

CALIFORNIA COASTAL COMMISSION

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W17a

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Hearing Date: 11/3-6/98



STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE AND DE NOVO HEARING

LOCAL GOVERNMENT: Ventura County

LOCAL DECISION: Approved with Conditions

APPEAL NO.: A-4-VNT-98-225

APPLICANT: Breakers Way Property Owners Association
Attn: Gary Garcia

PROJECT LOCATION: 6692 - 6694 Breakers Way, Mussel Shoals, Ventura County

PROJECT DESCRIPTION: Construct a security gate at the entrance to the northern portion of the Mussel Shoals Community

APPELLANTS: Commissioners Andrea Tuttle and Sara Wan

SUBSTANTIVE FILE DOCUMENTS: Appeal A-4-VNT-98-225 (Breakers Way Property Owners Association); Ventura County Certified Local Coastal Program; Appeal A-3-SCO-95-01 (Santa Cruz County CSA # 2); Coastal development permit 4-82-236 (Kildebeck and Duggan); County of Ventura Permit File PD-1700.

SUMMARY OF STAFF RECOMMENDATION:

1. SUBSTANTIAL ISSUE

Staff recommends that the Commission, after a public hearing, determine that substantial issue exists with respect to the grounds upon which the appeal has been filed for the following reason: the construction of the proposed gate is inconsistent with the applicable public access policies and related zoning standards of the County's certified Local Coastal Program (LCP) and the public access policies of the Coastal Act.

Should the Commission find a substantial issue exists, Staff recommends the Commission continue to the de novo hearing.

2. DE NOVO DENIAL

Staff recommends that the Commission, after a public hearing, deny a permit for the proposed development on the grounds that the development will not be in conformity with the public access provisions of the County's certified Local Coastal Program (LCP) and the public access policies of Chapter 3 of the Coastal Act.

STAFF NOTE: This item was opened and continued at the Coastal Commission meeting of September 8 - 11, 1998.

I. PROJECT DESCRIPTION

The project proposed by the applicant, the Breakers Way Property Owners Association, is a gate at the entrance to the north portion of the Mussel Shoals Community at 6692 - 6694 Breakers Way. The gate would be eight feet in height and of a mechanically sliding design flanked by pilons. The proposed gate is for security purposes. The gate contains a four foot gap to the side which would be open for pedestrian use.

The project site is located approximately 100 feet north of the sea and Punta Gorda at the intersection of Breakers Way and Ocean Avenue. Ocean Avenue connects to Old Pacific Coast Highway which connects to Highway 101 at the transition from a four lane highway to a conventional grade separated freeway (101 Freeway).

The project is appealable because it is located between the first public road and the ocean.

II. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act (Section 30603) provides for appeals to the Coastal Commission of certain local government actions on Coastal Development Permits. Development approved by counties and cities may be appealed, in certain circumstances, for example if they are: (1) located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is the greater distance; (2) located on tidelands, submerged lands, or public trust lands or within 100 feet of any wetland, estuary, or stream, or within 300 feet of top of the seaward face of a coastal bluff; (3) located in a sensitive coastal resource area (PRC Sec. 30603[a]). Furthermore, development approved by a County may be appealed if it is not designated as a principal permitted use in zoning ordinance or zoning district regardless of its geographical location within the Coastal Zone (PRC Sec. 30603[a][4]). As noted above, this project is appealable because it is located between the first public road and the ocean.

For development approved by the local government as noted above, the grounds for the appeal are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act.

Section 30625(b) of the Coastal Act requires that the Commission hear an appeal unless the Commission determines that no substantial issue is raised with respect to the grounds on which the appeal has been filed pursuant to PRC Section 30603. If the staff recommends "substantial issue" and no Commissioners object, the Commission may proceed directly to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue", or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. It takes a majority of the Commissioners present to find that no substantial issue is raised.

Should the Commission find that a substantial issue is raised by the appeal, the Commission will proceed to a full de novo public hearing on the merits of the project at the same time or at a subsequent meeting. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is the conformity with the certified Local Coastal Program pursuant to Section 30604(b) of the Coastal Act. In addition, PRC Section 30604(c) of the Coastal Act requires that, for development between the first public road and the sea as is true in the case of this project, that a finding must be made by the Coastal Commission that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. In summary, with respect to public access and recreation questions, the Commission is required not only to consider the certified LCP, but also Chapter 3 policies when conducting a de novo hearing on a project which has been appealed.

Finally, the only persons qualified to testify before the Commission during the substantial issue stage of the hearing are the applicant, persons who opposed the application before the local government (or their representatives), and the local government; all other persons may submit testimony in writing to the Commission or Executive Director. Any person may testify during the de novo stage of an appeal.

As noted above, the Notice of Final Action was received on August 5, 1998 and the appeal was filed on August 11, 1998 within the 10 working day appeal period following receipt of Notice of Final Action as provided by the Commission's regulations. Pursuant to section 30621 of the Coastal Act, an appeal must be heard within 49 days from the date an appeal of a Coastal Development Permit issued pursuant to a certified Local Coastal Program is received. An appeal of the above described decision was received in the Commission office on August 11, 1998 now that all relevant documents and materials regarding the subject permit have been received. The appeal was opened and continued at the meeting of September 8 - 11, 1998 awaiting receipt of the administrative record from the County.

III. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The County of Ventura Planning Director approved a coastal development permit (Planned Development Permit 1700) for the project on July 23, 1998 with conditions. There was no appeal at the local level to the County Planning Commission. A Notice of Final Action was issued on August 3, 1998.

The Notice of Final Action was received on August 5, 1998. Commissioners Wan and Tuttle filed an appeal of the County's action on August 11, 1998 within the 10 working day appeal period provided by the Commission's regulations.

Pursuant to Sec. 30261 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. In accordance with the Commission's regulations, staff requested all relevant documents and materials from the County to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The administrative record was received from the County on August 19, 1998.

Since the Commission did not have timely receipt of all requested documents and materials to allow consideration for the September 8 - 11, 1998 hearing, the Commission opened and continued the hearing (14 CCR Sec. 13112). All of the remaining file materials have now been transmitted to the Commission and reviewed by staff.

IV. APPELLANT'S CONTENTIONS

The appellants contend (Exhibit 1) that, first, the appeal is inconsistent with the vertical access policy in the LCP "mandating vertical access easements to the mean high tideline for all new development." This policy is found in the Objective and related policy found in the Access section of the North Coast Area Plan component of the LUP:

Objective

To maximize access to the North Coast sub-area consistent with private property rights, natural resources and processes, and the Coastal Act. Also, to maintain and improve existing access, as funds become available.

Policies

Vertical

1. For all new development between the first public road and the ocean, granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:
 - a. Adequate public access is already available within a reasonable distance of the site measures [sic] along the shoreline, or
 - b. Access at the site would result in unmitigatable adverse impacts on areas designated as "sensitive habitats" or tidepools by the land use plan, or
 - c. Findings are made, consistent with Section 30212 of the Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected, or
 - d. The parcel is too narrow to allow for an adequate vertical access corridor without adversely affecting the privacy or the property owner, or [provisions on lateral access not a part of the appeal follow at this point in the LUP text]

A second assertion of the appeal was that the LUP is in conflict with the the LCP Land Use Plan Figure 13 residential community map allegedly designating Breakers Way as a public street.

In addition, the appellants made two assertions relative to inconsistency of the County action with two sections of the County certified LCP Zoning Ordinance: LCP Zoning Ordinance Sec. 8178-6.1 mandating vertical access easements to the mean high tide line for all new development and the Sec. 8178-6.2 requirement for removal of "no trespassing" signs as a condition of development approval..

V. RESOLUTIONS

A. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Public Resource Code Section 30603. A majority of Commissioners present is required to pass the motion. Staff recommends a No vote on the following motion.

MOTION: I move that the Commission determine that Appeal No. A-4-98-226 raises no substantial issue with respect to the grounds on which the appeal has been filed.

Staff recommends a "NO" vote on the motion would result in the finding of substantial issue and the adoption of following substantial issue findings. A majority of the Commissioners present is required to pass the motion.

B. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT

The staff recommends that the Commission, after public hearing, deny a coastal development permit for the subject proposal. Staff recommends a YES vote on the following resolution:

MOTION: I move that the Commission DENY a permit for the proposed development.

Resolution for Denial

The Commission hereby denies a permit for the proposed development on the grounds that the development is located between the sea and the first public road nearest the shoreline; is not in conformance with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976; is not in conformance with the public access and recreation policies of the certified Ventura County LCP, and will have significant adverse impact on the environment within the meaning of the California Environmental Quality Act.

A majority of the Commissioners present is required to pass the motion. A "YES" vote would result in the denial of the coastal development permit approved by Ventura County and the adoption of the following findings.

V. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION AND LOCATION

The Breakers Way Property Owners Association proposes to construct a security gate at the entrance to the north portion of the Mussel Shoals Community at 6692 - 6694 Breakers Way. The proposed gate would extend 40 feet across the front of Breakers Way with an additional four foot pedestrian opening at the west end. (see Exhibit 5) The location is at the intersection of Breakers

Way and Ocean Avenue. Ocean Avenue is a public road which connects to Old Pacific Coast Highway which, in turn, is located south and adjacent to the merger of Highway 101 and the Ventura Freeway (State Route 101). The proposed project is located on the seaward side of Route 101 immediately north of the transition from a four lane highway to a conventional grade separated freeway.

The project site is approximately 100 feet north of Punta Gorda. The shoreline is approximately 100 feet south and south west of the project site, curving around Punta Gorda. Breakers Way parallels the shore at a distance of approximately 100 feet. Although Breakers Way parallels the shore it provides vertical access to the sandy beach at its northwest end. The pattern of coastal access is from the junction of Breakers Way and Ocean Avenue through the cul-de-sac at the end and down an informal path reaching the beach south of a storm outfall.

The project site is located in a community consisting predominantly of single family residences, a hotel and restaurant (the "Cliff House"), and oil transportation pipelines. The north portion of the Community to be served by the gate includes approximately thirty homes flanking on both northeast and southwest sides of Breakers Way.

The proposed gate would be eight feet in height and of a mechanically sliding single arm twenty feet long supported by two pilons. The surface of the gate will be vertical metal bars. Adjacent to the mechanical gate, a four foot wide pedestrian access point is proposed. Nothing in the project description or local government findings and conditions indicates whether or not this opening will provide access to the general public. The design does not indicate the method of security for the gate although the local findings indicate that a method of access will be available for local residents and public safety personnel such as fire and police.

The northern segment of Breakers Way was abandoned by Ventura County in 1978 and the street became part of the adjoining lots. The lots on the entire southwest side and the approximate southern half of the lots on the northeast side are developed with single family residences. The remainder belongs to the State of California.

Figure 13 in the LUP, i.e. the Mussel Shoals Residential Community map, designates the boundaries of the residential community. This map shows that approximately half of the the small lots on the inland side of the north section of the Breakers Way community, i.e. the aforementioned State-owned lots, are not within the boundaries of the Mussel Shoals Community. This area is part of the fenced area used by local residents for their personal parking use. Signs discourage the general public from parking on this public land. Formerly owned by State Parks, the lots are now owned by Caltrans. This area had been proposed as a State Parks park acquisition for development of a recreation area consisting of a promenade and 100 "picnic units" between the community and the Highway 101. (Department of Parks and Recreation, Ventura County Beaches Study, June, 1976) During preparation of these findings, staff was not able to obtain a response from Caltrans concerning their intent for this area.

Similarly, public use is discouraged to the northwest and immediately adjacent area to the Breakers Way community. This area includes a cul-de-sac and the 800 ft. beach area formerly belonging to Caltrans that is now in private

ownership. This area is not part of the designated Mussel Shoals Community. The cul-de-sac and adjacent 800 feet of sandy beach were sold by Caltrans to the adjacent single family homeowner in 1995. The cul-de-sac area is now posted with "No Trespassing" signs. Beyond this area is an additional 1.5 miles of usually dry sandy beach seaward of the rip-rap seawall protecting Highway 101.

The proposed development is an area designated High Density Residential (6.1 to 36 DU/Acre) in the certified Land Use Plan (LUP). This designation is intended to allow residential uses with "... intensities reflective of existing lot sizes and zoning categories." Principal permitted uses include one and two family dwellings, as well as various public or semi-public uses such as churches, public parks and playgrounds, fire stations, and home occupations. Accessory uses and structures such as the proposed gate are allowed by the Zoning ordinance.

One small area within the Community contains an old hotel and restaurant, the Cliff House, which is designated Commercial in the LUP recognizing the unique historical land use. An improved accessway to the beach from the adjacent cul-de-sac owned by Caltrans was recently eliminated as a result of emergency shoreline protection undertaken by Caltrans in conjunction with the adjacent hotel owner.

Areas surrounding the Community, including the beach and undeveloped areas inland of Route 101, are designated Open Space in the County LUP. This designation allows principal permitted uses including one dwelling unit per parcel with a ten acre minimum, agriculture, and "... passive recreational uses which do not alter physical features beyond a minimum degree ...".

In addition to the LUP land use map designations, there are the implementing zone designations found in the Zoning Ordinance component of the certified LCP. This designation for both the north section of Breakers Way and adjacent street is Residential Beach (R-B). In general, the R-B designation allows (1) single family residences, duplexes and mobilehome parks, (2) a number of incidental or ancillary uses such as vegetation clearance, keeping of pets, home occupations, etc., (3) certain public uses such as fire stations, libraries, public utility facilities, and (4) temporary real estate offices.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

At a public hearing conducted by the County Planning Director on July 23, 1998, the project was approved with conditions. There was no appeal at the local level from the Planning Director's decision to the County Planning Commission. After the appeal period had expired at the local level on August 2, 1998, the Notice of Final Action was issued on August 3, 1998.

Local government approval was subject to a number of conditions. The conditions of approval included:

- o Generic conditions relating to permit expiration, modification, building permits, zoning clearances, permittee's acceptance, fees, legal defense of the permit, liability, etc.; and
- o Compliance with Ventura County Fire Protection District Gate Guidelines.

There are no conditions of approval relating to public access and recreational opportunities, resource protection, hazards, or other potential issues related to the policies of the Local Coastal Program or the access policies of the Coastal Act.

The County staff report for the project includes findings concerning recreation and access which state:

- (d) Recreation and Access: Adequate public access to the shoreline is available within 1/2 mile from the site. Unmarked parking is available on CALTRANS property to the north and south of the Mussel Shoals Community. Ocean Avenue is a public street and offers some parking and there is a parking area at the southerly end of Mussel Shoals near the Cliff House. Breakers Way is a narrow private street with limited street parking. Also see the discussion under Section "C" of this report. Therefore, there will be no impact from the proposed project on recreation and access thereto.

The referenced Section "C" of the staff report (see Exhibit 2) is a background discussion which notes that the north segment of Breakers Way was subject to a recorded Resolution of Abandonment on September 22, 1978. The County findings note that the north segment of Breakers Way was abandoned by the County and that the cul-de-sac and an 800 foot long beach to the north was sold by Caltrans to the property owner at the northern end of Breakers Way.

C. SUBSTANTIAL ISSUE -- COASTAL ACT AND LOCAL COASTAL PROGRAM POLICIES

1. Assertions which Raise Substantial Issue

a. Background

Pursuant to PRC Section 30603(b)(1) the grounds for appeal are limited for developments between the first public road and the sea or within 300 feet of the inland extent of the beach or of the mean high tideline of the sea where there is no beach, whichever is greater, are limited to the standard of review that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act.

The appellants allege that the project is inconsistent with the Ventura County Local Coastal Program (LCP) as a result of: (1) the LCP Land Use Plan vertical access policy mandating access easements to the mean high tide line for all new development; (2) the LCP Land Use Plan Figure 13 residential community map designating Breakers Way as a public street; (3) LCP Zoning Ordinance Sec. 8178-6.1 mandating vertical access easements to the mean high tide line for all new development and the LCP Zoning Ordinance Sec. 8178-6.2 requirement for removal of "no trespassing" signs as a condition of development approval.

Since the project is located between the first public road and the ocean whereby the grounds for the appeal are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act.

The following sections examine the grounds for substantial issue in terms of the standards set forth in access policies of the LCP including Coastal Act policies included in the LCP. The certified LCP for Ventura County includes the following public access policies of the Coastal Act: PRC Sections 30210; 30211; 30212; as well as a paraphrasing of PRC Section 30214.

Two components of the LUP were specifically cited in the appeal. The first component was the policy to maximize vertical access found in the Access section of the North Coast Area Plan component of the LUP:

Objective

To maximize access to the North Coast sub-area consistent with private property rights, natural resources and processes, and the Coastal Act. Also, to maintain and improve existing access, as funds become available.

Policies

Vertical

1. For all new development between the first public road and the ocean, granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:
 - a. Adequate public access is already available within a reasonable distance of the site measures [sic] along the shoreline, or
 - b. Access at the site would result in unmitigatable adverse impacts on areas designated as "sensitive habitats" or tidepools by the land use plan, or
 - c. Findings are made, consistent with Section 30212 of the Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected, or
 - d. The parcel is too narrow to allow for an adequate vertical access corridor without adversely affecting the privacy or the property owner, or ...

Sec. 8178-6.2 - [in part] ... all fences, "no trespassing" signs and other obstruction that may limit public lateral access shall be removed as a condition of development approval. ...

b. Consistency with Certified LCP and Coastal Act

The above-listed Coastal Act and LUP policies support the maximization of access and that development not interfere with access acquired through use or legislative authorization. Further, both sets of policies require that access be required for new shoreline development except in special circumstances.

The following evaluates the background of the project area relative to the County's factual and legal analysis and finds that a substantial issue exists because of past public access use involving potential prescriptive rights which would be affected by the proposed development.

As background, it is appropriate to review the physical setting of the Mussel Shoals community before examining evidence of past public use of the north segment of Breakers Way. This review will also show the past pattern of access use and need for continued access from this location which must be recognized to maximize access within the meaning of the above-cited policies.

The Mussel Shoals Community is a destination for individuals using the coast for active and passive recreation and affords the opportunity to reach the coast which is not available for several miles to the north and south. Mussel Shoals is situated between two surfing areas known as "La Conchita" beach and "Cliff House" beach (Department of Parks and Recreation, Ventura County Beaches Study, June, 1976, p. 53). To the northwest there is access to the coast from the State Department of Parks and Recreation's surfer's park at Rincon Point, a part of Carpinteria State Beach, at a distance of approximately 3.2 miles. To the southeast there is access to the beach at the oil piers beach, at a distance of approximately one half mile. Mussel Shoals is located closer to the water and at a lower elevation than the elevated highway and freeway to the north and south and has available parking. Consequently, individuals intending to use the coast for active and passive recreation would tend to pull off into the community and use this as a staging area to reach adjacent beaches.

Access to the coast from the surrounding area is difficult from Highway 101, a conventional highway north of Mussel Shoals, and the 101 Freeway, a freeway south of Mussel Shoals. To the south, there is no available beach until the traveler reaches the oil piers beach, because the Freeway was built out into the ocean over tidelands and because the seaward side is bordered by steep, large rip-rap covered slopes extending directly into the water, even at low tide.

Individuals attempting to access the sandy beach north of Mussel Shoals would have to traverse either unimproved steep slopes or climb over rip-rap along the right-of-way to reach the sandy beach which extends for a distance of 1.5 miles north of Breakers Way. Such access is further impaired by concrete barriers along a portion of the highway. There are no stairways facilitating public access to the beach from the area north of Mussel Shoals. Parking is prohibited along a portion of the 101 highway to the north, injury and fatality accidents occur in this area on a regular basis, and pulling off and on to the road in this location is dangerous.

Parking within the community for the general public is used by surfers and other beach users and is an indicator of access use and need. Within the Mussel Shoals community, public parking is available along Old Coast Highway and Ocean Avenue, including a cul-de-sac east of the Cliff House. Much of this parking is on land in ownership by Caltrans. Additional parking of a few spaces is available on Ocean Avenue seaward of the Caltrans owned area adjacent to and north of the proposed gate.

As noted previously, the area is a visitor-destination point and the question then exists as to how access is provided along the coast from this area. Access to the south is not an issue since there is no available sandy beach, as noted, and lateral access along the shoreline is restricted by rock outcroppings and rip-rap along the 101 Freeway, even at low tide.

Breakers Way provides the only convenient and practical mechanism to travel from the public parking areas in Mussel Shoals to reach the sandy beach to the north, particularly at high tide. Because the proposed gate will impact upon potential public access, as discussed in greater detail below, it triggers the question of whether or not adequate access is available elsewhere within the community.

The County found that the gate could be allowed because they found that access was available at two locations within 1/2 mile of the site on Caltrans land. The following shows that both locations do not provide adequate access.

The first source of access nearby cited by the County is the Caltrans-owned cul-de-sac immediately adjacent to the Cliffhouse to the south. This access serves surfers who use the break on the south side of the Rincon Island causeway. Access to the area to the south of the Cliffhouse is inadequate, however, because the slope consists of steep unconsolidated and eroding fill material deposited over rip-rap by Caltrans on an emergency basis under the Firestone Bill (PRC Section 30600(e)(1) and (e)(2)). There was a previous primitive stairway to the beach, that was partly eroded away by the 1997-98 El Nino storms or covered by the subsequent rip-rap and fill. Traveling north is difficult to reach the remainder of the community, or the sandy beach north of the oil island causeway fronting the residences, or to the 1.5 mile sandy beach because (1) a number of rock outcroppings extend into the water and (2) access is impeded by the causeway itself, which at its landward toe is a rip-rap groin which extends out into the sea.

The second location found by the County to constitute adequate access nearby is to walk along the side of the 101 Highway on Caltrans land to the north. This area does not provide practical or convenient access to those in the community, either residents or visitors. Individuals parking in the community on public streets desiring to reach the beach area to the north from the Caltrans right-of-way would have to exit the community by foot through a dangerous intersection, competing with vehicle traffic, and then walk along a highway shoulder with limited visibility for oncoming cars due to high speed and a dangerous curve. A number of fatal accidents have taken place in this location. Then, the pedestrian would have to traverse either the aforementioned unimproved steep slopes or climb over rip-rap along the right-of-way to reach the sandy beach, which would be difficult for the average person. As noted, there are no stairways facilitating public access to the beach.

As noted previously, individuals desiring to reach the beach to the north may also traverse on the seaward side of the residences along the north segment of Breakers Way. These parcels are almost all fronted by rip-rap seawalls protecting the adjacent residences, which means that access is not available at high tide or during the winter months, when the sand is washed away and no beach is available. Although lateral access has been required through deed restrictions or offers to dedicate by either the Coastal Commission, prior to LCP certification, or Ventura County, after certification, this access is only to the toe of the revetment. Of the seventeen parcels which have processed coastal development permits for seawall improvements with the Commission which address provision of lateral access, only two have recorded easements and two have recorded offers to dedicate, based on a recent survey of permit records.

In summary, individuals parking in the community cannot access the lengthy sandy beach north of the Community with adequate alternative access. The findings of the County (see Exhibit 2) do not support that there is adequate access nearby because the two Caltrans access points cited do not provide adequate access and there is no adequate alternative other than access through the north segment of Breakers Way.

Public Access and Potential Prescriptive Rights

The findings discussed above conclude that there is a lack of adequate access nearby. The question then arises as to the potential that previous public access and/or prescriptive rights may exist through Breakers way which may be affected by the proposed development. As previously noted, access to the area north of the project site is important because there is a mile and a half of sandy beach which can only be reached conveniently by walking through the Breakers Way roadway and traversing a historical path at the end of the cul-de-sac at the north end.

There has been no prescriptive rights survey regarding use of Breakers Way for public access. However, it is not necessary to prove that prescriptive rights exist in order to determine if there is a potential impact on the public's historic use of the area for access. The following provides sufficient information that there is a potential pattern of public access to the dry sand beach to the north through the north segment of Breakers Way.

1. A 1929 aerial photograph (US Army Corps of Engineers, Ventura County California, Survey Report for Beach Erosion Control, December, 1978, Appendix 3, unpagged) shows Breakers Way with few residences and beach with no development at the north end of the street. The photo shows that there was a similar width of sandy beach available at that time in comparison to today, but that access was unimpeded to the west and north. This was prior to construction of shoreline protection and residential development. A review of later aerial photos indicates a pattern of access after development of residences along the remainder of the seaward side from the cul-de-sac at the north end of Breakers Way to the beach in aerial photographs dated 4-14-1973 (California Highways Department), 1978 (Department of Navigation and Ocean Development), 3-17-87 (Department of Boating and Waterways), and 4-14-93 (Department of Boating and Waterways).
2. At the time that the local coastal program was being prepared in 1979, Breakers Way was not considered to restrict public access. The July 1979 Issue Paper on Recreation and Access prepared by the County notes (p. 20) that the beach area is used by community residents and surfers and access was provided by surface roads in the community. No restrictions on public access for these surface roads was noted or authorized in the subsequent LUP.
3. As noted a letter from a former Breakers Way resident, the proposed gate will prevent the public from using the adjacent beach which has been allegedly used for "... sunbathing, picnics, swimming, fishing, surfing, volleyball, and other free recreational activities ...". (see Exhibit 7, letter from Geoffrey Latham, Surfers Environmental Alliance, dated 9/3/98) Latham alleges that the proposal is "... merely a proposal to restrict existing public access to recreational opportunities, and

interfere with the public's long established right of access to the coast." Latham also has noted verbally to staff that the northern terminus of Breakers Way has been used for launching of jet skis.

4. Breakers Way has been used for small boat launching in the past as well as access to the beach. Several slides taken by Commission staff on October 17, 1980 show a sand boat launching ramp at the north end of Breakers Way. Retention of this boat launch ramp was noted as desirable in the Regional Commission's findings on permit 4-82-236 (Kildebeck and Duggan). The application was for installation of a rock revetment to protect a beach front residence and septic system and expand a deck on the seaward side of Breakers Way. The Regional Commission found that:

The State owned turn-around at the end of Breaker's [sic] Way provides a unique type of vertical access in this area, a small craft launching area. (Morgan, testimony Coastal Commission Meeting February 6, 1981). Continuous lateral access across Breaker's [sic] Way and the beach is necessary to make use of this vertical access opportunity. Therefore, it cannot be found that adequate lateral or vertical access exists nearby.

This ramp area has since been eliminated by deposition of rip-rap without benefit of a coastal development permit, as noted in the March, 1996 staff visit. This rip-rap deposition is located within County LCP jurisdiction by virtue of location above the mean high tide line.

5. At the time of the staff site visit on September 10, 1998, residents in the area indicated to staff that the north segment of Breakers Way had been used by the public with deleterious effects such as additional trash and the threat of burglaries. Residents also pointed out that Breakers Way had recently been used as a staging area for a surf contest. These comments acknowledge that there has been public access through the area.
6. For a period of over twenty years, several Coastal Commission staff members including the staff analyst for this report have used Breakers Way to reach the sandy beach area to the north. As a recent example, staff of the Ventura Office conducted a visual and access inventory of Mussel Shoals in March, 1996 including taking a number of photos along Breakers Way. Although staff noted a number of local residents present, there was no challenge to travel along Breakers Way. At that time there were no "No Trespassing" signs erected at the end of Breakers Way, which have since been erected. Only recently, at the time of the staff site visit on September 10, 1998 was staff challenged and told to request permission to traverse to the beach along Breakers Way.

The above information is evidence of implied dedication because it indicates that the land has been used for five years as public land prior to abandonment by Ventura County in 1978. There is no information indicating that such use was without the permission of the nearby homeowners or that there were any attempt to prevent or halt the use. The representation of pathways to the beach between vegetation as evidenced on the aerial photos is indication that the use was substantial.

There is no evidence in the local government administrative record or findings to factually support installation of the proposed gate in terms of the

potential of public access rights or private property rights. The County findings that the gate may be permitted are confined to a finding that the street is private. The form of ownership does not constitute proof that any potential public access right does or does not exist.

Further, the County findings include an exhibit indicating that the cul-de-sac and 800 feet of beach to the north has been purchased from Caltrans by the adjacent homeowner. This purchase does not determine that any pattern of prior use by the public is extinguished. Further, such use is the allowed use under the County Open Space land use designation on the LCP land use map. Open space and public access uses are allowed under the LCP, but residential and related uses are not allowed in this area. The area is less than ten acres so that a single family residence would not be allowed as a principal permitted use. To clarify, under the Open Space designation for that area, principal permitted uses include a one dwelling unit per parcel with a ten acre minimum, agriculture, and "... passive recreational uses which do not alter physical features beyond a minimum degree" which would not allow restriction of the previous public use without benefit of a coastal permit. The allowed land use and/or preservation of access and recreational opportunities is determined by the LUP policies and not by the recent change in form of ownership.

Further, there is no evidence in the County findings to indicate that any action has been taken by the homeowners to prohibit public use. No evidence is presented as to presence of legal signs, fences, or similar impediments to public access or actions by the residents to direct the public not to use the area. Local residents have indicated verbally that they have blocked off access to Breakers Way on an annual basis, but no information or findings relative to this are included by the County. Blocking off access for one day on an annual basis does not constitute extinguishment of potential public access interest.

Further, the County made no findings as to potential past or present public use of Breakers Way for access. Further, the County administrative record indicates no field evaluation of public use of either Breakers Way or the surrounding project area.

The County findings do not support the project relative to access policies of the Coastal Act and the LCP. PRC Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization. PRC Section 30210 and LUP Objective of maximizing public access, includes the relation of access to private property rights. Although the County findings note the street is private, the findings do not indicate whether preservation of access to the beach along Breakers Way is inconsistent with private property rights.

The above established that there is evidence demonstrating past public access use and potential prescriptive rights in a visitor-destination area, which would be potentially affected by the gate as approved by Ventura County. Because of use of the area by individuals from outside the community, construction of the gate will be potentially precedential for other communities on the North Coast of Ventura County between Pacific Coast Highway and the sea (Solimar, Faria Beach, Seacliff, and Rincon Point). For these reasons, the local government decision raises an issue of more than local significance. Therefore, for the reasons discussed above, the Commission finds that the evidence supports a pattern of public historic use of Breakers

Way for public access, raises substantial issue with the LUP public access policy/objective, and Secs. 30210 and 30211 of the Coastal Act relative to the construction of the security gate.

Consequently, the project if approved would have precedential value in terms of the future interpretation of the LCP.

2. Other Assertions which do not Raise Substantial Issue

In addition to the above policies, the Mussel Shoals Residential Community map i.e. Figure 13 in the LUP which designates the community boundaries. This map shows that a portion of the small lots on the inland side of Breakers Way community are not within the boundaries of the Mussel Shoals Community. Formerly owned by State Parks, the lots are now owned by Caltrans. The map shows that the cul-de-sac and the beach area at the north end of Breakers Way are not part of the Community. The cul-de-sac and adjacent 800 feet of sandy beach, as noted above, was sold by Caltrans to the adjacent single family homeowner in 1995.

In addition, the appellants assert that a substantial issue exists relative to two specific sections of the County certified LCP Zoning Ordinance: LCP Zoning Ordinance Sec. 8178-6.1 mandating vertical access easements to the mean high tide line for all new development; and LCP Zoning Ordinance Sec. 8178-6.2 requirement for removal of "no trespassing" signs as a condition of development approval.. The following is the text (where applicable) of these two LCP Zoning Ordinance provisions:

Sec. 8178-6.1 - The granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:

- a. Adequate public access is already available within a reasonable distance (one-quarter mile) of the site measured along the shoreline, or
- b. Access at the site would result in unmitigatable adverse impacts on areas designated as "sensitive habitats" or tidepools by the land use plan, or
- c. Findings are made, consistent with Section 30212 of the Coastal Act, that access is inconsistent with public safety or military security needs, or that agriculture would be adversely affected, or
- d. The parcel is too narrow to allow for an adequate vertical access corridor without adversely affecting the privacy of the property owner. This shall mean that the possibility does not exist to site the accessway five feet or more from the residential structure and that the structure cannot be redesigned to accommodate the accessway with the five foot separation.

A second assertion of the appeal relative to the LUP is the conflict with the LCP Land Use Plan Figure 13 residential community map allegedly designating Breakers Way as a public street. The LUP text does not specifically call out Breakers Way in the text as a public or private street. Breakers Way not shown as part of the adjacent residential development. It is shown as an open

street on Figure 13, as opposed to being merged with adjacent residential land as shown on the zoning designation map in the LCP Zoning Ordinance. As noted previously, both the north section of Breakers Way and adjacent street is designated Residential Beach (R-B) which permits single family residences, duplexes and mobilehome parks, incidental or ancillary uses, certain public uses, and temporary real estate offices. Based on this material, it is concluded that the LUP Figure 13 is not relevant whether or not the north segment of Breakers way is public. Further, the issue of whether or not the street is public by itself does not determine whether or not there is an issue relative to the preservation of public access opportunities. For these reasons, the assertion does not raise a substantial issue.

In addition, the appellants assert that a substantial issue exists relative to two specific sections of the County certified LCP Zoning Ordinance, as described in text above: LCP Zoning Ordinance Sec. 8178-6.1 mandating vertical access easements to the mean high tide line for all new development; and LCP Zoning Ordinance Sec. 8178-6.2 requirement for removal of "no trespassing" signs as a condition of development approval..

Relative to Sec. 8178-6.1 above, it should be noted that the previous discussion of the LUP policy relative to vertical access is based on substantially the same criteria as noted in this ordinance provision. The above analysis showed that there is a substantial issue relative to access to the beach and that the project as approved was not shown to require preservation of access. Consequently, this assertion raises a substantial issue.

Relative to the second assertion under the LCP Zoning Ordinance, there was no consideration or condition imposed as part of local government action on the project to remove signs which restrict or discourage public access, even though such removal is required and such signs have been installed without benefit of coastal development permits. There are a plethora of signs in the immediate project area, including at the immediate location of the proposed development. Because these signs on the project site were not examined and evaluated relative to potential restriction or discouragement of public access, this assertion raises a substantial issue.

In summary, the Commission concludes that no substantial issue is raised relative to Figure 13 in the LUP but concludes that, for the above reasons, that the locally approved project is not in conformance with the public access provisions of the County's certified LCP Zoning Ordinance. The proposed development does not conform to Zoning Ordinance provisions to mitigate the adverse impact of development on public access to the beach.

3. Conclusion

The Commission concludes that the locally approved project is not in conformance with the public access standards of the County's certified LUP and the access policies of the Coastal Act because the project does not provide adequate provisions to mitigate the adverse impacts on public access to the beach. The appellants' first contention therefore raises a substantial issue with respect to the public access standards in the County's certified LUP component of the LCP and the Coastal Act. .

E. COASTAL PERMIT

PRC Section 30604(b) of the Coastal Act requires that a finding must be made by the Commission on appeal that the development is in conformity with the certified local coastal program. Further, PRC Section 30604(c) requires, for development between the first public road and the sea, that the Coastal Commission on appeal find that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act.

Coastal Act and LCP policies are listed above. These policies support the maximization of access and recreation opportunities and that development not interfere with access acquired through use or legislative authorization. Further, both sets of policies require that access be required for new shoreline development except in special circumstances provided that it is demonstrated that the development will have direct impacts on existing public access.

The certified LCP for Ventura County includes the following public access policies of the Coastal Act:

PRC Section 30210 which states that:

In carry 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.

PRC Section 30211 which states that:

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.

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

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

There are three criteria above which are exceptions to this mandate under the Coastal Act and LCP, none of which are applicable in the case of this project. In addition, no constraints exist on public access provision relative to resource protection, military security needs, agriculture, and the like.

Further, PRC Section 30212(c) which provides that:

Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

PRC Section 30214 is not included verbatim in the LUP, but is paraphrased in the following manner in the North Coast Area Section:

9. In accordance with Sec. 30214(a), the time, place, and manner of access will depend on individual facts and circumstances; including topographic and site characteristics, the capacity of the site to sustain use at the intensity proposed, the proximity to adjacent residential uses, the privacy of adjacent owners, and the feasibility to provide litter collection.
10. In accordance with Sec. 30214(b), the requirement of access shall be reasonable and equitable, balancing the rights of the individual property owner and the public.

The proposed gate is on a site where potentially exists through prior public use and potential prescriptive rights. Therefore, the potential for future public access must be protected. The above background analysis reviewed the physical setting of the Mussel Shoals community relative to past public use of the north segment of Breakers Way. The community was found to be a destination for individuals using the coast for active and passive recreation affording an opportunity to reach the coast. Two surfing areas were cited nearby, i.e. "La Conchita" beach and "Cliff House" beach, which rely on Mussel Shoals for access. Mussel Shoals was found to afford access to the beach not available to the north for three miles or to the south for one half mile.

Access to the coast was found to be difficult if not dangerous from the areas adjacent to Mussel Shoals immediately upcoast and downcoast. Construction of the 101 Highway to the north and the 101 Freeway to the south has eliminated both beach areas and areas providing access to the beach over the years, making it necessary to preserve whatever opportunities that remain for access to the shore. There are no stairways facilitating public access to the beach from the State highway areas to the north and south. In contrast, parking for surfers and other beach users is available within the Mussel Shoals community. Breakers Way provides the only suitable mechanism to travel from the public parking areas to reach the sandy beach to the north.

Installation of a gate at the location proposed would further restrict public access to the beach area to the north, contrary to the intent of the Coastal Act and the LCP. Ocean Avenue is the nearest public roadway and Section 30212 and related policies in the LCP require that public access from the nearest public roadway to the shoreline and along the coast be provided. The above findings on substantial issue discuss in detail why adequate access does not exist nearby.

Installation of a gate at the location proposed would further restrict public access to the beach area to the north, contrary to the intent of the Coastal Act and the LUP. The proposed gate is proposed in an area where access is

needed, and potentially exists through prior public use and potential prescriptive rights, for public access to areas to the north of the project site, including 1 and 1/2 miles of sandy beach. Further, the potential for future public access must be protected. There is less sandy beach area available for access along the coast in Ventura County in recent years. Much of the North Coast of Ventura County has been armored in recent years.

As noted previously, the gate is of a mechanically sliding design flanked by pilons. The local record indicates that a method of access will be available only for local residents and public safety personnel such as fire and police. Although a four foot wide pedestrian access point is proposed, there is no indication that this will be available to the general public. The design does not indicate the method of security for the gate such as a lock and key, combination lock, coded entry system or the like. Based on past Commission experience and the intent of the applicant to provide security for the community, the Commission finds that the gate may be locked at some time in the future. Commission experience indicates that gaps for pedestrians can be easily closed off.

The Commission has found in past decisions that gates of the type proposed are intimidating or discouraging to the public. Both the physical presence of the gate and the psychological impact of a large physical barrier discourage the public from using Breakers Way. Further, because of the visual interference, the public will be less able to perceive that Breakers Way leads to the ocean. As noted previously, there are no practical and convenient alternative ways to get to this beach from the Mussel Shoals Community, a destination for surfers and other beach users.

This restrictive factor is exacerbated by a number of public and private signs in the immediate area (100 ft.) of the proposed gate. These signs include messages such as "PRIVATE ROAD by order County Board of Supervisors 12-2-86 Section 959 - State Street and Highway Code SPEED BUMPS NO PUBLIC PARKING", "NOT A THROUGH STREET", "No Parking", "ABSOLUTELY NO PARKING IN TOWAWAY ZONE", "Tow Away No Parking Anytime Private Property", "No Parking After Dark", and "PRIVATE ROAD by Order of the County Board of Supervisors 9012-78 Section 959 - State Street and Highway Code SPEED BUMPS NO PUBLIC PARKING". There is no record of a coastal development permits for such signs, although they constitute development under PRC Section 30106 and the LCP because they raise an issue relative to erection of a structure, impact on intensity of use, change in intensity of use of the water and access thereto.

In summary, the combination of the gate and erection of signs would tend to discourage any utilization by surfers and other beach users of public access opportunities in the project area. The cumulative effect is to leave the cul-de-sac at the south end of the community adjacent to the Cliff House as the only practical and relatively unconstrained access point to the beach. Therefore, the Commission finds that, relative to the access provisions of the LUP and Coastal Act, there is interference with a past pattern of public use and potential prescriptive rights in an area of greater than local importance.

While the Coastal Act and LCP state that coastal access shall be provided in a manner consistent with private property rights, the application contains no assertion or other material indicating that the gate is necessary to protect private property rights by ensuring public safety. Public safety needs are

addressed in the above-noted policies 9. and 10. in the North Coast Area Plan section on Access as well as in PRC Sections 30210 and 30214 (a) (4).

Relative to the past history of access to the beach and future need for such access, is there a public safety problem of sufficient magnitude to warrant installation of a gate which would discourage such access? The right for public access to the shoreline must be balanced with the need to limit access due to public safety needs. As noted in A-3-SCO-95-01 (Santa Cruz County CSA # 2), the Commission has consistently required evidence of criminal activity for security gates and has then allowed those measures which deal with the specific problem. Further, where the Commission has allowed solutions which address the problem, monitoring measures have been instituted, the solution has been allowed for only a specified number of years, and renewal has been allowed if warranted by the monitoring results.

In terms of the proposed security gate at the foot of the north segment of Breakers Way, there is no documentation of the need for the security gate. There is no material such as reviewed in the above-referenced Santa Cruz County case as the need for the security gate such as in the form of letters from the residents, a private security firm, or public safety agencies indicting examples of any activity such as littering, thefts, late night noise, vandalism, etc..

Further, there is no relationship described between the installation of the gate and any such activity. As described above, the gate will have a pedestrian opening allowing individuals to pass into and leave the residential area without interference. No relationship is indicated between the installation of the gate in terms of (1) individuals who may enter the neighborhood to use the beach for passive and active recreation use and (2) to individuals who may engage in illegal or undesirable activities.

Relative to impediment of access to the beach, the gate will present an appearance of exclusivity. However, features such as the proposed pilons in the gate design can increase the sense of exclusivity and privacy without creating a physical and/or psychological barrier to pedestrian traffic.

As noted in the Santa Cruz case, the appropriate starting point before considering installation of a gate is to review other measures to increase neighborhood security. There is nothing in the application to indicate that such measures have been considered to mitigate any security concerns. There is no indication that normal public safety patrols have proved inadequate or that there is a need for use of a private security patrol. The Commission has found that such measures or private security patrols should be first utilized in lieu of installation of a security gate.

As noted above, there are alternatives to prevent vehicular access which could discourage the public from driving to the area. In contrast, what is proposed is a large metal gate which both psychologically and visually blocks off Breakers Way to the public.

The project could be conditioned to recognize any potential prescriptive rights through a coastal access sign indicating that access is available to the public to reach the beach area to the north. This would not resolve the problem of impediment to public access for several reasons. The applicant has disagreed with this alternative and has indicated that members of the Mussel

Shoals Property Owners Association will actively oppose any use of Breakers Way in the future for public access. The applicant has also indicated that the northernmost property owner will assert private property rights to contest public use of the former Caltrans land to the north of Breakers Way in the area of the former small boat launch described previously. There are already signs posted without benefit of a coastal development permit at the end of Breakers Way indicating "No Trespassing", which were installed since the previous staff site visit in March, 1996.

In summary, the proposed development cumulatively discourages the public right to beach access in a manner in conflict with PRC Sections 30210, 30211, 30212, and 30214 as found in the Coastal Act and included in the Land Use Plan component of the certified LCP. Related, it conflicts with the Objective statement and Policy Vertical 1 in the North Coast Area Plan. Due to the range of feasible alternatives to control security in lieu of construction of the proposed security gate, the Commission finds that the project is not in conformance with the public access policies of the LCP and the Coastal Act and must be denied.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Coastal Commission's permit process has been designated as the functional equivalent of CEQA. Section 13096(a) of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of 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 that would substantially lessen any significant adverse effects that the activity may have on the environment.

The proposed development will result in unmitigatable environmental impacts associated with the loss of public access resources. Furthermore, the alternative to the proposed gate such a simpler gate to restrict vehicular access in combination with a sign indicating that access is available is not feasible due to opposition to access within this section of Breakers Way. Litter pick-up, increased public or private safety patrols, or other security measures would result in fewer environmental impacts on coastal resources. The Commission finds, therefore, that there are feasible alternatives or mitigation measures available which would substantially lessen the significant adverse impacts which the proposed may have on the environment of the coastal zone and the project cannot be found consistent with CEQA.

Received at Commission
Hearing 8/11/88
Pete Wilson, Governor

STATE OF CALIFORNIA—THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

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



**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: County of Ventura

2. Brief description of development being appealed: Construction of a security gate across the north segment of Breakers Way

3. Development's location (street address, assessor's parcel no., cross street, etc.): 6692 - 6694 Breakers Way, Mussel Shoals, North Coast of Ventura County

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: X

c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: South Central

H5: 4/88

EXHIBIT NO.
APPLICATION NO.
<u>A-4-VNT-98-225</u>
<u>Appeal p1 of 4</u>

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator
- c. Planning Commission
- b. City Council/Board of Supervisors
- d. Other _____

6. Date of local government's decision: July 23, 1998

7. Local government's file number (if any): Planned Development Permit 1700

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:
Gary Garcia for Breakers Way Property Owners Association
6758 Breakers Way
Ventura, CA 93014

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) _____
- (2) _____
- (3) _____
- (4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

EXHIBIT NO.	
APPLICATION NO.	
A-4-VNT-98-225	
Appeal p2 of 4	

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

1. Ventura County LCP Land Use Plan: Vertical access policy mandating vertical access easements to the mean high tide line for all new development;

2. Ventura County LCP Land Use Plan: Figure 13 residential community map designating Breakers Way as a public street;

3. LCP Zoning Ordinance Sec. 8178-6.2 mandating vertical access easements to the mean high tide line for all new development;

4. LCP Zoning Ordinance Sec. 8178-6.2 requiring removal of "no trespassing" signs as a condition of development approval.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Sara Allen
Signature of Appellant(s) or Authorized Agent

Date 8/11/98

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

8533A

EXHIBIT NO.	1
APPLICATION NO.	A-4-VNT-98-225
Appeal p3 of 4	

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Andrea E. Tuttle

Signature of Appellant(s) or
Authorized Agent

Date

8/11/98

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appel

Date

EXHIBIT NO.	1
APPLICATION NO.	A-4-VNT-98-225
Appeal p4 of 4	

RESOURCE MANAGEMENT AGENCY
county of ventura

Planning Division

Keith A. Turner
Manager

NOTICE OF FINAL DECISION

RECEIVED
AUG 05 1998

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
805 South Victoria Avenue, Suite # 200
San Buenaventura, CA 93001

On July 23, 1998 the Planning Director approved Planned Development Permit 1700. No appeals were filed with the County, so that decision is now final, and will be effective at the end of the Coastal Commission appeal period if no appeals are filed. The permit is described as follows:

Applicant Name and Address:

Gary Garcia, for
Breakers Way Property Owners Association
6758 Breakers Way
Ventura, CA 93001

Property Owner:

Hickey Brothers Land Company, Inc.
PO Box 147
Carpinteria, CA 93014

Project Location: 6692-6694 Breakers Way, Mussel Shoals (Ventura), in the north coast area of Ventura County.

Assessor's Parcel No.: 060-0-082-295

Date Filed: May 14, 1998

Description of Request: To construct a security gate at the entrance to the community on Breakers Way, a private street in the community of Mussel Shoals. (see Exhibit "4").

Findings and Conditions: See attached staff report for the findings and conditions.

County Appeal Period: From: July 23, 1998 to August 2, 1998.

After receipt of this Notice, the Coastal Commission will establish their appeal period. At the conclusion of that period, if no appeals are filed, this decision will be effective.

Any inquiries regarding this Notice of Final Decision should be directed to Debbie Morrisset at (805) 654-3635.

Date: 8/3/98


Coastal Administrative Officer
Jeff Walker, Manager, Land Use Permits Section

cc: Applicant

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EXHIBIT NO. 2
APPLICATION NO.
A-4-VNT-98-225
Local Decision p 1 of 7

**VENTURA COUNTY
COASTAL ADMINISTRATIVE HEARING
STAFF REPORT AND RECOMMENDATIONS
Meeting of July 23, 1998**

SUBJECT:

Planned Development Permit No. 1700

APPLICANT:

Gary Garcia, for
Breakers Way Property Owners Association
6758 Breakers Way
Ventura, CA 93001

PROPERTY OWNER:

Hickey Brothers Land Company, Inc.
PO Box 147
Carpinteria, CA 93014

A. REQUEST:

To construct a security gate at the entrance to the community on Breakers Way, a private street in the community of Mussel Shoals. (see Exhibit "4").

B. LOCATION AND PARCEL NUMBER:

The project site is at the intersection of Breaker's Way and Ocean Avenue. The Assessor's parcel numbers adjacent to the gate are 060-0-082-280 and 290, (see Exhibit "3").

C. BACKGROUND:

The homeowners in the community are requesting that the access be limited due to the narrowness of the street, and the additional problem of nonresidents blocking the street because there is no second outlet on Breakers Way. The subject portion of Breakers Way was abandoned by the County in 1978. Exhibit "6" is a copy of the recorded Resolution of Abandonment. A public hearing was conducted by the Board of Supervisors on the abandonment on September 12, 1978, and the Resolution was recorded on September 22, 1978. Therefore, this portion of Breakers Way has been a private road for almost 20 years. This fact was recognized by the Coastal Commission who lists Mussel Shoals as a private community in their Coastal Access Guide.

There was a turn-around area (cul-de-sac) at the northwesterly end of Breakers Way owned by the State Department of Transportation which may have been used in the past for public access to the beach. However, in 1995 that property was sold to the adjacent private property owner. Exhibit "7" is a copy of the recorded deed transferring title to that property

D. GENERAL PLAN AND ZONING:

General Plan Land Use Map Designation: EXISTING COMMUNITY
Coastal Area Plan Land Use Map Designation: RESIDENTIAL COMMUNITY
Coastal Zoning Classification: RESIDENTIAL BEACH (R-B)

E. EVIDENCE AND PROPOSED PERMIT FINDINGS:

Certain findings specified by Section 8181-3.5 of the County Coastal Zoning Ordinance must be made to determine that the proposed project is consistent with the Ordinance and with the Land Use Element of the Local Coastal Program. The proposed findings

EXHIBIT NO. 2
APPLICATION NO.
A-4-VNT-98-225
Local Decision p 2 of 7

and the project information and evidence to either support or reject them are presented below:

1. **Proposed Finding: The project is consistent with the intent and provisions of the County Local Coastal Program.**

Evidence:

- (a) General Plan and Zoning: The proposed project is compatible with the current General Plan, Local Coastal Plan and Coastal Zoning Ordinance. Section 8175-5.1 of the Zoning Ordinance indicates that the installation of a security gate is allowed in the R-B zone with a Planning Director Approved-Planned Development Permit.
- (b) Protection of Environmentally Sensitive Habitats: The proposed project is in a developed residential community therefore, there will be no impacts to environmentally significant habitats as there are none on the project site.
- (c) Protection of Archaeological and Paleontological Resources: Since the proposed project is in a developed area, no direct or indirect adverse impacts to archaeological or paleontological resources will occur as a result of the proposed project.
- (d) Recreation and Access: Adequate public access to the shoreline is available within 1/2 mile from the site. Unmarked parking is available on CALTRANS property to the north and south of the Mussel Shoals Community. Ocean Avenue is a public street and offers some parking and there is a parking area at the southerly end of Mussel Shoals near the Cliff House. Breakers Way is a narrow, private street with limited street parking. Also see the discussion under Section "C" of this report. Therefore, there will be no impact from the proposed project on recreation or access thereto.
- (e) Preservation of Agricultural Lands: The proposed project site is not located on or near an agriculture preserve or prime soils area. The project will not have an impact on the preservation of agriculture lands or land use plan policies relating to agricultural uses.
- (f) Protection of Public and Property from Naturally-Occurring and Human-Induced Hazards: The Public Works Agency has determined that there will be no adverse impacts relative to the proposed project from naturally-occurring and/or human-induced hazards as there are no known faults or landslides on the project site.
- (g) Protection of Property from Beach Erosion: The project site is not located in an area of beach erosion. Therefore, the property does not require protection from beach erosion and no impacts are expected.
- (h) Consistency with Public Works Policies: The proposed project will be required to meet all Public Works Agency requirements for construction, prior to issuance of a building permit. In addition, no Public Works facilities will be affected by the proposed project.

2. **Proposed Finding: The project is compatible with the character of surrounding development.**

EXHIBIT NO. 2
APPLICATION NO.
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Evidence: The residential community along Breakers Way is requesting this permit and feel it is necessary to preserve the character of their community. As the proposed project is a security gate that will only effect the residents of the area requesting the permit, it will be compatible with the surrounding development.

3. **Proposed Finding:** The project will not be obnoxious or harmful, or impair the utility of neighboring property or uses:

Evidence: The proposed security gate will reduce, not create, traffic, noise dust, or other such impacts on the surrounding residences and therefore, will not be obnoxious or harmful, or impair the utility of neighboring property or uses.

4. **Proposed Finding:** The project will not be detrimental to the public interest, health, safety, convenience or welfare.

Evidence: The proposed project will not require any public services.. The project design and location has been reviewed and approved by both the Ventura County Fire Protection District and the Public Works Agency Transportation Department. Therefore, the proposed project will not be detrimental to the public interest, health, safety, convenience or welfare.

F. COUNTY ORDINANCE CODE COMPLIANCE:

Based upon the information and evidence presented above, this application with the attached conditions, meets the requirements of Section 8181-3.2 the County Coastal Zoning Ordinance and County Coastal Plan. The proposed project is consistent with the intent and provisions of the County's Local Coastal Program in that the development will not have an impact upon environmentally sensitive habitats, coastal recreation or access, nor have an impact upon neighboring property or uses. The design and style of the proposed development is consistent and compatible with surrounding structures and meets the development standards of the R-B zone.

- G. CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE:** The proposed security gate was determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) under Sec.15303 Class 3, New Construction of Small Structures. A Notice of Exemption will be filed with the Clerk of the Board following action on this permit. Filing of the Notice establishes a 35-day statute of limitations on legal challenges to the decision that this project is exempt from CEQA.

- H. JURISDICTIONAL COMMENTS:** The project was distributed to the appropriate and concerned agencies, as of the date of this document no one has commented on the project.

- I. PUBLIC COMMENTS:** All property owners within 300' of the proposed project parcel and all residents within 100' of the subject parcel were notified by U.S. Mail of the proposed project. In addition, the notice was published in the local newspaper. As of the date of this document no comments have been received.

RECOMMENDED ACTION:

1. Find that the project is categorically exempt from CEQA, and Direct that a Notice of Exemption be prepared and filed in accordance with CEQA and the Guidelines issued thereunder;

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2. Adopt the proposed findings and Approve Planned Development Permit No.1700, subject to the conditions in Exhibit "2".

Prepared by:

Debbie Morrisset, Case Planner

Attachments:

- Exhibit "2" - Conditions of Approval
- Exhibit "3" - Location Map (Assessor Parcel Map)
- Exhibit "4" - Plot Plan/Site Plan
- Exhibit "5" - Elevations and Floor Plans
- Exhibit "6" - Resolution of Abandonment
- Exhibit "7" - CALTRANS deed

Project and conditions _____ approved or _____ denied on _____

Jeff Walker, Manager
Land Use Permits Section
Coastal Administrative Office

c:\naoffice\winword\debbie\document\coastal\pd1700cor.doc

EXHIBIT NO. 2
APPLICATION NO.
A-4-VNT-98-225
Local Decision p 5 of 7

CONDITIONS FOR: Planned Development
Permit No.: 1700 (coastal)

APPLICANT: Gary Garcia

HEARING DATE: June 25, 1998 JUL 23, 1998

LOCATION: Mussel Shoals, Ventura

APPROVAL DATE::

PAGE: 1 of 2

PLANNING DIVISION CONDITIONS:

1. The permit is granted to construct a security gate at the intersection of Ocean Avenue and Breakers Way in the community of Mussel Shoals.

2. Permit Expiration:

This permit shall automatically expire if any of the following circumstances occur;

- a. A Zoning Clearance has not been issued within one (1) year of permit approval. The Planning Director may grant a one year extension during the initial year period based on a written request by the applicant.
- b. A Building Permit has not been issued within six (6) months of issuance of the Zoning Clearance.
- c. The Building Permit expires prior to completion of construction.

3. Any changes will require the filing of a Modification application to be considered by the Planning Director.

4. All requirements of any law or agency of the State, Ventura County, and any other governmental entity shall, by reference, become conditions of this permit.

5. Prior to issuance of a Building Permit, a Zoning Clearance shall be obtained from the Planning Division. Prior to issuance of the Zoning Clearance, the following conditions must be met:

- a. Condition No. 10 - Condition Compliance Fee
- b. Condition No. 11 - Current Billing

6. The permittee's acceptance of this permit, issuance of a Zoning Clearance and/or commencement of construction and/or operations under this permit, shall be deemed to be acceptance by permittee of all conditions of this permit.

7. The permittee shall pay all necessary costs incurred by the County or its contractors for inspection, permit compliance, monitoring, and/or review activities as they pertain to this permit. The permittee shall also fund all necessary costs incurred by the County or its contractors for enforcement activities related to resolution of confirmed violations. Costs will be billed at the contract rates in effect at the time enforcement actions are required

8. Permittee Defense Costs

As a condition of Permit issuance and use of this Permit, including adjustment, modification or renewal of the Permit, the permittee agrees to:

EXHIBIT NO. 2
APPLICATION NO.
A-4-VNT-98-225
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14-1.96

EXHIBIT '2'

CONDITIONS FOR: Planned Development
Permit No.: 1700 (coastal)

APPLICANT: Gary Garcia

HEARING DATE: June 25, 1998

LOCATION: Mussel Shoals, Ventura

APPROVAL DATE::

PAGE: 2 of 2

- a. defend, at the permittee's sole expense, any action brought against the County by a third party challenging either its decision to issue this Permit or the manner in which the County is interpreting or enforcing the conditions of the Permit; and
- b. indemnify the County against any settlements, awards, or judgments, including attorney's fees, arising out of or resulting from any such action.

Upon demand from the County, the permittee shall reimburse the County for any court costs and/or attorney's fees which the County may be required by a court to pay as a result of any such action the permittee defended or had control of the defense of the suit. The County may, at its sole discretion, participate in the defense of any such action, but such participation shall not relieve the permittee of its obligations under this condition.

9. Liability (Other Responsibilities)

Neither the issuance of a permit hereunder nor compliance with the conditions thereof shall relieve the permittee from any responsibility otherwise imposed by law for damage to persons or property, nor shall the issuance of any use permit hereunder serve to impose any liability upon the County of Ventura, its officers or employees for injury or damage to persons or property.

Except with respect to the County's sole negligence or intentional misconduct, the permittee shall indemnify, defend and hold harmless the County, its officers, agents, and employees, from any and all claims, demands, costs, expenses, including attorneys fees, judgments or liabilities arising out of the construction, maintenance, operations or abandonment of the facilities described herein under Condition 1 (Permitted Use), as it may be subsequently modified pursuant to the conditions of this Permit.

10. Prior to the issuance of a Zoning Clearance for a building permit and/or construction, the permittee, or successors in interest shall submit to the Planning Division a \$240.00 fee as a deposit to cover the costs incurred by the County for Condition Compliance Review, with a fee Reimbursement Agreement signed by the applicant.
11. Prior to the issuance of a Zoning Clearance for this project, all permit processing fees billed to that date must be paid. After issuance of the zoning Clearance, any final billed processing fees must be paid within 30 days of the billing date, or the permit is subject to REVOCATION.

VENTURA COUNTY FIRE PROTECTION DISTRICT CONDITIONS:

17. The applicant shall submit a gate plan to the Ventura County Fire Protection District for plan check and approval prior to installation. The gate installation shall comply to the Ventura County Fire Protection District Gate Guidelines.

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APPLICATION NO.
A-4 - VNT - 98 - 225
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Breakers Way Gate

(Picture to show pillars)



DIRECTION OF SLIDING GATE

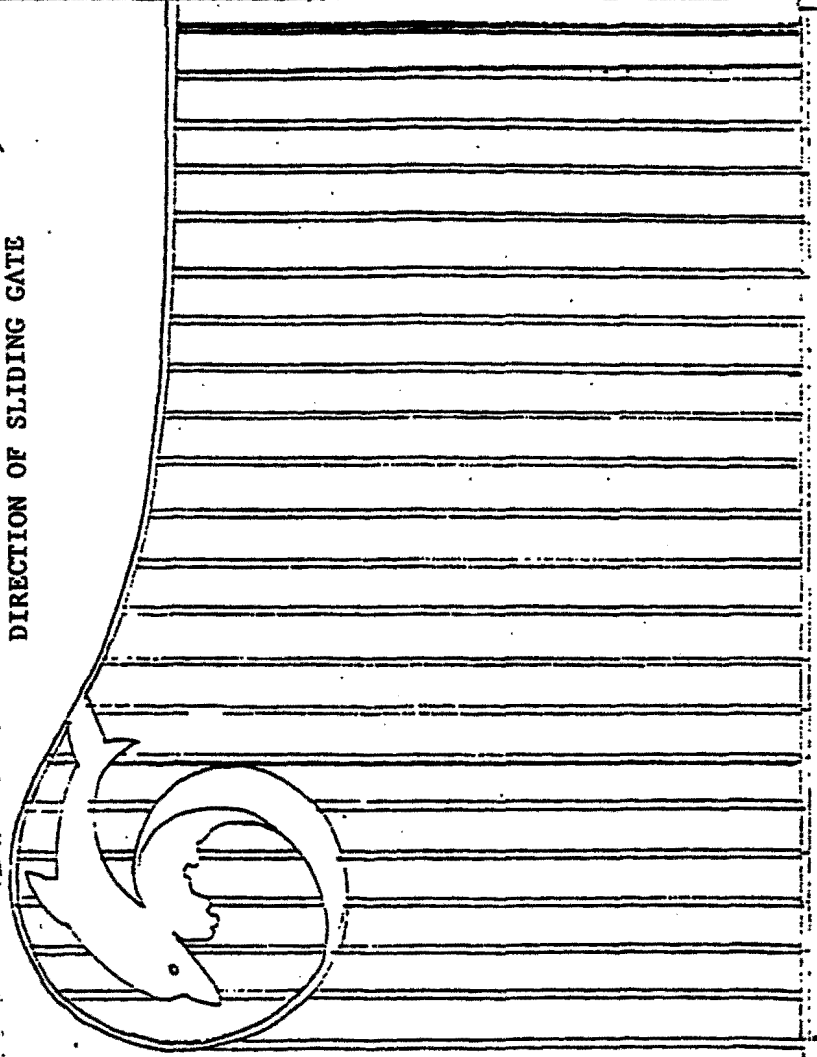


EXHIBIT "5"

Scale: 1/2" = 1'

ELEVATION

EXHIBIT NO. 3
APPLICATION NO.
A-4-VNT-98-225
Proposed Gate

POR. SEC. 12, T.3N.; R.25W. S.B.B. & M.
 POR. SEC. 7, T.3N.; R.24W. S.B.B. & M.

60-08
 DEC 20 1988

Tax Rate Area
 91008

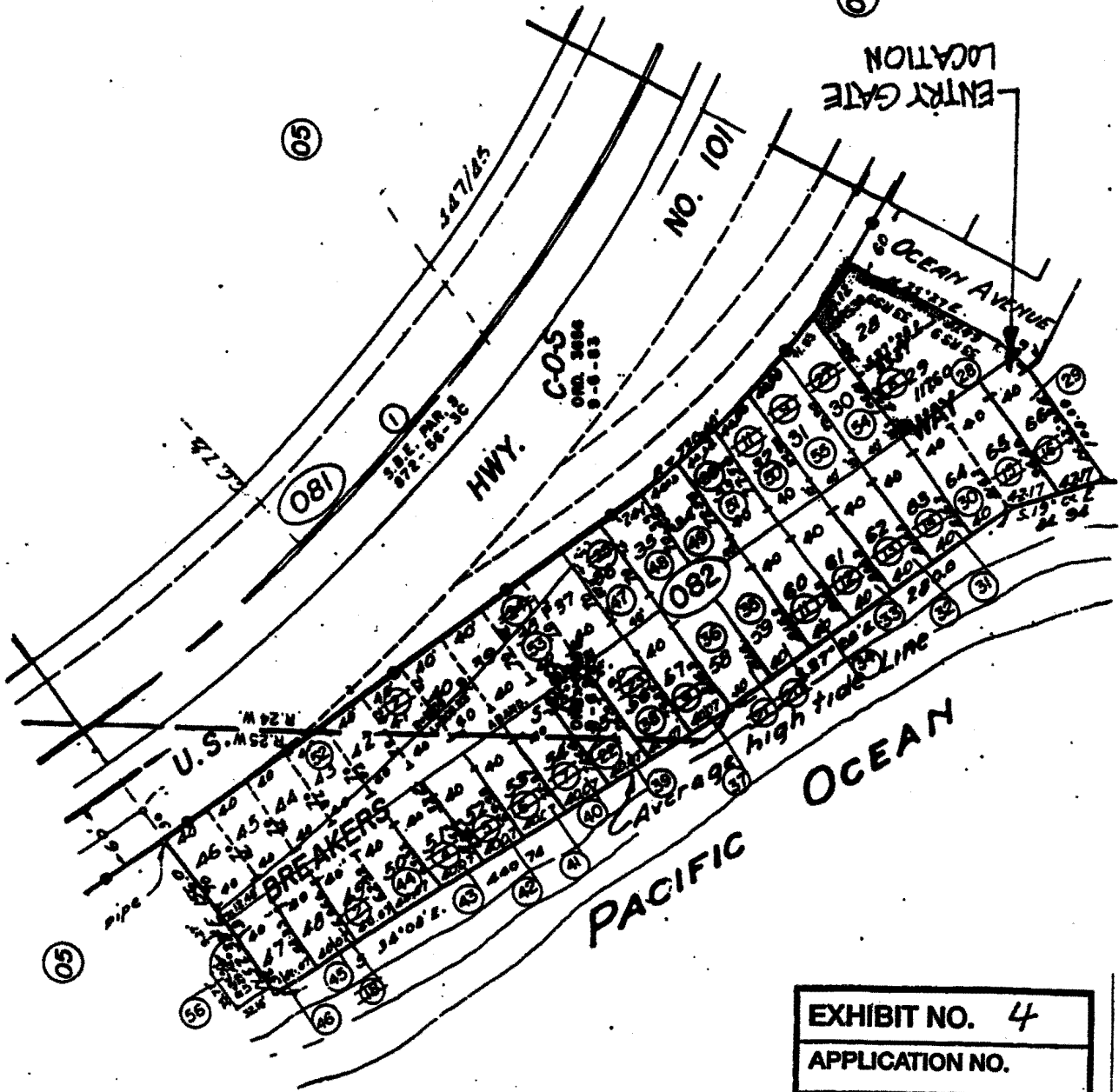
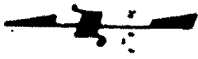


EXHIBIT NO. 4
 APPLICATION NO.
 A-4-VNT-98-225
 Project Location

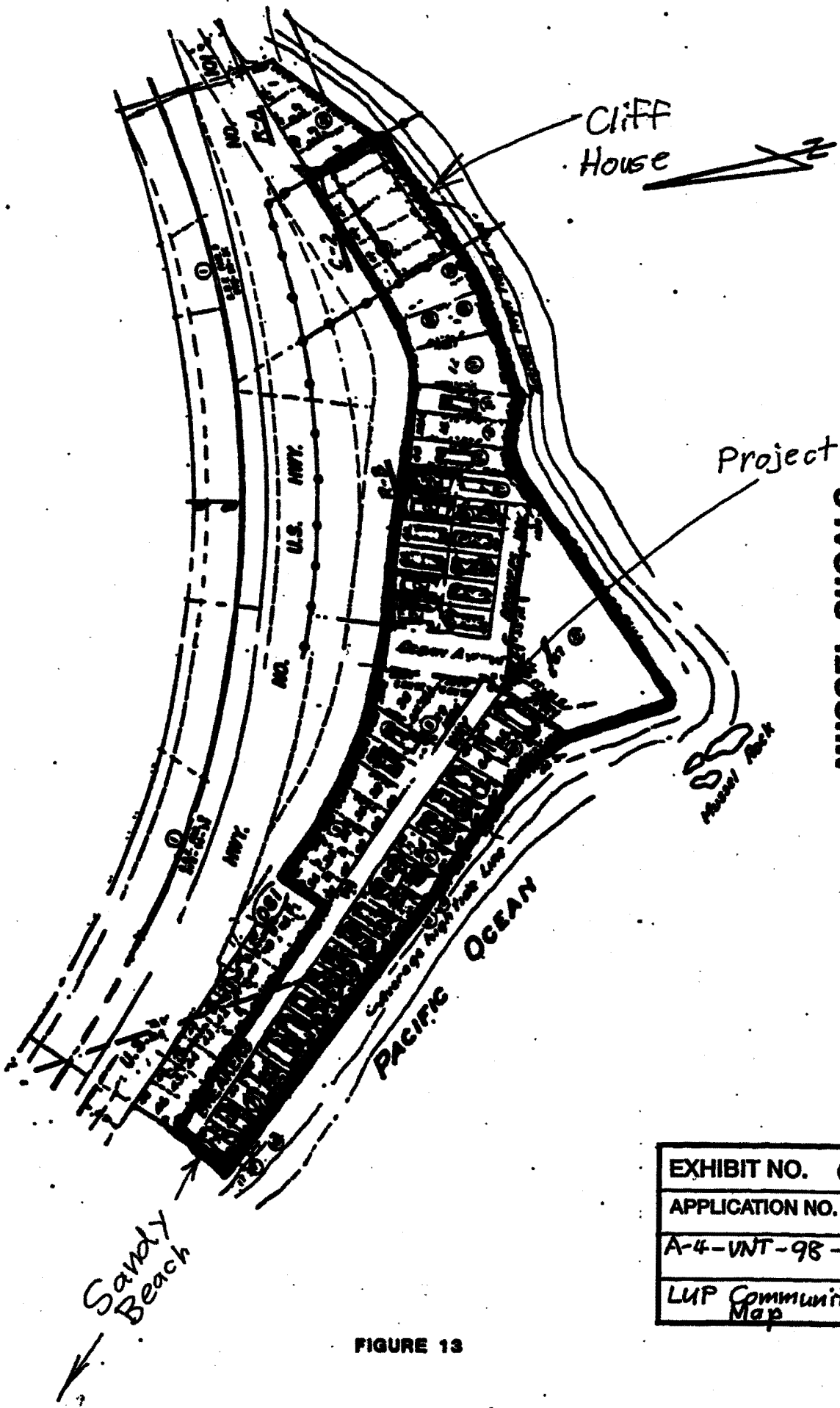
VENTURA COUNTY PLANNING DEPARTMENT
 ZONE BOUNDARY ZONING MAP 60-08
 BOARD OF SUPERVISORS COUNTY OF VENTURA
 ORDINANCE 9868 ADOPTED 9-6-88
 COUNTY CLERK Robert L. Mann
 By *Steph Hillard* Deputy

NOTE: THIS MAP IS FOR INFORMATION ONLY. IT DOES NOT CONSTITUTE A GUARANTEE OF ACCURACY. THE COUNTY CLERK'S OFFICE OF PLANNING DIVISION IS NOT RESPONSIBLE FOR THE CONTENTS OF THIS MAP.

Assessor's Map Bk. 60, Pg. 08
 County of Ventura, CA

Mussel Shoal Tr. 1, R.M. Bk. 12, Pg. 30

NOTE- Assessor's Block Numbers shown in Ellipses



**MUSSEL SHOALS
RESIDENTIAL COMMUNITY**

EXHIBIT NO. 6
APPLICATION NO.
A-4-VNT-98-225
LUP Community Map

FIGURE 13

SURFERS ENVIRONMENTAL ALLIANCE

1015 Casitas Pass Road, Suite 103, Carpinteria, CA, 93013
(209) 295-1645

"THE LEADING EDGE OF COASTAL ACTIVISM"

California Coastal Commission
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001
(805) 641-0142
Fax (805) 641-1732

VIA FAX AND U.S. MAIL

9/3/98

**RE: APPEAL NO. A-4-VNT-98-225: PROPOSED BREAKERS WAY
SECURITY GATE, MUSSEL SHOALS, VENTURA COUNTY**

Dear Commissioners:

The following comments are submitted on behalf of Surfers Environmental Alliance (SEA), a non-profit organization dedicated to the protection and preservation of the coastal environment, and marine resources. SEA appreciates the opportunity to comment on this matter and wishes to thank you for your consideration of these comments.

There remains few public access points to the coast between Rincon Point and Ventura, due to the proliferation of gated communities, and the obstructions resulting from the Caltrans 101 Freeway barriers at La Conchita and Seacliff.

Compounding the access problems for the public is the continued construction of coastal fortifications which push increasingly further into the public beach and effectively eliminate lateral public beach access on all but the lowest tides. The unfortunate result is a private coast for the privileged few, and the loss of coastal access for beach going members of the public.

EXHIBIT NO. 7
APPLICATION NO.
A-4-VNT-98-225
Letter from Geoffrey Latham

As a former resident of Breakers Way, I can testify that security is not a problem, nor is it the motivation for this proposal. Property owners on Breakers Way are well aware that once a security gate blocking vehicular access is constructed they will have a private beach, and as a result, their real property values will soar. Thereafter, as has been the case in most other gated coastal communities, fences will go up to exclude the troublesome unwashed masses from utilizing the public coastal resources.

No longer will the public enjoy the simple pleasures of sunbathing, picnics, swimming, fishing, surfing, volleyball, or other free recreational activities at Mussel Shoal's sandy beaches. Access to the beach at Mussel Shoals will go the route of other adjacent coastal communities such as, Seaciff, Faria Beach, and Solimar, and access by the public will be effectively eliminated once and for all, except to those privileged few who's security, and property value's we are apparently to accept as being paramount to the public's right to access to the public beach.

It is the policy of Article 2, of the Coastal Act to provide maximum public access to and recreational use of the coast for all the people. The public has traditionally used Breakers Way for coastal access. The proposal is not a new development, but merely a proposal to restrict existing public access to recreational opportunities, and interfere with the public's long established right of access to the coast. Therefore, the proposed gate violates both the letter and the spirit of the Coastal Act's maximum public access mandate.

SEA is opposed to the proposed security gate because it would constitute a restriction to existing public access to coastal recreational activities, and interfere with the public's right of access to the beaches at La Conchita, and Mussel Shoals. Please stop the rip-off of public resources.

Thank you for your efforts to provide maximum access to the public beach at Mussel Shoals.

Sincerely yours,

Geoffrey Latham
Geoffrey Latham
SEA Environmental Analyst

EXHIBIT NO.	7
APPLICATION NO.	
A4-VNT-98 - 225	
Letter from Geoffrey Latham	