcel gently slopes down from Pacific Coast Highway to the top of a 125 ft. bluff above the beach. The house as originally approved was 6652 sq. ft. and also included a garage, tennis court and swimming pool. The proposed amendment includes reducing the size of the residence to approximately 3500 sq. ft., resiting the tennis court and constructing a security wall along the Pacific Coast Highway boundary (Exhibit 2).

2. Public Views. Section 30251 of the Coastal Act provides:

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 subordinate to the character of its setting.

Public views of the ocean are currently provided from Pacific Coast Highway across the project site. The parcel slopes down from Pacific Coast Highway to the bluff top. The location proposed for the house is 40 ft. below the level of Pacific Coast Highway and, as proposed, the house will not restrict public views. However, the six foot wall proposed by the applicant in this amendment would interfere with views from the highway to the sea. However, since the parcel slopes downward towards the sea full security could be assured by placing the wall fence slightly downhill from the highway. As conditioned, the project will incorporate this redesign to assure protection of the public views. The Commission can, therefore, find that as conditioned, the amended project is consistent with Section 30251 of the Coastal Act.

3. Public Access. Section 30212 of the Coastal Act provides that:

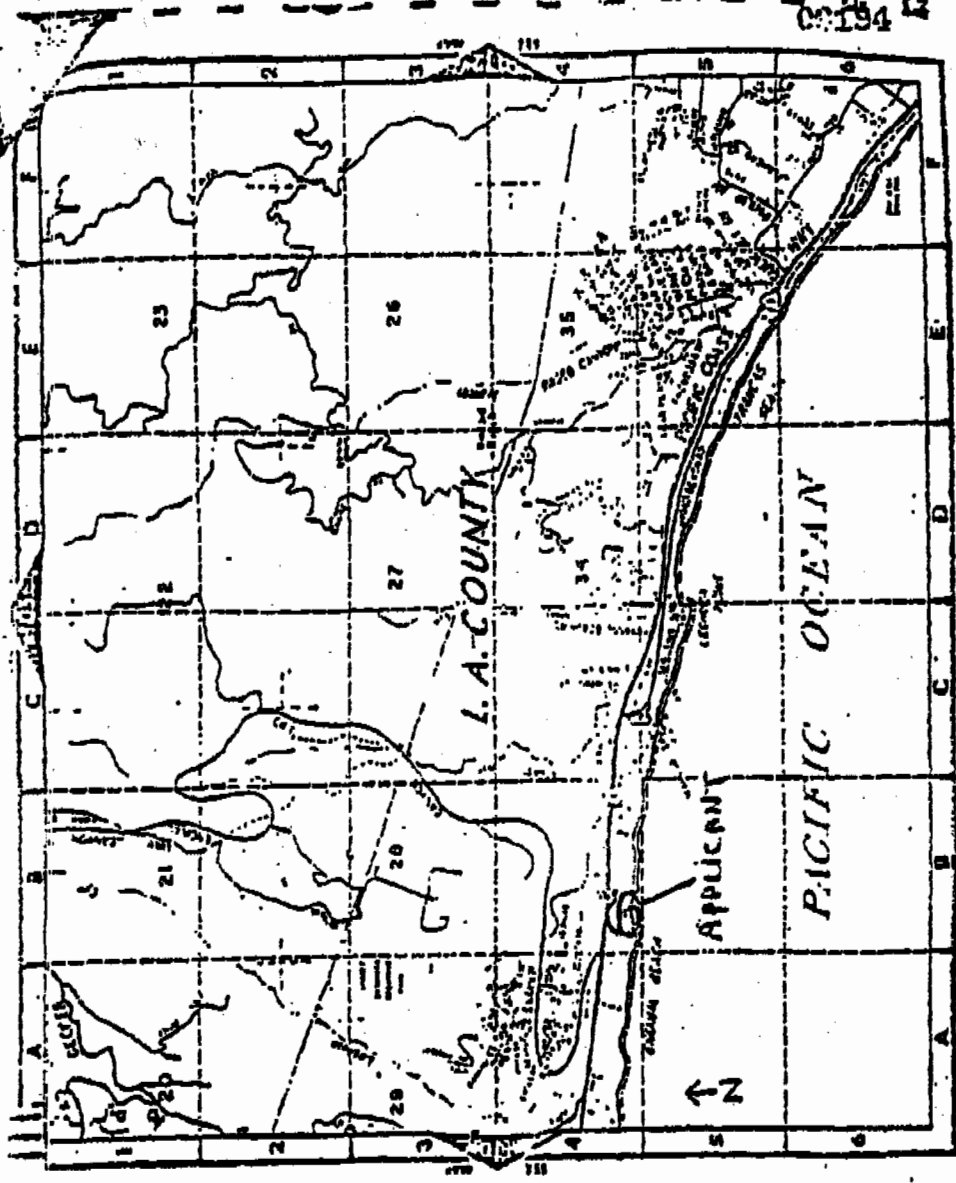
Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway 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.

Both the South Coast Regional Commission and the State Commission have long been concerned about the restrictions on public access to the State tidelands along the 27-miles of coast in Malibu. The area was subdivided many years ago into primarily single-family lots with no provision of public amenities, resulting in the continuing prescription of public tidelands for private use in this critical area close to the large urban population of Los Angeles.

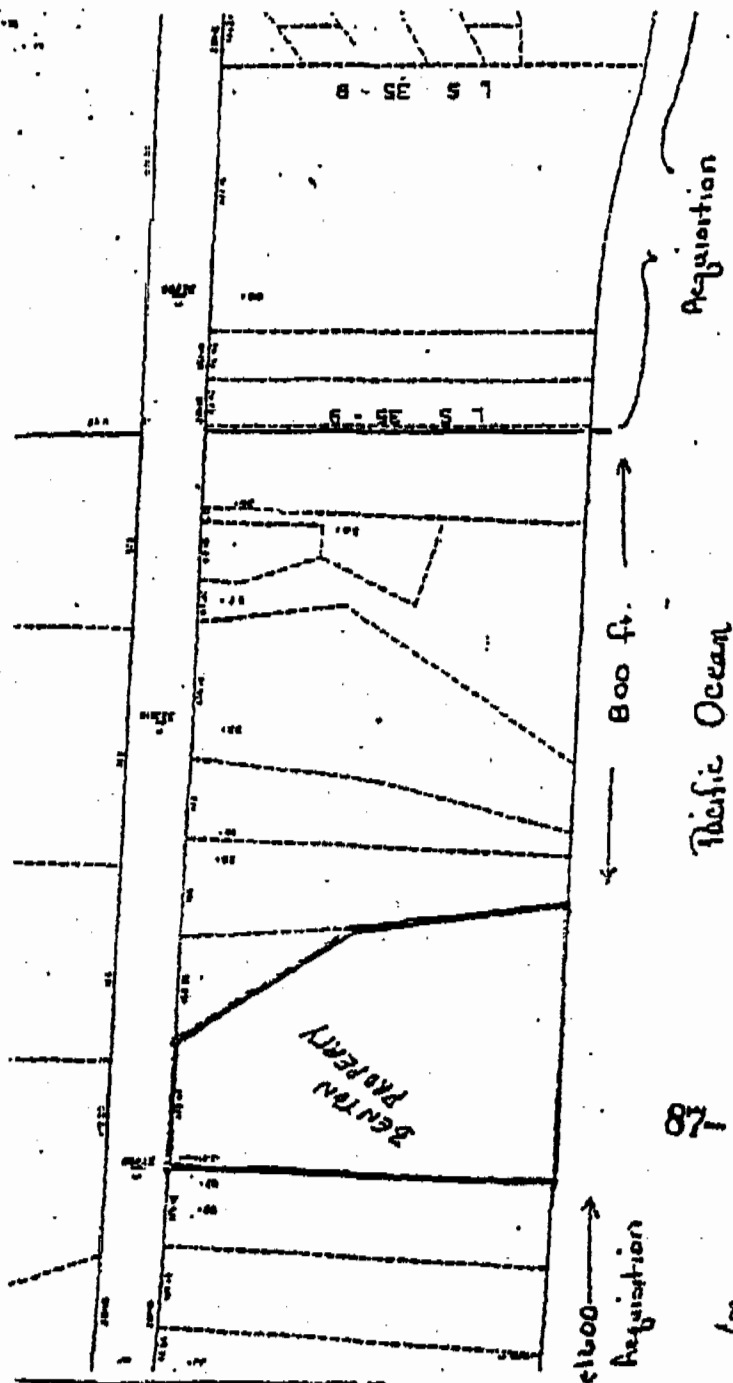
The proposed project site is a bluff top lot adjacent to the shoreline in Malibu. A headland exists on the site picking out into the water blocking lateral access. At the time the permit was originally granted, no vertical access existed to the shoreline on either side of the headland. In granting this permit the Regional Commission required the applicant to dedicate a 15 ft. wide lateral access easement and a vertical accessway to the shoreline. Subsequent to this decision, the state purchased El Matado and El Pescador beaches thereby providing vertical access both up coast and down coast of the headland (Exhibit J). However, the inability to pass around the headland would remain an impediment to determining that adequate public access exists on the parcel. The applicant proposes to eliminate this access impediment by enlarging the lateral access way to include the entire sandy beach, and to improve and dedicate an easement for public access and viewing across the headland. Since vertical access is available to the beaches adjacent to the site and because continuous lateral public access will be provided the Commission finds that this project can be approved without a dedication of vertical access. The Commission concludes that as conditioned to require the dedication and provision of lateral access, the project is consistent with Sections 30210-30212 of the Coastal Act.

87- 028221

0194 12



87-028221 Attachment 1
C) EXHIBIT B



87-028221

Attachment
of EXHIBIT B

EXHIBIT C

10

Prior to the issuance of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute a record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement shall extend from the mean high tide line and shall include an easement area, conforming to the plans attached in Exhibit E, over the headland on the site for pedestrian access and viewing. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

87- 028221

MARIO C. QUIROS • Land Surveyor

22345 PACIFIC COAST HWY.
MALIBU, CALIFORNIA 90265
488-9022

April 6, 1981

Description of lateral access easement as shown on map No. 948-7-C(1), issue dated April 6, 1981.

(NOTE: This description is to supersede the one dated March 26, 1981. The descriptions for lateral recreational easements for westerly and easterly beaches remain as written on March 26, 1981.)

Lateral Access Easement

An easement for lateral access easement over that portion of the Rancho Topanga Malibu Seguit in the County of Los Angeles, State of California, as confirmed to Matthew Keller by Patent recorded in Book 1, pages 407 et seq of Patents, records of said county, described as follows:

Beginning at Highway Engineer's center line Station 298 + 67.32 at the westerly extremity of that certain center line course described as "South 87° 40' 30" East 2044.20 feet" in deed for 80 foot strip of land from T.R. Cadwalader, et al, to the State of California, recorded in Book 15228 page 342 of Official Records of said county, said center line course having a bearing of South 37° 16' 24" East for the purposes of this description; thence South 2° 43' 36" West 40.00 feet to the southerly line of said 30 foot strip of land, at the beginning of a curve concave to the north, having a radius of 10040 feet; thence westerly along the arc of said curve being the southerly line of said 30 foot strip of land a distance of 12.26 feet; thence leaving said southerly line South 2° 48' 12" West 551.04 feet; thence South 76° 56' 09" East 69.98 feet; thence North 81° 23' 04" East 100.13 feet; thence South 53° 55' 04" East 74.83 feet to the true point of beginning; thence North 53° 14' 57" East 14.14 feet; thence South 81° 45' 03" East 82.18 feet; thence South 8° 14' 57" West 10.00 feet to a point that is distant South 81° 45' 03" East 92.18 feet from the true point of beginning; thence North 81° 45' 03" West 78.56 feet; thence South 53° 14' 57" West 17.57 feet to a point distant South 2° 44' 22" West 12.48 feet from the true point of beginning; thence North 2° 44' 22" East 12.48 feet to the true point of beginning.

87- 028221

BY: *Mario C. Quiros*EXHIBIT D
PAGE 1

MARIO C. QUIROS • Land Surveyor

P.O. BOX 186

March 26, 1981

22248 PACIFIC COAST HWY.
MALIBU, CALIFORNIA 90263
466-8823

Legal description of "Lateral Easements" as shown on enclosed map No. #48-7-C(1), issue dated March 26, 1981.

NOTE: Bearings for enclosed map and following legal descriptions are based on Zone 7 of the State of California Coordinate System.

Lateral Recreational Easement, Westerly Beach:

An easement for lateral recreational easement over that portion of the Rancho Topanga Malibu Sequit in the County of Los Angeles, State of California, as confirmed to Matthew Keller by Patent recorded in Book 1, pages 407 et seq. of Patents, records of said county, described as follows:

Beginning at Highway Engineer's center line, Station 298 + 67.32 at the westerly extremity of that certain center line course described as "South 87° 40' 30" East 2044.20 feet" in deed for 80 foot strip of land from T.R. Cadwalader, et al, to the State of California, recorded in Book 15228, page 342 of Official Records of said county, said center line course having a bearing of South 87° 16' 24" East for the purposes of this description; thence South 2° 43' 36" West 40.00 feet to the southerly line of said 80 foot strip of land at the beginning of a curve concave to the north having a radius of 10040 feet; thence westerly along the arc of said curve being the southerly line of said 80 foot strip of land, a distance of 12.26 feet; thence leaving said southerly line, South 2° 48' 12" West 551.04 feet to the true point of beginning; thence South 76° 56' 09" East 69.98 feet; thence North 81° 23' 04" East 100.13 feet; thence South 53° 55' 04" East 74.83 feet; thence South 2° 44' 22" West to the ordinary high tide line of the Pacific Ocean; thence westerly along said ordinary high tide line to an intersection with a line bearing South 2° 48' 12" West from the true point of beginning; thence North 2° 48' 12" East to the true point of beginning.

87- 028221

EXHIBIT D
PAGE 2

MARIO C. QUIROS - Land Surveyor

22249 PACIFIC COAST HWY.
MALIBU, CALIFORNIA 90263
458-8022

March 26, 1981

Page 3 cont'd. (948-7-C(1), issue dated March 26, 1981)

Lateral Recreational Easement, Easterly Beach:

An easement for lateral recreational easement over that portion of the Rancho Topanga Malibu Sequit in the County of Los Angeles, State of California, as confirmed to Matthew Keller by Patents recorded in Book 1, pages 407 et seq. of Patents, records of said county, described as follows:

Beginning at Highway Engineer's center line, Station 298 + 67.32 at the westerly extremity of that certain center line course described as "South 97° 40' 30" East 2044.20 feet" in deed for 80 foot strip of land from T.R. Cadwalader, et al, to the State of California, recorded in Book 15228 page 342 of Official Records of said county, said center line course having a bearing of South 87° 16' 24" East for the purposes of this description; thence South 2° 43' 36" West 40.00 feet to the southerly line of said 80 foot strip of land, at the beginning of a curve concave to the north having a radius of 10040 feet; thence westerly along the arc of said curve being the southerly line of said 80 foot strip of land, a distance of 12.26 feet; thence leaving said southerly line, South 2° 48' 12" West 551.04 feet; thence South 76° 56' 09" East 69.98 feet; thence North 81° 23' 04" East 100.13 feet; thence South 53° 55' 04" East 74.33 feet; thence South 31° 45' 03" East 92.18 feet; to the true point of beginning; thence North 8° 14' 57" East 10.00 feet; thence South 32° 42' 33" East 101.18 feet; to the westerly line of the parcel described in deed from Marblehead Land Company to Raymond W. Roessler and wife, recorded in Book 20706 page 289 of Official Records of said county; thence South 6° 02' 54" East along said westerly line to the ordinary high tide line of the Pacific Ocean; thence westerly along said ordinary high tide line to an intersection with a line bearing South 32° 58' 20" West from the true point of beginning; thence North 32° 58' 20" East to the true point of beginning.

BY: *Mario C. Quiros*

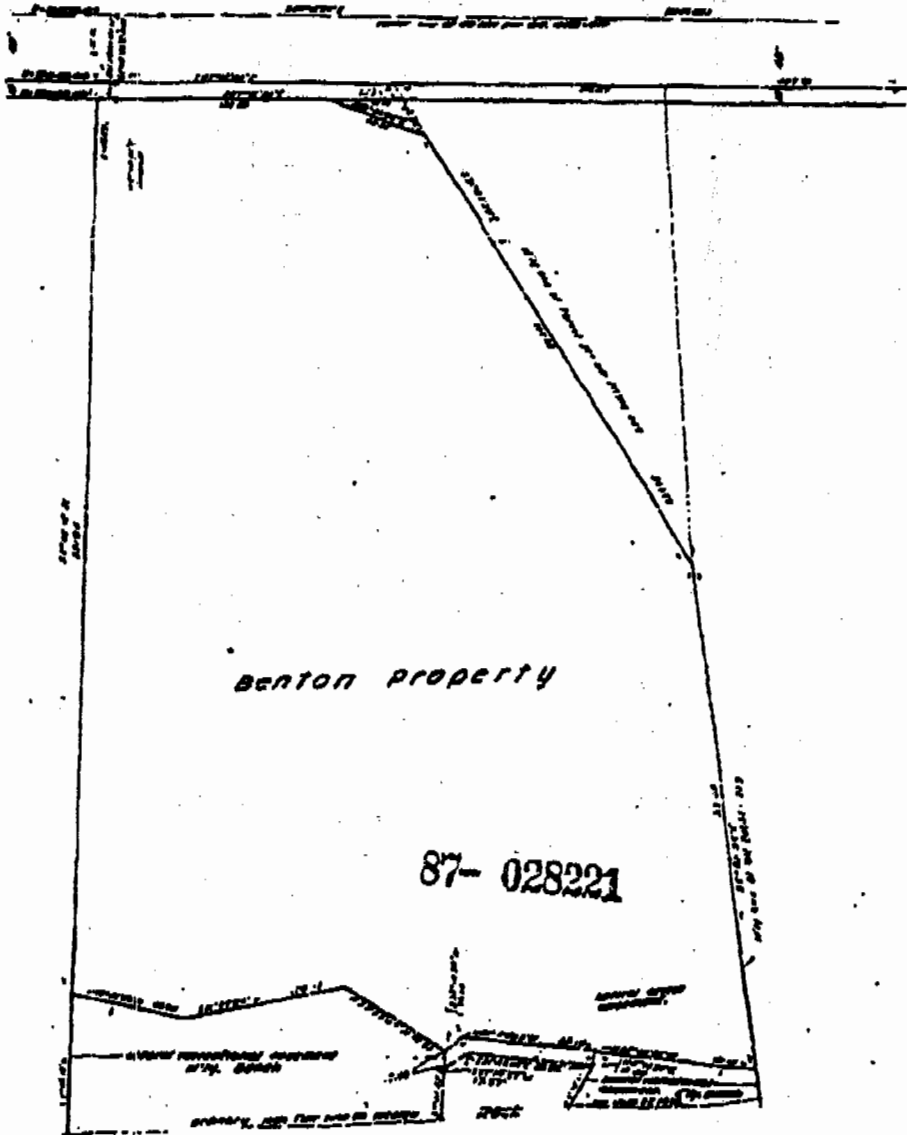
87- 028221

EXHIBIT D

PAGE 3

PACIFIC COAST HIGHWAY

18



Benton Property

87-028221

NOTES.
 Section 18 of the 18th Twp. N. of the
 Range 10E. of the 1st Meridian.

Pacific

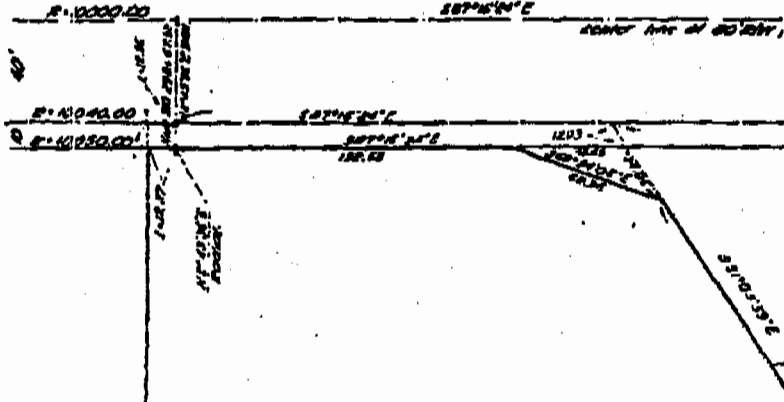
Ocean

Surveyed by John H. Gifford.
 Approved by J. C. Gifford.
 J. C. Gifford
 Surveyor General
 State of Oregon

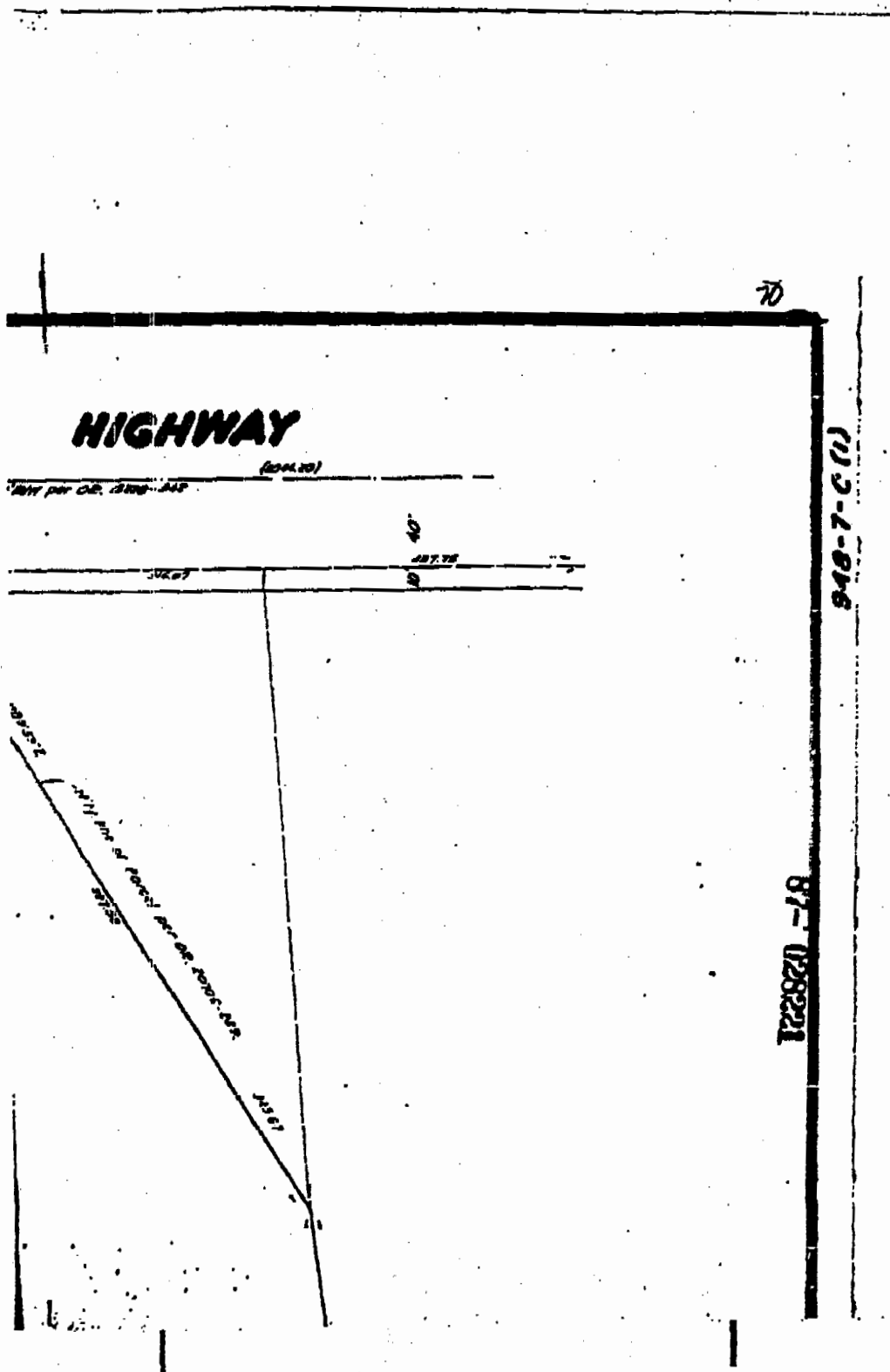
**MAP TO ACCOMPANY
 LEGAL DESCRIPTION
 OF LATERAL EASEMENTS
 IN BENTON PROPERTY AT
 3000 PACIFIC COAST HWY.**

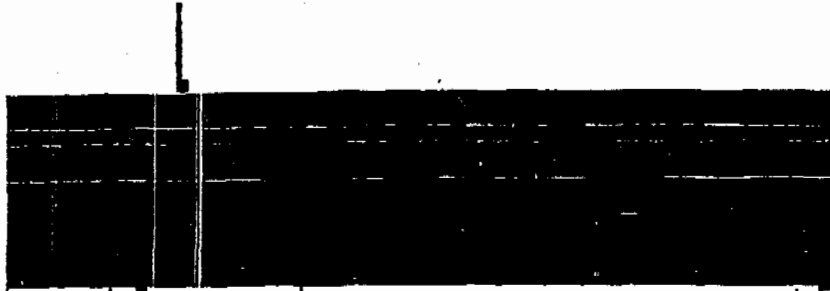
19

PACIFIC COAST



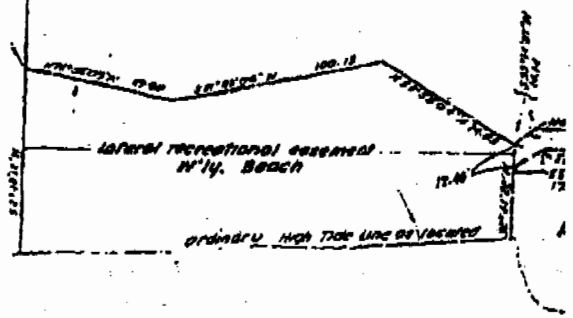
87-028291





Benton Propriety

87-026221



NOTES.

Buildings shown on this map are for the State Geographic System Zone 7.

Pacific

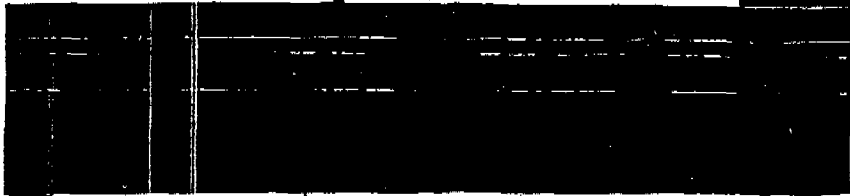
Surveyed for
BY: MARIE
DR. SARA
REED
MARIE C.
MARIE C.

Marie

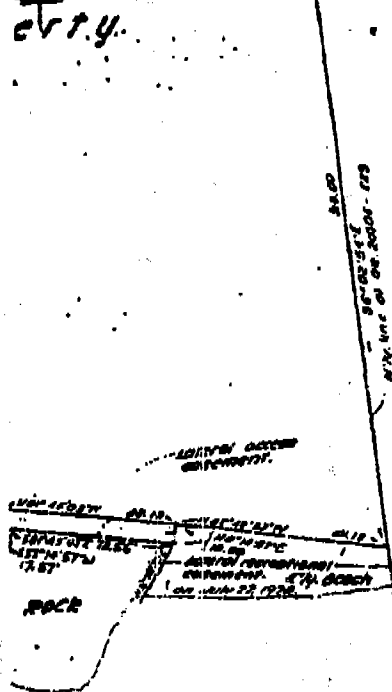
21



Exhibit



erty.



87- 028221

27

JOHN H. Benton.
18 C. O. Benton.
18 Pacific Coast Hwy
Los Angeles, CA 90068
9 (801) 488-8088.
C. Benton

MAP TO ACCOMPANY
LEGAL DESCRIPTION
OF LATERAL EASEMENTS
IN BENTON PROPERTY AT
38320 PACIFIC COAST HWY.
MALIBU

LOS ANGELES COUNTY, CAL.
SCALE 1"=40' MARCH, 1981
ISSUE: APRIL 6, 1981

948-7-C(1)



87- 028221

23

(Retyped for legibility.)

81019 1154275

R

108

TITLE INSURANCE AND TRUST COMPANY

DESCRIPTION:

PARCEL 1:

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER, BY PATENT, RECORDED IN BOOK 1 PAGE 407, ET SEQ., OF PATENTS, RECORDS OF SAID COUNTY, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF BEGINNING BEING DISTANT SOUTH 2 DEGREES 19 MINUTES, 30 SECONDS WEST 40 FEET AND SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 112.74 FEET FROM ENGINEER'S CENTER LINE STATION 293 PLUS 67.32 AT THE WESTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE DESCRIBED IN SAID DEED AS SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 2044.20 FEET. SAID POINT BEING ALSO IN THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO LOUISA D'ANDELOT CARPENTER, RECORDED JUNE 22, 1944 AS INSTRUMENT NO. 606, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 87 DEGREES 40 MINUTES 30 SECONDS WEST 112.74 FEET ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY, WITH A RADIUS OF 10040 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, 12.26 FEET; THENCE SOUTH 2 DEGREES 24 MINUTES 06 SECONDS WEST TO A POINT IN THE ORDINARY HIGH TIDE LINE OF THE PACIFIC [O]CEAN; THENCE EASTERLY ALONG SAID TIDE LINE TO THE INTERSECTION OF SAID TIDE LINES AND THAT LINE WHICH BEARS SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 2 DEGREES 19 MINUTES 30 SECONDS EAST ALONG THE WESTERLY LINE OF SAID CARPENTER PARCEL AND ITS PROLONGATION TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF THE 100 FOOT STRIP OF LAND DESCRIBED IN DEED FROM MARBLEHEAD LAND COMPANY, TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385, OFFICIAL RECORDS OF LOS ANGELES COUNTY.

ALSO EXCEPTING THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER SAID LANDS, AND EVERY PART THEREOF, BUT WITHOUT SURFACE RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED AUGUST 15, 1944 IN BOOK 21198 PAGE 122, OFFICIAL RECORDS.

ALSO EXCEPT ANY PORTION OF SAID LAND, WHICH AT ANY TIME WAS TIDE OR SUBMERGED LAND AND BECAME UPLAND BY OTHER THAN FROM NATURAL CAUSES.

PARCEL 2:

A PART OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, CONFIRMED TO MATTHEW KELLER BY PATENT, RECORDED IN BOOK 1 PAGES 407, ET SEQ., OF PATENTS, RECORDS OF SAID COUNTY, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T.R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, IN THE

Exhibit A

(Retyped for legibility)
81019 1154275

8

108

74

TITLE INSURANCE AND TRUST COMPANY

OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF BEGINNING BEING DISTANT SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST 40 FEET AND SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 112.74 FEET FROM ENGINEER'S CENTER LINE STATION 298 PLUS 67.32 AT THE WESTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE DESCRIBED IN SAID DEED AS SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 2044.20 FEET; THENCE SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 58.94 FEET ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP TO THE NORTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO RAYMOND W. ROESSLER AND WIFE, RECORDED IN BOOK 20706 PAGE 289, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL, SOUTH 31 DEGREES 28 MINUTES 05 SECONDS EAST 343.67 FEET; THENCE SOUTH 6 DEGREES 27 MINUTES 00 SECONDS EAST TO A POINT IN THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN; THENCE WESTERLY ALONG SAID TIDE LINE TO THE INTERSECTION OF SAID TIDE LINE AND THAT LINE WHICH BEARS SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 2 DEGREES 19 MINUTES 30 SECONDS EAST TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER SAID LANDS AND EVERY PART THEREOF, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED JUNE 22, 1944 IN BOOK 21052 PAGE 100, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE 100 FOOT STRIP OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION OF RANCHO TOPANGA MALIBU SEQUIT, AS PER PATENT RECORDED IN BOOK 1 PAGES 407, ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; CONVEYED TO JOHN T. BOND, BY DEED RECORDED IN BOOK 24379 PAGE 137, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF 100 FOOT STRIP OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385 OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE NORTHEASTERLY CORNER OF PARCEL 2 OF THE LAND CONVEYED TO JOHN T. BOND; THENCE ALONG THE SOUTHERLY LINE OF SAID 100 FOOT STRIP; NORTH 87 DEGREES 40 MINUTES 30 SECONDS WEST 45.69 FEET; THENCE SOUTH 68 DEGREES 58 MINUTES 12 SECONDS EAST 62.36 FEET TO THE EASTERLY BOUNDARY OF SAID PARCEL 2; THENCE ALONG SAID EASTERLY LINE, NORTH 31 DEGREES 28 MINUTES 05 SECONDS WEST 24.06 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT ANY PORTION OF SAID LAND WHICH AT ANY TIME WAS TIDE OR SUBMERGED LAND AND BECAME UPLAND BY OTHER THAN FROM NATURAL CAUSES.

87- 028221

LEAD SHEET

02 219/101

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
9:01 AM SEP 18 2002

SPACE ABOVE THIS LINE FOR RECORDERS USE

TITLE(S)

FEE

D.T.T.

FREE BB

5

CODE
20

CODE
19

CODE
9

Assessor's Identification Number (AIN)

To Be Completed By Examiner OR Title Company In Black Ink

Number of Parcels Shown

EXHIBIT 6
A-220-80-A2-EDD
SLC Public Access
Easement Acceptance

35-RO-09

THIS FORM IS NOT TO BE DUPLICATED

02 2191101

2

1 RECORDING REQUESTED BY:

2

3

4 WHEN RECORDED MAIL TO:
5 CALIFORNIA COASTAL COMMISSION
6 45 FREMONT STREET, SUITE 2000
7 SAN FRANCISCO, CA 94105-2219
8 ATTN: LEGAL DIVISION

7

8

9

10

11

CERTIFICATE OF ACCEPTANCE

12

13

14

15

THIS DOCUMENT IS BEING RE-RECORDED

16

TO INCLUDE THE NOTARY ACKNOWLEDGEMENT PAGE

17

18

WHICH WAS OMITTED FROM THE ORIGINAL RECORDING

19

20

21

22

23

24

25

26

27

02 2191101

~~02-1-1995~~

RECORDING REQUESTED BY
WHEN RECORDED MAIL TO

NAME *California Coastal Commission*

MAILING ADDRESS *45 Fremont Street
Suite 2000*

CITY, STATE *San Francisco, CA*
ZIP CODE *94105*

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
~~9:01 AM JUL 23 2002~~

SPACE ABOVE THIS LINE FOR RECORDERS USE

TITLE(S)

FEE

D.T.T.

~~FEE BB~~

3

CODE
20

CODE
19

CODE
9

CODE
24

Assessor's Identification Number (AIN)

To Be Completed By Examiner OR Title Company In Black Ink

Number of Parcels Shown

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
Attention: Legal Division

RECEIVED ~~02 17 2002~~

JUL 10 2002

CALIFORNIA
COASTAL COMMISSION

02 2191101

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDERS USE

NO TAX DUE -0-
SLC No. AD 426
CCC Permit No. A-220-80

A.P.N. 4473-014-009
32340 Pacific Coast HWY

CERTIFICATE OF ACCEPTANCE
Government Code 27281

This is to certify that the State of California, acting by and through the California State Lands Commission, a Public Agency of the State of California, hereby accepts any and all right, title and interest in real property conveyed by the Offer to Dedicate Public Access Easement, dated November 12, 1986, recorded January 8, 1987, as Instrument No. 87-028221, Official Records of Los Angeles County, from John H. Benton to the State of California.

The interest in real property conveyed by the offer is accepted in trust for the people of the State. Acceptance is made of that interest which can be legally conveyed and is not intended to define boundaries or accept interests or rights in lands which are already the property of the State or people of California.

This Acceptance and consent to recording of the Acceptance is executed by and on behalf of the State of California by the California State Lands Commission, acting pursuant to law, as approved and authorized by its Calendar/Minute Item No. C 17 of its public meeting on June 18, 2002, by its duly authorized undersigned officer.

California State Lands Commission

Dated: July 1, 2002

By: *Paul D. Thayer*
Paul D. Thayer
Executive Officer

ACKNOWLEDGMENT BY CALIFORNIA COASTAL COMMISSION

This is to certify that the California State Lands Commission is a public agency acceptable to the Executive Director of the California Coastal Commission to be Grantee under the Offer to Dedicate referenced above.

Dated: July 10, 2002

By: *John Bowers*
John Bowers, Sr

02 2191101 02 1712058

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of SACRAMENTO } ss.

On July 1, 2002, before me, Kimberly L. Korhonen, Notary Public

personally appeared Paul D. Thayer

- 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.

WITNESS my hand and official seal.

Kimberly L. Korhonen
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: Certificate of Acceptance - JOHN H. BARTON
D.D.S. 4473-014-009 32340 PACIFIC COAST HIGHWAY
Document Date: June 18, 2002 Number of Pages: 1

Signer(s) Other Than Named Above: JOHN BOWERS

Capacity(ies) Claimed by Signer

- Signer's Name: Paul D. Thayer
Individual
Corporate Officer - Title(s):
Partner - Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other: Executive Officer

Signer Is Representing: CA STATE LANDS COMMISSION

RIGHT THUMBPRINT OF SIGNER
Top of thumb here



6

STATE OF CALIFORNIA

02 2191101

COUNTY OF SAN FRANCISCO

On September 10, 2002, before me, Patricia Sexton, 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 Patricia Sexton

This page is part of your document - DO NOT DISCARD

06 0025846

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA

1:21 PM JAN 05 2006

TITLE(S) :



FEE

D.T.T.

FREE I 8

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

Grid of boxes for AIN and number of AIN's shown

THIS FORM IS NOT TO BE DUPLICATED

EXHIBIT 7
A-220-80-A2-EDD
Access Easement
Transfer

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:

STATE OF CALIFORNIA
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060
Attn: Legal Division

06 0025846

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

No Tax Due
SLC No. AD 509

APN: 4473-014-009
County of Los Angeles

ASSIGNMENT OF PUBLIC ACCESS EASEMENT

Whereas, the California State Lands Commission accepted an Amended Irrevocable Offer to Dedicate a public access easement by John H. Benton, recorded January 8, 1987 as Instrument No. 87-028221, Official Records of Los Angeles County.

The California State Lands Commission, a public agency of the State of California, hereby transfers and assigns to Access for All, C/O Steve Hoyer, Executive Director, P.O. Box 1704, Topanga, California 90290, all of its right, title and interest in the public access easement vested in the California State Lands Commission by the recordation of the Certificate of Acceptance, recorded on July 23, 2002 as Instrument No. 02-1713058, and re-recorded on September 18, 2002 as Instrument No. 02-2191101, Official Records of Los Angeles County.

IN WITNESS WHEREOF, said California State Lands Commission has caused this transfer and assignment to be executed by its duly authorized agent this 12 day of Dec. 2005.

State of California
California State Lands Commission

By Paul D. Thayer
Paul D. Thayer
Executive Officer

Acknowledgement by California Coastal Commission:

This is to certify that Access for All is a non-profit association acceptable to the Executive Director of the California Coastal Commission to be the Assignee of the easement referenced above.

Dated: Dec. 21, 2005 By: John Bowers
John Bowers, Staff Counsel

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
)
County of Sacramento) ss.

On December 12, 2005, before me, Grace M. Kato, Notary Public, personally appeared Paul D. Thayer, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Grace M. Kato

Signature of Notary Public

(SEAL)

OPTIONAL

Though law does not require the information below, 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:
ASSIGNMENT OF PUBLIC ACCESS EASEMENT

Document Date:
December 12, 2005

Number of Pages:
1

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

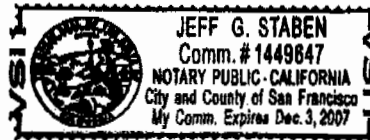
06 0025846

4

On 12.21.05, before me, JEFF G. Staben, a Notary Public personally appeared ³³ 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 J.G. Staben



STATE OF CALIFORNIA
COUNTY OF _____

On _____, before me, _____, a Notary Public personally appeared _____, 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 _____

ACKNOWLEDGMENT BY
CALIFORNIA COASTAL COMMISSION
OF TRANSFER OF PUBLIC ACCESS EASEMENT

06 0025846
5

THIS ACKNOWLEDGMENT acknowledges and certifies the transfer from the California State Lands Commission, a public agency, to Access For All, a private nonprofit corporation, of a Public Access Easement created by the recordation by the California State Lands Commission, of a Certificate of Acceptance on July 23, 2002, as Instrument Number 02-1713058, and the re-recordation of a Certificate of Acceptance on September 18, 2002, as Instrument Number 02-2191101, both in the Official Records of Los Angeles County (hereinafter the "Public Access Easement"), and sets forth conditions of that transfer of ownership of the Public Access Easement with respect to the management and future disposition of said Public Access Easement. It is the intention of the California Coastal Commission (hereinafter the "Commission") and Access For All to ensure that the purposes, terms and conditions of the Public Access Easement be carried out within a framework established by and among the Commission, Access For All and the State Coastal Conservancy (hereinafter the "Conservancy") in order to implement the Commission's Coastal Access Program pursuant to the California Coastal Act of 1976, Public Resources Code § 30000 *et seq.* (hereinafter the "Coastal Act").

I. WHEREAS, the Commission is an agency of the State of California established pursuant to Public Resources Code § 30300 and is charged with primary responsibility for implementing and enforcing the Coastal Act; and

II. WHEREAS, the Conservancy is an agency of the State of California existing under Division 21 of the California Public Resources Code, which serves as a repository for interests in land

whose reservation is required to meet the policies and objectives of the Coastal Act or a certified local coastal plan or program; and

III. WHEREAS, Access For All is a private nonprofit corporation existing under § 501(c)(3) of the United States Internal Revenue Code and having among its principal charitable purposes the preservation of land for public access, recreation, scenic and open space purposes; and

IV. WHEREAS, as a condition to its approval of a Coastal Development Permit, A-220-80, imposed pursuant to Sections 30210-30212 of the Coastal Act, the Commission required the permittee to grant the Public Access Easement; and

V. WHEREAS, terms and conditions of the Public Access Easement provide, among other things, that (A) the Public Access Easement may be transferred to and held by any entity which qualifies as a Grantee; and (B) the Public Access Easement runs with the land, providing that any Grantee may not abandon the easement until such time as Grantee effectively transfers said easement to an entity which qualifies as a Grantee; and

VI. WHEREAS, Access For All desires to become the holder of the Public Access Easement and accordingly has requested that the Executive Director of the Commission approve it as an acceptable management agency; and

VII. WHEREAS, Access For All is acceptable to the Executive Director of the Commission to be the holder of the Public Access Easement provided that the Public Access Easement will be transferred to another qualified entity or to the Conservancy in the event that Access For All ceases to exist or is otherwise unable to carry out its responsibilities as Grantee, as set forth in a management plan approved by the Executive Director of the Commission.

NOW, THEREFORE, this is to certify that Access For All is a private nonprofit corporation acceptable to the Executive Director of the Commission to be holder of the Public Access Easement,

on the condition that should Access For All cease to exist or fail to carry out its responsibilities as holder of the Public Access Easement to manage the Public Access Easement for the purpose of allowing public access and passive recreational use of the easement area located on the Property, then all of Access For All's right, title and interest in the Public Access Easement shall vest in the State of California, acting by and through the Conservancy or its successor, upon acceptance thereof; provided, however, that the State, acting through the Executive Officer of the Conservancy or its successor agency, may designate another public agency or private association acceptable to the Executive Director of the Commission, in which case vesting shall be in that agency or organization rather than the State. The responsibilities of Access For All to manage the Public Access Easement shall be those set forth in the Management Plan dated November 23, 2005 and maintained in the offices of the Commission and the Conservancy (and as the Management Plan may be amended from time to time with the written concurrence of the Executive Director of the Commission, the Executive Officer of the Conservancy, and Access For All). Notwithstanding the foregoing, the right, title and interest of Access For All in the Public Access Easement may not vest in the Conservancy or another entity ~~except upon (1) a finding by the Conservancy, made at a noticed public hearing, that Access For All~~ has ceased to exist or failed to carry out its responsibilities as set forth in the Management Plan; and (2) recordation by the State or another designated agency or entity of a Certificate of Acceptance, substantially in the form set forth in California Government Code § 27281. Nothing herein shall prevent Access For All from transferring the Public Access Easement to a qualified entity pursuant to the Public Access Easement, thereby relieving itself of the obligation to manage the Public Access Easement in accordance with the Management Plan.

06 0025846

IN WITNESS WHEREOF, the Commission and Access For All have executed this

ACKNOWLEDGMENT OF TRANSFER OF PUBLIC ACCESS EASEMENT as of the dates set forth below.

Dated: Dec. 22, 2005

Dated: 1/5/2006

CALIFORNIA COASTAL COMMISSION

ACCESS FOR ALL

By: John Bowers
John Bowers, Staff Counsel

By: Steve Hoyer
Steve Hoyer, Executive Director

06 0025846

9

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On January 5, 2006, before me Sandra Salkow, a Notary Public, personally appeared Steve Hove, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons(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 Sandra Salkow



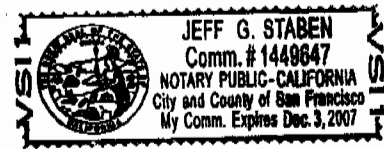
STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On 12.22.05, 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 persons(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



LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

1901 AVENUE OF THE STARS, SUITE 470
LOS ANGELES, CALIFORNIA 90067-6006
TELEPHONE (310) 552-3336
TELEFAX (310) 552-1850

ALAN ROBERT BLOCK
JUSTIN MICHAEL BLOCK
OF COUNSEL
MICHAEL N. FRIEDMAN

SENDER'S E-MAIL
alan@blocklaw.net

January 31, 2007

RECEIVED
FEB - 8 2007

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

VIA FAX & FIRST CLASS MAIL

Mr. Jack Ainsworth, District Director
California Coastal Commission
South Coast District Area
89 South California Street, Suite 200
Ventura, California 93001

Re: Appeal of Executive Director's Rejection of Request for Amendment to CDP No. A-220-80 (Benton) to delete Special Condition No. 2 Requiring The Construction Of Accessway Improvements from the Shoreline to the Headland Accessway and back to the Shoreline (Property Address: 32340 Pacific Coast Highway)

Dear Jack:

Pursuant to California Code of Regulations Section 13166 (a)(1) Graham and Brenda Revell are providing notice of their appeal of the Executive Director's determination, dated January 17, 2007, to reject the above captioned amendment request and desire to have this Appeal heard by the full Coastal Commission at a regularly scheduled meeting in Southern California.

The Amendment Request is being filed by the Revells due to physical changes to the property (changed circumstances) which have occurred between the time of the Commission's approval of the CDP, on September 19, 1980, and the date the Revells purchased the property, on May 13, 2004, and make compliance with said special condition both impractical from a construction perspective and unnecessary for the purpose of ensuring lateral access. More specifically the changed circumstances which necessitate the request include the following:

- Significant loss of sand at the base of the Headland

EXHIBIT 8
A-220-80-A2-EDD
Appeal of E.D. Determination

Mr. Jack Ainsworth, District Director
Re: CDP No. A-220-80 (Benton)
January 31, 2007

Page 2

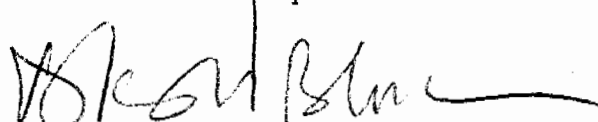
- Significant vertical drop associated with any potential lateral accessway improvement, raising serious safety concerns
- Construction, engineering and geological concerns which cannot be overcome, except at exorbitant expense
- Wave rush-up at high tide
- Availability of lateral access through existing sea cave

In order to facilitate your review and processing of this request we have engaged technical experts, including, but not limited to, a geologist, and structural and coastal engineer, to prepare the appropriate reports documenting the issues outlined above. The same will be provided for your review and consideration under separate cover. In the meantime, if you have any questions please do not hesitate to contact me.

Thank you for your anticipated courtesy and cooperation.

Respectfully submitted,

**LAW OFFICES OF
ALAN ROBERT BLOCK**
A Professional Corporation



ALAN ROBERT BLOCK

ARB:jm

cc: Graeme and Brenda Revell
Cynthia McClain-Hill, Strategic Counsel
Dan Olivas, Deputy Attorney General

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



January 17, 2007

Graeme and Brenda Revell
32340 Pacific Coast Highway
Malibu, CA 90265

Re: Coastal Development Permit Amendment A-220-80-A2 (Revell)

Dear Mr. And Mrs. Revell:

We are in receipt of your application which was submitted on December 18, 2006, to amend Coastal Development Permit (CDP) A-220-80-A2 by deleting previously required Special Condition Two. The underlying CDP authorizing construction of the existing single family residence on the property was approved by the Commission subject to several special conditions, specifically including the provision that the applicant record offers to dedicate both a public vertical access easement from Pacific Coast Highway to the mean high tide line and a public lateral access easement along the entire width of the property along the sandy beach. The Commission found that the proposed development could only be approved subject to the above referenced special conditions regarding the provision of public access.

In 1980, at the request of the owners of the property at the time, the Commission subsequently approved an amendment (CDP A-220-80-A1) to the underlying permit, deleting the requirement to provide public vertical access on site. Although the previous amendment authorized the deletion of the requirement to provide public vertical access on site, the amendment application was accepted and approved by the Commission only because the applicant proposed a new special condition (Special Condition Two of the amended permit) to mitigate for the loss of that vertical public access. Specifically, in order to provide for adequate public access without vertical public access, Special Condition Two required the property owner to submit project plans, for the review and approval of the Executive Director, for the construction of new access improvements to provide public access from the upcoast shoreline up and over the headland itself to the downcoast shoreline and vice versa. Special Condition Two (2) further required the property owner to construct the public access improvements in accordance with the approved plans prior to occupancy of the residence. Further, the Irrevocable Offer to Dedicate an Easement (OTD), which was recorded for the subject site pursuant to the amended permit, specifically states:

WHEREAS, the Commission found that but for the imposition of the above condition [for provision of lateral access], the proposed development could not be found consistent with the public access policies of Sections 30210 through 30212 of the California Coastal Act of 1976 and that, therefore, in the absence of such a conditions, a permit could not have been granted.

EXHIBIT 9
A-220-80-A2-EDD
E.D. Letter Rejecting Amendment

Thus, the permit required both a lateral public access easement and the actual construction of public access improvements in the easement. These were essential to the Commission's previous approval of the underlying permit and to the Commission's approval of the subsequent amendment to that permit deleting the requirement to provide a public vertical access easement.

Pursuant to Section 13166 of the California Coastal Commission Regulations (Title 14, Division 5.5) Article Five, the Executive Director shall reject an application for an amendment to a previously approved permit if such amendment would serve to lessen or avoid the intended effect of those conditions. Section 13166 states, in relevant part:

The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

In this case, although construction of the residence on site has been completed and occupancy of the residence has already occurred, the construction of the previously approved public access improvements, which was specifically required by Special Condition Two of your permit as mitigation for that development, has not yet been completed. The condition requires the permittee to construct access improvements. Removal of the condition would eliminate this requirement and thereby avoid the intended effect of the permit, which is that the permittee provide both an access easement and actual access improvements. The letter from Alan Block, dated December 8, 2006, and submitted as part of your application on December 18, 2006, asserts that the proposed amendment is requested "in light of physical changes to the property (changed circumstances) which have occurred between the time of the Commission's approval of the CDP...and the date the Revell's purchased the property." The letter further asserts that the headland effectively "rose" in height from approximately 14 ft. above the surface of the beach to approximately 23 ft. in height above the beach due to changes in the sand level on the beach and that the change in sand level makes construction of the previously required public access improvements infeasible. However, no evidence of any changes to sand levels on site or the infeasibility of constructing the required public access improvements was submitted as part of the amendment application.

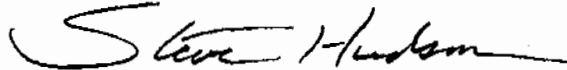
Furthermore, the beach is a naturally dynamic environment which is subject to periodic fluctuations in sand elevations due to tidal conditions and seasonal changes; such fluctuations are expected to occur and do not constitute "changed circumstances" to the condition of the site. Moreover, such fluctuations in sand level were well understood at the time the Commission approved the underlying permit and do not, in any manner, constitute "newly discovered material information" which could not have been "discovered and produced before the permit was granted." Regardless, any potential past, present, or future changes (either periodic or permanent in nature) to the sand elevations on the beach fronting the subject site are irrelevant to the feasibility of

constructing the previously approved public access improvements on the subject site in compliance with the required conditions of approval of the underlying permit. The geologic engineering report by Donald Kowalewsky dated December 13, 2005, submitted as part of your amendment application does not indicate that any changes have occurred on site which would prevent you from complying with the conditions of approval. In fact, the report indicates that construction of the required stairs is feasible provided that such stairs are constructed using deepened piles (caissons) extending into the underlying bedrock. Pursuant to the requirements of Special Condition Two, the previous property owner submitted project plans, for the review and approval of the Executive Director, to construct the required public access improvements on site. The approved plans prepared by The Frank Lloyd Wright Foundation dated 2/19/82 and approved by the Executive Director on 8/15/86 clearly show that both of the two approved public access stairways would be constructed using a deepened pile foundation supported in bedrock that would provide for adequate structural stability of the stairway regardless of any fluctuations or changes in sand levels on the beach.

Thus, the Executive Director finds that the deletion of Special Condition Two would avoid the intended effect of the permit and that no newly discovered information has been submitted as part of the submitted application which could not, with reasonable diligence, have been produced before the permit was granted. Accordingly, pursuant to Section 13166 of the California Code of Regulations and for the reasons stated above, CDP Amendment Application A-220-80-A2 is rejected. For your convenience, we are returning your permit amendment application and any additional materials that were submitted.

If you have any questions regarding this matter please call me at (805) 585-1800.

Sincerely,



Steve Hudson
Supervisor, Planning and Regulation

cc: Alan Block

LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

1901 AVENUE OF THE STARS, SUITE 470
LOS ANGELES, CALIFORNIA 90067-6006
TELEPHONE (310) 552-3336
TELEFAX (310) 552-1850

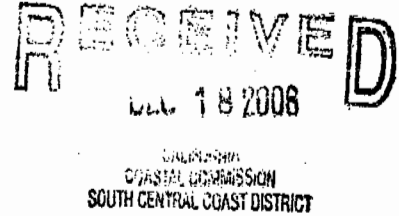
ALAN ROBERT BLOCK
JUSTIN MICHAEL BLOCK

OF COUNSEL
MICHAEL N. FRIEDMAN

SENDER'S E-MAIL
alan@blocklaw.net

December 8, 2006

Mr. Jack Ainsworth, District Director
California Coastal Commission
South Coast District Area
89 South California Street, Suite 200
Ventura, California 93001



Re: CDP No. A-220-80 (Benton)

Property Address: 32340 Pacific Coast Highway

Request for Amendment to Delete Special Condition No. 2 Requiring The Construction Of Accessway Improvements From The Shoreline To The Headland Accessway And Back To The Shoreline

Date of CDP Approval: September 17, 1980

Dear Jack:

As you know, this office represents Graham and Brenda Revell the current owners of the property located at 32340 Pacific Coast Highway ("Subject Property"). As we discussed last week, the enclosed Amendment Request seeks to delete Special Condition No. 2 from CDP No. A-220-80 which was approved by the Commission at the request of John Benton, a former owner of the subject property.

The Amendment Request is being filed by the Revells in light of physically changes to the property (changed circumstances) which have occurred between the time of the Commission's approval of the CDP, on September 19, 1980, and the date the Revells purchased the property, on May 13, 2004. It is the Revells vigorous contention that the changed circumstances make construction of the approved accessway improvements patently unreasonable, if not physically impossible.

Special Condition No. 2 provides as follows:

"Accessway Improvements. Prior to the issuance of the permit, the applicant shall submit plans, for the review and approval in writing of the Executive Director,

EXHIBIT 10
A-220-80-A2-EDD
Amendment Application A-220-80-A2 (2006)

Page 2

showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with the approved plans shall be completed prior to occupancy of the residence approved herein.”

At the time the Commission approved CDP No. A-220-80, the headland rose to a height of approximately 14 feet above the surface of the sandy beach. The accessway improvement plans, which were apparently not submitted to the Executive Director for review and approval until February 1982, were not approved until August 15, 1986, over four and one half years after being submitted, and almost seven years after the approval of the CDP itself.

Although Special Condition No. 2 required the accessway improvements to be constructed prior to the occupancy of the approved residence, they were never constructed. Records from the County of Los Angeles evidence that an application for building permit for the approved residence was submitted to the County in February 1983, and that the structure received it's final inspection in September 1987. It's been occupied ever since.

Although it is unknown what date CDP No. A-220-80 was actually issued, it appears that it was issued years prior to the Executive Director's approval of the accessway improvement plans as required by Special Condition No. 2. In our review of the Commission's file for CDP No. A-220-80 we did not observe documents which substantiated either the date of issuance of the permit or whether an extension of the CDP for was ever received.¹

The approved plans for the accessway improvements evidence that the maximum height of the improvements would extend 14 feet above the beach. At the time the Revells purchased the subject property the headland stood more than 23 feet above sand level. It is higher today. As such, construction of the approved accessway improvements today would not provide the public with the desired lateral access that the Commission sought at the time of its approval of CDP No. A-220-80. Further, after reviewing the approved plans, the City of Malibu, has concluded that it will not issue a building permit for the accessway improvements because they were not designed and/or engineered to meet the minimum

¹ The Commission file on CDP A-220-80 only indicate that the underlying CDP P-77-2107 was issued by the Commission on January 16, 1980. The issuance of CDP A-220-80 may have been prior to the applicant's recordation of the Irrevocable Offer To Dedicate lateral access as required by Special Condition No. 1 on June 2, 1982.

Mr. Jack Ainsworth
Re: CDP No. A-220-80 (Benton) Request For Amendment
December 8, 2006

Page 3

requirements of the Uniform Building Code ("UBC").

Furthermore, contrary to the apparent lack of access which allegedly surrounded the subject property at the time the Commission considered CDP No. A-220-80, adequate lateral access appears to be available to the public.

As stated by the Revells' consulting geologist Donald B. Kowalewsky in his letter report of December 13, 2005:

"The accompanying photographs clearly indicate that the promontory under discussion is not the only impairment to free access to the coastline westerly from El Matador beach. In fact a more severe promontory located to the east . . . limits access to the pocket cove between the two promontories such that a person walking the beach could not reach the proposed stairway during any time frame when the proposed stairway would be necessary for continued access to the western beaches. Similarly, a person walking eastward could not reach El Matador beach during high tide even with construction of the proposed stairs.

Perhaps more significant is the physical condition of the subject promontory. This promontory is a good example of a complex sea arch with multiple access ways. . . . Although the erosion of this promontory appears to be a series of sea caves, the caves are interconnected in such a manner that they are technically sea arches. Photographs clearly demonstrate that the sea arches are through passages from one side to the other . . . without the necessity of going around the promontory. In fact, two different passageways are accessible with one requiring crawling while the other allows one to walk standing upright . . . Because the arches are available for access, with the possible exception of very high tides, I question the need for vertical stairways on either side of the promontory, when these stairs will never be used by the public. If one is walking on the beach, would not that person prefer to walk through a sea arch rather than up a stair with 20 to 30 foot of vertical relief, only to descent another 20 to 30 (vertical) stair. During the highest tides when the arches would be periodically filled with wave runoff, a person who could theoretically use the stairs, could not reach the stairs from El Matador beach and a person who used the stairs from the west would only be able to walk a few hundred additional feet before being forced to turn around." A copy of Donald B. Kowalewsky's letter geology report, dated December 13, 2005, is attached as apart of the Revell's Amendment Request submittal.

Further, as evidenced by Kowalewsky's report and findings, the practical ramifications of the construction of the accessway improvements on the sandy beach have not been adequately considered, if at all. It serves no purpose to mar the landscape with unnecessary structures that could quickly wash away and pose a serious hazardous condition to the public while its remnants desperately cling to the rocks before being fully claimed by the sea. Likewise, a major construction project with extreme negative impacts on the environment is not justified.

As further stated by Geologist Kowalewsky in his letter report:

"The proposed accessway may enhance access . . . to a limited portion of the beach during high tide, but will at the same time detract from the reason why a person visits the area. Construction of the stairway, will require installation of several concrete caissons through the beach sand extending into the underlying bedrock a minimum of 10 feet. Excavations to construct the caissons will require heavy drilling equipment on the beach during low to medium tides. Because this type of rock is locally very hard, drilling will be difficult and any one bore hole may not be completed between high tides. Consequently, sand must be excavated and stored as a barrier to wave action so that drilling can continue, and the reinforcing steel placed and concrete poured before the boring is filled with sea water. The rock debris from the drilling must either be removed, or be allowed to erode with wave action. . . . It should be noted that access to the beach by heavy duty drilling rigs is very difficult and may necessitate a barge. I do not know what the actual conditions of the immediate near shore sea floor, however, observation suggests that numerous shallow rocks exist that may prevent a barge from reaching the shoreline . . . Needless to say, the logistics of drilling caissons on the beach at this location is questionable. Where a cliff stairway was created at El Matador beach, access for equipment was relatively easy from the east where residential construction at beach level exists.

Although construction will clearly require at least temporary beach modification, it must be understood that construction of four concrete caissons will change the erosion pattern due to wave action, at least locally. The individual caissons will periodically deflect, reflect, and otherwise change the flow of waves flowing across the beach. . . . the caissons will modify wave erosion, ultimately resulting in a loss of sand due to the reflected wave energy. Because this promontory has an extensive network of eroded sea arches . . . , increased erosion rates will modify the natural coastline."

Mr. Jack Ainsworth
Re: CDP No. A-220-80 (Benton) Request For Amendment
December 8, 2006

Page 5

In light of the fact that the applicant is merely requesting that Special Condition No. 2 of the approval be deleted in its entirety, he contends that neither project plans or Approval In Concept from the local government should be required.

I am enclosing hereto as part of the Amendment Request submittal the following documents:

- Application For Amendment To Coastal Development Permit ("CDP");
- CDP P-77-2107 and Amendment To CDP No. A-220-80;
- Property Owners List and stamped envelopes for all owners and residents within 100 feet of the subject property;
- Donald Kowalewsky Geology Report, dated December 15, 2005; and
- Filing Fee in the amount of \$200.

Please process the Amendment Request as promptly as possible.

Thank you in advance for your courtesy and cooperation.

Respectfully submitted,

**LAW OFFICES OF
ALAN ROBERT BLOCK**
A Professional Corporation


ALAN ROBERT BLOCK

ARB:jm
Enclosures

cc: Graeme and Brenda Revell
Deputy Attorney General Dan Olivas

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



APPLICATION FOR AMENDMENT TO COASTAL DEVELOPMENT PERMIT

Application for an amendment to a previously issued coastal development permit may be made by submitting this form, completed and signed, together with the materials described below and the application fee.

Pursuant to 14 Cal. Admin. Code Sections 13164 and 13168, materials to be submitted are:

- 1. Two sets of plans showing the proposed amendment; these must have been approved by the local planning agency and stamped with Approval In Concept. Please submit evidence of approval (Approval in Concept form).
2. Stamped, addressed envelopes for renotification of all property owners and residents within 100 feet of the development and list of same. The envelopes must be plain, business size (9 1/2 X 4 1/8), with first class postage. METERED STAMPED ENVELOPES CANNOT BE ACCEPTED.
3. A minimum application fee of \$200 or 50% of original filing fee, whichever is greater (based on updated fee schedule).

Upon receipt of the above information, the Executive Director will determine whether the amendment request should be rejected on the basis that the proposed amendment would lessen or avoid the intent of a previously approved permit condition. 14 Cal. Admin. Code Section 13168. If the amendment request is filed, the Executive Director will then determine whether the amendment request is immaterial or material. If the Executive Director finds that the proposed amendment is immaterial, notification is sent to surrounding property owners and the site must be posted with a form, which will be sent to you. If no objections are received, the amendment is approved, and you will be sent an amended permit. If objections are received, or if the amendment is determined by the Executive Director to be material, the request will be set for a public hearing. You have the right to request that the Commission make a determination of materiality independent of that previously made by the Executive Director. 14 Cal. Admin. Code Section 13166.

Please provide the information below and on the reverse. If you have any questions, contact this office.

APPLICANT

APPLICANT'S REPRESENTATIVE (if any)

NAME: Graham Revell

Alan Robert Block, Esq.

ADDRESS: 32340 Pacific Coast Highway

1901 Avenue of the Stars, #470

PHONE: Malibu, CA 90265

Los Angeles, CA 90067 (310) 552-3336

COASTAL PERMIT NUMBER: A-220-80

DATE OF ISSUANCE: 1/17/80

PROJECT ADDRESS: 32340 Pacific Coast Highway

FOR OFFICE USE ONLY:

Date Received:

Date Filed:

Application Fee Received:

RECEIVED (Over) DEC 18 2008

CALIFORNIA COASTAL COMMISSION SOUTH CENTRAL COAST DISTRICT

DESCRIPTION OF PROPOSED AMENDMENT: Deletion a Special Condition No. 2

Requiring the Construction of Accessway Improvements from the
Shoreline to the Headland Accessway & Back to the Shoreline

CERTIFICATION

I hereby certify that I or my authorized representative will complete and post the "Notice of Proposed Permit Amendment" form furnished to me by the Commission in a conspicuous place on the development property upon receipt of said notice.

I hereby certify that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct and I understand that any misstatement or omission of the requested information or any information subsequently requested may be grounds for denying the application, for suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.



Signature of Applicant(s) or Agent

ALAN ROBERT BLOCK, Esq.

NOTE: If signed by agent, applicant must sign below.

I hereby authorize Alan Robert Block to act as my representative and bind me in all matters concerning this application.

Signature of Applicant(s)

GRAHAM REVELL

FROM :

12/07/2006 15:08 3106521850
Dec-07-06 01:33pm Print

FAX NO. : 818 8882866

Dec. 07 2006 04:34PM P3
PAGE 03/03
T-400 P.002/002 P=001

DESCRIPTION OF PROPOSED AMENDMENT: Omission a Special Condition No. 2

Requiring the Construction of Accessway Improvements from the

Shoreline to the Headland Accessway & Back to the Shoreline

CERTIFICATION

I hereby certify that I or my authorized representative will complete and post the "Notice of Proposed Permit Amendment" form furnished to me by the Commission in a conspicuous place on the development property upon receipt of said notice.

I hereby certify that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct and I understand that any misstatement or omission of the required information or any information requested may be grounds for denying the application, for suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.

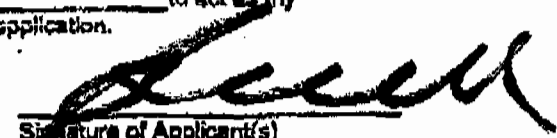


Signature of Applicant(s) or Agent

ALAN ROBERT BLOCK, Esq.

NOTE: If signed by agent, applicant must sign below.

I hereby authorize Alan Robert Block to act as my representative and bind me in all matters concerning this application.



Signature of Applicant(s)

GRAHAM REVELL

RECEIVED
DEC 18 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

LAW OFFICES
SHERMAN L. STACEY
1337 OCEAN AVENUE
SANTA MONICA, CALIFORNIA 90401

September 5, 1980

AREA CODE 213
394-1183

RECEIVED

SEP - 8 1980

CALIFORNIA
COASTAL COMMISSION

Mr. Melvin J. Carpenter
Executive Director
South Coast Regional Commission
P.O. Box 1450
666 E. Ocean Blvd.
Suite 3107
Long Beach, California 90801

RE: Permit No. P-2107

Dear Mr. Carpenter:

On behalf of John H. Benton, this letter is to constitute an application for Amendment to Permit No. P-2107 approved by the South Coast Regional Commission on January 16, 1978. This permit was the subject of litigation between Mr. Benton and the Commission and is presently the subject of an appeal to the Second District Court of Appeal. During the pendency of this litigation, the time period in which construction was required to commence under this permit has been tolled.

This amendment request is to delete the condition imposed by the South Coast Regional Commission upon the granting of permit requiring the dedication of the vertical accessway from Pacific Coast Highway to the line of mean high tide. In addition, we request the amendment to modify those conditions prohibiting any structures located in the line of sight toward the ocean in order to permit the construction of a wall as shown on the proposed plans along the northerly portion of the property. Finally, the amendment is to permit Mr. Benton to construct two stairways located at the easterly and westerly side of the headland located on his property in order to provide public access across such headland.

The factual circumstances which lead to this amendment request are that the State of California, since the time of approval of Mr. Benton's permit with the aforementioned conditions, has acquired in fee two significant beach areas east and west of Mr. Benton's property. The first beach is located to the east of Mr. Benton's property approximately 800 feet from the easterly boundary of his property. The second beach is located to the west of Mr. Benton's property approximately 1600 feet to the west of the westerly boundary of Mr. Benton's property.

EXHIBIT 11

A-220-80-A2-EDD

Amendment Application
A-220-80 (1980)

SHERMAN L. STACEY

Melvin J. Carpenter
September 5, 1980
Page Two

At the present time, no public utilization of these newly acquired beaches has been made. However, the County of Los Angeles has applied for and been granted funds by the California Coastal Conservancy for the improvement of the accessways to these beaches. These public accessways will be located both to the east and west of Mr. Benton's property. As such, they will provide adequate access to the beach areas. In order to insure that there is adequate access along the beach as required by Public Resources Code §30212, Mr. Benton proposes to construct stairways, to the specifications of the County of Los Angeles for their acceptance, on the east and west side of the headland which divides and renders the beach impassable at high tides. Such stairways will then permit the public to have access up to the top of the headland and down the other side of the headland to the adjacent beach on the opposite side. Sum and substance of this amendment is to insure that there is adequate public access across the beach. In addition, I should indicate that Mr. Benton is willing to agree to expand the lateral access condition previously imposed by the Commission to insure public use of the beach portion of the property up and to the toe of the bluff instead of the 25 feet previously applied.

It is my understanding that the California Coastal Commission intends to bring this matter before it and in accordance with Public Resources Code §30333.5 at its next public meeting. This amendment request is made in connection with the proposed settlement of the case presently pending at the District Court of Appeal between Mr. Benton and the Commission.

If you or any member of your staff should have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

Sherman L. Stacey
SHERMAN L. STACEY

SLS/djs

cc: Janet Tulk, Esq.
Richard C. Jacobs, Esq.
Mr. John H. Benton

Exhibit 11

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-3400



May 31, 2007

TO: Peter Douglas, Executive Director

FROM: Lesley Ewing, Sr. Coastal Engineer

SUBJECT: Appeal of A-220-80-A2-EDD

A handwritten signature in black ink, appearing to read "Lesley Ewing", written over the "FROM:" line of the memo.

I have been asked to provide a memo on appeal A-220-80-A2-EDD, in which the applicants are asserting that the Commission should accept amendment request A-220-80-A2, to delete Special Condition #2 of permit A-220-80, or 220-80, which requires that the applicants construct public accessway improvements along the shoreline to provide public access along and over a headland bluff. I have been asked my opinion on: (1) whether the materials presented by the applicants constitute newly discovered material information, which could not, with reasonable diligence, have been discovered and produced before the permit was granted; and (2) the stairway plans that were submitted to the Commission and approved on August 15, 1986, as conforming to the requirements of Special Condition #2 of permit #A-220-80

The material and information I am using for this memo are listed below. In addition, I have assisted staff in the preparation of the staff report for A-220-80-A2-EDD.

- 6 July 2005 site visit, accessing the site from El Matador Sate Beach, in the early afternoon (Tide predictions for Santa Monica: High Tide 3.6 feet MLLW at 11:27 Am; Low Tide 2.64' MLLW at 3:20 PM)
- Alan Robert Block (April 19, 2007) Appeal of Executive Director's Rejection of Request for Amendment to CDP No. A-220-80 (Benton) to delete Special Condition No. 2 Requiring The Construction Of Accessway Improvements for the Shoreline to the Headland Accessway and back to the Shoreline (Property Address: 32340 Pacific Coast Highway)
- Alan Robert Block (January 31, 2007) Appeal of Executive Director's Rejection of Request for Amendment to CDP No. A-220-80 (Benton) to delete Special Condition No. 2 Requiring The Construction Of Accessway Improvements for the Shoreline to the Headland Accessway and back to the Shoreline (Property Address: 32340 Pacific Coast Highway)
- California Coastal Commission (November 17, 2005) Adopted Findings for Cease and Desist Order and Restoration Order; CCC-05-CD-13 and CCC-05-RO-09.
- David Weiss (April 15, 2007) Coastal Engineering Opinion on The Feasibility of Proposed Stairs to Beach at 32340 Pacific Coastal Highway, Malibu, California (with Enclosures).
- Donald B. Kowalewsky (December 13, 2005) Discussion regarding geologic characteristics of a coastal bluff and promontory and its relationship to proposed access stairway at 32340 Pacific Coast Highway, Malibu (photos provided only as B&W copies)
- Frank Lloyd Wright Foundation (2/19/1982) 1 Plan Headland approved on August 15, 1986 as conforming to permit #220-80.
- Frank Lloyd Wright Foundation (2/19/1982) 2 Elevation Headland
- Frank Lloyd Wright Foundation (2/19/1982) 3 South Elevation Headland

EXHIBIT 12

A-220-80-A2-EDD

Coastal Engineering
Memorandum 5/31/07

- Frank Lloyd Wright Foundation (2/19/1982) 4 Detail
- Peak Surveys, Inc. (March 8, 2007) Topographic Detail of Headland and Beach showing Easement Line for Public Access per Inst. No. 87-285221 O.R (scanned from larger plan; vertical datum noted by staff as being NAVD 88).

Changed Circumstances

The applicants assert that there has been a significant loss of sand at the base of the headland” and that there is a “significant increase in the vertical drop associated with any potential lateral accessway improvement” (presumably due to the loss of sand elevation) (Block January 31, 2007) since the amendment to the permit (in late 1980) and/or the preparation of the plans that the Coastal Commission approved as conforming to permit #A-220-80. As a result of these changes, the applicants contend there will be “serious safety concerns” and “construction, engineering and geological concerns which cannot be overcome, except at exorbitant expense” (Ibid.)

Bedrock elevations, such as the elevation of the headland or the elevation of the bedrock layer under the beach sand, remain relatively constant for long periods of time, barring seismic uplift, subsidence or landslides. However, the elevation of a sand beach can vary significantly from day to day, month to month, and year to year. Sand beaches are dynamic environments and due to this dynamic nature, the difference in height from the beach sand level to the top of the headland is not a static or constant distance. Sand is a mobile element of the coast and sand has moved on and off shore and up and down coast for millennia. The phenomenon has been so fundamental to the coast that there is no identifiable moment when the dynamic nature of the coast was “discovered”. People have known about and studied the dynamic nature of beaches for years. While there is still much to be learned about beach dynamics, the concepts that sand is mobile and that beach elevation changes as sand is added or removed from the beach have been basic aspects of coastal study since well before 1980. In 1967, Professors Inman and Shelton popularized the concern through their video, *The Beach: A River of Sand* (produced and distributed through Encyclopedia Britannica).

Sand beach elevations can change rapidly, for example, when sand is moved offshore during a coastal storm. Likewise, sand beach elevations can build up rapidly as waves move nearshore sand deposits onshore and onto the dry beach. Changes in beach sand levels can also occur gradually as the beach adjusts to localized waves and available sand supplies. There is no frequency or schedule to beach changes; however, there has come to be a general expectation that during the summer months the dry beach area will expand and the beach elevation will rise, and during the winter, more stormy months, sand will be carried from the dry beach to the offshore and the beach elevation will drop. Summer storms can cause a temporary loss of sand during the summer period and a mild winter may cause continuing build up of the beach during a time it would be more expected to have the beach elevation drop. Changes to the beach can often be explained after the change has occurred, but it is often not possible to anticipate all possible changes in advance of the change. This is part of the dynamic nature of the beach and coast.

By the time the Coastal Commission considered and approved CDP amendment #A-220-80 (Benton), in 1980, the dynamic nature of the coast and especially the sand beach had been well recognized by coastal observations, coastal study and educational media. The dynamic nature of the beach was discussed in the 1975 California Coastal Plan that was a precursor to the California Coastal Act. Thus, while the beach seaward of 32340 Pacific Coast Highway may have had different sand elevations in 1982 and 1986 and 2007 than it did at the time of the initial permit, that is not an unexpected change. At the time of the CSP A-220-80 it should have been expected that the sand level would vary up and down at the beach fronting 32340 Pacific Coast Highway, based on available coastal literature, coastal observations and the Coastal Commission’s general body of knowledge.

There is some evidence that the beach now may actually be higher than it was at the time that CDP #A-220-80 was being considered by the Commission. The previous applicant referenced a 30-ft distance

from the top of the headland to the beach in his 1978 appeal of the original CDP (P-10-20-77-2107) approval. Since that time the beach has increased and dropped in elevation many times. By early 1982, when the Frank Lloyd Wright Foundation prepared plans for the accessways, the plans indicate that the beach elevation had risen such that there was only a 14' vertical difference between the sand beach and the headland. However, as discussed later, although these plans provide a general indication of site conditions and the alignment of the stairways, they are not engineered plans, and the elevations provided may be approximations. Nevertheless, the Frank Lloyd Wright Foundation plans provide some information about the general elevation of the beach sand at the time that plans were prepared. In 2007, when Peak Surveys prepared a more detailed Topographic survey of the property, the vertical difference ranged from about 22' to 24', depending upon the beach location that would be used for the reference beach elevation. The Weiss report notes that, "Experience working on this section of beach indicates that the depth of sand at the base of the bluff is approximately eight to twelve feet." Thus the sand depth and beach sand elevation varies from report to report and from one survey time to another.

The 1977 Assessment and Atlas of Shoreline Erosion along the California Coast (State of California, Department of Navigation and Ocean Development) characterized this section of coast as, "Sandy pocket beaches between low rocky points with offshore rocks backed by eroding cliffs with houses on top. Houses on beach at base of cliff subject to damage during high wave conditions." "Narrow and pocket beaches. Development requires careful control." The report does not identify the conditions leading to damage during high wave conditions, but since an eroded, low elevation beach often occurs during storms and times of high energy waves, it would seem that this beach area has been subject to some of the same concerns expressed by the applicants, (i.e. significant loss of sand at the base of the Headland and significant vertical drop from the Headland to the sand beach level) at least since the survey efforts that were incorporated into the Assessment and Atlas that was published in 1978. Living with the California Coast (Griggs and Savoy (1985) Duke University Press) notes of the section of coast between Nicholas Canyon and Lechuza Point, "Some homes on beach or bluff face damaged in 1983 storms" and characterizes this section of coast as posing moderate risk.

In 1994, the US Army Corps of Engineers undertook a Reconnaissance Report of Malibu/Los Angeles County Coastline (R5 Submittal, April 1994), which characterized the section of coast between the Ventura County Line to Lechuza Point as "narrow beach backed by high bluff" exhibiting stable to slow erosion. Potential problems were identified as being, "storm flooding and damages to older low lying homes; flood damage to recreation facilities during severe storms." More recently the US Geological Survey (USGS) undertook a National Assessment of Shoreline Change Part 3: Historic Shoreline Change and Associated Coastal Land Loss Along Sandy Shorelines of the California Coast (Open File Report 2006-1219). Over the long-term (from the middle of the 19th century to 1998) the sandy shoreline north of Trancas Beach has been stable to slightly erosive. For the shorter time period, the early 1970s to 1998, most sections of the shoreline have shown small rates of erosion, under 1 meter/year of horizontal movement of the Mean High Water Line.

None of these reports was prepared to discuss the conditions specific to the beach seaward of 32340 Pacific Coast Highway, but they do all provide general information on the beaches in the general vicinity of this beach. They all depict the shoreline as having narrow pocket beaches where low-lying development could be at risk from storm waves. There is slightly more detail about coastal conditions in the more recent reports, but none of the reports notes a dramatic change in coastal conditions. In fact, even the early reports note the need for care during any construction along the coast. There is every reason to believe that changes in beach sand elevation should have been an anticipated condition for this section of beach even in 1980, and such changes in beach sand elevation should have been considered during the design, engineering and construction of the required access stairs. Moreover, even if neither the Commission nor the applicant did, in fact, anticipate changes in beach sand elevation at the time the approved CDP amendment A-220-80, there is no doubt that, by exercising reasonable diligence, the applicant could have discovered the phenomenon and produced information about it to the Commission in advance of the Commission's action.

The applicants contend that the seasonal and interannual changes to the elevation of the beach pose significant safety concerns for any accessway and that there will be construction, engineering and

geological concerns that will be expensive to overcome. Stairways would be logical elements of any accessway that would go from the beach up to the headland and back down to the beach on the other side of the headland. The Commission clearly was envisioning stairs as a connecting element and stairs are part of the access plans that were approved by the Commission in 1986 as conforming to the requirement of Special Condition 2 of permit #A-220-80. Many locations along the California coast have public accessways that use stairs that span vertical differences of 30 feet or even higher. Some stairs in Orange and San Diego County provide safe public access up and down 80' high to 120' high bluffs (for examples, the stairs at Thousand Steps, Orange County, or the stairs at Grandview and Tide Park in San Diego). The beach level portion of these stairs are exposed to wave action and varying sand levels, similar to the conditions at the subject site. Stairs can be built to provide safe public access and the identified 30' vertical difference for the full stair access does not raise a safety issue, other than to insure that the stairs are carefully designed, engineered and built.

Plans Approved in 1986 as conforming to permit #A-220-80

The applicants suggest that since there is a 14' vertical difference between the headland and the beach elevation noted on the plans that were approved in 1986 as conforming to the requirement of Special Condition #2 of permit #A-220-80, it follows that the Commission only required stairs with a vertical span of 14 feet. The applicants suggest that such stairs would go down from the headland and stand suspended many feet over the elevation of the beach as it is today. Special Condition #2 states: "Prior to issuance of the permit, the applicant shall submit plans, for the review and approval in writing of the Executive Director, showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with approved plans shall be completed prior to occupancy of the residence approved herein."

The condition did not require engineering plans or construction details. The plans prepared by the Frank Lloyd Wright Foundation and approved as conforming to the requirement of Special Condition #2 of permit #A-220-80 are not engineered plans, they have not been stamped by a licensed engineer and they do not show construction details. They show, in concept, the intent to provide the accessways that were required by Special Conditions 1 and 2. They generally show foundation plans that would anchor the stairs at the headland and at the beach level. If engineering plans has been submitted consistent with general industry standards, they would have identified the bedrock elevations, provided specifics about all four stair foundations, specified the mix, set times and ultimate strength parameters for the concrete, specified the minimum embed depth for the pilings or caisson supports (identified on the Frank Lloyd Wright Foundation plans as "vertical anchors below [4]"). The embedment depth has now been noted in the report from Donald Kowalewsky as being 10' into bedrock., shown construction routes and possibly indicated what tide conditions should be used for the construction window. The engineering plans also would have identified the run to rise ratio that would be safe for the site and examined the engineering adequacy of the manufactured stair that was suggested in the Frank Lloyd Wright Foundation plans.

The plans prepared by the Frank Lloyd Wright Foundation indicate that the top of the headland is at +26' Mean High Tide. The Peak Surveys Topographic Survey show that the headland is closer to +31' NAVD 88 [Mean High Tide = 4.49' NAVD 88]. The headland is not a totally flat surface so it is reasonable that there is some variability on the headland elevation. The plans submitted by the Frank Lloyd Wright Foundation use the Mean High Tide Elevation as the zero vertical datum (the Peak Survey used NAVD 88 as the vertical datum). Engineers and surveyors do not often use the Mean High Water Elevation as a reference datum, but it is the use of this datum that explains some of the differences in elevations noted on the plans that were approved in 1986 and the elevations shown on the 2007 topographic survey prepared by Peak Surveys. However, even taking into account the different datums, the elevations noted on the plans by the Frank Lloyd Wright Foundation are generalized elevations for the areas in question. It seems that the elevations from the Frank Lloyd Wright plan should be considered approximate elevations that provide a general representation of the site conditions and that they are not survey-quality site plans.

Given that the sand level varies over time, it is difficult to speculate about what would have been installed if the stairs had been built prior to occupancy of the residence, as specified in Special Condition #2. The contractor would have addressed the beach sand levels and bedrock depth that were present at the time of construction. The Frank Lloyd Wright Foundation plans clearly show that the stairway foundations were to include anchors. Thus, if the beach was at the elevation noted on the plans, the foundation would likely have been supported by long pilings or caissons anchored into bedrock. If the beach sand level were lower, the stairs might have been extended, again with landings and a foundation supported on long pilings or caissons anchored into bedrock. Bedrock tends to be more constant in elevation than beach sand and the bedrock at the headland and at the beach is now at approximately the same elevation as it was in 1980 when the permit was approved, in 1982 when the Frank Lloyd Wright Foundation developed the plans and in 1986 when the Commission approved the plans (Bedrock elevations do change with plate movements, seismic uplift, subsidence, downwearing and landslides so it is not possible to say that bedrock never moves, However, bedrock is far more stable and constant in position than beach sand and there is no reason to believe that either the Headland bedrock or the beach level bedrock have moved noticeably since the initial permit. In addition, most vertical movement would be regional so that the relative differences in elevation between the Headland bedrock and the beach bedrock would be constant.).

Whenever these stairs were constructed, the contractor would have had the problem of anchoring the beach level foundation into bedrock for the beach level landing (where bedrock is at about the 0' NAVD 88 elevation) and the headland foundation where the headland bedrock is at about +30' NAVD 88 elevation). At the headland, there is about 1' of soil cover over the bedrock; at the beach level there is a varying soil or sand cover. Nevertheless, the foundation anchors would have to go through the top cover and anchor into bedrock to provide a safe and stable foundation. The elevations of the bedrock in the headland and at the beach level have not changed with the dynamic changes in beach sand elevation. And, since the stairs would have been anchored into the bedrock for stability, these bedrock elevations would have been an important design consideration for any stairs that might have been constructed any time from the initial permit till now. As a result, the construction of the stairway foundations, whether in 1980 or now, would require essentially the same level of effort.

If, as the applicants suggest, the stairs would have gone 14' down from the headland to a beach elevation of about +16' NAVD 88 (noted by the Frank Lloyd Wright Foundation as being +12' MHT), then, as the beach elevation dropped, additional stairs would likely have been installed to span the difference between the beach level and the lowest stair rung. If the beach elevation at the time of initial construction was so low that the 14' vertical drop would not reach the beach, the contractor might have installed a landing (embedded into bedrock) at some mid-elevation and continued the stairs to the beach elevation present at the time of construction, adding another foundation or landing at the end of the stairs. If the sand elevation had been so high that the 14' vertical drop would bury some of the lower stairs, the contractor might have adjusted the final landing to be at the higher beach elevation. As with the identified stairway foundation, general engineering practice would have required that, all the landings would have been anchored into the underlying bedrock and the elevation of the beach sand should not have been used in any calculations for anchoring and foundation stability.

David Weiss has provided two possible concepts for stair accessways. The provided plans are concept level plans and are noted as such in his report, "the design of the actual stairway to the beach is beyond the scope of this type of a coastal engineering opinion report." While the Weiss coastal engineering report provides far more engineering detail than the Frank Lloyd Wright plans, it should not be considered to be a design report. I have not been provided with any material that would be considered to be construction details for the accessway. Both the Weiss Report and the Kowalewsky Reports note concerns that will need to be considered when detailed plans are prepared. In general the construction constraints are similar to what existed at the time of the initial permit. Overland access might have been made more difficult due to the construction of the residence on the top of the bluff. The initial approach suggested in the CDP Amendment A220-80 that the stairs be installed prior to occupancy of the residence possibly anticipated the need to have bluff top construction activities that might be disruptive to the occupants or that might be limited by the residence. Construction of the stairways was required by the Commission as a condition of approval of the residence. The failure to construct the stairways at the

time the residence was constructed and to take advantage of the construction flexibility that might have been available on site prior to construction or occupancy of the residence should not now be used as a limitation on the feasibility of installing accessways that were to be built prior to occupancy. Regardless, it is feasible, from an engineering standpoint to construct the required accessways.

Waves and wave up-rush have been noted for many years as a concern for low-lying development. Waves and flooding could make construction difficult during certain times of year or for certain tidal conditions. It may require that the applicants use some temporary wave barrier during construction and pick advantageous tide windows. For some projects in San Diego, contractors have imported sand to provide an elevated site from which to do construction. Some type of specialized construction equipment may be needed for certain aspects of the project. Until there are engineered plans, it may not possible for a contractor to determine what options are available to construct the proposed access stairs. However, as noted by Mr. Weiss, given the various site constraints and the sensitivity of any work that is done on the beach, "the 'lowest bidder' does not necessarily insure the lowest construction costs. Because of some daunting logistic problems, this project requires a contractor that is experienced with construction in the surf zone." The applicants remain responsible for all aspects of construction and should well heed these consultant recommendations.

Nothing in the provided material, from examination of site photographs or from my 6 July 2005 site visit leads me to believe there is any newly discovered information material to the Commission's decision to impose Special Condition #2, much less such information that is not only new, but that could not, with reasonable diligence, have been discovered and produced before the hearing. There have not been changes to site conditions that could not have been anticipated or that were not occurring at the time of the original permit. Nor have the changes to the site made it impossible to install some type of accessway at the site that would go from the beach to the headland and back again.



Private stairway for Revell property from beach to top of headland

Cave Entrance

Figure 1. Headland



Figure 2. Private stairway for Revell property from beach to top of headland



Figure 3. Downcoast Cave



Figure 4. Upcoast Cave



Figure 5. Downcoast



Figure 6. Inside View

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RECEIVED
JUN 06 2007

June 4, 2007

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

VIA OVERNIGHT MAIL

Mr. John Ainsworth, Deputy Director
California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA 93001-2801

Re: Application No. A-220-80-A2-EDD [32340 Pacific Coast Highway, Malibu]
Appeal of Executive Director's Rejection of Amendment Application

Dear Mr. Ainsworth,

We are writing this letter in response to the Commission staff's request for a submittal of the Accessway Improvement Plans as required under the Commission Cease and Desist Order No. CCC 05-CD-13, regarding the construction of stairs for lateral access on the property.

The Coastal Commission approved conceptual plans submitted by the prior owner, John Benton, on August 15, 1986. The approval allowed for the construction of two stairways to provide public access to the beach and the view from the headway at 32340 Pacific Coast Highway, Malibu. The previous owners made no discernible attempts in the 18 years prior to the Revell's purchase of the property in May 2004, to construct the stairs as conditioned by CDP No. A-220-80 ("CDP") in 1978. The Revell's sought to construct the public access improvements to bring the property into compliance with the CDP, as amended. They were informed by consultants at Bedrock Engineering that the stairs, as approved by the Commission in 1986, do not meet the building code regulations for public safety in the City of Malibu. For compliance prior to submittal, the plans would have to be modified as follows:

1. The length of the stairs must be extended to terminate at the sand/rock at beach level since the vertical drop has changed from 14' to 23',

EXHIBIT 14
A-220-80-A2-EDD
Applicant June 4, 2007 Correspondence

Page 2

2. The rise of the stairs cannot exceed 7" and the run cannot be less than 11",
3. The length of the stairs must be extended to compensate for the required four foot deep mid point landing, and
4. The guard rail spacing must be reduced.

In addition to these modifications to the plan, Bedrock Engineering suggested obtaining the following:

1. A coastal engineering report and subsurface investigation to determine the maximum change in beach profile so that the stairs can be lengthened accordingly,
2. A structural integrity plan for the stairs including structural calculations,
3. A geotechnical report detailing the anchoring method proposed; and
4. An investigation into the headland structural integrity as it relates to possible need to anchor concrete caissons at the upper extreme of the stairs in light of the large sea cave formed below.

The Revells obtained a geotechnical report, a wave uprush report and two separate estimates to determine the feasibility of constructing any type of stairs at this location. They were informed that though there were a couple of scenarios that may work on this beach, the cost would far outweigh any public benefit created by the construction of the stairs which would permit public access for approximately only another one hundred feet to the east because of another protruding headland.

The geotechnical report of Donald Kowalewsky found that the topography of the beach created from the constant wave action required construction of a stairway secured by several concrete caissons installed through the beach sand extending into the underlying bedrock a minimum of 10 feet. The nature of this particular bedrock requires the use of heavy drilling equipment. Because of the topography and accessibility of this area, Mr. Kowalewsky surmised that it would be quite difficult, if not impossible, to get the equipment needed to construct the stairs to and from the site. The wave uprush report provided by the consulting structural engineer, David Weiss, concluded that the beach profile is constantly changing and the waves cause temporary scour and accretion of the sand of up to ten feet in

some areas on the beach. Mr. Weiss notes that wave action is constantly undermining the toe of the bluffs causing them to collapse. Under those conditions the connection of the stairs to the top of the bluff would always be in some danger of being destroyed or reinforced. Based on the arguably obtrusive design of a conforming long stair run, on the easement and the beach, he suggested construction of a steel stair tower with switchbacks. Mr. Weiss found that this model would require a foundation consisting of a minimum of four concrete such as drill rigs and cranes would likely have to be brought in from La Piedra State Beach piles and multiple grade beams.

The Revells initially obtained a cost estimate based on the original plans for a straight stair run that contained the suggested modifications from Bedrock Engineering. The preliminary cost estimate provided by Bedrock Engineering in December 2005 totaled \$225,000, but it only accounted for the cost of obtaining two pre-fabricated aluminum stairways constructed off-site and using pneumatic hand tools during low tide to position the caissons for support. Said preliminary estimate specifically referenced that the estimate was based on incomplete information and that additional information would be necessary in order to finalize the design and estimated cost. The estimate did not include calculations for the use, transport and storage of the heavy drilling equipment needed to construct stairs at the site. Once Bedrock became aware of the reports prepared by Kowalewsky and Weiss, which were not available at the time Bedrock prepared its preliminary estimate, it concluded that its was inadequate. Bedrock further concluded that "[T]his type of construction, with barging in equipment and working in the surf zone" was beyond their engineering experience. A copy of correspondence from Bedrock Engineering to this office, dated June 2, 2007 is attached hereto as **Exhibit 1** and hereby incorporated by reference.

A second estimate was obtained using the conceptual drawing of the stair tower and report of Mr. Weiss and the geotechnical report of Mr. Kowalewsky. An estimate was provided by Anacapa Construction, Inc., on May 8, 2007, totaling \$1,248,000. Though Anacapa Construction did not provide an estimate based on the straight stair run they suggest that such a structure would require additional caissons for intermediate support and would cost the same or more than the stair tower. A copy of the Anacapa Construction, Inc. cost estimate, dated May 8, 2007, as well as a subsequent cost breakdown, dated May 31, 2007, are attached hereto collectively as **Exhibit 2** and hereby incorporate by reference.

We have not obtained a full description of the construction procedures for the Accessway Improvement Plan, however, Mr. Weiss' report theorizes that local tidal action and the distance of the two promontories between the construction site and the park project seaward mean that there are only certain hours that the site can be accessed by heavy

Mr. John Ainsworth
Re: Application No. A-220-80-A2-EDD
June 4, 2007

Page 4

equipment. In addition, he notes that the contractor will have to make the decision on where the equipment will be kept. If it stays on the beach, a large berm would have to be created to protect the construction area and the equipment and material storage area.

In light of the foregoing, it is apparent that construction of the stairs is so significantly cost prohibitive as to render compliance with the condition legally impracticable if not impossible. Of equal importance, is the fact that such a stairway would do little to increase public access. This is particularly true in light of the other protruding headland just east of the subject property. Indeed, staff has asserted that the sea caves on site do not provide for safe or reliable public access because they are often filled with water. Likewise the stairs would be of no use during these periods because the lower rungs would be submerged for part of the day and there would still be no pedestrian access across the beach.

We again request that the Commission grant our appeal for the removal of Special Condition 2 of CDP No. A-220-80, requiring construction of public accessway improvements for lateral access on the property.

Respectfully Submitted,

**LAW OFFICES OF
ALAN ROBERT BLOCK**
A Professional Corporation


ALAN ROBERT BLOCK

ARB:ah
enclosures

cc: Gary Timm, District Manager ✓
Graeme and Brenda Revell
Cynthia McClain-Hill, Strategic Counsel

BEDROCK ENGINEERING
8241 Gladys Avenue
Huntington Beach, CA 92646
(714) 375-0877

June 4, 2007

To: Alan Robert Block, Esq.

From: Bedrock Engineering
Mark Wilson P.E.

Location: 32340 Pacific Coast Highway
Stairways to Beach

I have received the package of documents pertaining to the proposed stairways to the beach at 32340 Pacific Coast Highway, sent to me from your office. The package contained 5 documents as follows: 1.) Report from Bedrock Engineering, dated April 13, 2005, 2.) Cost Estimate from Bedrock Engineering, dated December 2, 2005, 3.) Report from Donald B. Kowalewsky, dated December 13, 2005, 4.) Report from David C. Weiss Structural Engineer & Associates, Inc., dated April 15, 2007 and 5.) Cost Estimate from Anacapa Construction, Inc. Dated May 8 and May 31, 2007. You have asked me to review the enclosed documents and to comment/review my original Cost Estimate, given the additional information expressed in the documents provided by Kowalewsky, Weiss and Anacapa Construction.

The Report prepared by Donald B. Kowalewsky, dated December 13, 2005, stated that any stair foundation element would need to be embedded at least 10 feet into existing bedrock, and the Report from David C. Weiss Structural Engineer & Associates, Inc., dated April 15, 2007, estimated that bedrock would be encountered at approx. 8 to 12 feet below the existing sand level at the base of the cliff. The Cost Estimate from Bedrock Engineering, dated December 13, 2005, assumed that the stair foundation elements (caissons) could be excavated with pneumatic hand tools during low tide, without the use of drilling equipment. Material excavated would be hauled to the top of slope for disposal at a land fill. In the Report from David C. Weiss Structural Engineer & Associates, Inc., dated April 15, 2007, he states that it is not possible to dig the holes for the caissons by hand due to the depth below grade, and that drilling equipment and stair elements would need to be barged to the site, and a protective sand berm be constructed around the drilling equipment/barge. David Weiss also recommends that a steel stair tower be considered, in lieu of the straight stair concept that was recommended in the Cost Estimate prepared by Bedrock Engineering (Note: The stair plan prepared by Bedrock Engineering showing the straight long stair concept, is consistent with the Approved Accessway Stair Improvements Plans, per Permit #A 220-80, and approved by the California Coastal Commission on August 15, 1986). The stair tower concept uses twice as many caissons for the stair tower supports as the Bedrock Engineering's straight stair concept, thus would cost more to construct. David Weiss choose the stair tower concept since it was more compact and visually less obtrusive than the straight long stair concept. The stair tower was proposed to be constructed of steel, hot dipped

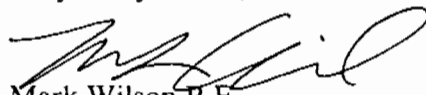
galvanized and coated with epoxy paint, where as the Bedrock Engineering straight stair concept, the stairs were to be constructed of aluminum in pieces at an offsite location, trucked to the bluff above and carried by hand to the construction site. Both reports prepared by David Weiss and Bedrock Engineering assumed that the concrete could be pumped from the top of the slope to the beach below, using a cement truck, cement pump and hoses.

The Cost Estimate from Anacapa Construction, Inc. Dated May 8 and May 31, 2007, follows the engineering guidelines outlined in the Report by David C. Weiss Structural Engineer & Associates, Inc., dated April 15, 2007, which includes barging in drilling equipment and using a steel stair tower. Anacapa Construction estimates a price of \$1,248,000 to construct two stair towers at the site, with a cost breakdown dated May 31, 2007 included in the estimate.

The Cost Estimate prepared by Bedrock Engineering, dated December 13, 2005, was preliminary, and was prepared prior to the reports prepared by Donald B. Kowalewsky and David C. Weiss Structural Engineer & Associates, Inc. These two reports added new information about the project that was not available at the time that the Cost Estimate by Bedrock Engineering was prepared. The Cost Estimate by Bedrock Engineering stated that a final Cost Estimate be obtained during the bidding process from contractors, we also cautioned all parties that the Bedrock Engineering stair plans and cost estimate were based on incomplete information and that additional information would be necessary for us to fine tune the design and bid out the construction of the stairways. In conclusion, based upon the documents received from your office, the conceptual stair plan/cost estimate prepared by Bedrock Engineering is inadequate and would need to be updated/verified by additional contractor's estimate of cost. This type of construction, with barging in equipment and working in the surf zone is beyond my engineering expertise, and I suggest that David C. Weiss Structural Engineer & Associates, Inc., be retained to prepare a final engineering design of the stairway to the beach.

If you have any questions, please feel free to call me.

Very Truly Yours,



Mark Wilson P.E.
R.C. E. 47989



Anacapa Construction, Inc.

P. O. Box 6206, Malibu, CA 90264 805-552-0309 phone 805-532-2088 fax

May 31, 2007

Mr. Graham Revell
c/o Alan Block, Esq.
1901 Avenue of the Stars
Suite 470
Los Angeles, CA 90067

RE: Breakdown for the estimate for two stair towers

Pilings:	\$180,000.00
Structural slabs & concrete stairs	\$150,000.00
Stair towers	\$350,000.00
Barge access, crane & material delivery	\$200,000.00
Misc. contingency	\$100,000.00
Supervision	\$ 60,000.00
OH&P	\$208,000.00
 Total Price	 \$1,248,000.00

Anacapa Construction, Inc.

P. O. Box 6206, Malibu, CA 90264 805-552-0309 phone 805-532-2088 fax

Mr. Graham Revell
c/o Mr. Alan Block, Esq.
1901 Avenue of the Stars
Suite 470
Los Angeles, CA 90067

May 8, 2007

RE: Estimate for two stair towers

Dear Alan;

You have requested an estimate to construct two stair towers at the east and west sides of the promontory on the beach at 32340 Pacific Coast Highway, Malibu. We have received the report prepared by Donald Kowalewsky dated Dec. 13, 2005 and the more recent report by David Weiss dated April 15, 2007, and have prepared our estimate to construct these towers loosely based on their reports. Following are some of the logistical and design parameters that we have used to prepare our estimate.

1. We will be able to access both sides of the promontory with drilling equipment. This may be possible, if at all, only by barge and this may not be possible due to the large rocks on the beach and just off the beach in the ocean. Also, an easement or license may have to be acquired from the neighbor to the east due to the existence of rocks in the east side of the Revell properties.
2. The stair towers will each require at least 4-30" diameter pilings drilled at least 10' into bedrock.
3. The pilings will be connected by a structural slab which will be designed to protrude above the beach sand at the time of year when the sand level is highest, but some sort of concrete stairs will have to continue down so as to provide stairs to the beach when the beach is at its lowest level. The alternative to this would be to have the structural slab at the lowest level with the galvanized steel stair tower above that level but this would entail that the steel stair tower was under sand for a substantial portion of the year. Such a design would probably be unfeasible because it would subject the stair tower to rapid corrosion.
4. The stairs would be designed as a hot dip galvanized stair tower, either square or rectangular with the exception of the bottom section which would be concrete as described in #3 above.
5. At the top of the stair tower there would have to be a cantelvered landing extending into the soil or rock at the top elevation of the promontory, in

order to ensure the safety of the pedestrian users of the tower. This landing would have to be provided with railings.

6. There would have to be some sort of guard rails on the top elevation of the promontory connecting one stair tower to another.
7. The stair towers could be designed similar to the one at the public access to the beach just east of 27420 P.C.H.
8. All rebar used in the concrete construction will be epoxy coated and concrete compressive strength will be 5000 psi or greater.
9. The galvanized steel stair towers might have to be delivered and erected by a barge mounted crane, since a crane could not be driven in and parked close enough to the site to deliver and erect the components. As stated in #1 above, there is no guarantee that even this approach will work.
10. An alternative to the stair tower approach would be to construct a straight run of stairs extending out from the promontory on each side. These staircases would extend out no less than 44 feet from the sides of the promontory, would require additional caissons for intermediate support and would cost the same or more than stair towers. In our opinion they would also be far less desirable from an aesthetic standpoint.

Anacapa Construction, Inc. proposes to build two stair towers including the foundations for these towers and associated landings, railings, and guardrails as outlined in 1-9 above for an estimated price of \$1,248,000. Until designs are drawn and the logistical problems are solved, there is no guarantee that this project can be done for this price.

Sincerely,



Lucian Warren

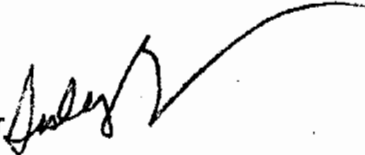
CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



June 20, 2007

TO: Peter Douglas, Executive Director

FROM: Lesley Ewing, Sr. Coastal Engineer 

SUBJECT: Appeal of A-220-80-A2-EDD and 7 June 2007 Memo from Alan Robert Block

At the request of your staff, I am preparing some comments to the June 4, 2007 letter from Alan Block which I received on June 13, 2007. This letter reasserts some of the statements from Messrs. Kowalewsky and Weiss concerning the various difficulties that could arise from constructing beach to headland to beach stairways at 32340 Pacific Coast Highway. Based on the construction difficulties outlined by these two consultants, Mr. Block has obtained a letter from Bedrock Engineering that recants a December 13, 2005 Cost Estimate and a letter from Anacapa Construction that replaces it with a May 31, 2007 Cost Estimate. This estimate, of \$1,248,000.00, is the basis for Mr. Block's statement that "construction of the stairs is so significantly cost prohibitive as to render compliance with the condition legally impracticable if not impossible."

The provided cost estimate is based upon a general geologic investigation by Mr. Kowalewsky, some coastal engineering observations by Mr. Weiss, a letter report by Bedrock Engineering and a rough understanding of the construction requirements by Anacapa Construction. There is no detailed geotechnical information; there is no detailed stairway design; and there was never a competitive bid process on any of the provided information. There are a number of uncertainties about the stairway project. If the applicants were to proceed with the public access that was required by Special Condition 2 of CDP #A-220-80, it is likely that they would be motivated to better limit the uncertainties, investigate the design constraints, pursue competitive bids and find cost-saving techniques to construct safe public stairways.

Drilling Equipment Needs: One constraint that is noted by Mr. Kowalewsky and repeated by Mr. Block is that the bedrock in this area will require the use of heavy drilling equipment. This requirement is one of the factors influencing the cost of the stairway construction. If there were more options for construction equipment, the project costs might be less. While Mr. Kowalewsky may be familiar with this area of the coast and with the bedrock formations that occur in this area, his geologic report only notes that this type of rock (cemented sandstone that is part of the San Onofre breccia member of the Trancas Formation) is locally very hard. Mr. Kowalewsky made a site visit to examine and photograph the coastline in the vicinity of the promontory. The resulting geologic report does not include any boring logs, soil strength analysis or other evidence that he undertook any geologic sampling when he was at the site. Thus, although Mr. Kowalewsky asserts that heavy drilling equipment is required, that

EXHIBIT 15
A-220-80-A2-EDD
Coastal Engineering Memorandum 6/20/07

assertion is based on information from a site visit and professional judgment. More site-specific tests might reveal that there are options for installing the stairway foundation that may be significantly less costly than to use heavy drilling equipment.

Foundation Design: There are no detailed engineering plans for any stairway. The stairway foundation has not yet been designed. However, based upon observations and photographs, Mr. Kowalewsky has required that whatever engineering design is developed, that the foundation be supported on concrete caissons extending into bedrock a minimum of 10 feet. This may be an overly conservative embedment depth given Mr. Kowalewsky's determination that the bedrock at this site is locally very hard and will likely pose a significant challenge to the drilling company such that heavy drilling equipment will be the only option for caisson installation. One option for cost saving would be to get better information on the bedrock characteristics through geologic sampling and develop sound engineering designs that might eliminate the need for 10-foot deep bore holes with cast-in-place caisson supports.

One of the current stair concepts has a mid-point landing with foundation, and a beach-level landing with foundation. If that design is implemented, there may be opportunities to use a more shallow foundation for the beach level landing. If the sand layer can be excavated and stockpiled close by, possibly even placed into sand bags that could be used to construct a temporary berm around the work site, it may be possible that some foundation designs could be constructed with hand tools and portable drill rigs. The requirements for both heavy drilling equipment and the use of concrete caissons extending into bedrock a minimum of 10 feet may be forclosing possible options for safe stairway designs and innovative construction techniques.

Stair Concept Has Not Been Designed: The provided reports and Cost Estimates suggest that detailed geologic information about this site and an engineered stairway design are available; however, to my knowledge, there have only ever been some general reports on site conditions and some general concepts for access stairs. The June 4, 2007 letter from Bedrock Engineering states that the stair tower concept (sketched out by Mr. Weiss and attached to his April 15, 2007 Report) would require twice as many caissons as the straight stair concept. However, it appears that both the straight stair concept that was approved by the Coastal Commission and the stairway tower design proposed by Mr. Weiss would use 4 caissons supporting the foundation or stair landing for each stairway. The Anacapa design assumes there will be 4 caissons for support of the stair tower – the same number as used in the concept design submitted to the Commission.

Bedrock Engineering attached a stairway concept drawing to the December 2, 2005 Cost Estimate that was different than the Frank Lloyd Wright Foundation stairway sketch, is different from Mr. Weiss's stairway tower sketch and from what was used by Anacapa Construction for the 2007 Cost Estimate. The December 2, 2005 Bedrock Engineering stairway concept was quite likely the basis for the December 2, 2005 Cost Estimate and this concept used only two supporting caissons for each stairway. To the best of my knowledge, this sketch was never approved by the Commission. However,

using a "straight run" design similar to what was presented earlier by Bedrock Engineering, Anacapa determined these stairs would "require additional caissons for intermediate support" so Bedrock Engineering's assertion that the current design will require additional caissons may have been based on the assumption for the Bedrock Engineering stairway concept that fewer caissons could be used in the design. The variability in the number of caissons that will be required for the access may stem from the costs being developed quickly as a rough estimate for the stair concepts. The confusion may also stem from the fact that there is no detailed geotechnical information nor any detailed engineering designs for the access, and the cost estimates are based on generalized concepts and professional judgments.

Barge Access for Construction Equipment: The December 13, 2005 letter report from Mr. Kowalewsky comments that access to the site is difficult and "may necessitate a barge". The April 15, 2007 report from Mr. Weiss comments that "everything from the drill rigs to the steel framing for the tower and stairs would have to be brought in on track mounted equipment from the park to the site(s)." (Weiss, 2007, Page 4 of 6). The two technical reports upon which Anacapa Construction is basing its Cost Estimate differ in their recommendation for how to get equipment to the site. The Cost Estimate from Anacapa included "barging in drilling equipment" with barge costs of \$200,000.00 and supposedly following the engineering guidelines provided by Mr. Weiss. But Mr. Weiss recommended the use of track mounted equipment; it was Mr. Kowalewsky who stated that a barge be may be necessary. Moreover, he only stated that it "may" be necessary, and there is nothing in the provided reports that explains either why the recommendation to use track mounted equipment was not possible or why the possible use of a barge became the only option for equipment access. If the track mounted equipment could be used, as recommended by Mr. Weiss, the barge costs would not have to be incurred.

Blufftop Access: Mr. Weiss has noted in his report that a drill rig on top of the bluffs would be 120 feet above the beach, if access across this private property were permitted. He goes on to state that the only material that might be brought in from the top of the bluff is the concrete for the foundation. To my knowledge, the options for access from the top of the bluff and in particular through the applicants' property have never been carefully examined. The applicants would not need permission from themselves to use their own property for access. And it seems that Mr. Weiss has been the only person to undertake a cursory examination of this property for potential construction access. The height of the bluff may make access difficult; however, some access options from the bluff might be possible, and if they are possible, they might provide a less costly construction option.

Wave Action at the Toe of the Bluff: Mr. Weiss's report notes that changing wave conditions and varying sand levels are common at this beach location. Mr. Block's letter states that "wave action is constantly undermining the toe of the bluffs causing them to collapse. Under those conditions, the connection of the stairs to the top of the bluff would always be in some danger of being destroyed or reinforced." (Block, June 4, 2007, page 3) Waves are a routine part of coastal design at almost all beach locations,

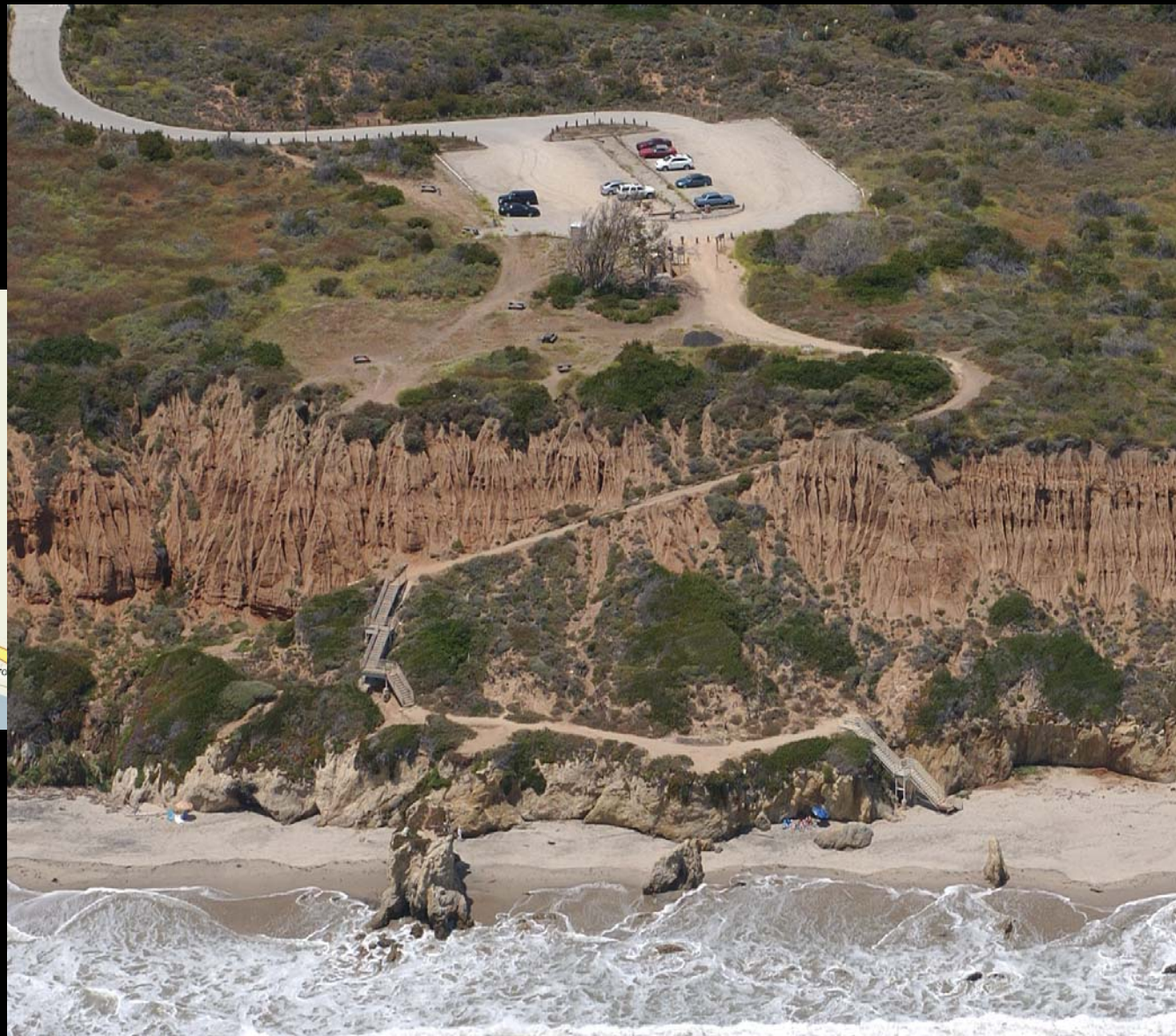
as is bluff retreat. Waves and bluff retreat occur at beach locations where access stairs have been constructed. Both wave energy and the concern about bluff collapse should be factored into the access design for any beach stairway. However, no evidence has been presented that wave action in recent times has caused significant collapse of these bluffs at 32340 Pacific Coast Highway. In fact, there seems to be little change in the general position of the headland and the bluff between the times that the Frank Lloyd Wright Foundation prepared its 1981 submittal and the 2007 Topographic Detail from Peak Surveys. This coastal area has not experienced the rapid cliff retreat that has been observed at other coastal locations. Also, the wave/bluff interaction at this site is not "constant" but rather is intermittent and seasonal. During times of high sand levels, the waves most likely break offshore and there is not constant wave action that undermines the toe of the bluff. During my site visit, the waves were not undermining the back bluff. A quick examination of images from the Coastal Records Project show some dry sand fronting the bluffs on either side of the headland in June 1987, September 23, 2002, October 23, 2004, June 9, 2005 and September 16, 2006. The dry sand strip is often not very wide, but the presence of this dry sand indicates that there are many times when waves are not "constantly undermining the bluff".

2005 Cost Estimate from Bedrock Engineers: In April 2005, Bedrock Engineering submitted to Lynn Heacox a two page review of the conceptual stairway plans that had been prepared by the Frank Lloyd Wright Foundation and noted numerous areas where the available information was either incomplete or inadequate. In December 2005, Bedrock Engineering provided Mr. Heacox with a new conceptual stairway plan and a cost estimate of \$225,000.00 for its construction. Bedrock Engineering noted some of the uncertainties in offering a cost estimate, including but not limited to the need for a geotechnical investigation, a coastal engineering investigation and stairway design by a structural engineer. As protection, the December 2, 2005 Cost Estimate noted, "A final Cost Estimate must be obtained during the bidding process." In 2007, when a final cost estimate was requested, Bedrock Engineering retracted the 2005 Cost Estimate and referred the project to a different construction company. This decision was based upon the recommendation that a barge be used for access, since, "this type of construction, with barging in equipment and working in the surf zone is beyond my engineering expertise" (Bedrock Engineering, June 4, 2007). It is unfortunate that the earlier cost estimate from Bedrock Engineering is no longer an option; however, it does point out the problems that can arise if costs are based on insufficient information and if only one bid is requested. It also points out the possible project expenses that have been imposed on this project by the apparent requirement to use a barge and heavy drilling equipment. If the project design and construction had been opened to competitive bid in 2005, a fuller understanding of the costs, uncertainties and options for cost savings might have been revealed.

2007 Construction Cost Estimates: As I noted in my earlier memo, there are many new types of construction equipment that are designed specifically for limited access sites. The applicants' consultants have taken one construction concept of using heavy drilling equipment, working from a barge with 10' deep concrete caissons. If heavy drilling equipment is not essential to the construction effort, many construction options

might be available and might be less costly than the current approach. For example, it may be possible to use access through 32340 Pacific Coast Highway for portable drilling equipment and most construction activities and not seek an easement from adjacent property owners, require access across the beach for track-mounted equipment or need a barge. Detailed designs for the stairways may identify foundation options that can provide stability without the 10' deep caissons. Innovative construction techniques or approaches may provide significant cost savings. The submitted estimate included \$368,000 for Misc. contingencies, supervision and OH&P. Adding in the \$200,000 for the barge and crane, over half a million dollars of the cost estimate is allocated to general access and construction, rather than to the stair tower, the pilings or the structural stabs. If the applicants were interested in finding some cost savings in the proposed construction effort, they might consider developing a design and build contract that would go out for competitive bid.

Public Access at El Matador State Beach, Malibu

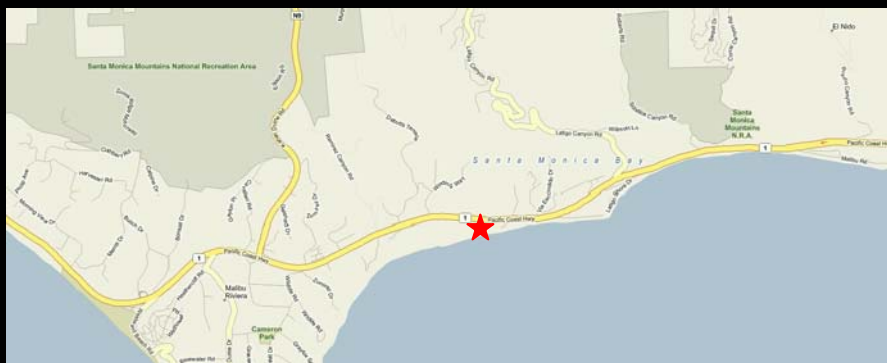


Map Source: RealQuest

Exhibit 16
A-220-80-A2-EDD
Stairway Photos

Photo Source: California Coastal Records Project

Seacliff Public Stairway at Escondido Beach, Malibu



Map Source: RealQuest



Photo Source: Commission Staff

Public Stairs At Thousand Steps Beach, South Laguna

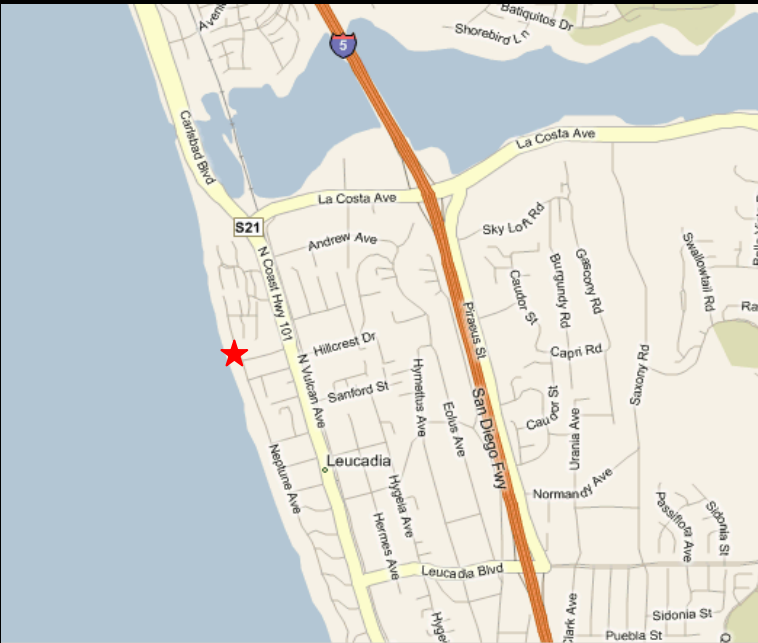


Map Source: RealQuest



Photo Source: California Coastal Records Project

Public Stairs At Grandview, Encinitas



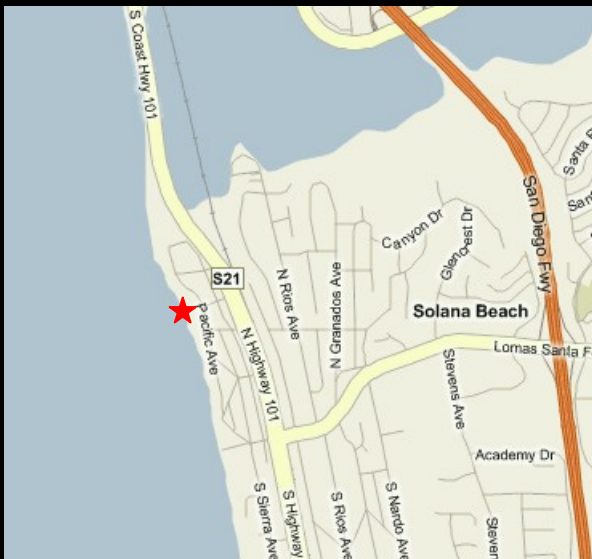
Map Source: RealQuest

Estimated Bluff Height = 80 – 100 feet



Photo Source: California Coastal Records Project

Public Stairs At Tide Beach Park, Solana Beach



Map Source: RealQuest

Estimated Bluff Height = 75-80 feet

Photo Source: California Coastal Records Project