

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036



Filed: June 23, 1998  
 49th Day: August 11, 1998  
 180th Day: December 20, 1998  
 270<sup>th</sup> Day: March 20, 1999  
 Staff: EL-SD  
 Staff Report: November 18, 1998  
 Hearing Date: March 9-12, 1999

RECORD PACKET COPY

**Wed 16a**

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-97-144

Applicant: Beach House Restaurant

Agent: Chris Buetow

Description: Repair and maintenance of an existing riprap revetment including the addition of approximately forty tons of new stone to the top of the revetment. Some development has already occurred pursuant to Emergency Coastal Development Permit #6-97-144-G.

Site: On beach seaward of restaurant at 2530 South Highway 101, Encinitas, San Diego County. APN 261-162-23

Substantive File Documents: Certified City of Encinitas Local Coastal Program; CCC Files #F2857; #F5483; #6-84-437; and #6-97-144-G

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends denial of the follow-up permit for the emergency work, at this time, due to the presence of unpermitted riprap within an area previously required by the Commission to be open to the public for access. There is an access dedication, 8 feet wide, seaward of the restaurant which was to be kept clear of improvements and available for access. The proposed augmentation is to an existing revetment which does not have proper permits and access is not being provided seaward of the restaurant in accordance with previous Commission action. Therefore, approval of the emergency work as permanent would be premature and could prejudice enforcement of the apparent Coastal Act violations that exist on the property. Enforcement is being pursued independent of Commission action on this permit and may result in a revised permit application for development seaward of the restaurant. The revetments at the subject site and the restaurants on either side have been augmented in a piecemeal fashion for many years, often without permits. Staff recommends that no more incremental augmentation be permitted until a comprehensive effort to address both public access and the need for shoreline protection is undertaken on all three properties.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Denial.

The Commission hereby **denies** a permit for the proposed development on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and would 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.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The applicant is proposing to repair and maintain an existing riprap revetment, which protects an existing oceanfront restaurant in the Cardiff area of the City of Encinitas. The current proposal is for the addition of approximately forty tons of additional riprap to augment the existing wall. This application is a follow-up action to an emergency permit granted on November 21, 1997. The emergency permit authorized the addition of twenty, four- to five-ton stones to the existing revetment and also authorized the retrieval by mechanized equipment of stones which had migrated seaward from the existing revetment onto the sandy beach. A letter received in this office on August 28, 1998, indicated there was no way to get equipment onto the beach to reposition migrated stones, and the migrated stones were not visible in any event. Thus, that portion of the authorized emergency repairs did not occur. Also, a smaller amount of stone was ultimately imported than had been approved in the emergency action, such that a total of only forty tons of new stone was actually placed on the revetment.

2. Site History. Three coastal development permit (CDP) applications have been submitted in the past for the subject site. CDP #F2857 was issued on October 9, 1976, for removal of an existing structure, construction of the Triton Restaurant (now the Beach House), provision of 58 parking spaces, installation of a monument sign and the reconstruction of an existing riprap revetment. Conditions of approval on that permit required the recordation of an eight-foot wide public access easement running parallel to the riprap between the riprap and the restaurant. Its stated purpose was to "provide 'dry land' access parallel to the beach during periods of high tide or storm conditions." Based on the exhibit attached to the recorded document, it appears the easement is located where the riprap revetment proposed for augmentation currently exists.

In April, 1977, the Commission approved CDP#F5483, which was actually an amendment to the previously-described permit. It proposed changes to the roofing and architectural design of the restaurant, but did not modify the building footprint, siting, square footage, parking or landscaping. It was approved with no special conditions and

neither the previously-recorded access easement nor the revetment was addressed in, nor affected by, that action.

A third application was submitted in August, 1984, proposing construction of a fifty sq.ft. storage building as an addition to the existing restaurant. Staff notes in the file recorded two meetings with the applicant's agent discussing the items needed to complete the file as well as discussions regarding the access easement. The notes indicate concern that the proposed storage structure was improperly sited and would obstruct the eight-foot-wide access easement area. The items required to complete the file were never received; thus, the application was never filed or processed.

3. Public Access and Recreation. The Coastal Act emphasizes the need to protect public recreational opportunities and to provide public access to and along the coast. The following Coastal Act policies, which address the protection of public access and recreational opportunities, are relevant to the proposed development:

#### 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.

#### 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....

#### Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

### Section 30223

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

The subject site is the middle of three contiguous properties all improved with restaurants (known locally as "restaurant row"). The three sites are located on the oceanfront in the Cardiff area of the City of Encinitas. The properties are located between two state beaches, the San Elijo State Beach and Campground to the north and Cardiff State Beach to the south. This is an area where very little sandy beach currently exists, and there is no lateral public access available except at the lowest tides. The Commission, through past permit actions, required public access easements on all three sites. These were to be located inland of the riprap revetments in order to provide dry access during all tidal regimes and storm conditions.

The subject property is currently improved with a two-story, 6,000 sq.ft. restaurant, a paved parking lot, landscaped areas and a riprap revetment. These facilities were approved through two past Commission actions (CDPs #F2857 and #F5483), and were constructed during the late 1970's. The Commission's first approval included the requirement to dedicate an eight-foot-wide public access easement seaward of the new restaurant approved therein. The stated purpose of the easement was to allow future construction of a walkway that would provide dry land lateral access during periods of high tides or storms. Although the restaurant appears to be sited in its approved location, it does not appear that the riprap revetment is located in the alignment approved in 1976. The earlier Commission action approved the revetment in a location that would allow the eight-foot-wide public access easement to be provided between the restaurant's dining patio and the revetment. The current plans and on-site conditions have the existing riprap revetment, proposed herein for maintenance and augmentation, located immediately adjacent to the dining patio, not eight-feet from the patio as the former Commission action required. Thus, it precludes the envisioned walkway improvements and obstructs lateral movement.

All three restaurant properties have current applications pending for shoreline modifications necessitated by the past winter's unusually heavy El Nino storm conditions. The subject applicant augmented its existing riprap revetment under an emergency permit (CDP #6-98-144-G) approved a year ago; the subject proposal is the follow-up to that emergency action. Because it was an emergency situation, the Commission did not have the opportunity to research the site history and determine whether or not the riprap was appropriately placed, based on past permit decisions and public access concerns. However, in reviewing the subject follow-up application to the emergency permit, and the current applications from the other two restaurant owners/lessees, it has been possible to piece together the history of all three sites.

In conversations between Commission staff and the current applicant (the restaurant lessee), the applicant has suggested that the riprap was probably modified, perhaps repeatedly, during the interim between the Commission's last action in 1977 and the time

the current lessee took over the property. Severe winter storms in 1982-1983, and again in 1987-1988, resulted in the construction of many shoreline protective devices up and down much of the coastline of San Diego County (and elsewhere in California). No records of emergency permits have been found for the subject site, but the placement of unauthorized rock during severe winter storm events is not an uncommon occurrence. It is possible that placement of even small increments of additional rock on the existing revetment could, over time, effectively change the overall revetment alignment. Based on the submitted site plan for the subject site, and the site plans from previous applications at the same site, it has now been determined that the riprap revetment is not located where it was approved in 1976. Whether it was originally constructed in the wrong location, or subsequent modifications effectively moved the alignment landward, it is clear that the current location is directly over the recorded public access easement.

For this reason, the Commission finds it must deny the current proposal to repair and maintain the inappropriately placed revetment. Permitting the proposed repairs would be in direct conflict with the Commission's past action, since it would allow the applicant to maintain the riprap in a manner that violates the requirement to provide a public accessway. Provision of the public access easement was required in the earlier action to mitigate the impacts of the development proposed at that time, particularly the reconstruction of the revetment, on public lateral access as it then existed. Only with the access dedication was the Commission able to find that earlier development consistent with Chapter 3 of the Act. Likewise, approval of the proposed development would be inconsistent with the cited Coastal Act policies, especially Section 30212, because it would perpetuate the applicant's inability to provide the required lateral access, due to the unpermitted location of the existing revetment. Thus, ongoing access impacts would remain unmitigated and the maximum access required by the Coastal Act would not be provided..

4. Potential Alternatives. The Commission finds that augmentation of riprap protection of the applicant's restaurant might be consistent with the Coastal Act if it were redesigned or sited differently. Based on existing tidal conditions and history of past storm damages, maintaining shoreline protection appears to be required to protect the existing restaurant. Thus, if the applicant redesigns or resites the riprap to protect the public accessway, the project could potentially be found consistent with the above-cited public access policies of the Coastal Act. There appear to be at least three alternative ways to provide both shoreline protection to the restaurant and protect the public lateral accessway. These alternatives need to be analyzed for feasibility and impacts to resources. The Commission identifies them here as suggestions only, and without implication that any or all would definitely be consistent with the Coastal Act. Further, the suggestions do not take into consideration comparative costs, future permit requirements or potential public interest or opposition.

First, the applicant could reconfigure the riprap revetment in the location approved in 1976. This may require some form of backfill between the relocated wall and the restaurant, which are contiguous at this time, since the restaurant is at a higher elevation than the toe of the revetment. This may be able to be accomplished within the existing

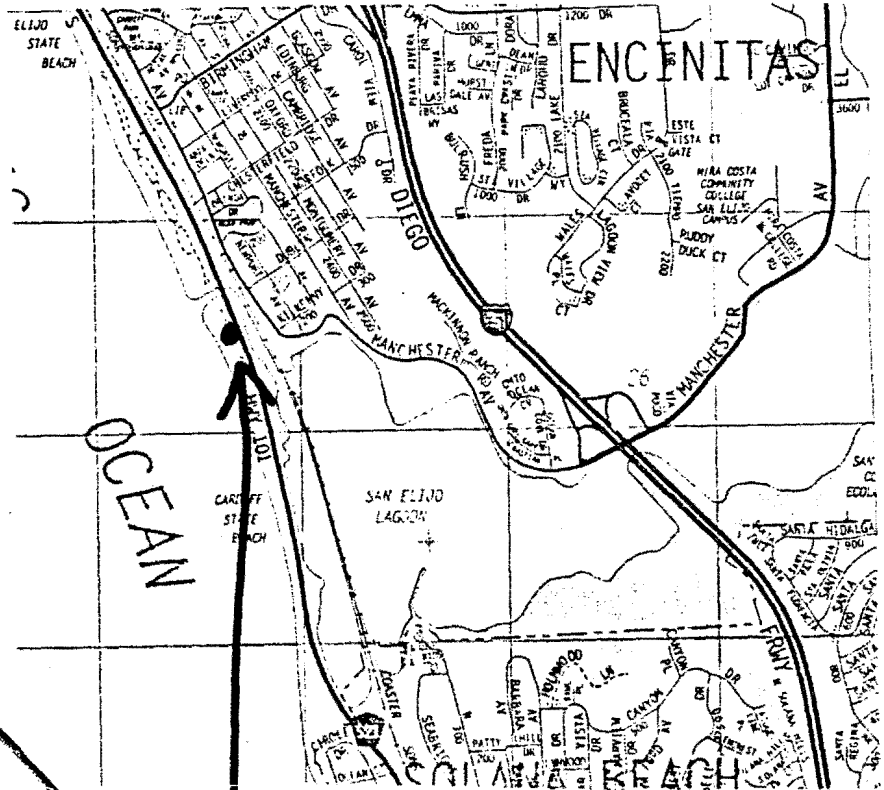
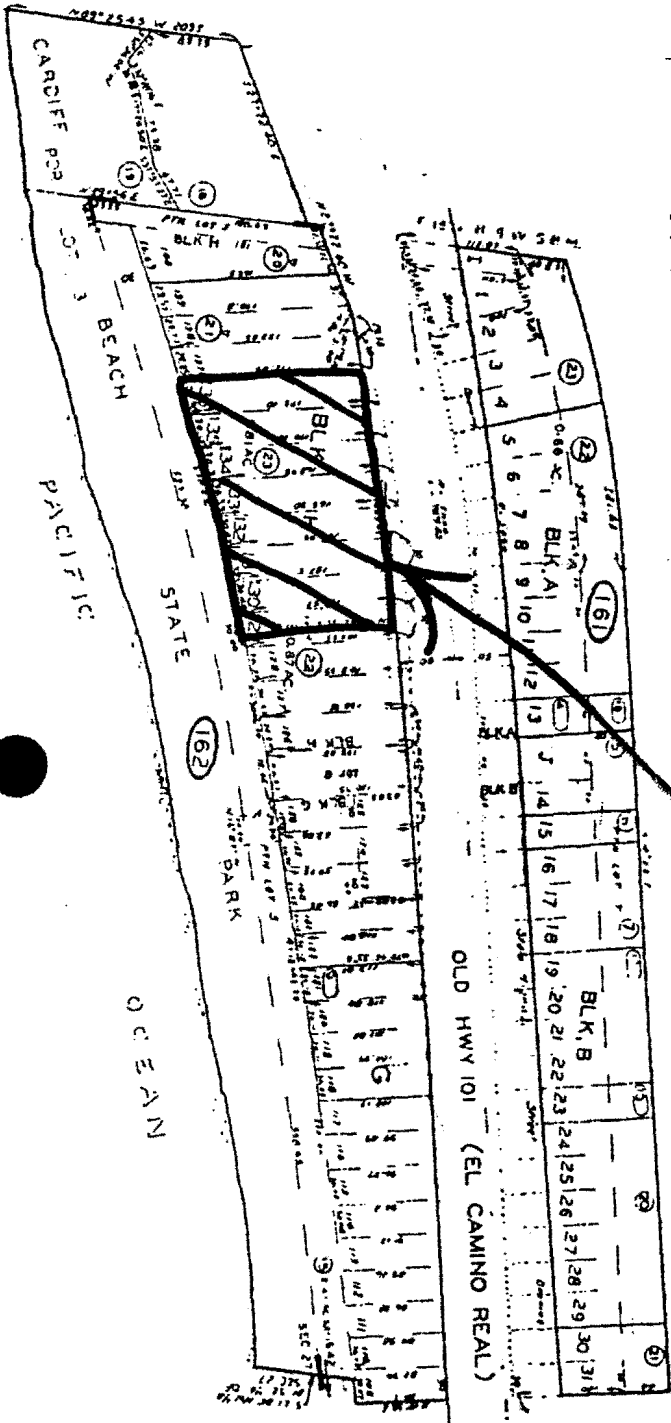
footprint of the revetment. Encroachment further seaward may not be an acceptable impact as it would reduce the sand area available now for public access and recreation, though only at low tides. Second, the riprap revetment could be engineered such that a walkway could be constructed across the top of it. This would not require further beach encroachment, nor a significant amount of backfill. Third, the rock revetment could be replaced with a vertical seawall with minimal backfill to allow construction of a walkway between the restaurant and seawall, similar to what exists in other areas where seawalls have been designed to provide lateral access across the top. This alternative would also not result in additional beach encroachment.

5. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding cannot be made and the permit must be denied.

The subject site is designated as Visitor-Serving Commercial in the certified City of Encinitas Land Use Plan. Policy 6.2 of the land use plan provides for the protection and enhancement of lateral access opportunities along the shoreline in cooperation with the State. In this particular case, a lateral access easement has been reserved on the subject site, but it cannot be used by the public, since the revetment has been incorrectly built within the easement. Thus, the revetment location is inconsistent with the City's certified land use plan policy and approval of the proposed development would prejudice the ability of the City to implement its certified LCP.

6. Consistency with the California Environmental Quality Act (CEQA). As previously stated, the proposed development will result in impacts on public access opportunities along the shoreline which will result in unmitigable environmental impacts. Furthermore, alternative revetment siting or design would lessen the environmental impact of the proposed project on coastal resources. The Commission therefore finds that there are feasible alternatives or mitigation measures available which would substantially lessen the significant adverse impacts which the proposed development may have on the environment of the coastal zone.

6-97-144



Site

EXHIBIT NO. 1
APPLICATION NO.
6-97-144
Vicinity Map
California Coastal Commission

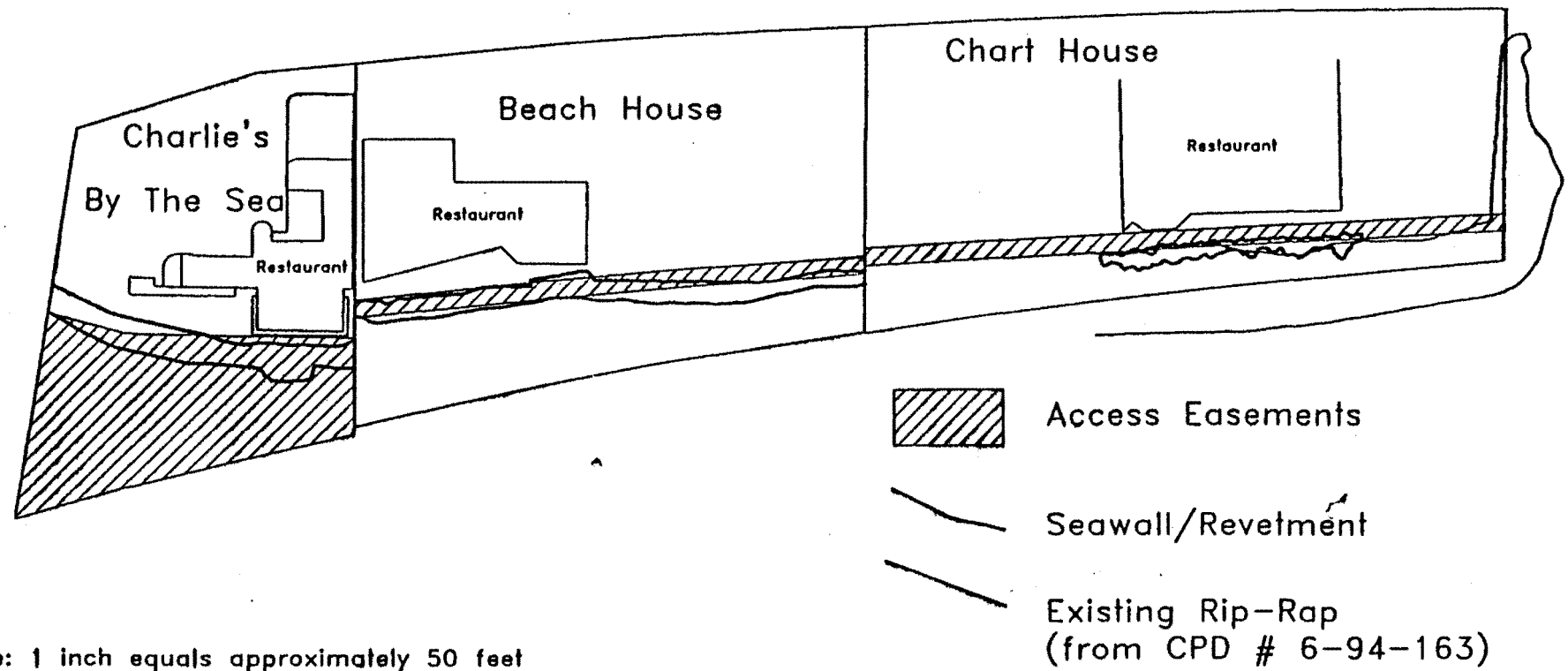
EXHIBIT NO. 2  
 APPLICATION NO. 6-97-144  
 Site Plan  
 Shoring Area  
 Easement  
 California Coastal Commission

# Access Easement Comparison

## Charlie's By The Sea, Beach House, Chart House Restaurants

### Cardiff by the Sea, San Diego County

2/2/99



Scale: 1 inch equals approximately 50 feet

Note: Locations approximate.  
 For illustrative purposes only.

Source: Permit file materials and plans



F2657

Beach House

76-39606

DEDICATION

THIS TESTAMENT, made this 20th day of November, 1976, by Leo Wayne Mullane and Dolores Jeanne Mullane who are the owners of Lots 129, 130, 131, 132, 133, 134, 135 and 136 of Block H, Map No. 1642 in the County of San Diego, State of California, filed in the Office of the County Recorder of said San Diego County, hereinafter referred to as "the Dedicator";

WHEREAS, pursuant to the California Coastal Zone Conservation Act of 1972, Sections 27000 through 27650 of the California Public Resources Code, the Dedicator has made Application No. F-2857 to the California Coastal Zone Commission, San Diego Region, for the issuance of a permit for the development of certain real property owned by the Dedicator; and

WHEREAS, said Commission has determined to grant said application and issue a permit for the development of said real property subject to certain conditions among which are that the Dedicator shall give the public the privileges and right to pass and repass over a strip of Dedicator's said real property eight (8) feet in width, and that the Dedicator shall execute and deliver to said Commission a restriction in the form herein set forth.

NOW, THEREFORE, in consideration of the issuance of said development permit, Dedicator agrees to keep the following

-1- Access  
Easement  
Dedication 6-97-144  
Exhibit 3

described portions of said real property, but no other portion thereof, open to the public for access to the Pacific Ocean and its shoreline for walking and agrees that Dedicator shall not construct any improvements on or in said public access area. The area subject to said public access is the following portion of the real property described in said application, to wit;

That certain real property in the County of San Diego, State of California, described in Exhibit "A" attached and made a part hereof.

Said public access privilege shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective, and during the period that the development covered by said permit, or any modification of said development, remains in existence in or upon any part of the real property described in said application.

Nothing shall become payable to Dedicator, nor the heirs or assigns of Dedicator, for the public privilege herein set forth and Dedicator consents to said privilege being administered by any duly constituted public agency.

Executed the day above written.

By Leo Wayne Mullaney  
Leo Wayne Mullaney

By Dolores Jeanne Mullaney  
Dolores Jeanne Mullaney

TO 447 C  
(Individual)

TI

STATE OF CALIFORNIA }  
COUNTY OF Orange } SS.

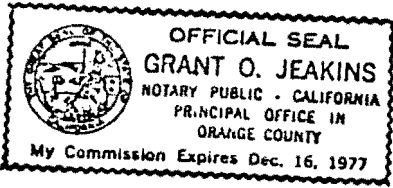
On November 20, 1976 before me, the undersigned, a Notary Public in and for said State, personally appeared LEO WAYNE MULLANE & DOLORES JEANNE MULLANE

STAPLE HERE

\_\_\_\_\_, known to me to be the person S whose name S ARE subscribed to the within instrument and acknowledged that THEY executed the same.

WITNESS my hand and official seal.

Signature Grant O. Jenkins  
GRANT O. JEEKINS  
Name (Typed or Printed)



(This area for official notarial seals)

697-144  
Ex 3 cont.

R. J. & R. R. TOAL, INC.

CIVIL ENGINEERS, LAND PLANNERS AND LAND SURVEYORS

139 AVENIDA NAVARRO • SAN CLEMENTE, CALIFORNIA 92672

PHONE (714) 492-8586

RICHARD J. TOAL, RCE 14505  
RAYMOND R. TOAL, RCE 16889

November 17, 1976

Job No. 3483

ENGINEER'S DESCRIPTION

An easement for public access over a portion of Lots 129, 130, 131, 132, 133, 134, 135 and 136 of Block H, Map No. 1642, in the County of San Diego, State of California, filed in the office of the County Recorder of said San Diego County, said easement being 8.00 feet wide, lying 8.00 feet Easterly of the following described line;

Beginning at a point in the Northerly line of said Lot 136, said point being 114.46 feet Westerly from the Northeast corner of said Lot 136; thence South  $15^{\circ}22'00''$  East, 92.66 feet; thence South  $15^{\circ}10'00''$  East, 136.33 feet to a point in the Southerly line of the Northerly 20.00 feet of said Lot 129.

EXHIBIT "A"

6-97-144  
Ex. 3 cont.

