

CALIFORNIA COASTAL COMMISSION

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Th17a & b

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AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: A-133-79-A4/F6760-A5

Applicant: Ure & Diane Kretowicz Agent: Marengo/Morton Architects

Original Project

Description: Construction of a 3,693 sq. ft. first floor addition to an existing 2,970 sq. ft. two-story, single-family residence on a 1.3 acre blufftop site.

Proposed

Amendment: 1) Delete the requirement to record an offer to dedicate both vertical and lateral public access easements; 2) pay \$3.3 Million to fund various public coastal access projects in the La Jolla area as mitigation for the deletion of the public access easements; and, 3) request after-the-fact approval for improvements, modification and additions to the existing residence resulting in a 7,388 sq. ft. two-level home (ref. Exhibit #8 – Settlement Agreement).

Site: 7957 Princess Street, La Jolla, San Diego, San Diego County.
APN 350-151-01 & -02

STAFF NOTES:

History

The Regional Coastal Commission's original approval of the application (F6760) for an addition to a single-family residence was appealed to the State Coastal Commission in 1978. The Commission found that the appeal raised no substantial issue. However, a lawsuit was filed against the Commission for, among other things, not having made adequate findings regarding public access pursuant to Section 30604 of the Act. The court ordered that the matter be remanded back to the Regional Commission for a specific finding on only the issue of public access and recreation. The court allowed the development to go forward in the interim because the petitioners failed to post the

necessary bond for a stay. The Regional Commission adopted findings regarding public access but did not impose any requirement for provision of public access at the site. This decision was then again appealed to the State Commission (A-133-79) who found that the appeal raised a substantial issue. On de novo, the State Commission approved the project with an additional condition that required the applicant to record an offer to dedicate a vertical public access easement (5 ft. in width extending from Princess Street along the southern edge of the property next to the garage and then in a northwesterly direction along the top of the slope and then back in a southwesterly direction, traversing down the face of the bluff to the beach), as well as a lateral public access easement. The Commission found that without this condition, the addition would interfere with existing public access. The State Commission found that because the residential addition displaced a blufftop viewpoint and trail to the beach on the site, public access should be required elsewhere on the site. Thus, the State Commission required that the applicant record an offer-to-dedicate (OTD) easement for public access extending from Princess Street to the mean high tide line. However, as noted above, the court had allowed the applicant to continue with the development under the original permit because the petitioners failed to post the necessary bond for a stay while the Commission reviewed the proposal again on remand, and thus, the requirement for recordation of the OTD occurred after the development was already complete. The applicant never recorded the offer required by the State Commission. The property was subsequently sold.

In June of 2005, the Commission reviewed an amendment request by a subsequent property owner to replace the requirement for the offer to dedicate public vertical access with an easement for emergency lifeguard access only and payment of \$10,000.00 for public access improvements in the La Jolla area (ref. A-133-79-A1/F6760-A2). The amendment request also included a request to remove various unpermitted improvements on the face of the coastal bluff, modify an existing rear yard retaining wall and install a patio, barbecue and landscaping in the rear yard. In its action, the Commission denied the applicant's request to revise the OTD requirement, but approved the other proposed improvements, except those located within the alignment of the access easement or those that could interfere with use of the access in the future. The applicant subsequently filed suit against the Commission regarding that decision.

Subsequently, a prospective settlement agreement was entered in to between the applicant and the Commission, resulting in another amendment application. However, all settlement agreements are subject to formal Commission action within a public hearing. This request included the proposal to replace the requirement for the offer to dedicate vertical public access with an easement for emergency lifeguard access only and a payment of \$200,000.00 towards feasibility investigation, design processing, professional consulting fees and construction costs to replace "Angel's Flight" public beach access stairway as mitigation for the change in terms of the vertical public access easement and to construct and improve a public viewing area in the public right-of-way adjacent to the home (ref. A-133-79-A2/F6760-A3). However, at the June 14, 2007 hearing on this item, the Commission raised concerns with the applicant's request and the matter was postponed by the applicant and subsequently withdrawn. Since that time, the applicant has received approval from the City of San Diego (Site and Neighborhood Development

Permits) for numerous unpermitted improvements at the subject site as well as some new improvements. The applicant submitted another amendment request. However, due to Permit Streamlining Act deadlines, the applicant withdrew the amendment request (ref. A-133-79-A3/F6760-A4).

The subject amendment application is a result of a revised settlement agreement reached between the applicant and the Commission and includes all the improvements approved by the City as well as the request addressing the public access.

Summary of Staff's Preliminary Recommendation:

Staff recommends that the Commission approve the proposed amendment subject to special conditions. The proposed amendment implements the settlement agreement in *Kretowicz v. California Coastal Commission*. However, as noted above, all settlement agreements are subject to formal Commission action within a public hearing. The proposal will delete the requirement that the applicant record an OTD for public access (both lateral and vertical) in exchange for the payment of \$3.3 Million to be used to fund other access improvements in the La Jolla area including reconstruction of Angel's Flight stairway, a public stairway that used to extend from a public path (Coast Walk) down to the same beach that is below the subject site. The reconstruction of Angel's Flight would be a substantial public access amenity in this area.

The applicant is also seeking approval for a number of improvements to the blufftop home that have been completed without benefit of a CDP, including an addition to the home and a new jacuzzi spa and decks. The City has reviewed and approved these improvements through both Neighborhood and Site Development permits. Staff has found that most of the proposed after-the-fact improvements are acceptable and consistent with the certified LCP. However, the project includes additions to the lower level of the home, portions of which extend closer than 25 ft. from the bluff edge. In addition, the project includes a new jacuzzi spa within the geologic setback area. Neither of these improvements is consistent with the provisions of the certified LCP, which requires such improvements to observe a minimum 25 ft. setback from the bluff edge. Therefore, staff is recommending that revised plans be submitted which delete or relocate the spa and delete/remove the portions of the home within 25 ft. from the bluff edge. In addition, staff recommends that all "prior to issuance" special conditions be satisfied within 60 days of Commission action and that the portions of the home to be removed occur with 90 days of issuance of the permit amendment. With the proposed conditions, the project is consistent with the certified LCP and public access provisions of the Coastal Act. Therefore, staff recommends the Commission approve the amendment request, subject to the special conditions detailed herein.

Standard of Review: The City of San Diego certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution.

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. A-133-79/F6760 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development, as amended and subject to conditions, will be in conformity with the provisions of the certified Local Coastal Program and the public access and recreation policies of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. Special Conditions.

The permit amendment is subject to the following conditions:

The following shall replace Special Condition #1A & B of CDP #A-133-79/F6760 and is added as new Special Condition #1:

1. Payment of \$3,300,000.

- A. The applicant shall pay \$3,300,000.00 to the State Coastal Conservancy (Conservancy) or other entity as directed by the Executive Director of the Commission, in accordance with the agreement required in Subsection B below, to be used to fund reconstruction of the Angel's Flight public access stairway and various other public access improvements in the La Jolla area, including a grant of \$300,000.00 to the City of San Diego to be used exclusively for public access improvements. If the funds paid to the Conservancy are not spent to reconstruct the Angel's Flight public access stairway within five years of the Conservancy's acceptance of such funds, the Executive Director may require that such funds be

used for other public access improvements in the coastal area of Southern California, as that region is defined by the Conservancy.

- B. WITHIN 120 DAYS OF THE COMMISSION'S APPROVAL OF THIS AMENDMENT**, the applicant shall provide to the Conservancy (or other entity approved by the Executive Director), through a financial instrument subject to review and written approval of the Executive Director (such as a credit card, cashier's check or wire transfer), \$800,000.00 payable to the Conservancy (or other entity approved by the Executive Director). An additional \$1,000,000.00 shall be paid twelve (12) months thereafter, an additional \$1,000,000.00 shall be paid twenty-four (24) months thereafter, and a final payment of \$500,000.00 shall be paid thirty-six (36) months thereafter. These funds shall be used for the purposes described in Subsection A above in accordance with a Memorandum of Understanding (MOU) that the Commission will enter into with the Conservancy (or other entity approved by the Executive Director) outlining how the funds are to be utilized.

2. Lifeguard Emergency Vertical Access. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, which grants to the City of San Diego an easement for emergency lifeguard access to the shoreline. The area of dedication shall consist of a corridor five (5) feet wide generally along the southern boundary of the property which shall extend from the Princess Street Right-of-Way to the mean high tide line. The easement shall also provide for a key to the gate or other means to allow access by the lifeguards. The grant of easement shall include formal legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed and shall run with the land on behalf of the City of San Diego and the people of the State of California, binding all successors and assigns.

3. Revised Final Plans. WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval, final plans for the proposed development, including a site plan that has been approved by the City of San Diego. Said plans shall be in substantial conformance with the plans prepared by Marengo Morton Architects, dated 3/15/10, except the plans shall be revised as follows:

- a. The proposed residential addition on the lower floor shall be revised such that no portion of the enclosed residence shall extend beyond (seaward of) the 25 ft. blufftop setback line. Those portions of the lower floor addition to the home that extend seaward of the 25 ft. bluff edge setback shall be deleted.
- b. The proposed jacuzzi spa and water feature located within the 25 ft. geologic setback area shall be deleted or relocated inland of the geologic setback area.

- c. The proposed fencing/gate in the south yard area shall be revised such that it does not extend beyond the southern property boundary onto the adjacent property, shall be no higher than 92 inches tall, shall not obstruct public views toward the ocean and shall have at least the upper 75 percent of its surface area open to light.
- d. All existing and proposed accessory improvements shall be identified. All accessory improvements (including, but not limited to, patios, decks, walkways, and open shade structures) proposed within the rear yard (west of the residence adjacent to the coastal bluff) area must be “at-grade” and located no closer than 5 ft. from the edge of the existing slope/bluff.
- e. The following shall be added as a note on the project plans:

“No development within 25 ft. of the identified bluff edge shall be allowed except for at-grade accessory improvements that are at least 5 ft. from the identified bluff edge.”

The applicant shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Revised Landscape/Yard Area Plans. WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval, revised landscaping plans approved by the City of San Diego. The plans shall be in substantial conformance with the plans as submitted by Marengo Morton Architects dated 3/15/10, except for the revisions cited below. The plans shall be revised to keep the side yard (south of the residence) clear to enhance public views toward the ocean. Specifically, the plans shall be revised to incorporate the following:

- a. A view corridor a minimum of 4 ft. wide shall be preserved along the southern side yard. All landscape materials within the southern yard area shall be species with a growth potential not expected to exceed three feet at maturity. In addition, all landscaping in the southern yard area shall be maintained at a height of three feet or lower to preserve views toward the ocean.
- b. The landscape palette for all proposed plants shall emphasize the use of drought-tolerant native species, but use of drought-tolerant, non-invasive ornamental species and lawn area, is allowed as a small component. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as ‘noxious weed’ by the State of California or the U.S. Federal Government shall be utilized.

- c. No permanent irrigation shall be permitted on the site.
- d. A written commitment by the applicant that all required plants on this site shall be maintained in good growing condition and whenever necessary, shall be replaced with new plant materials to ensure compliance with the approved landscape requirements shall be included.
- e. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- f. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The applicant shall undertake the development in accordance with the approved landscape and fence plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

5. Accessory Improvements. In the event that erosion or bluff failure threatens the accessory improvements located in the rear yard of the site (west of the residence adjacent to the coastal bluff) that are approved through this permit amendment, the threatened improvement(s) shall be removed. The approval of this permit shall not be construed as creating a right to shoreline protection under the certified LCP for such structures. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under the certified LCP. Prior to removal of any accessory improvement, the applicant shall obtain a coastal development permit for such removal unless the Executive Director determines that no permit is legally required.

6. Assumption of Risk, Waiver of Liability and Indemnity.

By acceptance of this permit amendment, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, bluff retreat and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit amendment of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

7. Deed Restriction. **WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

8. Future Development. This permit is only for the development described in coastal development permit No. A-133-79-A4/F6760-A5. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future improvements to the proposed single family residence, including, but not limited, to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. A-133-79-A4/F6760-A5 from the California Coastal Commission or shall require an additional coastal development permit from the applicable certified local government.

9. Open Space Restriction. No development (except for removal of flood lights, capping or removal of irrigation and removal of a drain pipe), as defined in section 30106 of the Coastal Act shall occur on that portion of the bluff face seaward of the bluff edge (as depicted in its current location on "Site Plan" by Marengo Morton Architects dated

3/15/10). This prohibition on development shall apply to the bluff face as the location of the bluff edge changes over time, due to erosion or other disturbances. The current location of the bluff face shall be described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

WITHIN 30 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT AND PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT

AMENDMENT, the applicants shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the current location of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #9 attached to this staff report.

10. Prior Conditions of Approval. The conditions of this amendment shall supersede and replace all others prior special conditions of Coastal Development Permit No. A-133-79/F6760, as amended.

11. Condition Compliance. Within the specified times required in each condition or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

12. Implementation of Removal of Improvements. WITHIN 90 DAYS OF EXECUTIVE DIRECTOR APPROVAL OF REVISED PLANS REQUIRED IN SPECIAL CONDITION NOS. 3 AND 4 OF AMENDED COASTAL DEVELOPMENT PERMIT NO. A-133-79-A4/F6760-A5, or within such additional time as the Executive Director may grant for good cause, the applicant shall remove and/or modify the existing wall and gate located at the south side yard setback area and replace the wall and gate consistent with the plans approved pursuant to Special Condition #3 of this permit amendment. The applicant shall also remove the floodlights on the bluff face, the drainage pipe located on the northern bluff face, cap or remove all irrigation on the site and remove the portions of the residence located on the lower level that extend beyond the 25 ft. bluff edge setback. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Amendment Description. The proposed project represents an amendment to a coastal development permit approved by the Commission for the construction of a 3,693 sq. ft. addition to an existing 2,970 sq. ft. single-family residence in 1979. The proposal

is to delete the requirement to record two offers to dedicate public access easements (both lateral and vertical), pay \$3.3 Million dollars towards access improvements, and approval of various other improvements, both new and after-the-fact. Specifically, the amendment request includes:

(1) The applicant proposes to delete the existing requirement for recordation of offers to dedicate both lateral and vertical public access easements and replace with the following:

- (a) Emergency Lifeguard Access. Upon issuance of the permit amendment, the applicant proposes to grant to the City of San Diego an easement for emergency lifeguard access to the beach which shall be 5 ft. wide and run along the southern property boundary.
- (b) Fee Payment. Upon approval of the amendment, the applicant proposes to pay a total of \$3.3 Million (Three Million Three Hundred Thousand Dollars) to the State Coastal Conservancy (or other entity as directed by the Executive Director) in installments as detailed below for the purpose of funding various coastal public access projects in the La Jolla area.

Payment Schedule:

- \$800,000.00 shall be paid within 120 days of approval of the amendment.
- \$1,000,000.00 shall be paid every twelve months thereafter, not to exceed a total payment of \$3,300,000.00.

The following components have already been constructed and are proposed to remain and be approved after-the-fact:

- (2) Construct concrete stairways along the south and eastern property boundaries.
- (3) Construct wall and fence across south side yard area (to be lifeguard emergency access).
- (4) Interior garage improvements to include excavation and removal of approx. 130 cy. of uncompacted fill material to allow an additional parking space, a car lift and storage.
- (5) Install decorative paving in City Right-of-Way leading up the house.
- (6) Construct new planter walls, entry trellis and 4 ft. high planter in public Right-of-Way.
- (7) Construct new fountain adjacent to eastern exterior stairway.
- (8) Replace second-story deck and add partial roof.
- (9) Construct new second-story cantilevered balcony.

- (10) Construct a 28 ft. long, 6 ft. high masonry wall in public right-of-way.
- (11) Extend height of existing retaining wall from 3 ft. 6-inches to 7 ft. 6-inches.
- (12) Construct modifications to non-conforming accessory structure (Casita) located partially within public right-of-way to include 52 sq. ft. bathroom addition, new doors, windows and expansion of existing walls.
- (13) Add approximately 844 sq. ft. to existing home (bedrooms, music and exercise room) by converting unimproved area beneath main home to living area, portions of which are located within 25 ft. of the bluff edge.
- (14) Remove wooden timber stairs and portion of retaining wall on bluff face.

The following components are new:

- (15) Remove floodlights from bluff face.
- (17) Remove landscape drainage pipe on northern bluff face.
- (18) Remove or cap irrigation on bluff face.
- (19) Install a new jacuzzi spa and trellis on existing main flood deck as well as a new water feature.
- (20) Install a photovoltaic system on the roof.

The 1.31 acre site is situated atop a 55-ft. high coastal bluff located off a cul-de-sac at the northern terminus of Princess Street in the La Jolla community of the City of San Diego. The existing residence is situated on the flatter portion of the site, directly adjacent to Princess Street, with the site sloping steeply down from the home to the north and west. There is no existing shoreline or bluff protection on the subject site. Surrounding development includes single family homes to the east and south and the Pacific Ocean to the north and west.

The City of San Diego has a certified LCP, and the subject site is within the City's permit jurisdiction. However, since the subject application represents an amendment to a Commission-approved coastal development permit and requires modification of prior conditions of approval, the Commission has jurisdiction over this application. Nevertheless, the standard of review is the certified LCP (the La Jolla Land Use Plan and the City's Land Development Code) and, because the subject site is between the sea and the first public road, the public access and recreation policies of the Coastal Act.

2. Detailed Project History. The home on the site was originally constructed around 1915. Over the years, the home was added to and remodeled several times. In June of

1977, the Regional Commission denied an application (#F5265) by Ms. Baker for a substantial addition (3,300 sq. ft.) to the existing home on the site, finding that the development would have a significant adverse impact on scenic resources in the area as it would significantly encroach onto the visually prominent bluff seaward of the existing home.

In June of 1978, the Regional Commission approved Ms. Baker's CDP #F6760 for construction of a 3,693 sq. ft. addition to the existing 2,970 sq. ft. single-family residence, finding that the project did not project further seaward than the existing line of development, thereby reducing its impact on visual resources (there is a discrepancy with the square footages called out in this permit and the subsequent actions. After review of the final plans approved for the original project, the actual size of the addition and of the existing home is greater). The permit was approved with special conditions requiring that the development comply with the recommendations of the geology report, that the southwest corner of the proposed addition (15 ft. x 15 ft.) be cantilevered to "ensure the integrity of the slope", and that the final drainage plans be submitted. The decision on this matter was subsequently appealed to the State Commission (A-221-78), but the State Commission found that the appeal raised no substantial issues on July 18, 1978. The grounds for the appeal were that inadequate public access findings were made.

A lawsuit was then filed against the Commission for, among other things, not having made adequate findings regarding public access and recreation as required by Section 30604 of the Coastal Act for development located between the first public road and the sea. The court subsequently found that the development was located between the first public road and the sea and that the finding on public access and recreation was not sufficiently specific to comply with the requirements of Section 30604(c) of the Act. The court ordered that the matter be remanded back to the Regional Commission for a specific finding on only the issue of public access and recreation. In addition, the court allowed the development to go forward in the interim because the petitioners failed to post the necessary bond for a stay. The Regional Commission subsequently adopted more specific findings regarding public access and recreation but did not impose any special requirements for the provision of public access at the site. This decision was then also appealed to the State Commission (A-133-79).

On September 20, 1979, the State Commission found that additional public access provisions should be required. Specifically, the Commission found:

...access to this pocket beach is only available at low tide due to the promontories which impede access to the beach from the nearest accessway to the shoreline which is located ¼ mile up coast. The Commission concludes, therefore, that adequate access does not exist nearby. Although the public has historically had access over the project site, construction of the project has preceded the use of this accessway, thereby diminishing the public's right of access to the state owned tidelands. An alternative accessway must, therefore, be provided to offset the burdens this development has placed on the public's constitutional right of access and to assure the conformity of the project with the provisions of Section 30212 of the Act.

The Commission imposed a special condition on the permit requiring the applicant to record offers to dedicate both lateral (across the ocean frontage of the parcel from the toe of the bluff to the mean high tide line) and vertical (5 ft. in width extending from Princess Street along the southern edge of the property next to the garage and then in a northwesterly direction along the top of slope and then back in a southwesterly direction , traversing down the face of the bluff to the beach) public access easements (ref. Exhibit #6 - Original Staff Report). By the time the Commission imposed the access conditions, however, the applicant had already completed construction of the proposed addition in compliance with the permit as previously issued. Therefore, the State Commission required that the vertical access be located in a slightly different location than the historic trail in order to accommodate the addition. The then-owner, Ms. Baker, did not record the offers to dedicate access.

Because the permit for the addition was remanded, and subsequently issued during the litigation and appeal, it retained the original application number F6760. However, because the State Commission heard a second appeal, it gave the permit a new number – A-133-79. Therefore, the permit for the addition is identified by both numbers: A-133-79/F6760.

Then, in 1980, the applicant (Ms. Baker) requested and received approval of an amendment to the permit to authorize drainage structures which had already been constructed without authorization (ref. CDP #F6760-A1). That is, the applicant implemented the drainage improvements without authorization and subsequently received approval through an after-the-fact permit amendment for the revised drainage plans.

In 1988, the Commission certified the City of San Diego's Local Coastal Program and the City began issuing coastal development permits for development within its jurisdiction, including La Jolla where the subject site is located.

In 1994, the property became bank-owned through a foreclosure and the bank sold to Mr. and Mrs. Kretowicz, the now current owners and applicants. As noted above, the offers to dedicate lateral and vertical access had not been recorded.

In 1999, the City of San Diego approved a coastal development permit for construction of a pool with spa, a concrete deck, barbecue counter, retaining walls, drains and landscaping in the rear yard of the blufftop site that contains the existing single-family residence. The proposal also included removal of a number of existing unpermitted improvements (wooden timber stairs, retaining walls and palm trees) on the face of the coastal bluff. No changes to the existing single-family residential structure were proposed. The City's decision to approve the development was appealed by the Commission on June 25, 2001 (ref. Appeal #A-6-LJS-01-95). The basis of the appeal was that the proposed development was allegedly inconsistent with the certified LCP as it related to blufftop setbacks, geologic hazards, protection of public views and public access. In particular, a swimming pool was proposed projecting beyond the bluff edge of the subject site. The certified LCP requires such structures to be sited a minimum distance of 25 feet from the edge of the

bluff. A second major issue raised with the project was that it was inconsistent with the conditions of approval of Coastal Development Permit #A-133-79/F6760, which required recordation of an offer for a public vertical access easement across the subject site.

The appeal was thus scheduled for Commission review. On August 6, 2001, the Commission found that a Substantial Issue existed with respect to the grounds on which the appeal was filed. The de novo review of the permit application was subsequently scheduled for the Commission's October, 2001 meeting and then again at its June, 2002 meeting. Both times the project was postponed by the applicant. Subsequently, on May 14, 2002, the project was withdrawn by the applicant, which resulted in no permit for the development at the City or the Coastal Commission. The City subsequently sued the applicant over the unpermitted development that was present on the site (excavation in the garage). At this time, the applicant worked with both the Coastal Commission's enforcement staff as well as the City's code enforcement staff to resolve the outstanding violations.

As part of the resolution of the outstanding violations on the subject site (and the related litigation that the City had instituted against the applicant), the applicant entered into a "Stipulated Judgment" with the City of San Diego, dated April 4, 2004, and, as agreed upon by the City and the applicant, the applicant then proceeded to seek an amendment to the previous Coastal Development Permit with the Coastal Commission, concurrent with the City's Site Development Permit, to address all the unpermitted development. As explained above, the State Commission revised CDP #F6760 to include the requirements for public access. As noted above, some of the development proposed by the applicant would block access to the area of the offer to dedicate a public access easement that was required in CDP A-133-79/F6760.

Then in 2004, the applicant requested an amendment to the State/Regional Commission permit to: (1) replace the requirement for recordation of an offer to dedicate a vertical public access easement with a) an easement solely for emergency lifeguard access and, b) a contribution of \$10,000 to enhance coastal access or other coastal improvements in the La Jolla area; 2) after-the-fact approval for the removal of unpermitted improvements on the subject site consisting of rear wood timber stairs, a portion of a retaining wall within the five foot coastal bluff setback, palm trees and the irrigation system; 3) construct an at-grade concrete patio, barbeque counter, area drains, staircase and landscaping; and 4) construct interior garage improvements to include excavation and removal of approx. 130 cy. of uncompacted fill material to allow an additional parking space and a car lift and storage (ref. CDP #A-133-79-A1/F6760-A2/Kretowicz). On June 14, 2005, the Commission denied the applicant's request to replace/modify the previously required vertical public access easement; however, it approved all other proposed improvements with a requirement that they be modified such that no improvements occur within the alignment of the required access easement.

On August 5, 2005, the applicant filed litigation against the Commission regarding its decision to deny the modification to the previously required public access easement (ref. SDSC Case No. GIC 851915). The Commission subsequently filed a Cross-Complaint,

claiming, among other things, violations of the Coastal Act. Subsequently, a settlement was reached and the applicant submitted an amendment request to modify the terms of the access easement (such that it would not be available for public access until 2081), pay \$200,000 towards the reconstruction of a nearby failed public access stair and install a public viewing platform pursuant to the terms of the settlement agreement (ref. CDP #A-133-79-A2/F6760-A3/Kretowicz). However, at the June 14, 2007 hearing on this item, the Commission raised concerns with the applicant's request and the matter was postponed by the applicant and subsequently withdrawn on November 20, 2007. The applicant and the Commission then negotiated an amended settlement agreement and the applicant applied to the City for approval. On December 2, 2008, the applicant received approval from the City of San Diego for Neighborhood and Site Development Permits for the development and then submitted a new amendment application to the Commission (ref. A-133-79-A3/F6769-A4). However, due to Permit Streamlining Act deadlines, this application was subsequently withdrawn. The subject amendment request is a result of the revised settlement negotiations between the applicant and the Commission (ref. Exhibit #8 – Settlement Agreement).

3. Public Access. Because this site is between the sea and the first public road parallel to the sea, pursuant to California Public Resources Code section 30604(c), any development must comply with the public access and recreation policies of the Coastal Act. Several policies of the Coastal Act require that new development protect or enhance public access and recreational opportunities to and along the shoreline. These policies include:

Section 30210

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

Section 30211

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

Section 30212

(a) 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,

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

In addition, the certified La Jolla Community Plan and Local Coastal Program Land Use Plan states the following:

The City should ensure that new development does not restrict or prevent lateral vertical or visual access (as identified in Figure 9 and Appendix G) to the beach on property that lies between the shoreline and first public roadway, or to and from recreational areas and designated public open space easements. Further, in areas where physical vertical access to the shoreline does not exist within 500 feet of a private development project on the shoreline, consideration of a new accessway across private property should be analyzed. (p. 52)

Maintain, and where feasible, enhance and restore existing facilities including streets, public easements, stairways, pathways and parking areas to provide adequate public access to the shoreline. Detailed maps and specific subarea recommendations are provided in Appendix G. (p.57)

The project site is located between the ocean and the first public roadway (Princess Street/Spindrift Drive). The subject site is at the terminus of Princess Street in the La Jolla community of the City of San Diego. The site is a natural promontory overlooking the La Jolla Underwater Park and Ecological Reserve and is bounded on the north and west by the ocean. The beach below the subject site (and to the south) is a small rock/cobble beach bounded by steep bluffs that is only accessible from surrounding beaches, and then only at very low tides and only from the north (the nearest public access point is adjacent to the Marine Room, approximately ¼ mile to the north). There is no formal access to this beach from the south due to the existence of steep coastal bluffs and rocky shorelines.

Relative to public access, the proposed amendment is to delete the requirement to record an offer to dedicate public vertical and lateral access easements. As described above in the “Detailed Project History” section, the Commission previously required recordation of an offer to dedicate (OTD) a public vertical access easement from the street to the beach as mitigation for impacts of a substantial home addition on a trail on the site that

had historically been used by the public to access the beach in this location. While the OTD has never been recorded, in violation of the terms of the coastal development permit, due to the inaccessibility of the beach below the subject site, the need to provide access to the beach at this location is just as important today as it was when the Commission originally required it in 1979. This has ultimately resulted in litigation filed against the Commission by the property owner. As a means to resolve the litigation, the applicant has proposed the subject amendment.

The subject amendment is to delete the requirement that public vertical access to the beach and public lateral access along the beach be provided on the subject site, in exchange for paying \$3.3 Million to fund public access improvements in the La Jolla area and immediate dedication of a vertical easement for emergency lifeguard access only. There are many other components to the proposed amendment, but no others that affect public access. To address this amendment, the Commission must determine if the proposed alternative measures are acceptable such that public access opportunities will not be diminished. In other words, do the proposed alternative measures provide the same level or greater public access than that previously required by the Commission in the original permit? Each of these components is addressed separately below.

a. Lifeguard Emergency Access.

The first alternative measure proposed by the applicant is to grant an easement to the City of San Diego for emergency lifeguard access across the site and down to the beach. While this measure is good and does help somewhat with public access, this was previously required by the Commission with the original permit. However, it too, was never recorded and remains a violation. Thus, the applicant's proposal to grant emergency lifeguard access complies with the Commission's previous decision and as such, does not mitigate or provide an "offsetting benefit" for the proposed elimination of the public vertical access.

b. Payment of \$3,300,000 towards Alternative Public Access in La Jolla.

Just down coast and across La Jolla Bay from the subject site is the Coast Walk public access. Coast Walk is a dirt path that runs along the top of the coastal bluff overlooking La Jolla Bay and runs between Coast Walk Drive and Coast Boulevard. Spectacular views of the ocean, La Jolla Bay and the north San Diego coastline are available from this very popular public accessway. Prior to around 1962, there used to be public stairway, known as "Angel's Flight", leading down a steep gorge, known as the "Devil's Slide", from the Coast Walk path to the beach below (ref. Exhibit Nos. 1 & 7). Sometime around 1962, this historic stairway was destroyed by a fire and to date, has not been reconstructed. Today, at this location, there is an informal "trail" leading down the bluff to the beach. However, it is very steep and only accessible to the most able bodied individuals willing to risk scrambling down the trail.

The applicant is proposing with this amendment to pay \$3.3 Million to the State Coastal Conservancy for public access improvements in the La Jolla area. Of that, \$300,000

would be granted to the City of San Diego to upgrade and improve existing accessways in the La Jolla area. The remaining \$3 Million would be used to replace the Angel's Flight historic stairway, as mitigation for eliminating the requirement to record public access OTDs on the subject site.

From a public access standpoint, the applicant's proposal has merit. The beach accessed by the old Angel's Flight stairway is the same beach that would be accessed by a stairway on the applicant's property, just a little further down coast. As noted earlier, currently, the only way to access this particular beach is to walk on the beach from the north at very low tides or by scrambling down the bluff at the old Angel's Flight location. Thus, providing another means of access to this beach is very important and one of the main reasons the question of public access remains as critical today as it did in 1979, when the Commission first required the vertical access easement.

Another positive aspect of the applicant's proposal to fund replacement of the Angel's Flight stairway is that the replacement stairway is located directly off the Coastwalk public path and will likely be more available and accessible to the public than a stairway on the subject site, which would be located between two single-family residences. This is not to suggest that an accessway to the beach on the subject site is not important to improve public access, but the proposed stairway at Coast Walk would simply likely get more use by the public due to the existing popularity of the Coast Walk path.

On the other hand, the applicant's proposal does not assure that the Angel's Flight stairway will be replaced. The proposal is to provide \$3 Million for public access improvements that would be used to reconstruct the stairway. In 2007, Commission staff met with representatives from the City of San Diego Parks and Recreation Department as well as with representatives from the La Jolla Conservancy (a local non-profit organization) to discuss the replacement stairway. While no formal Memorandum of Understanding (MOU) has been drafted, both parties agreed the stairway reconstruction was a good idea. The La Jolla Conservancy expressed interest in being involved in facilitating the stairway reconstruction as well as locating additional funding to complete the project (if necessary). At that time, the City provided a very preliminary feasibility review which estimated the stairway reconstruction could cost close to \$1.7 Million (\$1,700,000.00) and then would also need to be maintained. Commission staff has not been able to get a more updated figure since that time. However, taking into consideration cost of living adjustments since that time, the estimated cost to replace the stairway would still be less than \$3 Million, leaving room for added costs and future maintenance.

Again, while replacement of this stairway is not currently on any City list of needed/necessary access improvements for La Jolla, given its previous historic status and the need for safe public access to this beach, there is a strong interest by the public to see this stairway replaced. With the City's support and the help of the La Jolla Conservancy and others, the Commission is optimistic that replacement of this stairway will be feasible. In addition, \$300,000 would go to the City of San Diego to help fund much needed repairs to existing public accessways in the La Jolla area. Many accessways have

gone without needed maintenance for years, resulting in the closure of some as no money has been available for necessary maintenance. Thus, while not providing new access, this money would help open up existing accessways that have been closed and/or provide necessary repairs to others, thereby improving public access in the area.

To assure the applicant's proposed alternative measures are implemented, several special conditions are proposed. Special Condition #2 requires that prior to issuance of the permit amendment, the applicant execute and record a document granting to the City of San Diego an easement for emergency lifeguard access that extends generally along the southern property boundary in a 5 ft. wide corridor from the street to the mean high tide line. Special Condition #1 addresses the mitigation payment proposed by the applicant. This condition requires that the Commission and an identified third party enter into a Memorandum of Understanding (MOU) that addresses the disposition of the \$3.3 Million. The condition details how the funds are to be used and includes a schedule of payments.

In summary, the proposed amendment will result in changes to previously required public access provisions on a blufftop property in La Jolla. In exchange for deleting the requirement for recordation of a public access OTDs on the subject site, the applicant will provide emergency lifeguard access down the bluff to the beach and pay \$3.3 Million to be used to fund public access improvements in the La Jolla area. The Commission has reviewed the applicant's request and has determined that the proposal to pay \$3.3 Million for public access improvements elsewhere is acceptable, as it will provide access to the same beach as the access required in the original permit. Thus, this beach will arguably be more accessible to the public than under the original requirement, and the funds will restore an historic public accessway. Thus, the proposed alternative access will be at least as good as that previously required. Based on the above discussion, the Commission finds the proposed amendment, as conditioned, is consistent with the above cited access provisions of the Coastal Act and the City's certified LCP.

4. Blufftop Setbacks/Geologic Safety. The subject site is located on a blufftop lot located at the north end of the cul-de-sac of Princess Street where it meets Spindrift Drive in La Jolla. The proposed project includes various accessory improvements close to the bluff edge as well as additions to the home within 40 ft. of the bluff edge and some closer than 25 ft. from the bluff edge. The bluffs are steep and exist on both the north and west sides of the subject site. The existing residence is located on the flat part of the site close to the street frontage. From the street frontage, access to the rear yard is gained from the south side of the residence where there is a gate. Beyond the gate, there is a concrete walkway and steps which lead down in elevation to the back yard. As one turns the corner of the house in the back yard, there is a small flat lawn area immediately adjacent to the house. Grass and other vegetation then cascades down the south-facing and north-facing bluff face of the subject site. Also in the rear yard, on the north side of the residence, there is an improved at-grade concrete patio and a deck at the upper story of the residence. The shoreline below the site is a rocky shoreline and there is no existing improved physical access to this area due to the steepness of the bluffs. There are no

existing seawalls or bluff retaining walls on the subject site and none are proposed with the subject amendment request.

The proposed development raises several concerns related to the shoreline hazards provisions of the certified LCP as they relate to blufftop setbacks. Pursuant to the City's certified LCP, all proposed development on a coastal bluff must observe a required setback of 40 feet from the bluff edge, unless a site-specific geology report is completed which makes findings that a lesser setback can be permitted. Specifically, Section 143.0143 addressing Development Regulations for Sensitive Coastal Bluffs states the following:

- (f) All *development* including buildings, *accessory structures*, and any addition to existing *structures* shall be set back at least 40 feet from the *coastal bluff edge*, except as follows:
 - (1) The City Manager may permit *structures* to be located between 25 and 40 feet from the bluff edge where the evidence contained in a geology report indicates that the site is stable enough to support the *development* at the proposed distance from the *coastal bluff edge* and the project can be designed so that it will not be subject to or contribute to significant geologic instability throughout the anticipated life span of the primary *structures*, and no shoreline protection is required. Reductions from the 40-foot setback shall be approved only if the geology report concludes the *structure* will not be subject to significant geologic instability, and not require construction of shoreline protection measures throughout the economic life span of the *structure*. In addition, the applicants shall accept a deed restriction to waive all rights to protective devices associated with the subject property. The geology report shall contain:
 - (A) An analysis of bluff retreat and coastal stability for the project site, according to accepted professional standards;
 - (B) An analysis of the potential effects on bluff stability of rising sea levels, using latest scientific information;
 - (C) An analysis of the potential effects of past and projected El Nino events on bluff stability;
 - (D) An analysis of whether this section of coastline is under a process of retreat.
 - (2) *Accessory structures* and landscape features customary and incidental to residential uses shall not be closer than 5 feet to the *coastal bluff edge* provided, however, that these shall be located at *grade*. *Accessory structures* and features may be landscaping, walkways, unenclosed patios, open shade *structures*, decks that are less than 3 feet above grade,

lighting standards, *fences* and wall, seating benches, *signs*, or similar *structures* and features, excluding garages, carports, building, pools, spas, and upper *floor* decks with load-bearing support *structures*.

In addition, the policies and guidelines of the certified La Jolla-La Jolla Shores LCP also contain the following related provisions:

“The shoreline bluffs are one of La Jolla’s most scenic natural resources...Over time, as the bluffs continue to recede, existing developments will become increasingly susceptible to bluff hazards. In many cases, seawalls, revetments, and other types of erosion control structures will be required to stabilize the bluff. Such structures, while necessary to protect private property, are poor substitutes for adequate site planning....”

The LCP then goes on to cite the following guidelines:

[...]

“The geotechnical report...should document that the “area of demonstration” is stable enough to support the proposed development and that the project can be designed so that it will neither be subject to nor contribute to significant geologic instability throughout the estimated lifespan of the project structures....”

To find the proposed project consistent with the above-cited provisions of the LCP, the Commission must find that the proposed improvements will be safe and not require a seawall or other shoreline protective device to protect them into the future. To determine an appropriate safe setback for new development, the LCP requires the submission of an analysis of the stability of the bluff be completed according to accepted professional standards, which includes that not only the long-term erosion rate be adequately identified but also that the geotechnical report demonstrate an adequate factor of safety against slope failure (i.e., landsliding), of 1.5 or greater will be maintained throughout its economic life.

To that end, the applicant’s geotechnical representatives have prepared quantitative slope stability analyses for the site. The analyses show that the factor of safety for the most critical failure surfaces varied from 1.73 to 1.99 seaward of the existing residence after 75 years. Thus, the geotechnical reports completed for the project conclude that the new development will not be affected by bluff instability, will not contribute to significant geologic instability and will not require any shoreline protection measures, throughout the anticipated 75 year economic life span of the structure(s). The Commission’s staff geologist has reviewed the applicant’s technical reports and has concurred that the proposed residential improvements/additions will be safe for their anticipated 75-year expected life, consistent with the LCP requirements cited above.

The proposed improvements include accessory improvements and various additions/revisions to walls and decks, the majority of which are located inland of the

geologic setback area. However, as part of the after-the-fact improvements, the applicant is proposing to maintain a 844 sq. ft. addition to the home on the lower level that was constructed by enclosing existing unimproved areas and patios to create a gym and bedroom. When the major addition to the home was approved in 1978, the Commission allowed the newly added portions of the home to extend, in some locations, up to 5 ft. from the bluff edge. Since that time, the City has adopted ordinances, as cited above, which prohibit residential structures any closer than 25 ft. from the bluff edge. While the entire addition proposed for approval with this amendment is located below and within the footprint (albeit non-conforming) of the existing home, portions of this addition extend beyond the 25 ft. bluff edge setback. There are two areas of the proposed addition that extend into the 25 ft. setback area (ref. Exhibit #3). One is located on the northern most portion of the site. This area was expanded to create a bedroom and extends approximately 3 ft. into the 25 ft. setback area (total area of 7.35 sq. ft.). The other area is located on the northwestern portion of the site. It was expanded to create a gym and extends approximately 7 ft. into the 25 ft. setback area (total area of 65.6 sq. ft.).

In addition, the applicant is proposing to install a new spa and water feature within the 25 ft. blufftop setback area as well. As noted above, the applicant's technical consultants and the Commission's staff geologist both conclude that the proposed improvements are safe and will not be subject to threat for their estimated life. However, as also noted above, the LCP does not allow principal improvements, including pools and spas, to be located closer than 25 ft. from the bluff edge. In other words, on blufftop properties, no principal structures can be sited any closer than 25 ft. from the bluff edge, even if, from a geologic standpoint, the structures would be safe from threat for their estimated economic life.

One of the reasons for the minimum 25 ft. bluff edge setback in the LCP on ocean fronting properties such as this is to acknowledge that estimating the safety of structures and determining safe geologic setbacks is not an exact science. There have been many instances in San Diego County where a geologic report states a certain bluff edge setback is adequate and then some years later, the bluff fails and the property owners are requesting emergency permits to construct seawalls. Thus, the minimum 25 ft. setback provides a "buffer" area should the bluff sustain an unexpected failure in the future. In addition, the minimum 25 ft. setback area also serves to keep structures back from the edge to reduce their visibility from the beach and other off-site public locations. Additionally, pools and spas, due to their weight and potential for leakage, are also treated as principal structures and must also maintain a minimum 25 ft. bluff edge setback. The LCP does not contain any provisions to allow development to be sited any closer than 25 ft. from the bluff edge. As such, the development cannot be found consistent with the certified LCP.

According to the applicant's representative, the 844 sq. ft. addition was accomplished by simply closing in an existing unimproved patio area underneath the existing home, and no new foundations or structural improvements were constructed. In addition, the new spa is proposed to be constructed on retaining walls that support an existing deck structure. Based on a review of the project plans, because there are no foundation

improvements, it appears that the portions of the two rooms that extend beyond the 25 ft. bluff edge setback could be removed and still maintain the overall function of the rooms. In addition, as the spa has not been built, it can simply be deleted from the plans. Therefore, rather than deny the entire addition, the Commission, through Special Condition #3a, requires that the applicant submit revised plans which indicate that those portions of the home within the 25 ft. setback area have been eliminated. In addition, Special Condition #3b require that the spa be deleted from the plans or moved elsewhere on the site inland of the 25 ft. setback. Because the portions of the home in the setback area already exist, Special Condition Nos. 11 and 12 require that the revised plans, approved by the City of San Diego, be submitted within 60 days of Commission action and that the portions of the room extending beyond the 25 ft. setback be removed within 90 days of issuance of the amended permit.

The subject amendment also includes a request for after-the-fact authorization for removal of several unpermitted improvements beyond the bluff edge and on the face of the coastal bluff. These improvements included several wooden timber stairs, retaining walls and palm trees. However, as noted, all of these improvements have been removed. The applicant is also proposing with this application to remove some additional improvements that are also on the face of the bluff. These include a couple of flood lights, a plastic drain pipe extending down the bluff on its surface and capping or removing existing irrigation on the face of the bluff. All of these improvements can be removed without disturbing the bluff and do not raise any coastal resource issues. Again, as these improvements already exist, Special Condition #12 requires that they be removed within 90 days of issuance of the amended permit.

All other existing or proposed accessory improvements will observe a minimum 5 ft. setback from the bluff edge and are at-grade, consistent with the certified LCP. Given that the accessory improvements are closest to the bluff edge, there is the potential for these improvements to be subject to threat from erosion in the future leading to a request for shore/bluff protection. However, the certified LCP does not allow for shoreline protection devices to protect accessory improvements. As such, Special Condition #5 puts the applicant on notice that if the accessory improvements become threatened in the future, they should be moved/removed rather than anticipate shoreline protection to maintain them in place.

Although the Commission finds that the proposed improvements to the home have been designed to minimize the risks associated with their construction, the Commission also recognizes the inherent risk of blufftop development. There is a risk of damage to the proposed improvements as a result of erosion and sea level rise over time. Given that the applicant has chosen to construct these improvements despite these risks, the applicant must assume the risks. Accordingly, Special Condition #6 requires the applicant to acknowledge the risks associated with this development, waiving any claims against the Commission for injury or damage that may result from such hazards, and agreeing to indemnify the Commission against claims for damages that may be brought by third parties against the Commission as a result of its approval of this permit. Special

Condition #7 requires the permit and findings be recorded to assure future property owners are aware of the permit conditions.

Special Condition #8 has been attached which requires that an amendment be approved for any future additions to the residence or other development as defined by the Coastal Act on the subject site. Requiring an amendment for all future development allows the Commission to insure that such development will not create or lead to the instability of the coastal bluffs, impacts to public access, adverse visual impacts or result in the construction or enlargement of the existing structure in a high risk area. To further protect the geologic integrity of the coastal bluff seaward of the residence, Special Condition #9 requires that an open space deed restriction be placed over the bluff face to prohibit construction or the placement of any structures on it (with the exception of the removal of the unpermitted improvements, irrigation piping and drains) and to protect it in perpetuity.

In summary, the applicant has documented and the Commission's technical staff has concurred that the proposed improvements can be sited safely on the site without the need for shoreline protection in the future. With conditions requiring those portions of the home and the spa within the 25 ft. setback area be deleted/removed (total square footage of home area to be removed is 72.95 sq. ft.), the integrity of the coastal bluff will be assured, consistent with the geologic and blufftop stability provisions of the City's certified LCP. Therefore, the proposed development, as conditioned, is consistent with the provisions of the certified LCP addressing geologic hazards and blufftop setbacks.

5. Public Views. In terms of protection of scenic quality and the visual resources of the subject site, the certified LCP and the La Jolla Community Plan contain numerous policies addressing the protection of public views to the ocean. Some of these include:

Public views from identified vantage points, to and from La Jolla's community landmarks and scenic vistas of the ocean, beach and bluff areas, hillsides and canyons shall be retained and enhanced for public use....

Public views to the ocean from the first public roadway adjacent to the ocean shall be preserved and enhanced, including visual access across private coastal properties at yards and setbacks....

Protect public views to and along the shoreline as well as to all designated open space areas and scenic resources from public vantage points...Design and site proposed development that may affect an existing or potential public view to be protected...in such a manner as to preserve, enhance or restore the designated public view....

Implement the regulation of the building envelope to preserve public views through the height, setback, landscaping and fence transparency regulation of the Land Development Code that limit the building profile and maximize view opportunities....

View corridors utilizing side yard setbacks, should be encouraged along shoreline and blufftop areas, in order to avoid a continuous wall effect. Even narrow corridors create visual interest and allow for sea breezes to refresh passersby....

- Setbacks and view corridors should be kept clear of trash receptacles, utility boxes, storage materials, untrimmed landscaping or any other obstructions which may interfere with visual access.

In addition, the certified Land Development Code contains similar provisions. Section 132.0403 of the Land Development Code states the following:

- (a) If there is an existing or potential public view and the site is designated in the applicable *land use plan* as a public view to be protected,
 - (1) The applicant shall design and site the *coastal development* in such a manner as to preserve, enhance or restore the designated public view, and
 - (2) The decision maker shall condition the project to ensure that critical public views to the ocean and shoreline are maintained or enhanced.
- (b) A visual corridor of not less than the side *yard* setbacks or more than 10 feet in width, and running the full depth of the *premises*, shall be preserved as a deed restriction as condition of Coastal Development permit approval whenever the following conditions exist [emphasis added]:
 - (1) The proposed *development* is located on *premises* that lies between the shoreline and the first public roadway, as designated on Map Drawing No. C-731; and
 - (2) The requirement for a visual corridor is feasible and will serve to preserve, enhance or restore public views of the ocean or shoreline identified in the applicable *land use plan*.
- (c) If there is an existing or potential public view between the ocean and the first public roadway, but the site is not designated in a land use plan as a view to be protected, it is intended that views to the ocean shall be preserved, enhanced or restored by deed restricting required side yard setback areas to cumulatively form functional view corridors and preventing a walled off effect from authorized development.

[...]
- (e) *Open fencing* and landscaping may be permitted within the view corridors and visual accessways, provided such improvements do not significantly obstruct public views of the ocean. Landscaping shall be planted and maintained to preserve public views.

In addition, the City's certified implementation plan defines open fencing as "a fence designed to permit public views that has at least 75 percent of its surface area open to light." The intent of the above-cited language in the certified LCP is to enhance or maintain any potential public views across a property between the first coastal road and sea.

The subject site is located at the northwest corner of Princess Street and Spindrift Drive in La Jolla on a coastal blufftop lot. The site is located within a major scenic viewshed, as identified in the certified Land Use Plan and between the first public road and the sea. The proposed amendment raises a couple of issues with regard to protection of public views. First, the proposed fence/wall and gate at the entrance to the vertical access easement may impact public views from the public right-of-way as well as from an existing informal viewing area on Spindrift. The second relates to the proposal to contribute funds for construction of a new public access stairway. The public access itself could result in public view impacts.

Relative to the fence/wall and gate, as noted above, on properties located between the first public road and the sea and/or on properties that contain designated view sheds, the LCP requires that public views be protected by, among other things, requiring that the side yard setback area(s) be deed restricted to assure structures and landscaping do not interfere with public views. In the case of the subject site, public views of the ocean are available along the south side yard area from Princess Street as well as from an informal viewing area adjacent to Spindrift Street over the residence. There is an existing concrete stairway in the southern side yard. However, beyond the stairway further south along the side yard, there is an existing hedge which could impede public views to the ocean. While no new landscaping is proposed, there is the potential that in the future, trees or other tall shrubs could be planted within this side yard area. For this reason, Special Condition #4 requires the south yard area be maintained free of vegetation greater than 3 ft. in height, such that no trees or tall hedges are planted, in order to preserve views of the ocean in this viewshed. In addition, currently there is existing landscaping within the south side yard setback area that partially obstructs views to the ocean from not only the existing informal public viewing area, but also from the end of Princess Street looking towards the ocean through the south side yard. While this landscaping need not be removed, Special Condition #4 requires that it be trimmed such that ocean views are not affected. This condition also requires that plant materials be mostly drought-tolerant native species (no invasive species) and that in 5 years a landscape monitoring report be submitted documenting that the landscaping is consistent with the landscape plans approved with this action.

However, the fence/wall and gate proposed to be retained will affect public views along this view corridor and are not consistent with the provisions of the certified LCP cited above in that neither the wall nor the fence have been designed such that 75% of their surface area is open. The existing fence/wall and gate extend across the south side yard adjacent to Princess Street. As proposed, the gate is 92 inches tall and 48 inches wide and is constructed with a wood frame (approximately 6 inches wide on either side and approximately 9 inches wide on the top and bottom) with a wire mesh middle section.

One side is attached to the home and other to a free standing solid stucco wall that is 92 inches tall and approximately 32 inches wide that extends beyond the property line onto the adjacent property to the south. Based on the plans submitted with this application, the proposed gate only retains approximately 50% of its surface area as open and the stucco wall is solid, with no open area. Thus, both the gate and the wall are inconsistent with the certified LCP.

The south side yard area is the only area on the property where public views are available to the ocean. Thus, maintaining these existing public views is important. To assure public views are maintained, Special Condition #3c requires that the fence/wall and gate be revised such that the upper 75% of the surface area of each is open and that no portion extends onto the adjacent property to the south. This condition also requires that revised plans first be approved by the City of San Diego. Because the fence/wall and gate are currently existing, Special Condition Nos. 11 and 12 require that the revised plans, approved by the City of San Diego, be submitted within 60 days of Commission action and that the fence/wall and gate be removed within 90 days of issuance of the amended permit.

Currently, ocean views are available over the existing home and between the existing home and the home to the south from an informal public viewing area along Spindrift. None of the proposed improvements will result in public view impediments from this viewing area. With the requirement that landscaping be no greater than 3 ft. and the fence/gate be modified in the south yard area, the Commission can be assured public views will be maintained into the future.

The last issue raised by the subject amendment relates to the proposed mitigation for revising the vertical access. As noted in the project description, the applicant is proposing to pay \$3.3 Million to delete the requirements for providing public access on the subject site and provide funding for other public access improvements in the La Jolla area, including rebuilding the Angel's Flight public stairway. While the construction of a public access stairway down the face of a coastal bluff can result in public view impacts, in this particular case, the stairway will be located where a stairway previously existed, but was destroyed by fire many years ago. In addition, this amendment is not permitting that stairway; a separate coastal development permit will be required for that development and impacts on scenic visual resources will be addressed at that time.

In summary, there are existing public views of the ocean that will be affected by the subject development. The existing wall and gate proposed to be retained result in public view impacts and are inconsistent with the certified LCP. As conditioned to revise these structures and to assure all landscaping in the south side yard setback area is low level, not to exceed three feet in height, public views will be protected, consistent with the above-cited provisions of the certified LCP.

5. Unpermitted Development. Unpermitted development has been carried out on the subject site without the required coastal development permit. The applicant is requesting after-the-fact authorization for numerous improvements to the existing home to include construction of concrete stairways, walls and fences, garage improvements, decorative

paving in the public Right-of-Way, new planters and trellises, second story-deck and roof and balcony and modifications to non-conforming structure located partially in the public Right-of-Way. Also, requested are after-the-fact additions to the home.

To ensure that the matter of unpermitted development is resolved in a timely manner, Special Condition #11 requires that the applicant satisfy all conditions of this permit amendment within the specified times required in each condition, or within such additional time as the Executive Director may grant for good cause. In addition, because many components of the amendment have already been constructed and through this amendment are required to be revised, Special Condition #12 requires that within 90 days of Executive Director approval of the required revised plans pursuant to Special Condition Nos. 3 and 4, the applicant shall remove the existing improvements consistent with the plans approved pursuant to Special Condition Nos. 3 and 4 of this permit amendment.

Although development has taken place prior to the submission of this amendment request, consideration of the request by the Commission has been based solely upon the certified City of San Diego LCP and the public access and recreation policies of the Coastal Act. Commission action upon the permit amendment does not constitute a waiver of any legal action with regard to the alleged violations of the Coastal Act that may have occurred; nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

6. Local Coastal Planning. The subject site is zoned RS-1-7 and is designated for residential use in the certified La Jolla Land Use Plan. The proposed project is consistent with that zone and designation. The subject site consists of a sensitive coastal bluff as identified in the City's certified LCP. The Environmentally Sensitive Lands (ESL overlay) regulations of the City's implementation plan are thus applicable to the subject site. The proposed improvements, as conditioned, are consistent with the ESL overlay.

The certified La Jolla Community Plan and Local Coastal Program Land Use Plan contain policies that address shoreline protective devices, protection and improvement of existing visual access to the shoreline, and policies stating that ocean views should be maintained in future development and redevelopment. In addition, the certified LUP requires that structures be set back adequately from the coastal bluff to protect the geologic integrity and visual resources of the coastal bluffs and shoreline areas. As conditioned, the proposed development is consistent with the shoreline hazards provisions and all other relevant provisions of the certified LUP. It is also consistent with the public access and recreation policies of the Coastal Act. Therefore, the proposed development, as conditioned, is consistent with the certified LCP and the relevant policies of the Coastal Act and can be approved.

7. Consistency with the California Environmental Quality Act (CEQA). The Commission incorporates its findings above in sections 1 through 7 regarding Coastal Act consistency and LCP consistency at this point in support of its CEQA findings. Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the

permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the certified LCP and the public access and recreation policies of the Coastal Act. Mitigation measures, including conditions addressing payment of the fee, revised plans and open space on the bluff face will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

2008 photograph of subject site from Coastal Records Project (Copyright © 2002-2010 Kenneth & Gabrielle Adelman - Adelman@Adelman.COM).



OCEAN

SAN DIEGO

LA JOLLA

UNDERWATER PARK

ECOLOGICAL RESERVE

LA JOLLA BAY

ANGEL'S FLIGHT STAIR LOCATION

SUBJECT SITE

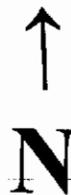
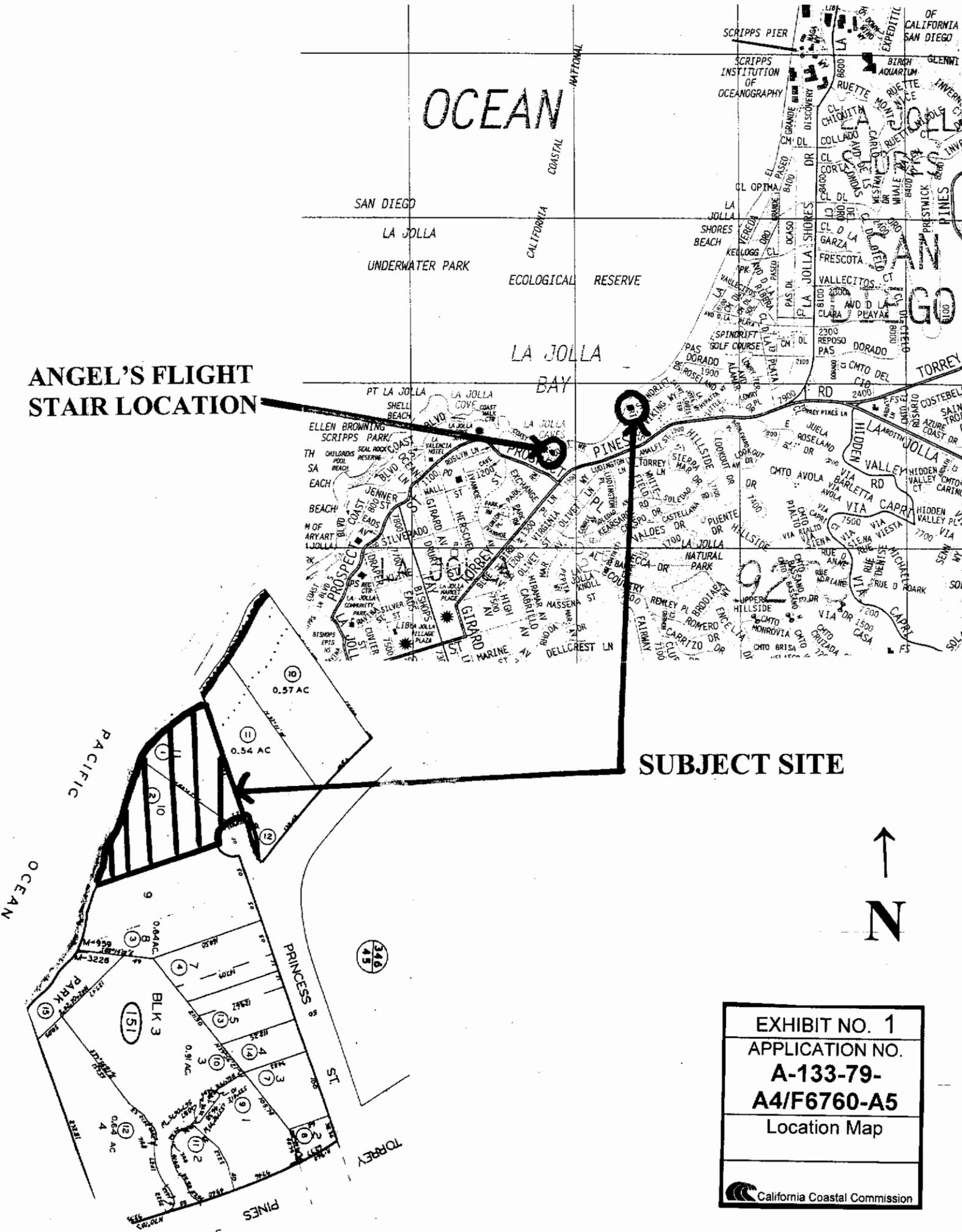
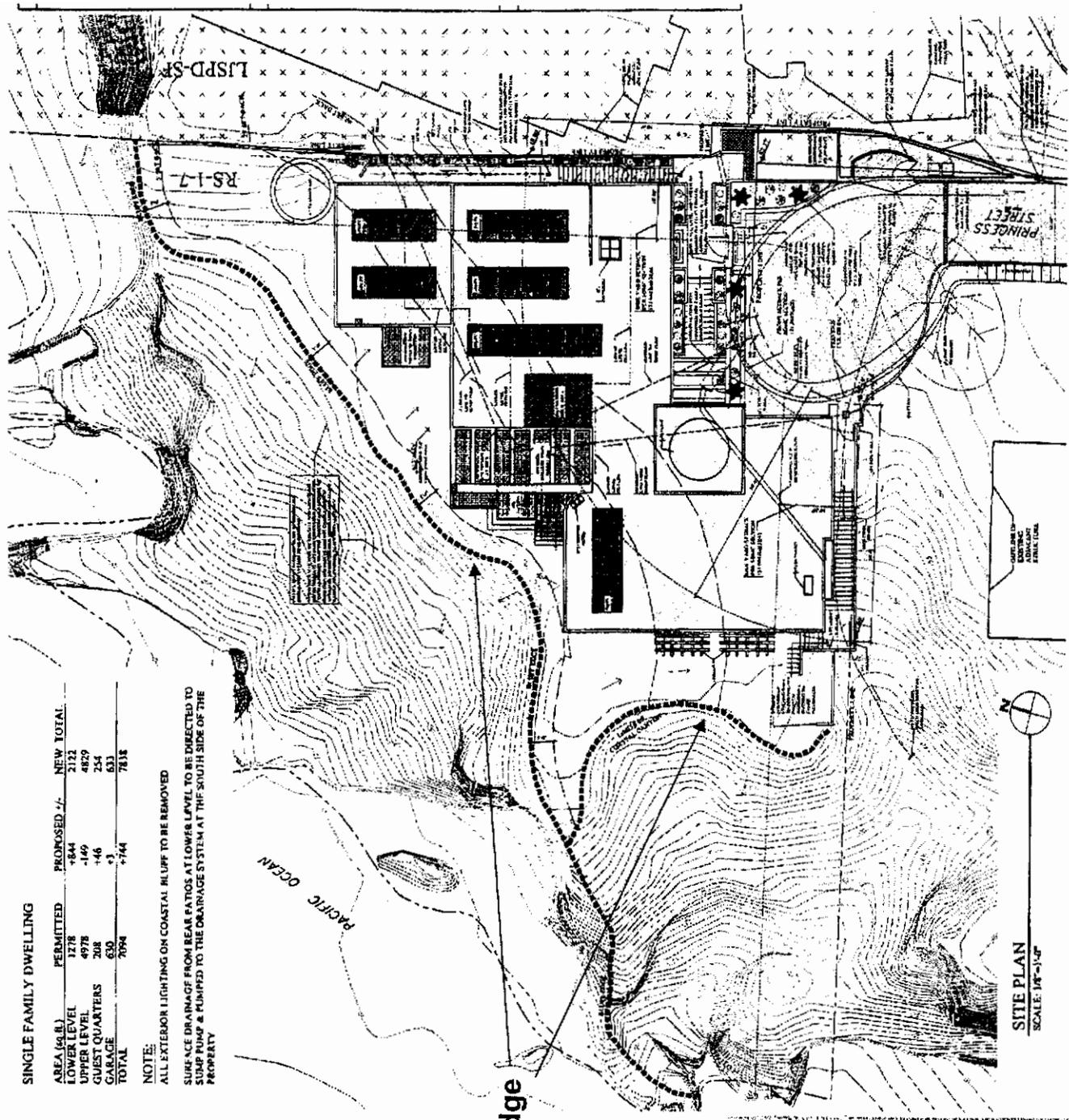


EXHIBIT NO. 1
APPLICATION NO.
A-133-79-
A4/F6760-A5
Location Map
 California Coastal Commission





SINGLE FAMILY DWELLING

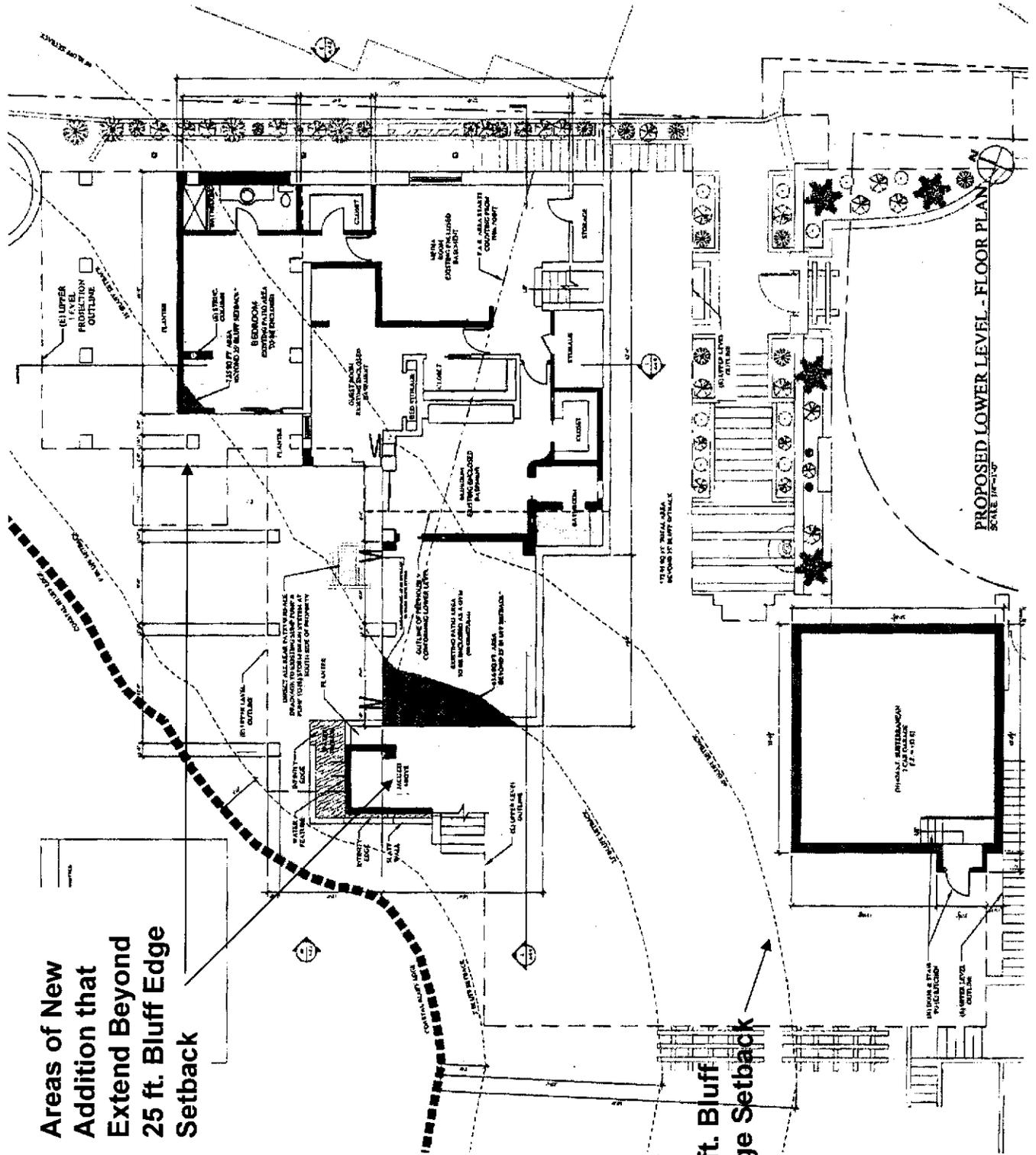
AREA (sq. ft.)	PERMITTED	PROPOSED +/-	NEW TOTAL
LOWER LEVEL	1278	+844	2122
UPPER LEVEL	4978	-146	4832
GUEST QUARTERS	208	+46	254
GARAGE	630	0	630
TOTAL	7694	+744	8438

NOTE:
 ALL EXTERIOR LIGHTING ON COASTAL BLUFF TO BE REMOVED
 SURFACE DRAINAGE FROM REAR PATIOS AT LOWER LEVEL TO BE DIRECTED TO
 SOAP PUMP & PUMPED TO THE DRAINAGE SYSTEM AT THE SOUTH SIDE OF THE
 PROPERTY

Bluff Edge

SITE PLAN
 SCALE: 1/8" = 1'-0"

EXHIBIT NO. 2
APPLICATION NO.
A-133-79-
A4/F6760-A5
Site Plan
California Coastal Commission



Areas of New Addition that Extend Beyond 25 ft. Bluff Edge Setback



25 ft. Bluff Edge Setback

40 ft. Bluff Edge Setback

EXHIBIT NO. 3
APPLICATION NO.
A-133-79-
A4/F6760-A5
Floor Plan – Lower Level
California Coastal Commission

PROPOSED LOWER LEVEL - FLOOR PLAN
SCALE 1/8" = 1'-0"

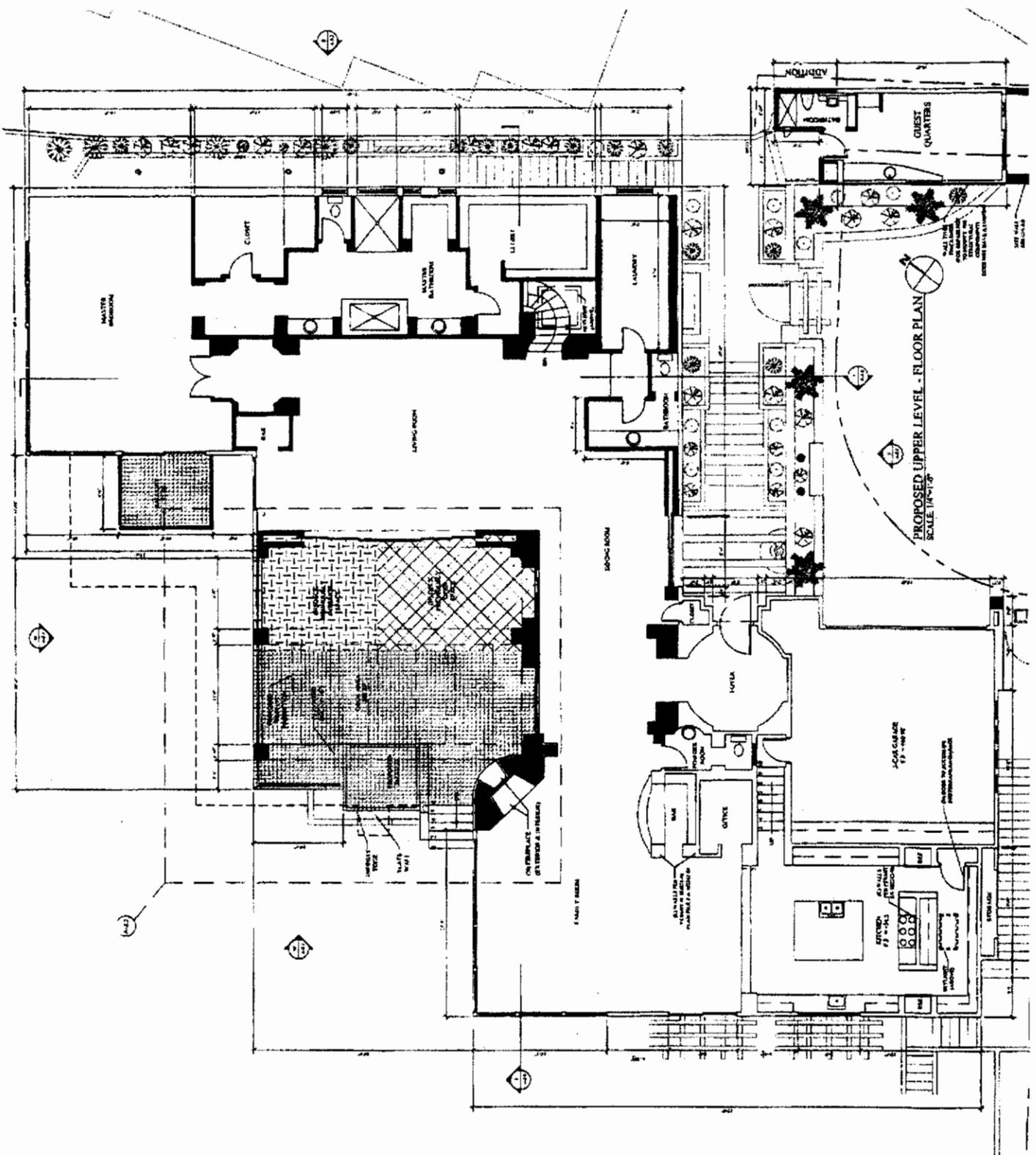
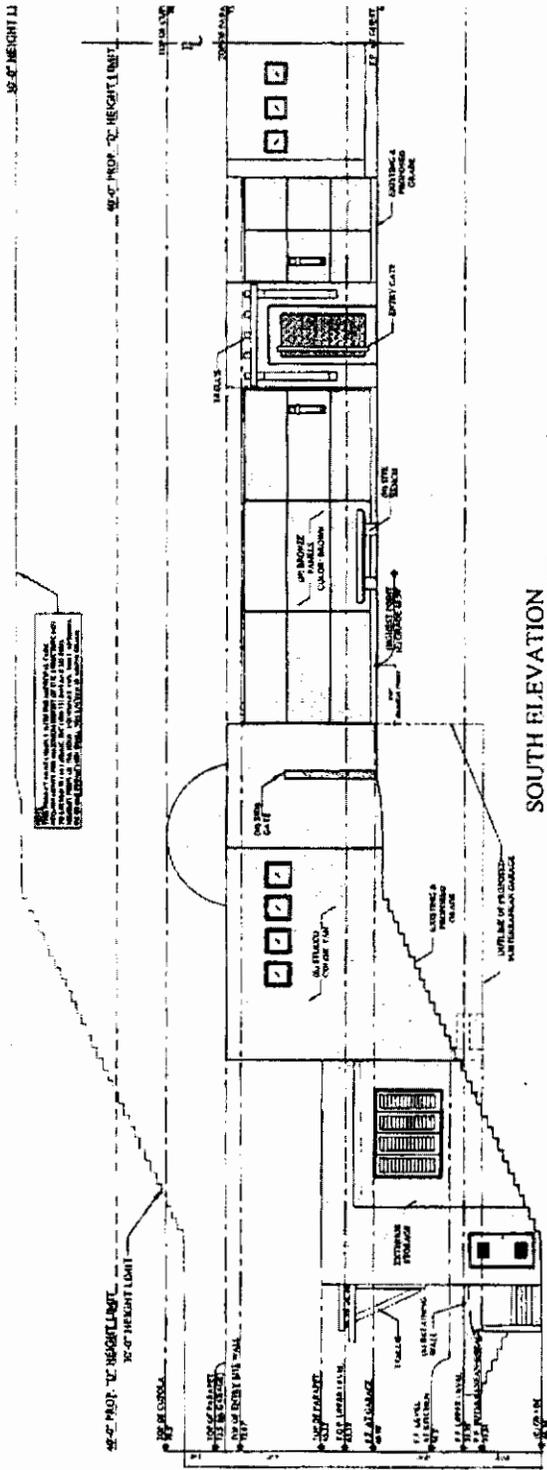
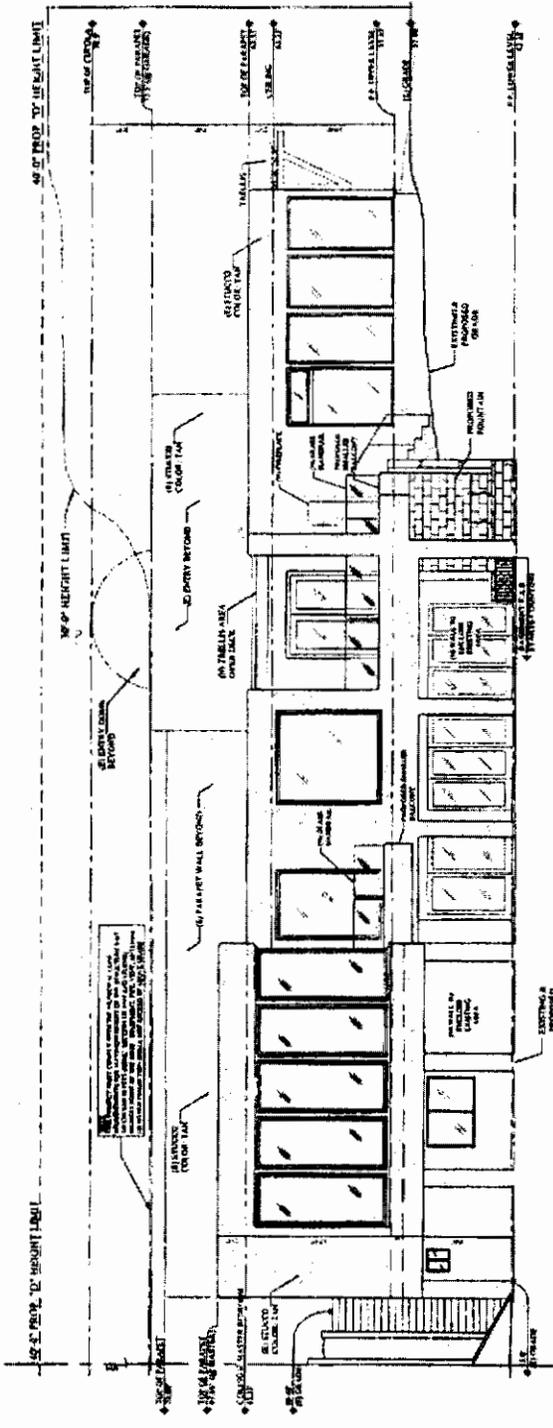


EXHIBIT NO. 4
 APPLICATION NO.
A-133-79-
A4/F6760-A5
 Floor Plan – Upper
 Level
 California Coastal Commission

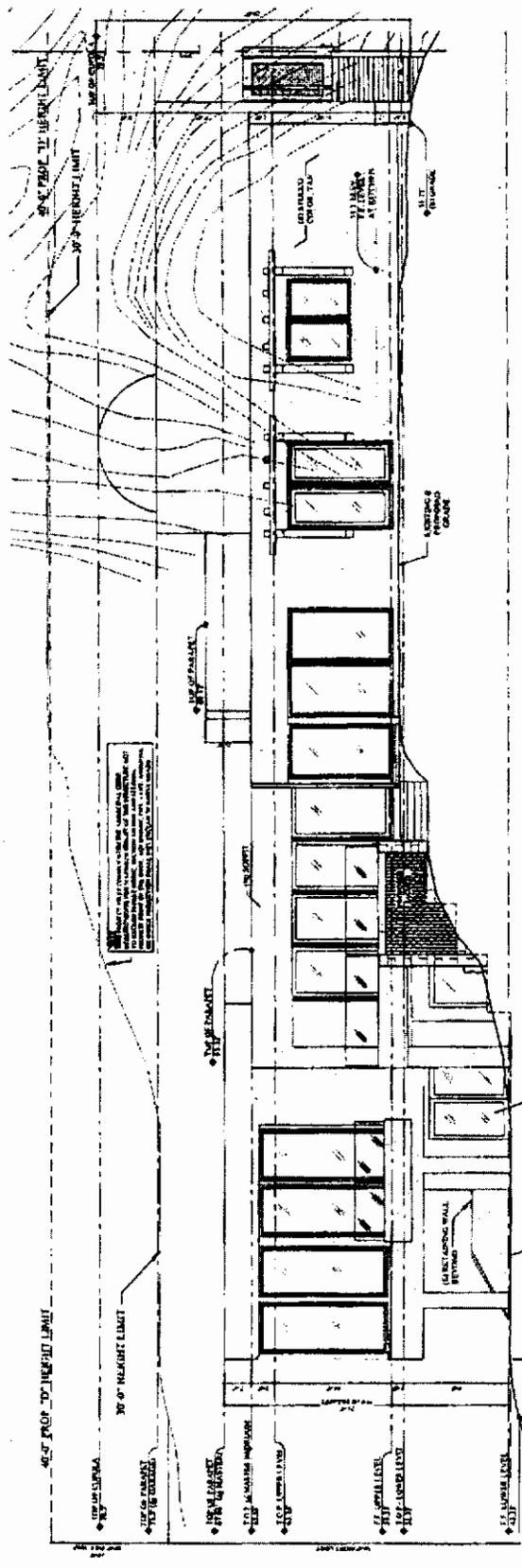


SOUTH ELEVATION
SCALE: 1/4" = 1'-0"

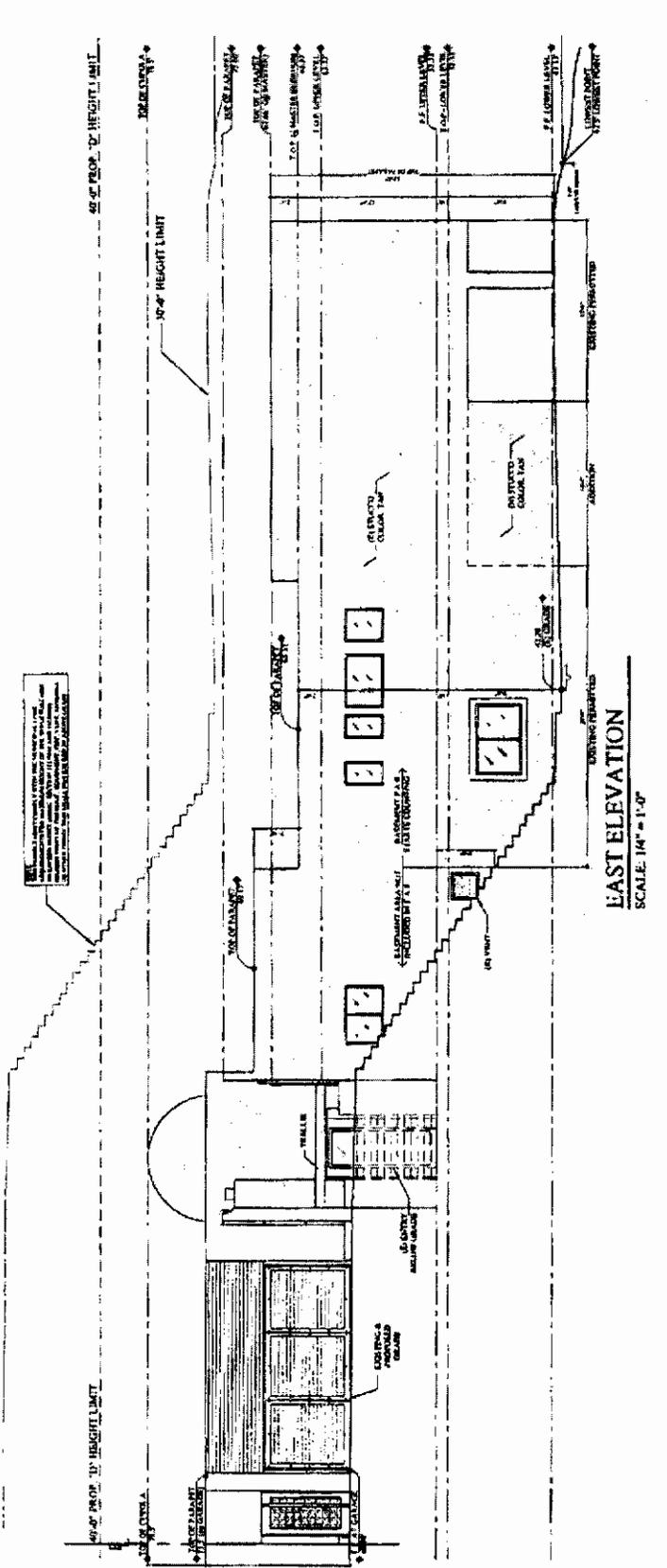


NORTH ELEVATION
SCALE: 1/4" = 1'-0"

<p>EXHIBIT NO. 5 APPLICATION NO. A-133-79- A4/F6760-A5 Elevations</p>
<p>1 of 2</p>
<p>California Coastal Commission</p>



WEST ELEVATION
SCALE: 1/4" = 1'-0"



EAST ELEVATION
SCALE: 1/4" = 1'-0"

ALL DIMENSIONS ARE IN FEET AND INCHES UNLESS OTHERWISE SPECIFIED.
ALL WALLS ARE 8\"/>

STAFF RECOMMENDATION

PASSED UNANIMOUSLY 9/20/79

Appeal No. 133-79
(Baker)
Hearing Opened: 6/19/79

DECISION OF REGIONAL COMMISSION:

Permit granted with conditions by San Diego Coast Regional Commission

PERMIT APPLICANTS:

Jane B. Baker

APPELLANT:

Anthony Ciani

DEVELOPMENT LOCATION:

One half mile east of La Jolla Cove, at 7957 Princess Street, La Jolla, City and County of San Diego (Exhibits 1, 2)

DEVELOPMENT DESCRIPTION:

Single story addition to existing two-story, single family residence (Exhibits 3, 4)

PUBLIC HEARING:

Opened on June 19, 1979 in Los Angeles

ADDITIONAL SUBSTANTIVE FILE DOCUMENTS: La Jolla Community Plan

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that, as conditioned, the development is in conformity with the provisions of Chapter 3 of the Coastal Act, 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, is located between the sea and the public road nearest the sea and is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Conditions.

This permit is subject to the following condition:

Public Access. Prior to the issuance of the permit, the applicant shall submit, for the review and approval of the Executive Director, a document irrevocably offering to dedicate to a public agency or private association approved by the Executive Director easements for public access to and along the shoreline in accordance with the provisions of this condition. The approved document shall be irrevocable for a period of 21 years running from the date of recordation. The documents shall be recorded free of all prior liens and encumbrances except for tax liens and shall constitute a covenant running with

9/18-

EXHIBIT NO. 6
APPLICATION NO.
A-133-79-
A4/F6760-A5
Original Staff Report for CDP #A-133- 79/F6760
1 of 6
 California Coastal Commission

the land in favor of the People of the State of California binding the applicant, heirs, assigns and successors in interest to the subject property. The documents shall provide for offers to dedicate easements for:

A. Lateral Access along the shoreline. The easement shall extend across the ocean frontage of parcel from the toe of the bluff seaward to the mean high tide line; where sea caves exist, the easement shall extend to the inland extent of the cave. The easement shall allow for passive recreational use by the public and shall allow accepting agency to post signs indicating that marine life cannot be removed from the area.

B. Vertical Access extending from princess drive to the mean high tideline. The easement shall be 5 ft. in width and shall extend along the southern edge of the property adjacent to the garage and down the bluff along the trail currently existing on the site (Exhibit 3). The exact location of the easement shall be plotted on a map subject to the review and approval of the Executive Director and shall be attached as an exhibit to the recorded document.

The easement shall be available for public pedestrian use from sun rise to sunset and for emergency rescue operations 24 hours per day. The terms of the easement shall allow the accepting agency, with the concurrence of the Coastal Commission or its successor in interest, to construct improvements to the accessway to ease the public's ability to reach the shoreline. The easement shall also allow the accepting agency to post signs informing the public of the existence of the accessway.

Nothing in this condition shall be construed to constitute a waiver of any sort or a determination on any issue of prescriptive rights or public trust lands which may exist on the parcel itself or on the designated easement.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description and History. The applicant proposes to construct a one-story, 3,566-sq. ft. addition to an existing 1,250-sq. ft. single-family house. The existing dwelling is two stories in height but is situated primarily below street level. The proposed addition, two ft. higher than the existing structure with the exception of a rotunda projecting six feet above the new roofline, would be $7\frac{1}{2}$ ft. above the centerline of the frontage road. The proposed project would be set back 35 ft. from the irregularly-shaped bluff and $2\frac{1}{2}$ ft. from the frontage road. No exterior grading would be required.

The proposed addition would be constructed on a parcel consisting of the lot on which the existing structure is situated and an adjacent undeveloped lot (Exhibit 2). The project site is a blufftop parcel located on a promontory overlooking the San Diego-La Jolla Underwater Park and Ecological Reserve, about $\frac{1}{2}$ mile east of La Jolla Cove. The site is located at the end of Princess Street, a residential cul-de-sac (Exhibit 2).

In June, 1978, the Regional Commission granted a permit for the proposed development. The permit was subject to conditions to assure the geologic stability of the development. The Regional Commission found that, as conditioned, the development was consistent with the provisions of Chapter 3 of the Act. Although the project site is between the first public road and the sea, the Regional Commission did not make a specific finding regarding the conformity of the development to the public access policies of the Act as required under Section 30604 of the Act. This decision was appealed to the State Commission, which

subsequently found that no substantial issue was raised by the appeal.

Subsequent to the State Commission action, the appellants filed for a Writ of Mandate with the San Diego County Superior Court. This action challenged, among other issues, the adequacy of the Commission decision due to the failure to make the requisite finding regarding public access. The trial judge ruled that the finding on public access was required prior to issuance of the permit and remanded the decision to the Regional Commission for a determination on the conformity of the project to the access provisions of the Act. The Court ruled that the Regional Commission could make this determination based on the prior record, or open the public hearing and make a determination based on both previously submitted and new evidence. Although noticed as a public hearing, the Regional Commission decided not to admit new evidence on the issue of public access. Based on the documents in the record, the Regional Commission found that access dedications would not be appropriate at the site due to safety constraints and resource protection concerns and that the development would, therefore, be consistent with the access policies of the Act. Over the past year, the applicant completed the construction of the addition which is the subject of this appeal. The appellants contend that the addition is sited over a trail traditionally used by the public to obtain access to the shoreline and Charolette Park, a City-owned oceanfront park.

2. Public Access. The proposed project site is located between the first public road and the sea on a promontory overlooking the San Diego-La Jolla Underwater Park and Ecological Reserve, about $\frac{1}{2}$ mile east of La Jolla Cove. The Coastal Act of 1976 requires that public access to and along the shoreline be maximized. In accordance with this policy statement Sections 30210 - 30212 of the Act provides:

In carrying out the requirement of Section 4 of Article 10 of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. (30210)

Development shall not interfere with the public's right of access to the sea where acquired through use... or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. (30211) (Emphasis Added)

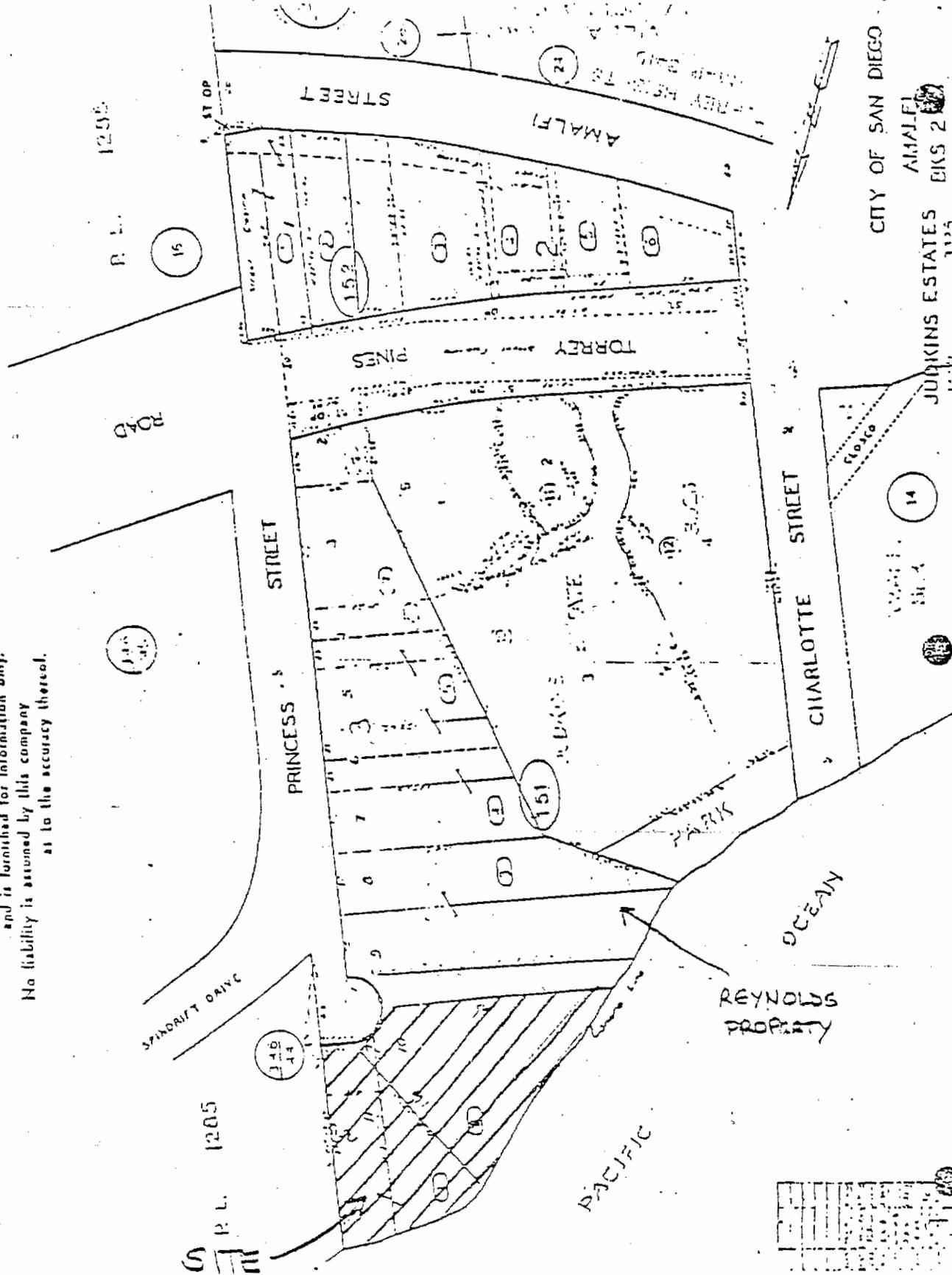
Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessways 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. (30212)

The project site is a blufftop lot overlooking the rocky shoreline adjacent to the La Jolla Underwater Park ecological reserve. To the south of the site is the .16 acre Charolette Park. Public access to the shoreline below and to the City park is currently available only at low tide by walking down coast from an accessway at La Jolla Shores $\frac{1}{4}$ -mile north of the site.

The Commission finds that access to this pocket beach is only available at low tide due to the promontories which impede access to the beach from the nearest accessway to the shoreline which is located $\frac{1}{4}$ mile up coast. The Commission concludes, therefore, that adequate access does not exist nearby. Although the public has historically had access over the project site, construction of the project has preceeded the use of this accessway, thereby diminishing the public's right of access to the state owned tidelands. An alternative accessway must, therefore, be provided to offset the burdens this development has placed on public's constitutional right of access and to assure the conformity of the project to the provisions of Section 30212 of the Act. The applicant contends that, because of the steepness of the bluff, the accessway would not be safe and therefore need not be provided under subsection (3) of Section 30212. This site has historically been used for access to the shoreline below. A site inspection revealed that it was not difficult to walk down the bluff face and, if minor improvements were made, the access way could be easily traversed with little damage to the landforms. The Commission concludes that public access can be provided consistent with public safety and must, therefore, be provided to find the proposed project consistent with the Coastal Act.

Prior to the construction of the proposed addition, the site was the last remaining vacant parcel adjacent to the subject pocket beach and Charolette Park. Numerous letters have been submitted stating that the public had continuously used the project site to gain access to the shoreline and to the adjacent Charolette Park. This is the only trail to gain access to this pocket beach and city-owned Oceanfront park. Evidence of a well worn trail currently exists on the edge and face of the bluff, although the portion of the trail extending from the road to the bluff top has been covered by the addition to the residence which is the subject of this application. The appellants contend that since the addition interferes with public access as established through historic use, the project can not be found consistent with Section 30211 of the Coastal Act. The appellants concede, however, that since the addition is constructed denial of the project may not be an acceptable solution. The Commission notes that the Coastal Act requires that public prescriptive rights be protected wherever they exist. However, as set forth in the Statewide Interpretive Guidelines on public access development may be sited in an area of historic public use where equivalent areas for public access are provided. The Commission has noted in previous appeals [401-78 (Tree)] and the guidelines that such relocated accessways to compensate for the lost public accessway and find the project consistent with Section 30211 of the Act. The Commission finds that the submitted documents give clear indication of the historic use of the parcel. Because of the historic use and the fact that access to the cove beach below the site and city-owned oceanfront park adjacent to the site would be totally precluded by approval of the project without provisions for public access the Commission cannot find the project as proposed consistent with the provisions of either Sections 30211 or 30212 of the Act. Only, as conditioned, to provide an access path equivalent to the historic use area of the site and to provide lateral access along the shoreline can the commission conclude that the project is consistent with the public access provisions of the Coastal Act.

This plat is not a survey of the land
and is furnished for information only.
No liability is assumed by this company
as to the accuracy thereof.



CITY OF SAN DIEGO

AMALFI

JUDKINS ESTATES

14

P. L. 1205

P. L. 1255

REYNOLDS PROPERTY

EXHIBIT 2

6760

EXISTING

BASELINE
BASELINE
BASELINE

BASE OF CLIFF

TOP OF CLIFF

EXISTING HOUSING

SIDE PLAN



ADDITION

EXISTING HOUSING

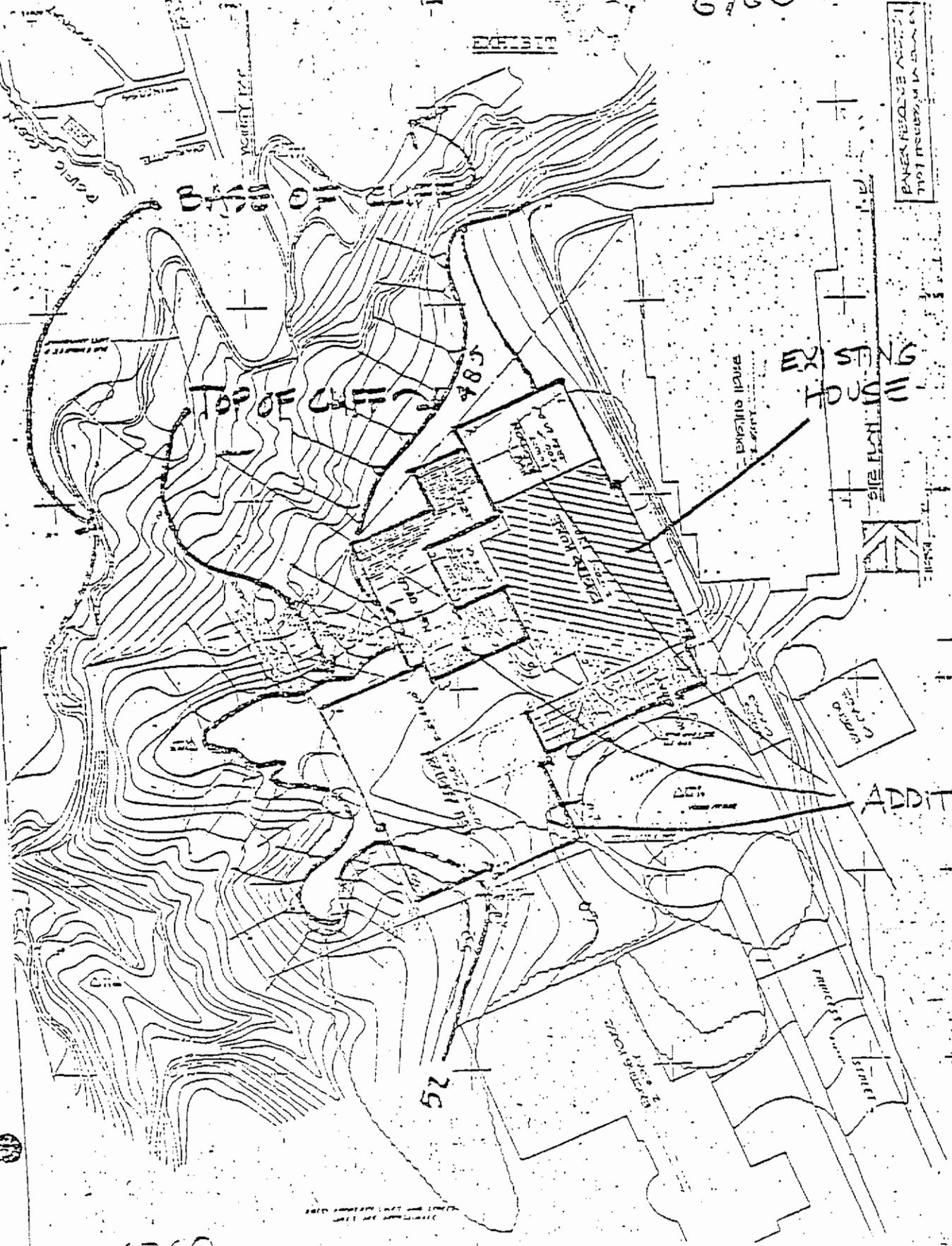
52

2701 S. 10th St.

Franklin St.

EXISTING

NOT TO SCALE



The Coast Walk Trail

Legal Description:

Coast Walk, a dedicated street between Cave Street and Torrey Pines Road, adjacent to Lots 15 through 27, Block 48, and Lots 1 through 8, and Lots 20 and 21, Block 46, La Jolla Park Subdivision, in the City of San Diego, California.

Historical Background:

Overlooking the La Jolla Caves area, approximately 100 feet above the shoreline, is a bluff top pathway known as the Coast Walk Trail. This dirt pathway, amidst natural and introduced ornamental plantings, meanders approximately 1/2 mile northeasterly from behind the Cave Curio Shop at Goldfish Point up to and across a wooden trestle bridge over a steep gorge known as the "Devil's Slide." Here it continues northeasterly from the bridge until it meets Coast Walk, a paved, dead end street which connects with Torrey Pines Road to the east.

This pedestrian trail, once named Angel's Walk, affords a panoramic view of the Pacific Ocean, beach, and shoreline below. Archeological artifacts found along the bluffs and shoreline suggest that the trail may have been in existence since prehistoric times, where it may have served as a hunting trail. In recorded times, it has been the only practical means of lateral pedestrian access along the bluffs since the 1860's. Because it is located within a dedicated street, the trail serves as a buffer against residential or commercial development and the fragile coastal environment below.

The western terminus of the trail at Goldfish Point (also known as Alligator Head) and from stairs located in a man-made tunnel beneath the La Jolla Cave & Shell Shop (dug in 1902 by Gustav Schulz, German-born engineer and professor of philosophy), provide access to the western approaches of the tidepools and caves below the trail. These seven deep sea caves are cut into the sandstone cliffs below Coast Walk Trail. These caves, known as the "Mammoth Caves," were used as bathhouses during low tide at the turn of the century and as suspected smugglers' dens for illegal aliens, bootleg whiskey and saboteurs. The sandstone cliffs above the caves serve as rookeries for the Common gull, the endangered California brown pelican, and black Cormorant, which are considered sacred birds to Native Americans.

To the west of the caves is the La Jolla Cove area, which has been a popular resort area since 1860. In 1887, the Pacific Coast Land Bureau developed the area around the cove into the La Jolla Park subdivision. One year later the La Jolla Park Hotel was built on the ocean side of Prospect Street and Grand (later Girard) Avenue, but it did not open until 1893 (the hotel burnt down in the latter part of 1894).

One year later, on March 15, 1894, the San Diego, La Jolla & Pacific Beach Railroad extended its line from Pacific Beach to La Jolla, ending some 1500 yards shy of the hotel. One month later the line finally reached the hotel.

EXHIBIT NO. 7

APPLICATION NO.

A-133-79-

A4/F6760-A5

History of Coast Walk
and Angel's Flight
Stairway

1 of 4

 California Coastal Commission

The railroad (known as the "Abalone Limited") attracted visitors to the cove, tidepools and caves through special attractions and promotions. A pavillion, bath house and a small "tent city" were built at the Cove for visitors and residents. Spectators would walk up from the Cove area along Angel's Walk to the crest of the bluffs overlooking the caves where balloon rides were given.

One of the more noteworthy attractions along the trail was a series of dives off "Dead Man's Leap" given by "Professor" Horace Poole. In 1898, the railroad sponsored the good professor to leap from a diving board off the cliffs into the shallow waters below. On July 4th, 1898, Professor Poole, after dousing himself with inflammable oil, made one of his more spectacular dives off the bluffs engulfed in flames!

Cliff diving off the bluffs was banned in 1899, when Bert Reed, the son of the mayor of San Diego, died from injuries sustained after an unauthorized plunge off of the bluffs. Over the years other reckless individuals have jumped off the bluffs along the Coast Walk Trail.

People walked up from the bath house along Angel's Walk to an area between Dead Man's leap and Devil's slide where they were lowered over the side of the cliff in buckets in order to dangle above the water to peer into the caves below.

To provide access to the eastern approaches of the caves (notably the legendary "White Lady" cave) and the abalone beds to the northeast, in 1899 the railroad installed a wooden staircase from the end of Park Row down Devil's Slide to the beach below. At that time Park Row was known as Beach Row and the top of the cliffs was transversed by Cave Street. Cave Street was a street in name only. Due to the fact that the cliffs were unstable, vehicular traffic was prohibited. In 1913, Cave Street was renamed Coast Boulevard. In 1920 Coast Boulevard was declared a dedicated street. This farsighted action prevented buildings from encroaching upon the scenic bluffs.

During the Depression a series of public work projects were conducted by the local welfare committee of the La Jolla Chamber of Commerce. One of these projects was the making of an attractive coast walk along the original Angel's Walk foot trail. The entire trail was reconditioned and made safer by the installation of wooden fences and benches. Erosion-control check dams and cobblestone brow ditches were also added. The stairs leading down Devil's Slide were refurbished. Wooden foot bridges were built over Devil's Slide Gorge as well as two other smaller gullies along the trail (Local residents who have lived in the area since before 1920 all agree that no bridge ever crossed the Devil's Slide area before 1929). Stands of Canary Island Palms and other non-native plantings were planted in the canyon and along the trail in order to prevent erosion. This local attempt at public relief predates any Federal programs by two years.

In 1963, the entire trail and a paved roadway east of the bridges, which connected to Torrey Pines Road, was changed from Coast Boulevard to Coast Walk. In the last few years, the two smaller bridges east of the one over Devil's Slide have been relaced with concrete culverts. In 1962, the stairs leading down

to the beach were burned beyond repair.

In the 1970's, an underwater park and ecological reserve were created to protect the fragile ecosystems. A concrete stairway was planned to be installed in order to replace the burnt one, but prohibitive construction costs, as well as the need to limit access to the caves, underwater park, and the ecological reserve, were cited as reasons not to install the replacement concrete stairway. Devil's Slide is still used by some individuals to climb down to the area below, even though the descent is steep and dangerous.

Historical Significance:

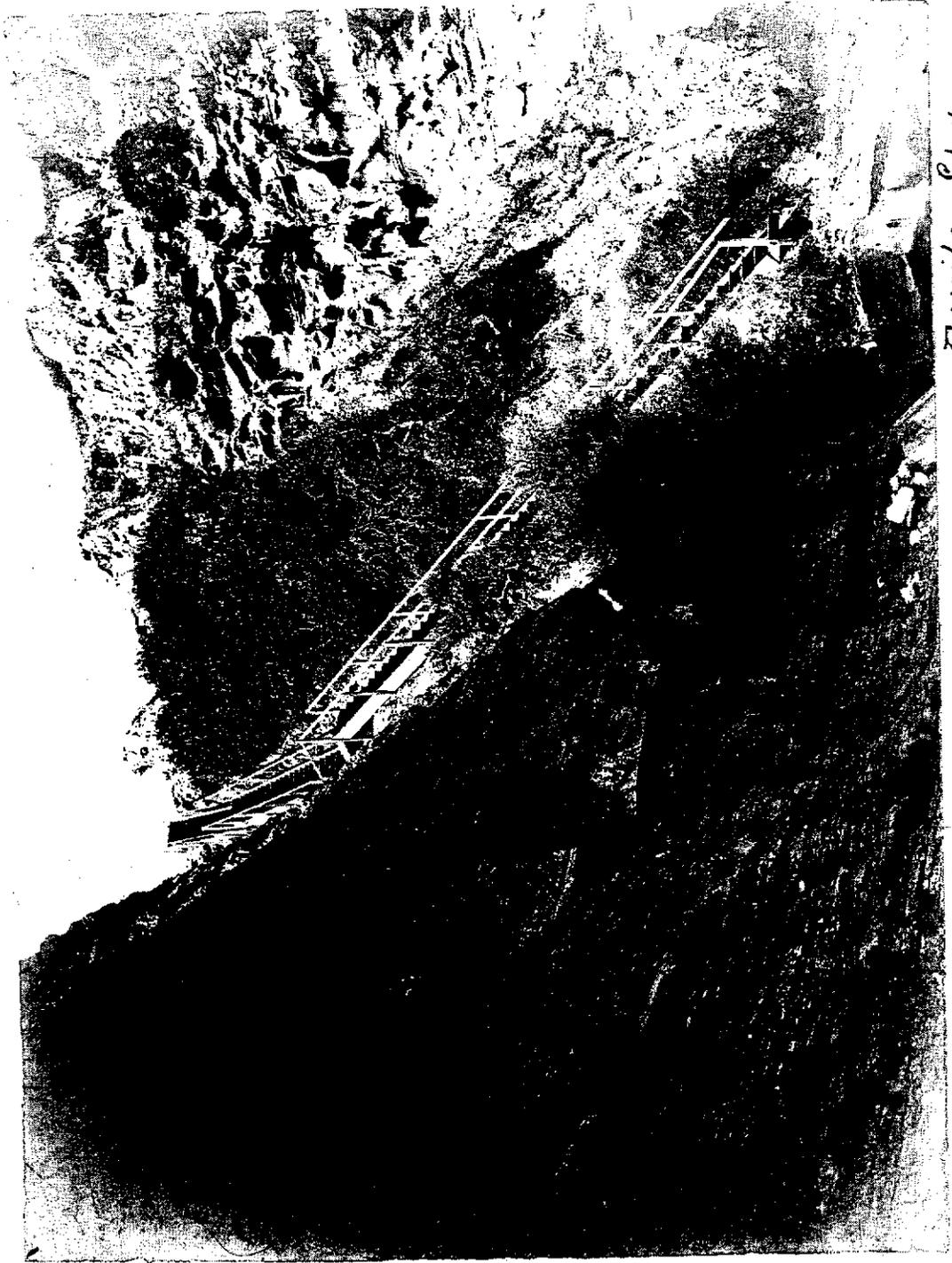
The natural and scenic wonders along and below Coast Walk Trail have been a local attraction since the late 1860's. This pedestrian trail, once named Angel's Walk, affords a panoramic view of the Pacific Ocean, beach, and shoreline below. This foot path, refurbished in 1931 and renamed the Coast Walk Trail in 1963, has served as the only practical means of lateral pedestrian access along the bluffs.

Even though the area along, above, and below the trail was exploited by local real estate developers and railroad companies during the turn of the century in order to attract customers, today it serves as a buffer against encroachment by commercial or residential development. The area along the trail provides a feeling of what La Jolla might have been like before its post-WWII population growth, affording the visitor one of the most beautiful and unspoiled recreational resources in La Jolla, as well as along the entire Pacific Coast.

Bibliography

Books:

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- MacPhail, Elizabeth C.. The Story of New San Diego and Its Founder Alonzo E. Horton. San Diego: The San Diego Historical Society, 1979.
- Randolph, Howard S. F.. La Jolla: Year by Year. La Jolla: the Library association of La Jolla, 1946 (reprinted 1955).
- Pourade, Richard F.. The Glory Years. San Diego: San Diego Union-Tribune Publishing Company, 1964.
- Schaelchlin, Patricia A.. La Jolla: the Story of a Community, 1887-1987. La Jolla: The Friends of the La Jolla Library, 1988.



Devils Slide.
ca 1906

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is effective this 14 day of July, 2008, by and between Dianne Kretowicz and Ure Kretowicz, as Trustees of The Princess Trust (collectively "Kretowicz") and the California Coastal Commission, an agency of the State of California (the "Commission") in relation to San Diego County Superior Court Case No. GIC 851915, entitled *Dianne Kretowicz and Ure Kretowicz v. California Coastal Commission, et al.* and related cross complaint, with reference to the facts set forth herein.

RECITALS

A. Kretowicz filed an action in the Superior Court of California, County of San Diego, SDSC Case No. GIC 851915 (the "Kretowicz Action") against the Commission in connection with the Commission's claimed right to an easement for public access over residential property owned and occupied by Kretowicz, located at 7957 Princess Street, in the community of La Jolla, City of San Diego, California ("Property"). The Commission filed a Cross-Complaint to the Kretowicz Action alleging, among other things, violations of the Coastal Act ("Commission Cross-Complaint").

B. On September 20, 1979, the State Commission took action to approve coastal development permit A-133-79 ("Permit A-133-79") for the Property. The Commission asserts that as a condition to that approval it required a previous owner of the Property to offer lateral and vertical public access easements across the Property. No offer to dedicate easements over the Property pursuant to Permit A-133-79 was ever recorded.

C. On July 22, 2004, Kretowicz submitted an application to the Commission to modify an existing garage and to install a barbeque, patio, landscaping and related improvements on the Property and to remove certain wooden timber stairs, palm trees and portions of a retaining wall ("Kretowicz Permit Application"). The Commission required Kretowicz to offer to dedicate public access easements over the Property pursuant to Permit A-133-79 as a condition of approval of the Kretowicz Permit Application.

D. The parties dispute the Commission's authority to require an offer to dedicate any easement over the Property pursuant to Permit A-133-79.

E. On January 19, 2007, the parties entered into that certain Stipulation for Entry of Judgment ("Original Stipulation") to settle and resolve their differences relating to the Property. Among other things, the Original Stipulation required the Commission to consider approval of an amended coastal development permit. At a hearing held on June 14, 2007, the Commission refused to grant the proposed amendment.

F. Taking into consideration guidance received from the Commission at the June 14, 2007 hearing, the parties now desire to settle and resolve their differences relating to the Property as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the parties agree as follows:

101099204.3
Settlement Agreement
Kretowicz/California Coastal Commission

1

EXHIBIT "A"

EXHIBIT NO. 8
APPLICATION NO. A-133-79- A4/F6760-A5
Settlement Agreement
1 of 10
 California Coastal Commission

AGREEMENT

1. Incorporation of Recitals. Recitals A through F, inclusive, are incorporated herein by this reference and acknowledged by all parties hereto as accurate.
2. Original Stipulation Void. This Agreement is intended to supersede and replace the Original Stipulation in its entirety. The parties hereby agree that the Original Stipulation is void.
3. New Kretowicz Permit Amendment Application. Within ninety (90) days after the execution of this Agreement, Kretowicz shall submit a new coastal development permit amendment application ("Amendment Application") consistent with the Kretowicz Permit Application, and also seeking approval for (i) deletion of the requirement to offer to dedicate vertical public access identified in Permit A-133-79, (ii) an unpermitted gate and fence, and (iii) the other existing improvements to the Property constructed without the benefit of a coastal development permit as listed in Exhibit A, and (iv) a proposal to pay \$3.3 million. Kretowicz shall provide any additional information that Commission staff deems necessary to complete the Amendment Application within 30 days of receipt of notice from Commission staff that such information is necessary, subject to Kretowicz's appeal right to the Coastal Commission pursuant to California Code of Regulations, title 14, section 13056. If the Commission approves the Amendment Application ("Approved Amendment"), Kretowicz shall comply with all terms and conditions of the Approved Amendment within the deadlines set forth in the conditions. If the Commission denies the Amendment Application in full or if, within twenty (20) days following the date of the final Commission action on the Amendment Application, Kretowicz provides written notice stating that Kretowicz does not accept the Commission's action, this Agreement shall be null and void.
4. City Permit Process. The parties acknowledge that Kretowicz has submitted development applications to the City of San Diego ("City") pursuant to the January 8, 2008 City Administrative Hearing Officer determination which include, without limitation, a site development permit amendment ("City Permit Application"). The City will process the City Permit Application and consider its approval in advance of the Commission's discretionary action on the Amendment Application. Although the City is not exercising coastal development permit jurisdiction in connection with the City Permit Application, the parties acknowledge that the City's decision to approve, deny or conditionally approve the City Permit Application may affect the scope and content of the Amendment Application. Accordingly, within thirty (30) days following the final determination by the City in connection with the City Permit Application, in their sole discretion Kretowicz either will make revisions necessary to bring the Amendment Application into conformity with the City's action on the City Permit Application or will notify the Commission that Kretowicz does not accept the City's action, in which event this Agreement shall be null and void.
5. Grant of Emergency Lifeguard Easement. If the Agreement is not terminated pursuant to Section 3 hereof, Kretowicz will grant the City of San Diego ("City") an easement for emergency lifeguard access and no other purpose ("Lifeguard Easement") upon the issuance of the permit for the Approved Amendment. The Lifeguard Easement shall be four (4) feet wide along the southern Property boundary.
6. Payment. If the Agreement is not terminated pursuant to Section 3 or Section 4 hereof, Kretowicz will pay a total of Three Million Three Hundred Thousand Dollars

(\$3,300,000.00) ("Financial Obligation"), in installments as set forth below, to the State Coastal Conservancy or other entity as directed by the Executive Director of the Commission. The Commission may direct use of the payment to fund various coastal access projects in the La Jolla area, including a grant of \$300,000 to the City of San Diego exclusively for such purposes, although Kretowicz will have no involvement in such projects and this Agreement is not contingent upon any such project.

6.1 Payment Schedule. Subject to the provisions of Section 6.2 below, the Financial Obligation shall be satisfied as follows:

6.1.1 \$800,000 shall be paid within 120 days of the Commission's approval of the Approved Amendment; provided, that if prior to the expiration of said 120 days the Commission staff notifies Kretowicz in writing of its intention to issue the Approved Amendment, Kretowicz shall make the initial payment as a condition of permit issuance. The Commission staff shall give ten (10) days advance written notice of its intention to issue the Approved Amendment.

6.1.2 An additional \$1,000,000 shall be paid every twelve months thereafter, not to exceed a total payment of \$3,300,000.

6.1.3 The twelve month deadline referenced in Section 6.1.2 shall run from the previous payment deadline, regardless of whether the prior payment was timely made.

Late payments shall include interest at the legal rate (presently 10%) in accordance with Code of Civil Procedure section 685.010. Interest shall be in addition to any penalties imposed pursuant to section 8 hereof.

6.2 Issuance of Approved Amendment. Commission staff will use best efforts to review all documents that must be approved by the Executive Director prior to issuance of the Approved Amendment and will timely process and issue the Approved Amendment following the Commission's approval of the same. Kretowicz will timely submit all documentation necessary for the issuance of the Approved Amendment.

6.3 Security. The Financial Obligation will be memorialized in a promissory note secured by a second position trust deed on the Property, which shall be a condition of issuance of the Approved Amendment. At any time, Kretowicz shall have the unilateral right to replace the promissory note and deed of trust with a letter of credit in a form reasonably satisfactory to the Executive Director of the Commission. The Commission agrees to sign, notarize and record a reconveyance or other document adequate to release the encumbrance of the trust deed from the Property upon such substitution of security. The security shall be subject to the following requirements:

6.3.1 The first trust deed on the Property shall not exceed \$3 million.

6.3.2 As a condition of the issuance of the Approved Amendment, Kretowicz shall obtain a MAI appraisal certifying that the fair market value of the Property is at least ten million dollars (\$10,000,000). Kretowicz shall obtain a renewed MAI appraisal every twelve months thereafter, until all payments have been made.

6.3.3 The fair market value (as reflected in the annual appraisal) at all times shall exceed the combined outstanding principal balances of the first trust deed and the second trust deed (or substituted security pursuant to Section 6.2) by \$3,700,000. If such equity is not maintained, Kretowicz shall promptly substitute the second trust deed and promissory note with a letter of credit in an amount equal to the then-outstanding Financial Obligation. The form of letter of credit shall be reasonably acceptable to the Executive Director of the Commission.

7. Dismissal of Claims; Court's Retention of Jurisdiction. Within 45 days of the date hereof, the parties shall seek entry of an order in a form mutually acceptable to the parties providing that the Court shall retain jurisdiction to enforce this Agreement until performance in full of its terms pursuant to Section 664.6 of the California Code of Civil Procedure. Within 30 days following entry of such order, Kretowicz shall dismiss the Kretowicz Action without prejudice and the Commission shall dismiss the Commission Cross-Complaint without prejudice. The parties shall be permitted to re-file these actions if the Settlement Agreement is terminated or deemed null and void, in which case the parties shall revert to their respective legal positions before this Agreement was executed, as if the litigation had been tolled. Neither party shall assert any defense or theory which would prevent the other party from re-instituting its claims.

8. Violation of Terms of Agreement Pursuant to Stipulation. Should Kretowicz violate any term set by this Agreement, Kretowicz shall be liable for a penalty in the amount of two hundred fifty dollars (\$250.00) for each day Kretowicz is in violation. Before any such penalty is imposed, the Commission shall give Kretowicz thirty (30) days written notice (by certified mail, return receipt requested) of the Commission's intent to enforce this penalty provision. If at the end of such thirty (30) days Kretowicz has failed to cure the violation, the Commission may enforce this penalty provision for the entire period of non-compliance and regardless of whether Kretowicz has subsequently complied. Kretowicz shall pay the Commission such penalty within twenty (20) days of receipt of the Commission's written notice (by certified mail, return receipt requested) to enforce this penalty provision. Payment of the penalty shall be computed from the first day in which Kretowicz violated the Agreement. Payment of such penalty shall not relieve Kretowicz of his duties under the Agreement. Kretowicz may seek an extension of any deadline in this paragraph and the Commission's Executive Director may grant the extension for good cause, in which case Kretowicz would not be liable for a penalty during that extension.

9. Commission Access to Site. Kretowicz agrees to provide access to the Property upon receipt of 24 hours advance notice and an opportunity for Kretowicz to be present. Nothing in the Agreement is intended to limit in any way the right of entry or inspection that any agency may otherwise have under applicable law. Commission staff may enter and move freely about the portions of the Property on which the development which is the subject of this Agreement is located, and, to the extent allowed by law, on adjacent areas of the Property to view the areas where the development is being performed pursuant to the requirements of the Agreement for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of Kretowicz in carrying out the terms of the Agreement.

10. Mutual Release. The parties hereto intend and agree that this Agreement shall be effective as a full and final accord in satisfaction and general release of and from all claims, rights or causes of action arising out of or related to the Kretowicz Action and the Commission Cross-

Complaint ("Released Matters"). In furtherance thereof, the parties acknowledge that they are familiar with Section 1542 of the Civil Code of the State of California which provides as follows:

"A general release does not extend to claims which the creditor does not know or expect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The parties expressly waive and release any and all rights or benefits which they have or may have with respect to the Released Matters under Section 1542 of the Civil Code of the State of California, any successor statute or any similar law or rule of any other jurisdiction. In connection with such waiver and relinquishment, the parties acknowledge that they are aware that claims or facts in addition to, or different from, those which they presently know or believe to exist may be discovered and that the release herein given shall be and remain in effect as a full and complete release notwithstanding the discovery of the existence of any additional common, new or different claims or facts. However, nothing in this Agreement constitutes a waiver of the Commission's authority to enforce violations of the Coastal Act that are not addressed in the Amendment Application.

11. Enforcement of Settlement Agreement.

11.1 Kretowicz and the Commission hereby jointly request the Court to retain jurisdiction of this case and over Kretowicz and the Commission personally until final performance of this Agreement and to hear and determine motions to enforce this Agreement under Code of Civil Procedure section 664.6. This joint request includes tolling of any applicable statute, rule or court order affecting timely prosecution of this action, including without limitation the 5-year statute (Code of Civil Proc. section 583.330).

11.2 The Court also retains jurisdiction for the purpose of enabling any party to this litigation to apply to the Court for any further orders or directions as may be necessary and appropriate for the Agreement's construction, execution, and enforcement of the Agreement pursuant to California Code of Civil Procedure sections 128(a) (4) and 664.6.

12. Miscellaneous.

12.1 No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of the Commission's duties pursuant to applicable law with regard to the Property. This Agreement does not in any way compromise, limit, control or direct the discretionary authority of the Commission with regard to pending or future permit applications.

12.2 No Admission of Liability. Nothing in this Agreement shall be construed as an admission by any party of any liability or wrongdoing in connection with the Kretowicz Action, the Commission Cross-Complaint or the Property.

12.3 Counterparts. This Agreement may be executed in counterparts, all of which, when taken together, shall constitute a fully executed original.

12.4 Entire Agreement. This Agreement constitutes the final and exclusive settlement agreement between the parties hereto and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein.

12.5 Cooperation. Each party agrees to cooperate and to perform such further acts and to execute and deliver any and all further documents that may be reasonably necessary to effectuate the express purposes of this Agreement in a timely manner.

12.6 Modification. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the parties.

12.7 Construction. This Agreement was not drafted by any one party and shall not be construed or interpreted against any one party.

12.8 Severability. If any provision or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

12.9 Successors and Assigns. Each and all covenants and conditions of this Agreement shall inure to the benefit of, and shall be binding upon, the successors in interest, assigns, and legal representatives of the parties hereto and shall run with the land.

12.10 Governing Law. The parties hereby agree that this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. In mutual recognition of the fact that this Agreement is to be performed in San Diego County, California, the parties agree that in the event that any civil action is commenced regarding this Agreement, San Diego County, California, is the proper county for the commencement and trial of such action.

12.11 Advice of Counsel. The parties, and each of them, represent and declare that in executing this Agreement they have relied solely upon their own judgment, belief and knowledge, and the advice and recommendation of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by the other parties hereto or any other person.

12.12 Notice. Any notice to be given or other document to be delivered by any party to another party under this Agreement may be deposited in the United States mail in the State of California, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service, or by facsimile addressed to the party for whom intended as follows:

To Kretowicz: Dianne and Ure Kretowicz, Trustees of The Princess Trust
4365 Executive Dr., Suite 600
San Diego, CA 92121
Facsimile: (858) 452-3600
Telephone: (858) 458-9700

With a copy to: Luce, Forward, Hamilton & Scripps LLP
600 West Broadway, Suite 2600
San Diego, CA 92101
Attn: Jeffrey A. Chine, Esq.
Facsimile: (619) 446-8275
Telephone: (619) 699-2545

To Commission: Lee McEachern
California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108
Facsimile: (619)767-2384
Telephone: (619) 767-2370

And a copy to Lisa Haage, Chief of Enforcement
California Coastal Commission
45 Fremont Street, 20th Floor
San Francisco, CA 94105-2219
Facsimile: (415) 904-5400
Telephone: (415) 904-5200

With a copy to: Jamee Jordan Patterson, Esq.
Supervising Deputy Attorney General
State of California
P.O. Box 85266
110 West A St., Suite 1100
San Diego, CA 92186-5266
Facsimile: (619) 645-2012
Telephone: (619) 645-2023

Any party may from time to time, by written notice to the other, designate a different address, which shall be substituted for the one above specified. Unless otherwise specifically provided for in this Agreement, all notices, payments, demands or other communications shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery or (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iii) the immediately succeeding business day after timely deposit with Federal Express or other equivalent overnight delivery system or (iv) if sent by facsimile, upon confirmation if sent before 5:00 p.m. on a business day or otherwise on the business

day following confirmation of such facsimile, and provided that notice is also sent on the same day by one of the methods described above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

Dianne Kretowicz, Trustee

California Coastal Commission

By: *Signature on file*

By: _____
Its: _____

Ure Kretowicz, Trustee

Signature on file

By: _____
Its: _____

By: _____

APPROVED AS TO FORM:

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

Signature on file

By: _____
Jeffrey A. ~~Chin~~, Attorney for Dianne Kretowicz and Ure Kretowicz, as Trustees of The Princess Trust

OFFICE OF ATTORNEY GENERAL

By: _____
Jamee Jordan Patterson, Deputy Attorney General,
Attorney for the California Coastal Commission

day following confirmation of such facsimile, and provided that notice is also sent on the same day by one of the methods described above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

Dianne Kretowicz, Trustee

California Coastal Commission

Signature on file

2/2/08

By: _____

By: _____

Its: Peter Douglas, Executive Director

Ure Kretowicz, Trustee

By: _____

By: _____

Its: _____

APPROVED AS TO FORM:

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: _____

Jeffrey A. Chine, Attorney for Dianne Kretowicz and Ure Kretowicz, as Trustees of The Princess Trust

OFFICE OF ATTORNEY GENERAL

Signature on file

By: _____

for Jamee Jordan Patterson, Deputy Attorney General, Attorney for the California Coastal Commission

EXHIBIT A

1. Construction of stairways along the south and eastern property boundaries;
2. Extending height of garage roof;
3. Removal of rear wood timber stairs on the face of the bluff (already removed) and portion of a retaining wall within the five foot coastal bluff setback;
4. Installation of decorative paving of City ROW leading up to home;
5. Masonry wall (6 ft. high) in City ROW as well as the extension in height of an existing retaining wall from 3'6" to 7'6", not in City ROW;
6. Modifications to non-conforming accessory structure "casita" (partially within City ROW) to include new plumbing and electrical, new doors and windows, expansion of existing walls and rehab and thickening of some exterior walls;
7. New planter walls, entry trellis and new 4' high max. planter in ROW;
8. New fountain adjacent to eastern exterior stair;
9. Second-story deck reconstructed and partial roof added;
10. New second-story cantilevered balcony;
11. Native vegetation removal on face of bluff;
12. Landscaping (non-native ice plant) and removal of irrigation on bluff face;
13. New square footage added, portions within 25 ft. of the bluff edge (bedrooms, music room and exercise room), constructed below house;
14. Flood lights on bluff face;
15. Drainage pipe down bluff face to collect and discharge drainage from northern patios/landscaped areas;
16. Wall and Fence in required vertical public access (lifeguard access);

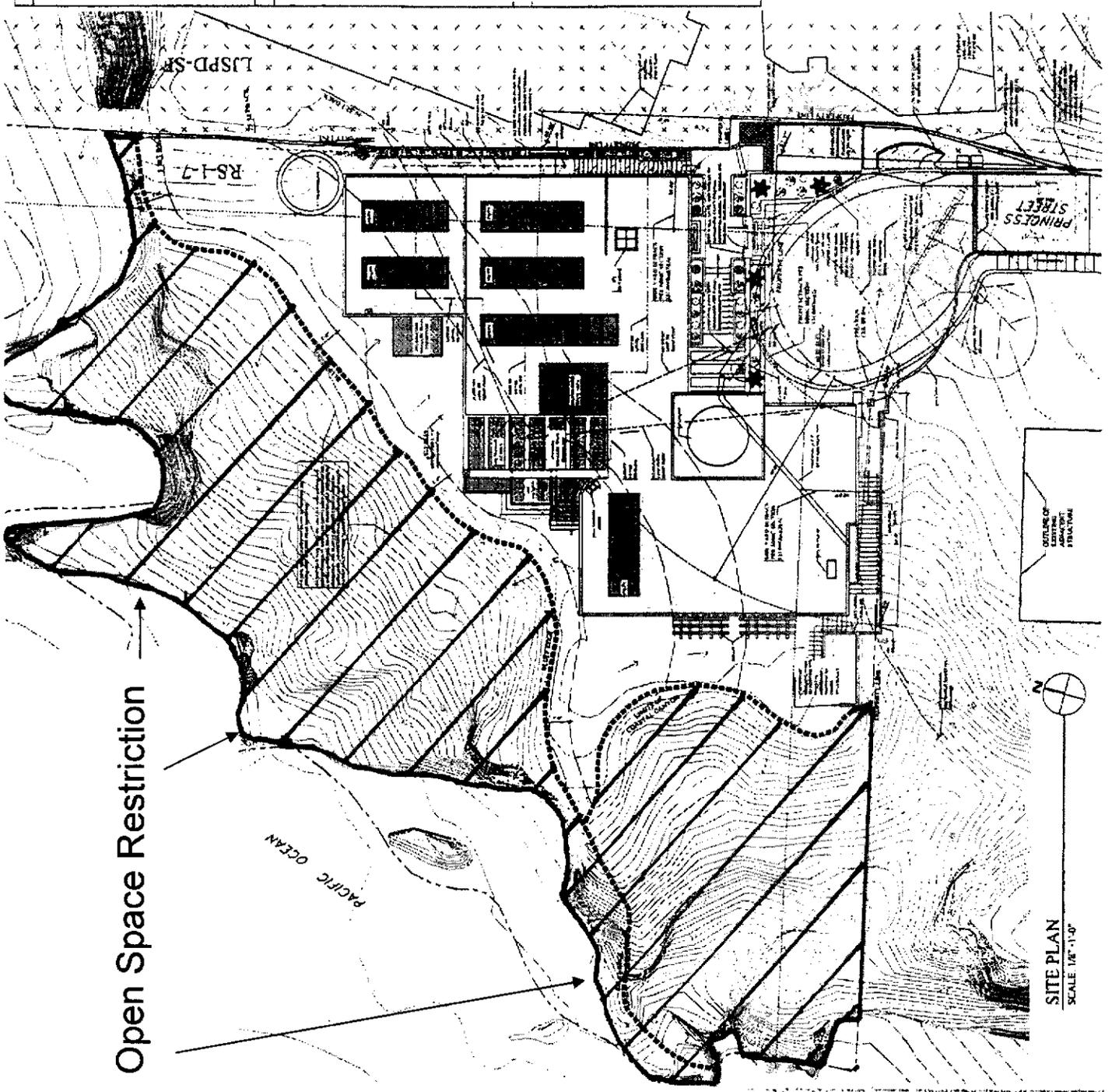


EXHIBIT NO. 9
APPLICATION NO. A-133-79- A4/F6760-A5
Open Space Restriction
 California Coastal Commission

Anthony A. Ciani
340 Dunemere Drive
La Jolla, CA90237

September 26, 2010

California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108
Attention: Mr. Lee McEachren

RE: KRETOWICZ – A-133-79-A4/F6760-A5

Dear Commissioners:

I am writing in support of the Staff Recommendation, to approve the proposed amendments to the Coastal Development Permits for this property with Special Conditions to protect the bluffs and adjacent shoreline and underwater park - ecological reserve; to protect public views of the La Jolla Caves and Cove; and, to provide a significant off-site mitigation fee to enhance public access at Coast Walk in La Jolla. After years of careful patience and deliberations of the competing issues, I believe that the Coastal Commission, together with its staff and legal advisors, has achieved a great outcome under very difficult circumstances.

I request that the Commission require that the existing, unapproved irrigation of the bluffs be eliminated, and that future irrigation be designed and controlled to avoid urban runoff in the ecological reserve. I also request that the current storm drainage system and applicant's storm drainage system, be diverted away from the bluff and sea using a sump pump with a gas-powered generator backup. Also, based upon the permit history for this site, I request the Commission require a monitoring program to insure compliance with the conditions for these amendments.

Regarding the Mitigation Fees: The Coast Walk - Public Right of Way is a designated historical site that attracts visitors from around the world. It is mainly a natural earthen path that has three entrances from the adjacent streets. At the center is a wooden foot bridge and stairs dating back to the 1890's when visitors came to La Jolla on horseback, buggies and the Abalone Express. At that time, Angel's Flight was built down the steep Devil's Slide to provide access to the mammoth caves and tide pools. In the early 1960's Angel's Flight was destroyed by vandals. The proposed mitigation fee will serve to restore the stairs and trail for the public's enjoyment of one of California's treasured cultural and natural resources, and offset the loss of public access at Princess Street. I believe those fees should be administered by the State Coastal Conservancy, with a goal to complete the access-way, and provide for its long term operation and maintenance.

Sincerely,

Signature on file

Signature on file

Anthony A. Ciani

RECEIVED

SEP 27 2010

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT NO. 10
APPLICATION NO.
**A-133-79-
A4/F6760-A5**
Comment Letters

 California Coastal Commission



*Preserve, Restore, and
Protect Coastal Resources*

September 23, 2010

California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive, Suite 103
San Diego, California, 92108

Attention: Lee McEachern

Re: Kretowicz – Off Site Mitigation
File A-133-79-A4 / F6760-A5

On September 22, the Board of the La Jolla Conservancy voted unanimously to support the Commission's efforts to protect the public's use of this historic access to the La Jolla Underwater Park and State Ecological Reserve, with the proposed off-site mitigation fee to restore it. Angel's Flight access is located at the heart of the Coast Walk Trail and footbridge which are a designated historical landmark and visitor destination of worldwide significance. The La Jolla Conservancy stands ready to assist the Coastal Commission and other state and local agencies to successfully carry out the goal to enhance the public's access and enjoyment of this treasured California coastal resource.

Respectfully,

Jc Signature on file

John Redlinger, Secretary
619-666-9736

RECEIVED
SEP 23 2010
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

P.O. BOX 660
LA JOLLA, CA 92038
PH. ~~650.245.7503~~
FX. ~~619.255.4255~~
www.lajollaconservancy.org