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CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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VENTURA, CA 93001
(805) 641-0142



RECORD PACKET COPY

Request Filed: 2/12/99
Staff: Ven
Staff Report: 3/23/99
Hearing Date: 4/13-16/99

STAFF REPORT: REQUEST FOR RECONSIDERATION

APPLICATION NO: A-4-VNT-98-225

APPLICANT: Breakers Way Property Owners Association

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

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

COMMISSION ACTION: The Commission found **Substantial Issue** and **denied** the permit on appeal after conducting a de novo hearing at the January 15, 1999 Commission Hearing.

PROCEDURAL NOTE:

The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of an application, or of any term or condition of a coastal development permit which has been granted (California Code of Regulations, Title 14, Section 13109.2).

The regulations further state that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627(B)(3) which states:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an

error of fact or law has occurred which has the potential of altering the initial decision.

Section 30627(b)(4) of the Coastal Act also states that the Commission "shall have the discretion to grant or deny requests for reconsideration."

The applicant, Breakers Way Property Owners Association, submitted a request for reconsideration on February 12, 1999, within the 30-day period following the final vote on the application, as required by Section 13109.2 of the California Code of Regulations. If a majority of the Commissioners present vote to grant reconsideration the permit application will be scheduled for a de novo hearing at the next available Commission meeting or as soon as practicable. At the new hearing, if any, the Commission would consider it as if it were a new application (CA. Code of Regulations, Title 14, Sec. 13109.5[d]).

STAFF NOTE:

The reconsideration procedure applies only to Commission decisions on terms or conditions of permits granted, or of a denial. The Commission's determination that the appeal raises a Substantial Issue is not subject to the reconsideration procedure (Section 13109.1). Thus, the Reconsideration Request is applicable only to the Commission's denial of the application on appeal in the de novo hearing – the January 15, 1999 vote. The Commission's determination that a Substantial Issue exists with respect to the grounds upon which the appeal was filed is final and does not qualify for reconsideration. The Commission may grant reconsideration only of the denial of an application, or of any term or condition of an approved coastal development permit (CA. Code of Regulations, Title 14, Sec. 13109.2).

APPLICANT'S CONTENTION:

The Request for Reconsideration is based here on the assertion that errors of fact and law occurred which have the potential of altering the Commission's initial decision. The applicant contends: that errors of law occurred because staff made significant changes to the findings in an addendum to the report which were not given to the applicant; that there were errors of law made due to deficiencies in the notice to affected property owners; and that there were errors of fact made during the discussion of the permit at the January 15, 1999 Commission meeting. The request does not allege the existence of relevant new evidence.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

- I. Approval

The Commission hereby grants the request for reconsideration because errors of fact or law occurred which have the potential of altering the Commission's initial decision.

II. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Project Description and History

The applicant, Breakers Way Property Owners Association, is requesting reconsideration of the Commission's denial of the permit application (on appeal from decision of Ventura County to approve the permit) to construct a security gate across Breakers Way at the entrance to the northern portion of the Mussel Shoals Community. Mussel Shoals is a beachfront community located on the seaward side of Highway 101 and the Ventura Freeway.

The proposed location of the gate is at the intersection of Breakers Way and Ocean Avenue, a public street which intersects with Old Pacific Coast Highway which connects to Highway 101 and the Ventura Freeway, all public roads. Breakers Way parallels the shore and has historically provided public access to the sandy beach at its northwest end. The proposed gate would extend approximately 40 feet across Breakers Way and would include a four-foot wide pedestrian opening along its southwestern boundary. The portion of Breakers Way affected by the proposed gate became a private street in 1978 when the County abandoned this segment and ownership reverted to the property owners.

The County of Ventura approved a Coastal Development Permit for the proposed project on July 23, 1998 with conditions and the County's Final Local Action Notice was received in the Commission's South Central Coast District office on August 5. The County's approval was subsequently appealed by two Coastal Commissioners on August 11 within the 10 working day appeal period. The appeal was opened and continued at the Commission meeting of September 8-11, 1998 pending receipt of the permit administrative record from the County. The applicant agreed to waive the 49-day hearing requirement on appeals in order to conduct a dialogue on issues raised in the appeal with Commission staff prior to completion of a staff recommendation.

The appeal was then scheduled for the Commission's November, 1998 hearing but was postponed based on the written request of the applicant. The matter was then rescheduled for the Commission's January 1999 hearing. However, the applicant requested from staff an additional continuance of the hearing in writing prior to the hearing (due to eye surgery which hindered his ability to read the staff report). Due to the provisions of 14 California Code of Regulations

Section 13085(a) limiting applicant postponement requests to one by right staff informed the applicant that any further continuance could only be granted at the discretion of the Commission pursuant to 14 CCR Section 13085(b) and recommended that a representative of the Homeowners Association attend the hearing in case the Commission decided to proceed with the hearing.

The Commission subsequently proceeded with a public hearing on January 15, 1999. At the hearing the Commission determined that the appeal raised a Substantial Issue with regards to conformance with the County of Ventura certified Local Coastal Program (LCP) and denied the permit in the de novo hearing on the same day.

B. Grounds for Reconsideration

Pursuant to Section 30627(b)(4) of the Coastal Act, the Commission has the discretion to grant or deny requests for reconsideration. Section 30627(a)(1) states that the Commission shall decide whether to grant reconsideration of any decision to deny an application for a coastal development permit. The applicant has requested that the Commission reconsider its denial of the permit (exhibit 1). The basis of the applicant's request is that an error of fact or law has occurred which has the potential of altering the initial decision. If the Commission votes to grant reconsideration, it will consider the permit application as a de novo permit application at a subsequent meeting.

C. Relevant New Evidence

Staff notes that the applicant does not contend that there is any relevant new evidence which could not have been presented at the hearing on the matter. Although this is not one of the stated grounds for the applicant's request for reconsideration, staff notes that this ground is not presented by the facts at issue here. The applicant has not submitted any new evidence nor has staff review disclosed any. The reasons given by the applicant as the basis for an asserted error of fact or law do not suggest that there is any new evidence which could not have been presented at the hearing. The Commission therefore finds that there is no relevant new evidence which could not have been presented at the hearing on this matter.

D. Error of Fact or Law

The applicant asserts that the Commission committed errors of fact and/or law in denying the permit application. As an error of law the applicant claims that there were deficiencies in the public notice to affected property owners, specifically that several property owners along the portion of Breakers Way affected by the proposed gate did not receive notice of the January hearing. The Commission notes that a failure of notice can constitute an error of law sufficient to trigger a grant of reconsideration in certain circumstances. A review of the mailing list in

the Commission's file confirms that notices were not actually sent to all addresses on Breakers Way. The mailing list, which was included in the administrative record obtained from Ventura County after the appeal was filed, appears to target property owners within a 100-foot radius of the proposed gate. Several other individuals were added to the mailing list by Commission staff either by request or because they sent letters to staff expressing various concerns about the proposed project. Providing notice to adjacent landowners and residents within 100 feet of a proposed development is consistent with Commission requirements for notification. Specifically, Section 13054 of the Code of Regulations requires the applicant to provide a list of all addresses and parcels within 100 feet of the perimeter of the parcel on which the development is proposed. The Code of Regulations further requires in Section 13063 that notice of hearing shall be provided to "all persons known or thought by the Executive Director to have a particular interest in the application". It is not clear in the administrative record provided by the County how the parcel boundary was determined for the purpose of notification. The County's Notice of Final Decision provides one Assessor's Parcel Number (APN) while the County's staff report provides two different APNs. It is, therefore, unclear whether all interested parties received notice. An argument could be made that the entire private street affected by the gate is the subject parcel for purpose of public notice and that all adjacent parcels to the street are within the 100-foot perimeter. It could also be argued that all owners and/or residents of adjacent parcels are interested parties who, therefore, should have been notified. Although it is the applicant's responsibility to provide the mailing list, it appears that the mailing list utilized here may indeed have failed to include interested parties.

Although the result of the analysis of the alleged noticing deficiency is inconclusive, based on the above information, it appears that interested parties may not have received notice of the public hearing. Based on the unique circumstances presented in this case the Commission considers this potential noticing deficiency as an error of law and, therefore, grounds to grant reconsideration. Furthermore, the Commission finds that this error of law, the noticing deficiency which has occurred, has the potential of altering the Commission's initial decision.

The applicant also asserts that the Commission made many factual errors in denying the permit. Many of the alleged factual errors concern the determination, in the staff report and by the Commission at the hearing, that the County's approval raised Substantial Issue with respect to conformance with the County's certified LCP. As previously indicated, the Commission's determination of Substantial Issue is not subject to this request for reconsideration, however.

The applicant also contends that an error of fact occurred in the Commission's denial because the project was found to be in compliance with the certified LCP by the County. No evidence was submitted to support this claim in the request

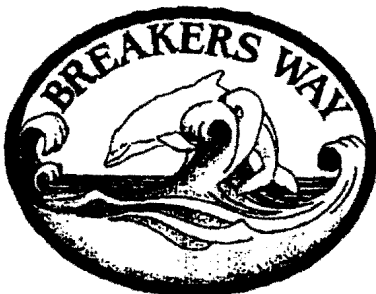
for reconsideration, however, and staff's analysis of this alleged ground has not found any evidence to support the claim.

Central to the applicant's contention of error of fact is a specific reference to a discussion in the staff report citing the County's failure to require the applicant to remove "no trespassing" signs at the entrance to Breakers Way as evidence of lack of conformance with a certified LCP policy which required such removal. The applicant objected to this finding and asserted that no "no trespassing" signs existed. Staff confirmed that there were no "no trespassing" signs at the site prior to the Commission hearing and corrected this "finding" in the January 12 addendum to the staff report. Although this finding was not the only basis for the staff recommendation for denial of the permit it is not clear whether this correction was made clear to the Commission at the hearing. This inaccuracy may have created an area of confusion in the report as well as in the public hearing. The Commission finds that this inclusion of inaccurate information in the staff report as a potential error of fact and, therefore, adequate grounds to grant reconsideration. Further, the Commission finds that this error of fact has the potential of altering the Commission's initial decision.

E. Conclusion

Where an applicant for reconsideration meets the threshold requirement of alleging potential errors of fact or law that have the potential for altering the Commission's decision, the Commission has discretion to grant reconsideration. In this situation, a second hearing on the application would allow the Commission to more fully consider the applicant's claim that the project is consistent with the existing requirements of the LCP and should, therefore, be approved. Additionally, a second hearing would allow the provision of public notice to property owners who potentially should have received notice of the previous hearing and would allow staff to revise the staff report to correct inaccurate information.

Therefore, the Commission grants the request for reconsideration. A de novo hearing on the application will be scheduled at the next available Commission meeting or as soon as practicable.



Breakers Way Property Owners Association

EXHIBIT NO. /

APPLICATION NO.

A-4-VNT-98-225 R

Gary Garcia
President, Breakers Way Property Owners Assoc.
6758 Breakers Way
Ventura, CA 93001

February 12, 1999

Mr. Peter Douglas
Executive Director, California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RE: Appeal No.: A-4-VNT-98-224

APPLICANT: Breakers Way Property Owners Association

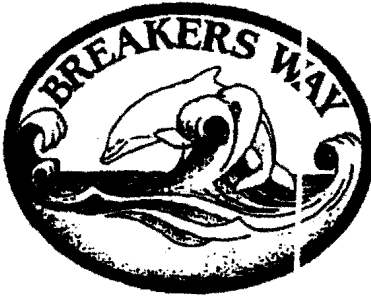
PROJECT DESCRIPTION: Construct a security gate at the entrance to the northern portion of the Mussel Shoals Community (Breakers Way Street)

Dear Mr. Douglas:

As President of the Breakers Way Property Owners Association, I had a discussion on January 5, 1999, with Gary Timm, Manager, Ventura District Office of the California Coastal Commission, requesting a hearing continuance on the above item from the scheduled January 15, 1999 Coastal Commission meeting. I received verbal support for the continuance from Mr. Timm, and then sent a letter to you on January 10, 1999 requesting your confirmation. Nevertheless, the item was addressed at the January 15 Coastal Commission meeting in our absence, and the permit was denied.

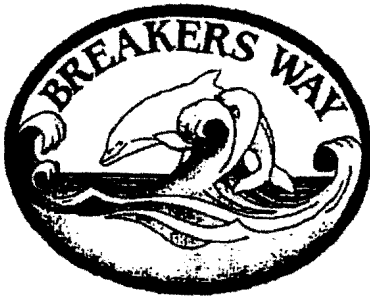
As the applicant, I would like to request a reconsideration of both the substantial issue and de novo hearing portions of this item, for the following reasons:

- 1) At the January 15, 1999 hearing, Mr. Timm states that staff did not object to our request for postponement, and further states that Coastal Commission staff "did make some significant changes to the findings." In addition to a 20-page addendum to the Coastal Commission on our item (Fr9a), a copy of which was never given to me as the applicant, I did not receive until FEBRUARY 4 a copy of the Coastal Commission Staff Report changes. This is a full three weeks AFTER our agenda item had been heard.



Breakers Way Property Owners Association

- 2) In addition to the lack of information given to me as the applicant, I believe there are notice deficiencies to affected property owners. According to the Coastal Commission file at the Ventura District office, property owners whose addresses range from 6702 through 6724 and 6741 through 6748 Breakers Way received notification of the January 15 Coastal Commission meeting. At a minimum, the property owners from 6726 through 6734 should have also received the public hearing notice. Since the gate would affect all property owners on the street, I believe that all property owners should have been notified.
- 3) There were many factual errors made during the discussion of our permit request at the January 15 meeting, if the Commissioners re-examine the original four reasons brought up by the appellant, None of the four items in the appeal can be substantiated that our project is out of compliance with any applicable regulation, and I believe that is why the Coastal Commission wished to avoid discussing the substantial issue items. Items 1 & 3 in the appeal regarding the vertical access policy are met by the exception that adequate access is nearby (and our gate does NOT CHANGE current access patterns). Item 2 regarding Figure 13 is dispensed in the Staff Report itself which shows that Breakers Way is a private road and the item does not raise a substantial issue. Item 4 regarding the removal of "no trespassing" signs is an error; since no "no trespassing" signs exist, a point that is finally made in the January 12 addendum to the Staff Report: "The project location . . . does not have such signs or obstructions. Therefore, this assertion does not raise a substantial issue" (p.2).
- 4) By ignoring the items raised in the appeal, the findings have been expanded beyond the issues raised, and thus the findings are broader than what was on appeal. Even in the de novo portion of the hearing, the crucial issue, pedestrian v. vehicular access, was not even discussed or analyzed. Nor was it recognized that the security gate would change NO current patterns of allowed access to Breakers Way and the beach.
- 5) Since the access for pedestrian's remains the same as currently exists on Breakers Way, the Coastal Commission staff should provide a basis for their assertions that the gate would be a visual impediment and/or a psychological barrier for public access.



Breakers Way Property Owners Association

I request reconsideration for the substantial issue and de novo portions of our permit request, to demonstrate that fairness and due process are upheld with due consideration by the California Coastal Commission. Please let me know the process by which this reconsideration request will be handled (e.g., whether the reconsideration request and a new hearing on the permit would be scheduled at the same meeting or at sequential meetings), so that I will be ready to provide information to the Coastal Commissioners at their earliest convenience.

Sincerely,

Gary Garcia
Homeowner and
President, Breakers Way Property Owners Association

Cc: Gary Timm, Manager, Ventura District Office, California Coastal Comm.
Kris Kuzmich, Administrative Assistant to Senator Jack O'Connell
Lindsay Nielson, Attorney at Law
Jeff Walker, County of Ventura Coastal Administrative Officer, & Manager, Land Use Permits Section

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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VENTURA, CA 93001
(805) 641-0142

Filed: 8/11/98
49th Day: 9/29/98
180th Day: 2/7/99
Staff: MB-V
Staff Report: 12/17/98
Hearing Date: 1/15/99



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 across Breakers Way 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; Department of Parks and Recreation, Ventura County Beaches Study, June, 1976.

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. The Commission continued the substantial issue and de novo hearing on this item at its November 4 - 6, 1998 hearing in accordance with the applicant's written request for postponement.

I. PROJECT DESCRIPTION

The project proposed by the applicant, the Breakers Way Property Owners Association, is a gate at 6692 - 6694 Breakers Way at the south entrance to the north portion of the Mussel Shoals Community. The gate would be eight feet in height and of a mechanically sliding vertical metal bar design flanked by pilons. The proposed gate is for security purposes. The gate contains a four foot gap on the western, seaward 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).

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 the 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 a local government with a certified Local Coastal Program, 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 a "substantial issue" determination 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, 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. Thus, 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 representative), 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.

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 subject to 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 had not timely received 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 raise four grounds for appeal (Exhibit 1), first, that 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 covering the Mussel Shoals area:

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

In addition, the appellants assert that the County action was inconsistent 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 Sec. 8178-6.2 requiring 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-4-98-225 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 DE NOVO 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 motion:

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.

VI. 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 south entrance to the north portion of the Mussel Shoals Community at 6692 - 6694 Breakers Way. The application affects all of the parcels along the northern portion of Breakers Way north of Ocean Avenue and, as discussed in greater detail below, public access through Breakers Way to the beach.

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 gate 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). Ocean Avenue ends on the seaward side at a private street leading to the causeway connecting to an artificial oil island offshore.

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 inland. Although Breakers Way parallels the shore it provides vertical access to the sandy beach at its northwest end. The pattern of coastal access from the junction of Breakers Way and Ocean Avenue is northwest down Breakers Way through the cul-de-sac at the north end of Breakers Way and down a well worn 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 with 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 applicants have stated that a four foot wide pedestrian accessway will be left open for public use.)

The County's public easement over the northern segment of Breakers Way beyond the proposed gate was abandoned by Ventura County in 1978 and the street reverted to owners of the adjoining lots. (Exhibit 7) The lots on the entire southwest side and the approximate southern half of the lots on the northeast (highway) side are developed with single family residences.

The remaining approximate half of the lots on the highway side that would be affected by the gate belongs to the Department of Transportation of the State of California (Caltrans). Figure 13 in the LUP, i.e. the Mussel Shoals Residential Community map, designates the boundaries of the residential community. This map shows that the aforementioned State-owned lots, are not within the boundaries of the Mussel Shoals Community. However, 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 is used by local residents for their personal parking use, however. This area of Caltrans property had been proposed formerly 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 at the north end of Breakers Way. This area includes a paved cul-de-sac and an 800 ft. beach area formerly belonging to Caltrans, which recently acquired by the adjacent homeowner. 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 posted with a "Do Not Enter" sign. 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.

Located immediately south of the residential Community is a refurbished old hotel and restaurant, the Cliff House Inn, which is designated Commercial in the LUP recognizing the unique historical land use. The Cliff House is a popular visitor destination. 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.

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:

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

There are no conditions of approval relating to public access and recreational opportunities, 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 County 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.

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. The appeal was opened and continued at the meeting of September 8 -11, 1998 awaiting receipt of the administrative record from the County. All relevant documents and materials regarding the subject permit now have been received.

C. SUBSTANTIAL ISSUE ANALYSIS

1. Background

Pursuant to PRC Section 30603 and 30625, the standard of review for a substantial issue determination on appeal 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, is that no substantial issue exists with respect to the grounds which the appeal has been filed concerning the development conforming 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 (4) the LCP Zoning Ordinance Sec. 8178-6.2 requirement for removal of "no trespassing" signs as a condition of development approval.

The following sections examine the grounds for substantial issue raised in the appeal 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.

2. Inconsistency with LUP Vertical Access Policy and Policy to Maximize Access

Two components of the County's 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 which provides:

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. 8178-6.1 of the LCP's Zoning Ordinance, the second ground of the appeal,

substantially reiterates this vertical access policy.

The above-listed Coastal Act and LUP policies support the maximization of access and require 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 analysis finds that a substantial issue exists because the County's determination that vertical access was not required under its LCP was unfounded because adequate public access is not available within a reasonable distance of the site. Evidence exists of existing 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. The erection of the gate is contrary to the policy of maximizing and will obstruct rather than maintain and improve existing access as required by the County's LCP.

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 one-half mile to the 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 landward and to the north and the freeway to the 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. The beach extends seaward of the residences along Breakers Way and also 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. None of this parking is located within the area of the community along Breakers Way to be restricted by the gate.

As noted previously, the area is a visitor-destination point and the question then exists as to how access is provided to and 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 route to travel from the public parking areas in the remainder of Mussel Shoals to reach the sandy beach to the north, particularly at high tide. The proposed gate will discourage this public access, as discussed in greater detail below, and trigger the question of whether or not adequate access is available elsewhere within the community.

The County concluded that the gate could be allowed because access was available at two locations within 1/2 mile of the site on Caltrans land. The following shows that neither location provides adequate access.

The first alternative location is the Caltrans-owned cul-de-sac immediately adjacent to and south of the Cliff House adjacent to the highway right of way. 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 Cliff House is inadequate, however, because the slope consists of steep unconsolidated and eroding fill material deposited over rip-rap by Caltrans on an emergency basis. A previous primitive stairway to the beach was partly eroded away by the 1997-98 El Nino storms or covered by the subsequent rip-rap and fill. Traveling north once the beach is reached from the Caltrans cul-de-sac is hampered by rip rap shoreline protection, the rocky shoreline, and lack of sandy beach. An individual attempting to travel further north would be hampered by the oil island causeway's rocky groin which extends out into the sea. This would make it necessary to walk inland, trespass across the oil company land, and then descend back down a rip rap slope to reach the sandy beach north of the causeway.

The second location found by the County to constitute adequate access nearby is from 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, compete 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, most recently on December 11. Then, the pedestrian would have to traverse either the concrete barriers and 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, where access is not available at high tide or during the winter months when the sand is washed away and no beach is available. Dedicated lateral public access easements and offers to dedicate such easements have been recorded for some of these properties. 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.

In summary, if Breakers Way is restricted as proposed, individuals parking in the community along public streets cannot access the lengthy sandy beach north of the Community with adequate alternative access. The findings of the County (see Exhibit 2) that there is adequate access nearby because the two Caltrans access points cited adequate access is unsupported, and there is no adequate alternative other than access through the north segment of Breakers Way.

3. Public Access and Evidence of Implied Dedication

The findings discussed above conclude that there is a lack of adequate access nearby. The question then arises as to the potential that public access may exist by implied dedication 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 since the County abandoned its public easement on the Road. Substantial information is provided that there is a long-standing pattern of public access to the dry sandy beach to the north through the north segment of Breakers Way, however. A public right of

use may arise as implied dedication of an easement over real property, which comes into being without the explicit consent of the owner. The doctrine of implied dedication was confirmed in *Gion v. City of Santa Cruz* (1970) 2 Cal. 3d 29. The right acquired is also referred to as a "public prescriptive easement". The term recognizes the fact that the use must continue for the length of the "prescriptive period" before an easement comes into being. In California, the prescriptive period is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that the public has used the land for a period of five years or more as if it were public land, without asking for or receiving permission from the owner, with the actual or presumed knowledge of the owner, without significant objection or bona fide attempts by the owner to prevent or halt the use and the use has been substantial rather than minimal.

When examining this issue, the Commission cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law.

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 the beach north of Breakers Way 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 well-worn path demonstrating 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), through 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. The County's LCP ("Mussel Shoals", p. 40) expressly recognizes popular North Coast recreation area include Mussel Shoals. Figure 4 "Recreation Areas of the North Coast" of the LUP also identifies the coast of Mussel Shoals as an existing recreation area.
3. Several letters in opposition to the project have been received from members of the public, including residents or former residents of Mussel Shoals, including a former resident of Breakers Way, indicating opposition to the project and stating that there

has been prior public use of Breakers Way by the public (Exhibits 7a through 7e). The letters allege that the proposed gate will prevent the public from using the adjacent beach which has been used for sunbathing, picnics, swimming, fishing, surfing, volleyball, jet skiing, kayaking, boogie boarding, and other free recreational activities. An employee of the the Cliff House, a visitor-serving hotel in Mussel Shoals south of the project site, objects to the project on the grounds that it would obstruct necessary access to the beach (see Exhibit 7d). This individual states that the Cliff House has regularly directed its guests to use the route down Breakers Way to access to the beach.

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 in approving the application 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, by Caltrans according to local residents, 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 perceived threat of burglaries. Residents also pointed out that Breakers Way had recently been used as a staging area for a surf contest. The residents' comments acknowledge that there has been public access through the area down Breakers Way.
6. For a period of over twenty years, Coastal Commission staff members 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, travel was not obstructed along Breakers Way.

The above information indicates that the land has been used continuously by various groups of users for well over 20 years by the public after abandonment by Ventura County in 1978. There is no information indicating the need for permission of the nearby homeowners was requested or that there were any significant attempts to prevent or halt the use. Vehicular and pedestrian users of the street are visible to the owners of the adjoining properties. The existence of worn pathways to the beach between vegetation indicates as evidenced on the aerial photos indicates that the use was substantial.

While the County's LCP policy cited requires that maximum access be consistent with private property rights, there is no evidence in the local government administrative record or findings to factually support the need for installation of the proposed gate. The County findings that the gate may be permitted are confined to a determination that the street is private and that adequate access exists nearby. Whether the road is privately owned or not does not preclude the existence of a public access right. 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.

Further, there is no evidence in the County findings to indicate that any action has been taken by the homeowners which has prohibited public use. No evidence is presented as to presence of legal signs, fences, or similar impediments to public access or any significant 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 at times on an annual basis, but no information or findings by the County relative to this are included. Further, the County made no findings relative to 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's findings rested on its determination that alternative access sites were adequate. There has been no prescriptive rights survey regarding use of Breakers Way for public access since the County abandoned its public easement to the road twenty years ago. The applicant has furnished no information to the staff as requested concerning recorded consent to use the land by permission has been recorded pursuant to Sec 813, of the Civil Code.

PRC Section 30210 incorporated in the County's LCP and the LUP objective of maximizing public access considers the relation of access to private property rights. Although the County findings note the street is private, the findings do not demonstrate whether preservation of access to the beach along Breakers Way is inconsistent with private property rights.

The evidence of existing public access through implied dedication in a visitor-destination area would be adversely affected by the gate as approved by Ventura County. Therefore, for the reasons discussed above, the Commission finds that the evidence indicating a pattern of public historic use of Breakers Way for public access, raises substantial issue with the LUP public access policy/objective of maximizing and maintaining public access, and as well as

Secs. 30210 and 30211 of the Coastal Act (included in the LCP) relative to the construction of the security gate. Further, there is a substantial issue as to consistency with the County's LCP vertical access provisions since there is compelling evidence that adequate alternative access is not reasonably available nearby.

4. Inconsistency with LUP Figure 13 Map

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 identify Breakers Way in the text as a public or private street. Breakers Way is 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.

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 or subject to a right of public use. The issue of whether or not the street is public by itself, however, 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.

5. Inconsistency with LCP Section 8178-6.2 Requiring Removal of "No Trespassing" and Similar Signs

LCP Zoning Ordinance Sec. 8178-6.2 requires removal of "... "no trespassing" signs and other obstructions that may limit public lateral access as a condition of development approval." the beach and that the project as approved was not shown to require preservation of access. There was no consideration or condition imposed as part of local government approval of the project to remove signs or other obstructions which restrict or discourage public access on Breakers Way. The north end of Breakers Way contains a "Do Not Enter" sign and the previously noted bollards and chains also hamper public access. Consequently, this assertion raises a substantial issue.

6. 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 significantly obstructs public access and does not provide adequate provisions to mitigate the adverse impacts on public access to the beach. The appellants' contention therefore raises a substantial issue with respect to grounds of appeal concerning vertical access standards and signs and other obstructions to public access in the County's certified LUP component of the LCP and the Coastal Act.

D. DE NOVO COASTAL PERMIT ANALYSIS

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 below. 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 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.

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.

Further, PRC Section 30212(c) 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 foregoing discussion of the physical location of the site relative to the beach, the inadequacy of alternative access sites, the history of public use, and the evidence of implied dedication are incorporated herein from the Substantial Issue findings in this report. The proposed gate is on a site with a history of public use and significant evidence of an implied dedication of that portion of the road which that reverted to private ownership in 1978. 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 exist nearby, i.e. "La Conchita" beach and "Cliff House" beach, which rely on Mussel Shoals for access. Mussel Shoals affords 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 route 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 LUP. 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 incorporated herein discuss in detail why adequate access does not exist nearby.

Regardless of whether the County's abandonment of the public easement was valid in 1978, the gate is proposed in an area where access is needed, has historically existed and continues to exist as demonstrated by evidence of implied dedication since 1978, 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, since much of the North Coast of Ventura County has been armored.

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 in the project description that this will be open to the general public. However, the applicant has recently indicated that this gap will be kept open. 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 is concerned 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. The gate will entirely block vehicular public access and effectively discourage pedestrian beach access./

This restrictive factor is exacerbated by a number of public and private signs in the immediate area (100 ft.) of the proposed gate:

- The entrance to Breakers Way is flanked by two low brick posts or bollards attached to adjacent poles by chains. In addition there is a painted sign on the roadway itself at the entrance to Breakers Way indicating "PRIVATE DRIVE".
- There is a sign to the south of the entrance attached to one of the brick posts which states "PRIVATE ROAD".
- Two signs flanking the entrance state that Breakers Way is a "PRIVATE ROAD by order County Board of Supervisors 12-2-86 Section 959 - State Street and Highway Code SPEED BUMPS NO PUBLIC PARKING" and a third similar sign is found midway down Breakers Way to the north.

In summary, the gate, despite a four foot opening for pedestrians, 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 substantial interference with a past pattern of public use and potential rights under implied dedication.

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 or to ensure 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).

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 matter as to 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 evidence that the installation of the gate would be effective in preventing 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.

As noted in the Santa Cruz appeal matter, 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. A range of feasible alternatives exist with less adverse effects on coastal resources to control security in lieu of construction of the proposed security gate.

Conditioning the project to recognize public access rights through a coastal access sign(s) indicating that access is available to the public to reach the beach area to the north is not feasible. 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. Nor would such a sign(s) in conjunction with the gate be effective in mitigating the adverse impact on the public perception of its ability to use Breakers Way for access. Thus, the erection of a gate across Breakers Way will both interfere with the public's right of access acquired through use to the sea contrary to Section 30211 of the Coastal Act. By blocking all vehicular access and effectively limiting pedestrian access through erection of this imposing gate, access will be significantly interfered with contrary to Section 30210 of the Coastal Act's mandate to maximize access and provide for public recreational opportunities.

In summary, the proposed development individually and 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. The project also conflicts with the Objective statement and LCP Policy Vertical 1 in the County's North Coast Area Plan and those Coastal Act sections incorporated in the County's LCP. 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.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Coastal Commission's permit process has been designated as the functional equivalent of CEQA. Section 13066(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. Litter pick-up, increased public or private safety patrols, or other security measures would result in fewer adverse 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 effects which the proposed project would have on the environment of the coastal zone and the project cannot be found consistent with CEQA.

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

Received at Commission.
Hearing 8/11/98



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. 1
APPLICATION NO.
A-4-VNT-98-225
Appeal p1 of 4

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 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.


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. Tittle
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	#4 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
89 South California St., 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").

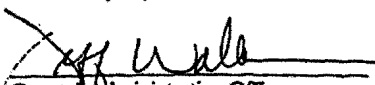
Findings and Conditions: See attached staff report for the findings and conditions.

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 1/4 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.
A-4-VNT-98-225
Local Decision p 3 of 7

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 statue 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;

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

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

Prepared by:

Debbie Morrissey, 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

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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 25, 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
Local Decision P 6 of 7

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.

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

Breakers Way Gate.

(Picture to
show pillars)



DIRECTION OF SLIDING GATE

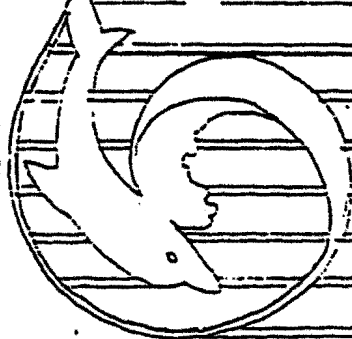


EXHIBIT "5"

EXHIBIT NO. 3

APPLICATION NO.

A-4-VNT-98-225

Proposed Gate

— ELEVATION —

Scale: 1/4" = 1'

60-08
DEC 20 1998

Tax Rate Area
91008

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

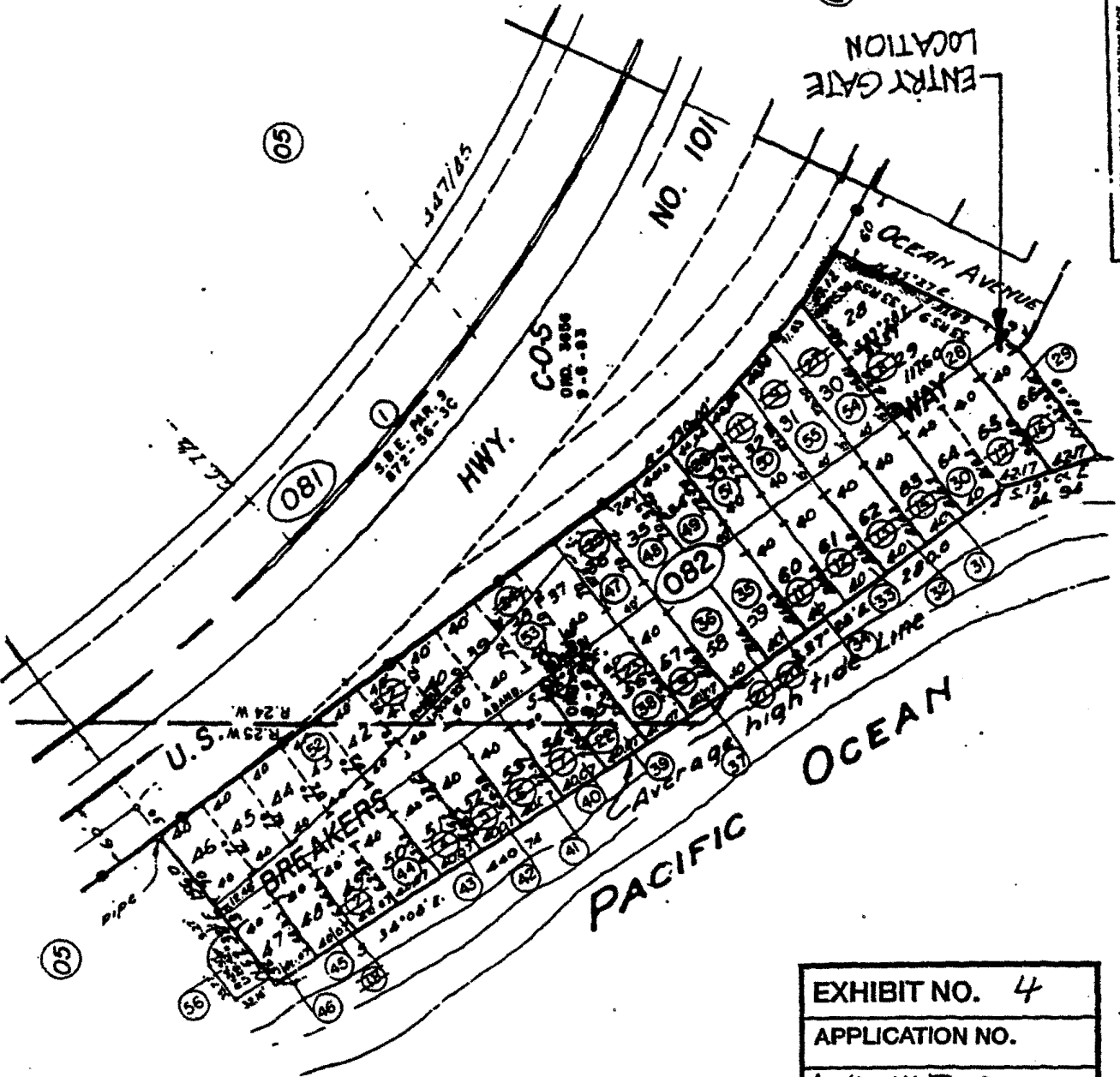


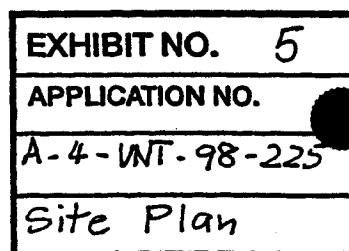
EXHIBIT NO. 4
APPLICATION NO.
A-4-VNT-98-225
Project Location

VENTURA COUNTY PLANNING DEPARTMENT
ZONING MAP 60-08
BOARD OF SUPERVISORS COUNTY OF VENTURA
ORDINANCE 9898 ADOPTED 9-8-98
COUNTY CLERK Robert L. Ham
By *Jay Hillard* Deputy

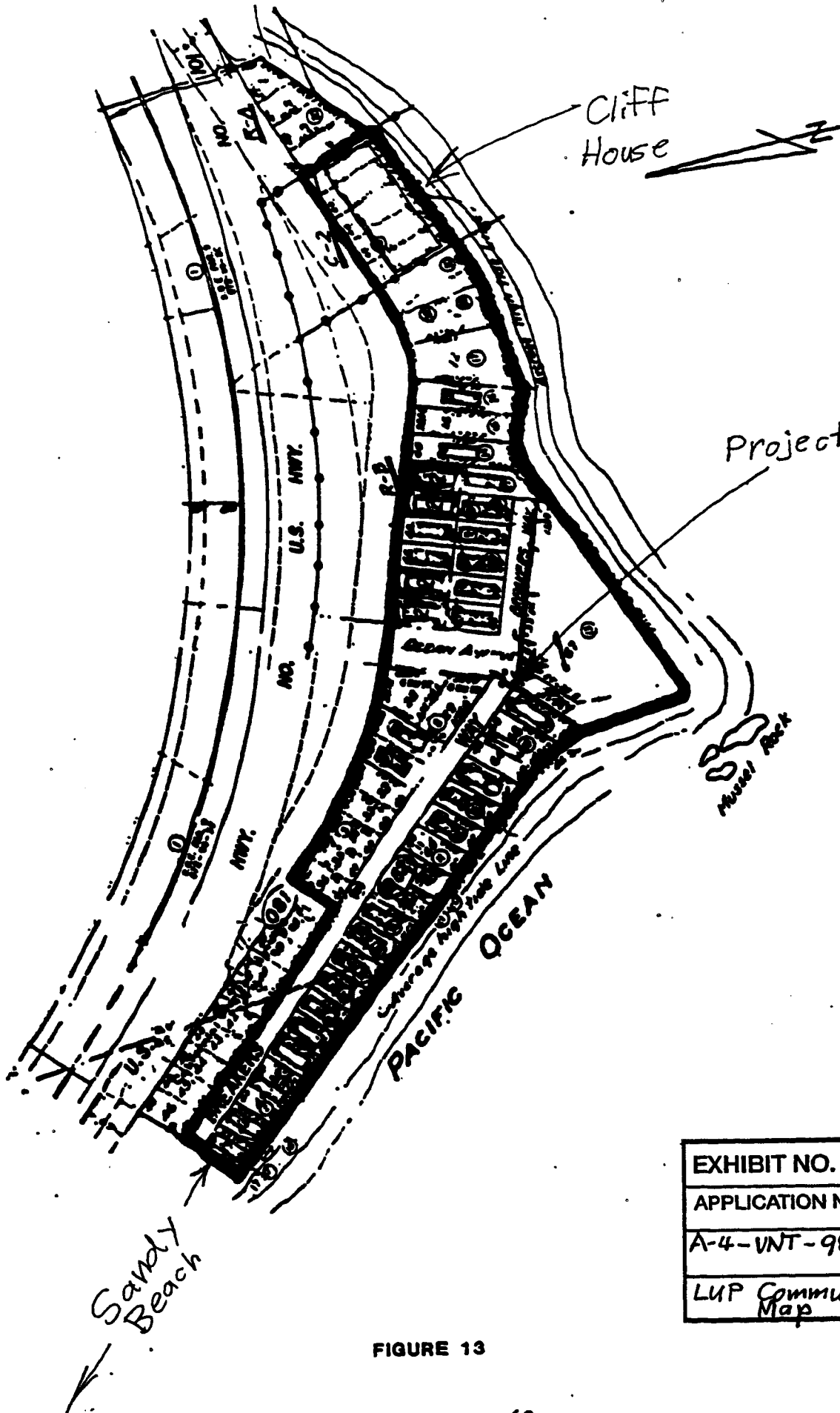
Assessors Map Bk. 60, Pg. 08
County of Ventura, Calif

NOTE: Assessor's Block Numbers Shown in Ellipses

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



A:HP REVISED 4-26-95
PD 1700



**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) 295-1648

"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, MUGGILL 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.	7a
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 Shoals sandy beaches. Access to the beach at Mussel Shoals will go the route of other adjacent coastal communities such as, Seacliff, 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.	7a
APPLICATION NO.	
A4-VNT-98 - 225	
Letter from Geoffrey Latham	

Anthony Doganay
P.O. Box 1406
Summerland, CA 93067

RECEIVED

NOV 02 1998

November 2, 1998

California Coastal Commissioners
89 S California Street, Suite 200
Ventura, CA 93001
Fax (805) 641-1732

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Re: Appeal of Proposed Gate at Breakers Way, Mussel Shoals, and Ventura County

Dear Coastal Commissioners:

I have been a resident of the Carpinteria area for over 15 years. I have used the public access at breakers way to launch my kayaks to go fishing and surfing and kayaking between Montecito and Ventura I also use breakers way and the beach and Mussel Shoals and La Conchita. Breakers Way is one of the only places that provides a convenient location for Kayaks to drive within the close proximity of the water without having to climb over dangerous objects, the Breakers Way Beach access is the most safe and convenient place to unload and launch Kayaks.

I am a parent of two twin children Eric and Krystal 9 years of age who also enjoy recreation at the beach at breakers way, please vote to retain the historic public access way to the beach at Mussel Shoals and La Conchita and halt the construction of the proposed security gate.

Sincerely,


Anthony Doganay

EXHIBIT NO. 7b
APPLICATION NO.
A4-VNT-98-225
Letter from Anthony Doganay

California Coastal Commission

S. Central Coast Area

89 S. California St. Ste. 200

Ventura, CA. 93001

(805) 641-0142

(805) 641-1732 (Fax)

EXHIBIT NO. 7c

APPLICATION NO.

A4-VNT-98-225

Letter from Tricia
McLinder

RECEIVED

NOV 02 1998

RECEIVED 11/31/98

COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT

re: Appeal No. A-4-98-225 (Breakers Way Property Owners, Ventura Co.)

My name is Tricia McLinder, I am a single parent of an 11 year old boy whom I have raised in La Conchita & Carpinteria. He has learned to surf & swim in the ocean at La Conchita & Mussel Shoals. I am writing because I am opposed to eliminating public access to the beach in the Mussel Shoals & La Conchita area.

The access to public beaches in the area is already extremely limited due to gated communities.

Breakers Way has traditionally been used by families in the community for recreational beach access.

I was surprised to learn of this proposal since I understood that state parks & the coastal conservancy were currently in the process of planning construction of more public facilities along Breakers Way & at Mussel Shoals.

There are more citizens committed to the care & enjoyment of the beaches than just the few residents that would be beyond the gate.

Please preserve public access to our local beaches.

Sincerely,

Tricia McLinder

The Cliff House Inn
6602 W. Pacific Coast Hwy
Mussel Shoals, CA 93013
(805) 652-1381 Fax (805) 652-1201

November 3, 1998

California Coastal Commissioners
89 S. California St. #200
Ventura, CA 93001

Re: Appeal of Proposed Gate at Breakers Way, Mussel Shoals, Ventura County.

Dear Coastal Commissioners and Staff:

I am 30 years old, and a native of Carpinteria, CA. I have used Breakers Way for access to the beach at La Conchita and Mussel Shoals all my life. I use Breakers Way when I drop off my two sons to boogie board at the beach.

I am employed at The Cliff House Inn and restaurant located at Mussel Shoals. I am often asked by our guests how to get down to the beach from the Hotel. I always direct them to use Breakers Way because it is the only safe formal access to the beach in the area, and is the route most often used by the general public for beach access.

I am opposed to the construction of the gate because it will eliminate the best public access to the beach in the vicinity.

Yours Truly,


Denise Mendoza

EXHIBIT NO. 7d
APPLICATION NO.
A4-VNT-98-225
Letter from Denise Mendoza

JAN A. SOVICH, O.M.D., L.Ac.
Oriental Medicine/Acupuncture

Nov. 6, 1998

California Coastal Commission
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001

RECEIVED

NOV 10 1998

COASTAL COMMISSION
SOUTH CENTRAL COAST DIST.

Dear Commissioners:

I am writing to you in regards to the proposed Breakers Way security gate, Mussel Shoals, Ventura County. Please allow for continued public access to the beach at this aforementioned location. This small stretch of coastal property has been used for activities such as picnics, volleyball, sun-bathing, fishing and surfing throughout time. It would be a true shame to see this being discontinued for no other reason than to give a select few property owners exclusivity.

If a gated closure were to occur, I foresee a dangerous situation where individuals will put themselves at extreme risk by parking elsewhere to access this area of concern. This could result in loss of life, as this section of roadway is constantly being served by the Emergency Medical teams out of Ventura County and is historically hazardous.

The proposed gate violates the substance of the Coastal Act's maximum public access mandate. Please consider this request from a member of Ventura's business community and homeowner/taxpayer in the 93001 area who also lives within the boundary of the Coastal Act.

Sincerely,



Dr. Jan A. Sovich



EXHIBIT NO. 7e

APPLICATION NO.

AK-VNT-98-225

Letter from Jan
Sovich

RESOURCE MANAGEMENT AGENCY
county of ventura

Planning Division

Keith A. T...
Dir

December 10, 1998

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

EXHIBIT NO. 8
APPLICATION NO. P1 of 4
A4-VNT-98-225
Letter from Ventura Co. Planning Director

Subject: Response to Staff Report Dated 10/20/98 for Appeal No. A-4-VNT-98-225, Commission Appeal of Ventura County's Approval of PD-1700, Security Gate in the Community of Mussel Shoals

Dear Commissioners:

It was very difficult to provide comments on the staff report for this item. The format of the report is difficult to follow, with the same issues brought up in different locations but with seemingly different conclusions. There also appears to be several internal inconsistencies and some incorrect statements. Nevertheless, I will try to provide comments which I feel are to the point and relevant. In general, there are many issues raised in your report that were not specifically raised by your staff to the County during our permit process. Also, other issues (such as an allegation that the County illegally abandoned Breakers Way) were raised by your staff to the County during the County's permit process, but are not found in your report.

There appear to be only two major appellant's contentions, listed on page 4 and pages 8 & 9 in the Commission's staff report for this item which presumably raise substantial issues with the County's approval of PD-1700 (although, based on statements from page 16 of the report, it is unclear whether or not contention no. 2 raises a substantial issue). They are: 1) 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," and 2) there is a conflict with Figure 13 residential community map in the LCP Land Use Plan because that map "allegedly" designates Breakers Way as a public street. In my opinion, neither of these are valid contentions for the following reasons.

Contention No. 1

The *quoted* statement is incorrect and not found anywhere in the County's LCP. It only has the effect of immediately slanting the reader toward the appellant's point of view. The correct statement, which is actually vertical access policy number 1, is listed on pages 4 & 9. It states that "granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:" Four specific exemptions are then listed which are also part of the policy. No weight seems to be given to those exemptions by your staff.

The first exemption is that "adequate public access is already available within a reasonable distance of the site..." In analyzing PD-1700, staff determined that this exemption was applicable. The County's certified LCP, when discussing access on the North Coast subarea, of which Mussel Shoals is a part, states "...over 70 percent of the shoreline (8.6 acres) is now accessible via State or County-owned land. Additionally, good vertical access (within 1/2 mile) exists to the shoreline in front of all residential areas." As the County's staff report for

Coastal Commission
December 10, 1998
Page 2

EXHIBIT NO. ⁸ p 2 of 4
APPLICATION NO. A4-VNT-98-225
Letter from Ventura Co. Planning Director

PD-1700 notes, access exists to the shoreline at both ends of the Mussel Shoals community, and in the interior of the community at the end of Ocean Ave.

The overall purpose of this vertical access policy is to require the granting of a *new* access easement over a specific portion of a lot where development is proposed, *consistent with private property rights*. The proposed development (security gate) is proposed to be located on only two lots at the southerly end of Breakers Way at Ocean Ave. Only one of those lots is located on the shoreline, and it already contains a house. Therefore, staff determined that another of the listed policy exemptions applied to this permit. It states that no easement need be granted if "The parcel is too narrow to allow for an adequate vertical access corridor..." However, the shoreline access point noted above in the interior of the community is *adjacent* to this lot, and there is a sign depicting the access point. Even though your staff used this access point in one of their visits to the site, they failed to note it in the staff report.

On page 10 of your staff report is a listing of the locations of existing public parking areas *within* the Mussel Shoals community. None of that parking is located *on* Breakers Way; therefore, the proposed security gate would not decrease the amount of that parking in any way. In fact, the gate would prevent the public from both driving onto Breakers Way, a dead-end street, because they think there is public parking somewhere on the street, and from actually parking in an illegal location on Breakers Way.

Therefore, it appears that the only form of access, which might be in contention, is *pedestrian* access. In a site visit with property owners, your staff, and County staff, pedestrian access was discussed, and the property owners clearly expressed a willingness to modify the gate design to accommodate such access. It is my understanding that your staff has had no follow-up conversations with the Property Owners Association regarding such a modified design.

On page 11, your report states that "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 tides." Again, your staff fails to note the willingness of the property owners to accommodate pedestrian access over Breakers Way through a modified gate design.

Your staff report indicates that several existing vertical access points, such as those to the north of Mussel Shoals and the one adjacent to the Cliff House within the Mussel Shoals community, are inadequate because of *design or construction* issues. That is, they are relatively unimproved, there are no stairs so the user must traverse on rock outcroppings or rip-rap. The County's certified LCP contains no design standards for vertical access points. Also, the beach access point your staff says will be cut off by the proposed gate at the northerly end of Mussel Shoals is also over *unimproved rock rip-rap*.

With respect to the lengthy discussion regarding potential prescriptive rights by the public over Breakers Way, it is my understanding that such a determination can only be made by a court after a claim is made by a member of the public. No such claim was made by any member of the public at the County's public hearing, and I know of no such claim filed in court to date.

Coastal Commission
December 10, 1998
Page 3

EXHIBIT NO. 8
APPLICATION NO. P 3 of 4
A4 - VNT - 98 - 225
Letter from Ventura Co. Planning Director

Also, your staff report presents information purporting to be evidence of "implied dedication." I have no idea what that term means. However, the report further indicates that this so-called evidence shows that Breakers Way was used by the public "prior to abandonment by the County in 1978", more than 20 years ago! This may not be substantial evidence for a claim of prescriptive rights.

I will not comment further on the prescriptive rights issues raised in your staff report, except to reiterate one crucial point. Again, it appears that *pedestrian* access over Breakers Way is the only issue, and there seems to be willingness by the property owners to work this out. Therefore, in my view, it is a waste of time and money to go any further in this appeal process without your staff and the property owners first trying to resolve the problem at the staff level.

Contention No. 2:

This issue was raised by Mr. Betz, and responded to by my staff *prior* to the County's public hearing on PD-1700. Since no further mention of it was made by Mr. Betz, we thought the information we provided to him was sufficient. Clearly, that was an incorrect assumption.

Figure 13 in the LCP Land Use Plan is merely a copy of the Assessor's map for the Mussel Shoals area. We added a dark, heavy line on the map to depict the extent of the Mussel Shoals "community" area. This figure was not intended to show public versus private roads, or any type of easements. It is similar to the other maps (Figures 11-16) for each of the six "communities" in the North Coast area. For example, Figure 12 depicts the community of La Conchita, and shows both the public streets and the private alleys within the community, with *no distinction* between the two. The *only* reference to Figure 13 found in the LCP Land Use Plan is within the "Locating and Planning New Development" section, where the policies only address build-out within the communities at current zoning densities, not access.

Pages 15 and 16 of the staff report indicate that Figure 13 shows Breakers Way to be within an "Open Space" land use designation. This is incorrect. Figure 13 does not depict land use designations. The adopted Land Use Plan map for the North Coast area clearly shows that Breakers Way, along with the surrounding residential properties, is within the "Residential-High Density" land use designation.

It is entirely inappropriate to use Figure 13 as grounds for contention in an appeal on access issues when the map was never intended to show public access points, and never purported in any way to show such access.

We also disagree with the conclusion on page 15 of your report that approval of this permit for a security gate in Mussel Shoals would set a precedent for interpreting the LCP regarding other similar requests. Of the six existing residential communities on the North Coast, three of them are currently gated, one cannot be gated because it fronts on Old Pacific Coast Highway, and the other is on the landward side of the freeway where no beach access issues exist. In short, there are no other communities on the North Coast of Ventura County that could request a permit for a similar gate.

Coastal Commission
December 10, 1998
Page 4

EXHIBIT NO. 8
APPLICATION NO. P 4 of 4
A4-VNT-98-223
Letter from Ventura Co. Planning Director

Although every time one reads through the staff report, another statement or two seems to "jump out" and beg for a response, I will end this letter with one final comment. On page 16 there is a statement that the County did not impose any conditions to require the removal of "signs which restrict or discourage public access." Then on page 19 there is a listing of the messages on several signs "in the immediate area of the proposed gate." There are no requirements in the Coastal Zoning Ordinance requiring the removal of such signs, and County staff did not see any located on the two lots which were the subject of the permit. There is only a requirement in the Ordinance to either remove or obtain proper permits for signs which were erected illegally, regardless of the message on the sign. Moreover, condition of approval number 4 placed on PD-1700, requires conformance with any County laws, including those regulating signs. The signs listed on page 19 may, or may not, have been erected illegally, but since there were apparently no such signs on the property which was the subject of the permit, no violations of the Ordinance existed, and no specific condition was necessary.

As I said, I will end this letter even though more comments could be made. I hope this information proves helpful in your deliberations. The County does not feel construction of the security gate raises any substantial issues, and we also feel the entire situation could, and should be resolved through constructive meetings with the Mussel Shoals Property Owners Association.

Sincerely,



Keith Turner, Director

C: Supervisor Kathy Long
Tom Berg, RMA Director
Gary Garcia, Mussel Shoals Property Owners Association
Lindsay Nielson
Gary Timm, Coastal Commission

WHEN RECORDED RETURN TO
THE DEPT OF PUBLIC WORKS
ATTN: RIGHT OF WAY AGENT

101992

RECORDED AT REC'D
VIA REG. MAIL
AT 11:00 AM
SEP 22 1978

NO TAX DUERESOLUTION OF ABANDONMENT
OF

Steven R. Williams A PORTION OF BREAKERS WAY
County of Ventura

SEP 22 1978

FREE-3

Upon motion of Supervisor *MacDonald*, seconded by Supervisor *Ramsey*, and duly carried, the following resolution is hereby adopted:

WHEREAS, the Board of Supervisors of the County of Ventura, State of California, on August 15, 1978, adopted a Notice and Resolution of Intention to Abandon a portion of Breakers Way, and

WHEREAS, a hearing upon said resolution was set for September 12, 1978, and notice of said hearing was given for the time and in the manner prescribed by law, and

WHEREAS, said hearing was held and evidence submitted to the Board, bearing upon the present and prospective use of said County highway for public use, and

WHEREAS, based on the evidence submitted, the Board of Supervisors hereby approves the FINDINGS set forth on Exhibit "A", which is attached hereto and incorporated herein by reference.

NOW, THEREFORE, the Board of Supervisors of the County of Ventura, finds, resolves and orders that the portion of the County highway described on Exhibit "A", which is attached hereto and incorporated herein by reference, is not necessary for present or prospective public use and is hereby abandoned.

ADOPTED ON September 12, 1978

COUNTY OF VENTURA

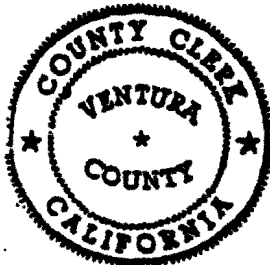
BY *Edwin A. Jones*
Chairman, Board of Supervisors

STATE OF CALIFORNIA ss
COUNTY OF VENTURA

On this 12th day of September, 1978, before me, ROBERT L. HAMM, County Clerk of the County of Ventura, State of California, personally appeared EDWIN A. JONES, known to me to be the Chairman (and member) of the Board of Supervisors of the County of Ventura, State of California, and acknowledged to me that he executed the within instrument for and on behalf of the County of Ventura.

ROBERT L. HAMM, County Clerk,
County of Ventura

BY *Roberta Rodriguez*
Deputy Clerk



PCM:mgg

EXHIBIT NO. 9

APPLICATION NO.

AK-VNT-98-225

Resolution of Street

Item 25A
9/12/78

A.P. #5 60-08-02, 03, 05, 09

ADJACENT TO

537-5

BOOK 5215 PAGE 983

TRACT R016800.1a

A portion of Mussal Shore Tract No. 1 in the County of Ventura, State of California, as shown on the map recorded in the office of the County Recorder of Ventura County, in Book 12, Page 30 of Miscellaneous Records, described as follows:

All of that portion of Breakers Way, 30.00 feet wide, as shown on said map, extending southeasterly from its northwesterly terminus to the southwesterly prolongation of the northwesterly line of Ocean Avenue, 60.00 feet wide, as shown on said map.

Excepting and reserving from this abandonment an easement for the Southern California Edison Company, the Casitas Municipal Water District, and the Pacific Telephone and Telegraph Company. Said exception and reservation is in conformance with Section 959.1a of the Streets and Highways Code.

In conformance with Section 960 of the Streets and Highways Code, this abandonment shall not extinguish any existing private easement of access, regardless of origin appurtenant to lands abutting the highway.

EXHIBIT NO. 9
APPLICATION NO. p 2 of 3
A4-VNT-98-225
Resolution of Street Abandonment

BOOK 5215 PAGE 982

ABANDONMENT
BREAKERS WAY
TRACT R0168C0.1a

STATEMENT OF FINDINGS

1. The County's title consists of an Easement in and to that portion proposed for abandonment. Upon abandonment, the area will revert to the underlying fee owners.
2. The abandonment of that portion of the public road sought to be abandoned will not extinguish the easement of access however acquired, of any parcel of land, to the general system of highways.
3. The portion of public road sought to be abandoned is a County highway within the meaning of Section 940.3 of the Streets and Highways Code, is excess highway right of way and is not necessary for present or prospective public use.
4. Abandonment of the subject portion of Breakers Way will be a benefit to the County by removing County liability in the abandoned area and returning same to the tax rolls.

EXHIBIT NO.
APPLICATION NO. 9 p3243
A4-VNT-98-225
Resolution of Street Abandonment

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 841-0142



January 12, 1999

To: Commissioners and Interested Parties

From: Staff, South Central Coast Area Office

Re: **Addendum and Correspondence:** Agenda Item **F9a** Appeal
No. A-4-VNT-98-225 (Breakers Way Property Owners Association),
Mussel Shoals, Ventura Co.

The following changes are recommended to the staff report

1. Page 14, third paragraph - Add sentence (in **bold**):

When examining this issue, the Commission cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. **However, where there is substantial evidence that such rights may exist, those rights must be considered in analyzing whether proposed development limits or interferes with such rights.**

2. Page 15, item 4, second paragraph, delete portion of first sentence (strikethrough):

This ramp has since been eliminated by deposition of rip-rap, by Caltrans according to local residents ~~without benefit of a coastal development permit~~ as noted in the March, 1996 staff visit.

3. Page 16, first paragraph, delete (strikethrough) and substitute (in **bold**):

The above information indicates that the land has been used continuously by various groups of users for well over 20 years by the public after abandonment by Ventura County in 1978. There is no information indicating ~~the need for~~ permission of the nearby homeowners was requested or that there were any significant attempts to prevent or halt the use. Vehicular and pedestrian users of the street are visible to the owners of the adjoining properties. The existence of worn pathways to the beach between vegetation ~~indicates~~ as evidenced on the aerial photos indicates that ~~the~~ public use was substantial.

4. Pages 16 through 17, last paragraph, delete (strikethrough) and substitute (in bold):

The ~~evidence of existing public access through implied dedication~~ Commission finds that current public use in a visitor-destination area would be adversely affected by the gate as approved by Ventura County. Therefore, for the reasons discussed above, the Commission finds that the evidence indicating a pattern of public historic use of Breakers Way for public access, raises substantial issue with the County's permit action or this project because the jurisdiction conflicts with the LUP public access policy/objective of maximizing and maintaining public access, and as well as Secs. 30210 and 30211 of the Coastal Act (included in the LCP) ~~relative to the construction of the security gate~~. Further, there is a substantial issue as to consistency with the County's LCP vertical access provisions since there is compelling evidence that adequate alternative access is not reasonably available nearby.

5. Page 17, sections 4., 5., and 6., redesignate as sections 3., 4., and 5.
6. Page 17, delete section 4 and substitute the following (in bold):

4. Inconsistency with LCP Section 8178-6.2 Requiring Removal of "No Trespassing" and Similar Signs

LCP Zoning Ordinance Sec. 8178-6.2 requires removal of "... "no trespassing" signs and other obstructions that may limit public lateral access as a condition of development approval." The project location (i.e. the south end of the northern segment of Breakers Way) does not have such signs or obstructions. Therefore, this assertion does not raise a substantial issue.

7. Page 19, fourth paragraph, second sentence, delete (strikethrough) and substitute (in bold):

The proposed gate is on a site with a history of public use and significant evidence of an implied dedication of that portion of the road which ~~that~~ reverted to private ownership in 1978. Therefore, the potential for existing and future public access must be protected.

8. Page 20, third paragraph, delete first line of first sentence (strikeout) and add (in bold):

~~Regardless of whether the County's abandonment of the public easement was valid in 1978, t~~ The gate is proposed in an area where access is needed, has historically existed and continues to exist ...

9. Page 20, fourth paragraph, add (in bold):

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 is concerned that the gate may be locked at some time in the future **and that the gap will be closed off.** Commission experience indicates that gaps for pedestrians can be easily closed off.

10. Page 21, second paragraph, third sentence, delete (strikethrough) and add (in bold):

Therefore, the Commission finds that, relative to the access provisions of the LUP and Coastal Act, ~~there is approval of the gate would result in a~~ **substantial** interference with a past pattern of public use and potential rights under implied dedication.

Correspondence

Staff has received the following correspondence (attached):

1. A letter from Ventura County to Caltrans that **provides background information** on the sale and merger of land at the north end of Breakers Way.
2. A letter from the Sierra Club **supporting** the staff recommendation.
3. A letter from the County of Ventura **opposing** the staff recommendation.
4. A letter from the Breakers Way Property Owners Association **requesting a continuance**.
5. Two letters from residents of Breakers Way **opposing** the staff recommendation.

RESOURCE MANAGEMENT AGENCY

County of ventura

Planning Division

Keith A. Turner
Director

RECEIVED

JAN 05 1999

November 16, 1994

Mr. Gerald Wright, Associate Agent
Caltrans R/W Appraisal Branch
107 S. Broadway, Suite 8103
Los Angeles, CA 90012

CALIFORNIA —
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

SUBJECT: Caltrans Assessor Parcel No. 060-0-050-125 (portion you designate as excess Parcel No. 141-01-02) and APN 060-0-080-350

Dear Mr. Wright:

This letter is in response to your inquiry dated November 2, 1994 regarding a proposal to sell excess Caltrans right-of-way. After I spoke to you on the 2nd I remembered, that as I previously told another Caltrans appraiser, if the Caltrans parcel is not shown on the latest equalized County assessment roll, a division of a portion thereof is not a subdivision under the definition contained in Government Code Section 66424. I contacted the Tax Collector's office November 10, 1994 and verified that APN 060-050-125 is not shown on the latest equalized County Assessment roll.

I hope this information uncomplicates the matter at hand. The County asks, however, that the lot to be created through a sale to the owners of APN 060-080-350 be required to be merged with said parcel by processing a Parcel Map Waiver, Voluntary Merger. As I recall from a previous conversation with an appraiser, there is an existing structure on the Caltrans portion of APN 060-0-050-125 which is being used by the contiguous lot. Merger of the two lots into one lot would place the garage on the same lot as the dwelling unit. Even if the structure were to be demolished, the County requests voluntary merger of the two lots. To answer the specific questions in your letter:

APN 060-050-125 is zoned Coastal Open Space and APN 060-0-080-350 is zoned Residential Beach.

Regarding a zone change fee, no zone change is required under the PMW, Voluntary Merger scenario.

If you still need to know about fees, the Zoning Clearance fee for demolition is \$35 (double the amount if the garage was built without proper permits) and a Zoning Clearance for a single family residence is \$35.00; keeping in mind that each lot is allowed only one single family dwelling.

For the building permit demolition and single family dwelling building fees, please contact the Building and Safety Division of the Resource Management Agency at 654-2771.

Gerald Wright
November 16, 1994
Paage 2

I understand your question regarding sewer connection and fees was directed to the Public Works Agency. To repeat, under the merger scenario, Caltrans would be allowed to sell a portion of their lot to the contiguous owner only if it is subsequently merged by a Parcel Map Waiver. This may change the nature of your sewer question and response from Public Works.

I hope this information is useful to you. Please call me if you have any questions at 654-2489. For a presubmittal meeting or discussion for a Parcel Map Waiver, Voluntary Merger, please make an appointment with Nicole Doner at 654-3860.

Sincerely,

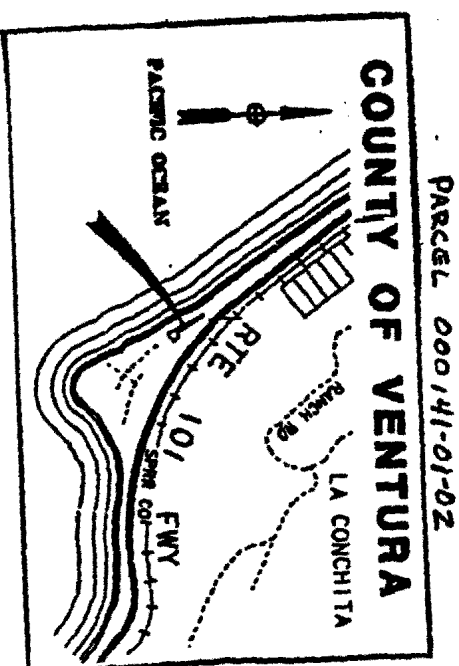


Lori Windt, Senior Planner

cc: Robert Chacon, L.S.
Chief Deputy County Surveyor

c:\60.pam.K9483.LWpg

29.





SIERRA CLUB

LOS PADRES CHAPTER

"ONE EARTH, ONE CHANCE"

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

January 7, 1999

RE: APPEAL OF BREAKERS WAY PROPOSED SECURITY GATE. Permit No. A-4-VNT-99-225. January 15, 1999

Dear Commissioners and Staff:

The following comments are submitted on behalf of the Los Padres Chapter of the Sierra Club. John Muir founded the Sierra Club in 1892 to enable future generations to explore, enjoy and protect the wildlands and natural resources that our their heritage.

The Los Padres Chapter of the Sierra Club appreciates the opportunity to comment on this matter presently before the Commission and wishes to thank you for your consideration of these comments.

THE PUBLIC HAS ACQUIRED THE RIGHT OF PRESCRIPTIVE ACCESS TO THE COAST VIA BREAKERS WAY DUE TO THE PUBLIC'S HISTORIC USE

The Sierra Club is the world's oldest and largest grass roots environmental organization with over 551,000 members. The Los Padres Chapter of the Sierra Club has more than 6000 members in Ventura and Santa Barbara Counties. The Los Padres Chapter has adopted a formal resolution opposing the construction of the proposed gate at Breakers Way.

The Sierra Club is opposed to the proposed gate on the grounds that Sierra Club members and the general public have for decades established historic use of Breakers Way to access the coast both by vehicle and on foot. The California Coastal Trail is immediately accessible via Breakers Way and the public access boat and personal watercraft ramp which has historically existed at the end of Breakers Way.

Sierra Club members, tourist, the beach going public, and hikers accessing the California Coastal Trail have historically used Breakers Way for both parking and convenient access to the coast thereby establishing a prescriptive easement.

RECEIVED

JAN 07 1999

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

**THE PROPOSAL IS INCONSISTENT WITH THE VENTURA COUNTY LCP
AND THE COASTAL ACT WHICH MANDATE VERTICAL ACCESS EASEMENTS**

The Los Padres Chapter of the Sierra Club is opposed to the proposed gate on the grounds that it violates the provisions of the Ventura County LCP to maximize, maintain, and improve existing access to the coast, and violates the Coastal Act's policy to provide the maximum public access and recreational use of the coast. Due to the extremely limited sites for safe public access to the coast presently existing along the north coast area of Ventura County the Sierra Club objects to the placement of "No Trespassing" signs, fences, and/or obstructions of any kind, including the proposed gate that will interfere with the long established prescriptive use of Breakers Way for either vehicular or pedestrian access to the coast via Breakers Way.

Due to the construction of Highway 101, and rip-rap fortifications that encroach into the tidal zone safe public access has been effectively eliminated in the area. Breakers Way provides the best and safest public access to the miles of sandy beaches of both La Conchita, and Mussel Shoals, for coastal trail hikers and the beach going members of the public. During high tide Breakers Way provides the only feasible access to the dry sandy beaches in the general vicinity, because due to the encroachment of the rip-rap fortifications there simply is no other feasible alternative access.

Historically there has been no challenge to public use of Breakers Way, nor have any prior restrictions on public access to the coast at Breakers Way existed. The pathways to the beach and sand access ramp existing at the northern end of Breakers Way has traditionally been used by the public for access to the beach, launching fishing boats, canoes, kayaks, catamarans, and jet skis.

CONCLUSION

The Los Padres Chapter of the Sierra Club supports the Commissions staff recommendation that a substantial issue exists with respect to this appeal, and is opposed to any signs, fences, gates, or other obstructions that would interfere with the public's long established prescriptive rights to access to the coast via the paths, trails, and ramps located at the northern end of Breakers Way. Thank you for the opportunity to comment on this proposal.

Sincerely,

Alan Sanders
Alan Sanders
Conservation Chair

January 5, 1999

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

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JAN 08 1999

JAN 11 1999

CALIFORNIA
COASTAL COMMISSION

Subject: Response to Staff Report Dated 12-17-98 for Appeal No. A-4-VNT-98-225

Dear Commissioners:

The 12-17-98 staff report is substantially better than the first report dated 10-20-98. It contains a better project description and is more factual in nature. Nevertheless, some comments are warranted.

One significant fact must be kept in mind at all times when reviewing this project. That fact is, since 1978 when Breakers Way was abandoned by the County, the only type of public access permitted over that road has been pedestrian access. This fact is significant because the proposed security gate does not limit pedestrian access in any way. In County staff's opinion, this one simple fact renders all the substantial issue arguments moot.

As your current staff report notes on page 7, "a four foot wide pedestrian access point is proposed." This is a four-foot wide opening with no impediments to pedestrian access. The purpose of the proposed security gate is to limit vehicular traffic on Breakers Way to property owners, who presumably are more sensitive to such things as children playing in the private street than others (trespassers) who might inadvertently drive onto the street looking for a place to park.

Since the proposed gate design does not limit or impede pedestrian access, which is the only type of access now allowed, no significant physical changes to Breakers Way will take place as a result of the project. Pedestrians who want to walk down Breakers Way will have to go through a four-foot wide opening, which is certainly not a problem for any person who could traverse the rocks at the end of Breakers Way to get down to the beach. The areas along the public streets in Mussel Shoals, which can be used for public parking, are not being changed in any way by the proposed gate.

Therefore, as noted above, since the proposed gate is not limiting pedestrian access, County staff does not feel any substantial issues are raised by the project.

The following are responses to specific statements made in the staff report which either support the fact that no substantial issues exist regarding this project, or point out inaccuracies in the report:

1. Page 8-bottom paragraph. A statement is made regarding the County's decision on the project that "There are no conditions of approval relating to public access...." We did not feel any such conditions were necessary because *pedestrian* access was not being changed by the project.
2. Page 9-second paragraph. A statement is made that the County findings note 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." The County report *only* speaks to the cul-de-sac, not an 800-foot long beach.
3. Page 9-third paragraph. A statement is made that "The appeal was opened and continued at the meeting of September 8-11, 1998 awaiting receipt of the administrative record from the County." This is incorrect. Your staff received the administrative record on August 19, 1998, as the 10-20-98 staff report correctly notes at the bottom of page 3.
4. Page 11-second paragraph. Your staff states that "Evidence exists of existing public access use involving potential prescriptive rights which would be affected by the proposed development." Since prescriptive rights have not been claimed by any member of the public, or granted by a court, this statement seems premature at best. Also, even if prescriptive rights were granted by a court for pedestrian access over Breakers Way, County staff does not believe the proposed gate would impede those rights in any way.
5. Page 11-fourth paragraph. The conclusion of this paragraph is that because the community of Mussel Shoals is located closer to the water and at a lower elevation than the highway and freeway to the north and south of the community, *everyone* who wants to use the shoreline in this area will access it via the community. This points out the difference between your staff's *perception* of beach use versus the *reality* of use. The amount of parking available to the public *within* the community of Mussel Shoals is extremely limited. Therefore, the Pacific Coast highway to the north of the community is extensively used for parking, and the people seem to have little trouble climbing down the rock rip-rap to get to the beach.
6. Page 11-bottom, page 12-top. Statements are made that a portion of Hwy. 101 to the north of Mussel Shoals is prohibited for parking, and that injury and fatality accidents occur in this area on a regular basis. No map is provided to indicate which portion is prohibited for parking, or how much is prohibited. Also, no CalTrans accident statistics are provided to back up the "injury and fatality" statement. Only about 0.2 tenths of a mile immediately north of Mussel Shoals is prohibited for parking, while on the next couple of miles north, parking is allowed. Therefore, adequate parking, with beach access, is available within ½ mile north of the community (one-half mile is the standard in the County's LCP).

7. Page 12-fourth paragraph. A statement is made that "Breakers Way provides the only convenient and practical route to travel from the public parking areas in the remainder of Mussel Shoal to reach the sandy beach to the north, particularly at high tide." As noted several times above, the proposed gate will not impede this pedestrian access. Then a statement is made that "The proposed gate will discourage this public access, as discussed in greater detail below...." We could not find a specific discussion of the details of how the gate, with a four-foot wide pedestrian opening, would *discourage* pedestrian use.
8. Page 13-third paragraph. A statement is made that "In summary, if Breakers Way is restricted as proposed, individuals parking in the community along public streets cannot access the lengthy sandy beach north of the Community with adequate alternative access." This statement is incorrect because, again, the proposed gate does not prohibit pedestrian access.
9. Page 13-fourth paragraph. A statement is made that "The findings discussed above conclude that there is a lack of adequate access nearby." We disagree with this statement for the reasons outlined in response number 6 above, and in my previous letter (Exhibit 8). And even if your Commission concludes, based on all the evidence presented to you, that there is a lack of adequate access nearby, the proposed gate does not change the amount of *existing* pedestrian access.
10. Page 14-Point No. 2. A statement is made that "Figure 4-Recreation Areas of the North Coast of the LUP also identifies the coast of Mussel Shoals as an existing recreation area." This is incorrect. *All* of the residential communities along Ventura County's north coast (including La Conchita, which is landward of the Pacific Coast Hwy.) are labeled on the map (Figure 4) *for location reference only* as are the Mobil-Rincon and Phillips *industrial* areas. This map must be viewed in conjunction with Figure 3 in the LUP, which is a written listing of the specific recreation areas. The beach at Mussel Shoals is not listed in Figure 3 as a recreation area.
11. Pages 14 & 15-Point No. 3. This paragraph references the letters received by the Commission regarding this appeal, using them as proof that "there has been prior public use of Breakers Way by the public." We didn't know this issue was in dispute. Regardless, the proposed gate would not prohibit continued pedestrian use of Breakers Way. It is interesting to note that none of the people who wrote to you have ever come to the County to view the file to see the actual proposed gate design. It is also interesting to note that a member of the Surfrider Foundation *did* review the proposal early in the County's permit process, and had no problems.
12. Page 16-second paragraph. A statement is made that "...there is no evidence in the local government administrative record or findings to factually support the need for the installation of the proposed gate." There are no standards in the County's certified LCP that requires either an applicant to prove the *need* for a permit, or the County to find that such a need exists. We don't think the Coastal Act requires such a finding, and we are therefore unclear why such a statement is included in the report.

13. Page 16-third paragraph. The first sentence states "Further, there is no evidence in the County findings to indicate that any action has been taken by the homeowners which has prohibited public use." Again, we are unclear why such a statement is made since the proposed gate is not designed to prohibit pedestrian access to Breakers Way. This statement seems to reference the issue of prescriptive rights.
14. Page 16-fourth paragraph. A statement is made that "...the findings do not demonstrate whether preservation of access to the beach along Breakers Way is inconsistent with private property rights." No such findings are necessary because the proposed gate does not prohibit pedestrian access along Breakers Way.
15. Page 17-Point No. 5. Your staff indicates that a sign exists at the north end of Breakers Way that states "Do Not Enter." In the County's view, this is a separate issue, and perhaps an enforcement issue. Since pedestrian access is not changed by the proposed gate, the existence of such a sign would not change pedestrian access in any way from that which exists at the present time. Also, keep in mind that the cul-de-sac and the north end of Breakers Way is not part of the roadway abandoned by the County. It was a separate piece of land once owned by CalTrans and deeded to the adjacent property owner.

The above comments only address the *substantial issue* portion of the staff report, not the *de novo permit analysis* portion since County staff does not feel there are any substantial issues. However, our comments are relevant to both portions of the report.

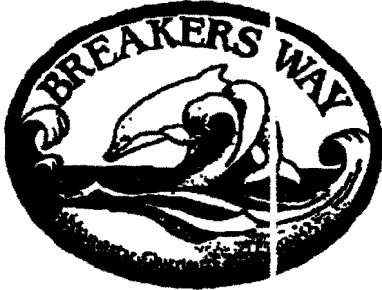
As you can see, there were several statements made in the report designed to further the argument that substantial issues exist regarding installation of the proposed security gate on Breakers Way. However, it is County staff's belief that all the statements are either incorrect or moot for the reasons noted above. We do not feel that the gate, as currently designed, is inconsistent with the policies of either the County's LCP or the Coastal Act because it only restricts public vehicular access which is currently prohibited on Breakers Way.

Sincerely,



Keith Turner, Director

C: Supervisor Kathy Long
Tom Berg, RMA Director
Gary Timm, Coastal Commission, Ventura District Office
Gary Garcia, Breakers Way Property Owners Association
Lindsay Nielson



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

January 6, 1999

Mr. Peter Douglas
Executive Director, California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RE: Appeal No.: A-4-VNT-98-224

APPLICANT: Breakers Way Property Owners Association

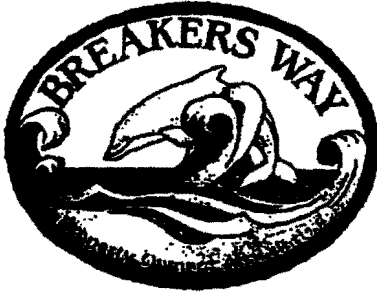
PROJECT DESCRIPTION: Construct a security gate at the entrance to the northern portion of the Mussel Shoals Community (Breakers Way Street)

Dear Mr. Douglas:

As President of the Breakers Way Property Owners Association, I have been the point person to the Ventura County Resource Management Agency application for a security gate at the entrance to Breakers Way, a private street. Our Planned Development Permit No. 1700 was given final approval (August 3, 1998) upon review by County Planners and was determined in compliance with the Ventura County/Coastal Commission Local Coastal Plan. Subsequently after no public appeals and with final review through the Ventura Office of the Coastal Commission, the Ventura Office of the California Coastal Commission (August 11, 1998) filed an "Appeal From Coastal Permit Decision of Local Government".

I am requesting a hearing continuance from the scheduled hearing of Friday, January 15, 1999. We feel this is within our application review window of 180 days. This for the following reason:

As the representative for the Breakers Way Property Owners Association and the responsible person to present in front of the Coastal Commission on behalf of our



application, I need additional time to review the recently revised (December 23, 1998) staff report. I have recently had eye surgery and am not fully capable of reviewing the document to best of my ability and to represent the Association members' position.

With such little notice, and what appears to be a Staff Report in need of very close scrutiny, I need this additional time.

Your attention to this request is appreciated and we will come to the Commission with reason and cooperativeness. We hope to have the Coastal Commission, through a reasonable hearing and appropriate scheduling, to find no substantial issues with our application.

Sincerely,

Gary Garcia
Homeowner and
President, Breakers Way Property Owners Association

Cc: Gary Timm, Manager, Ventura District Office, California Coastal Commission
Lindsay Neilson, Attorney at Law
Jeff Walker, County of Ventura - Coastal Administrative Officer, Manager, Land
Use Permits Section

January 6, 1999

RECEIVED

JAN 06 1999

California Coastal Commission
South Central Coast
89 S. California St., Suite 200
Ventura, CA 95060-4508

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Subject: New Appeal # A-4-VNT-98-²²⁵~~222~~
(Breakers Way Property Owners Association)

Dear Coastal Commissioners,

We know that your time and efforts are very valuable in protecting the California coastline for current and future generations; nevertheless, we request that you adhere to Chapter 4, Article 2.5, Section 30320 of the California Coastal Act regarding public interest, fairness and due process. Please review our case and listen to what we are saying in an open, objective, and impartial manner. We thank you in advance for that courtesy.

Regarding our case (New Appeal # A-4-VNT-98-~~222~~²²⁵, Breakers Way Property Owners Association's proposed security gate at 6692-6694 Breakers Way), please first review the December 10, 1998 and January 5, 1999 reports you have received from Keith Turner, Director of the Resource Management Agency in the County of Ventura. We will try not to reiterate points brought up in those documents in the interest of brevity; however, those documents are crucial in understanding our proposed gate.

We know that the words "gate" and "public access" are generally thought to be mutually exclusive, and a quick perusal of the Staff Report (dated 12/17/98) would easily lead you to that conclusion. We regret to say, in very strong terms, that the Staff Report that is purported to be "factual," is instead **BIASED, INACCURATE, SLANTED, MISLEADING, AND CONTAINS FALSE STATEMENTS.** (To back up this assertion, we could have submitted a three-page

refutation for each page of the 23-page Staff Report, and have you review an additional 69 pages of counter-claims and refutations. Of course, if you are interested, we would be happy to make a presentation to you on a line-by-line basis if you provided us the time at the February Coastal Commission meeting.) Again, for brevity's sake, we will not launch in to an exhaustive line-by-line refutation of the errors, and not speculate on whether they were deliberate or otherwise.

Instead, we ask you to think about the crucial issue: PEDESTRIAN v. VEHICULAR ACCESS: our security gate would change NO current patterns of allowed access to Breakers Way and the beach, due to the fact that, as noted on p. 2 of the Staff Report, the "gate contains a four foot gap on the western, seaward side which would be open for pedestrian use." Although there are references to pedestrian access in various places in the Staff Report, there is no discussion or analysis regarding public vehicular access and the gate except for one sentence on p. 20: "The gate will entirely block vehicular public access and effectively discourage pedestrian beach access." This one sentence deserves our close attention, so let us look at it together.

As it stands, the above-mentioned sentence sounds bone-chilling and contrary to public rights and interests. However, if we first look at the vehicular access issue, then the last sentence of Keith Turner's January 5 letter is pertinent: "We [County staff] do not feel that the gate, as currently designed, is inconsistent with the policies of either the County's LCP or the Coastal Act because it only restricts public vehicular access which is currently prohibited on Breakers Way." And, we might add, has been prohibited for the last twenty years.

Regarding the second part of the sentence, which asserts that the gate will "effectively discourage pedestrian beach access," we first draw your attention to the review of the physical setting of the Mussel Shoals Community and surrounding area as vividly portrayed on pp. 11—12 of the Staff Report. There is an assertion made that the "Mussel Shoals Community . . . affords the opportunity to reach the coast which is not available for several miles to the north [ital. added] and one-half mile to the south." This statement is false regarding the access to the north. Most of the public parking to access the beach to the north is along a 1.5 mile stretch of Highway 101. Caltrans created public parking and a bike path, and also installed concrete barriers along a portion of the highway. Although these concrete barriers are

noted (p. 12), there is no mention of the periodic barrier breaks for individuals to pass though once they have parked their cars. Thus, for the Staff Report (p. 11) to try to lead you to believe that there is no access for 3.2 miles (from Rincon Point) is a spurious mischaracterization of the facts.

The Staff Report points out, correctly, that "[i]ndividuals 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" (p.11). It neglects to mention, however, that ALL access points in the Mussel Shoals Community can be thus described: none have stairways, there are no improvements, and all require residents and visitors alike to climb over rip-rap or steep slopes. We do not wish to insult your intelligence, but we cannot understand how the hearty individuals who must scramble up and down rip-rap to get to the beach are going to be the same individuals who are going to be intimidated by the "physical presence of the gate and the psychological impact of a large physical barrier" (p. 20, Staff Report).

Another salient issue for the Coastal Commission to examine in the staff report concerns prescriptive rights; however, we have no idea why the Staff Report brings up the "doctrine of implied dedication [which] was confirmed in *Gion v. City of Santa Cruz* (1970) 2 Cal. 3d 29," and is also referred to as a "public prescriptive easement" (p. 14, Staff Report). It is our understanding that the "doctrine of implied dedication" was changed by statute in Civil Code 1009 in 1971. We know of no individuals who may wish to assert a claim stretching back to pre-1971; and respectfully request that the Coastal Commission heed the Staff Report statement that "the Commission cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law" (p.14). (As an aside note, it is not for the Commission to determine potential rights on behalf of a member of the public who currently uses Breakers Way for public pedestrian access, but for such an individual to assert his or her rights through the judicial system and then have those rights awarded by a court of law. We do not think that such individuals would be such shrinking violets that they would be unable to deal with the "psychological impact" of walking though a gate with four-foot wide pedestrian access.)

Another deliberate obfuscation presented to the Commission in the Staff Report concerns the lengthy discussion of the appeal brought forward in Santa Cruz (A-3-SCO-95-001 Santa Cruz County CSA # 2), since the gate project described in that case in no way resembles our situation. Very briefly, the gate in Santa Cruz blocked pedestrian access to the beach, did NOT block vehicular access, was NOT located next to the residential area, and was adjacent to a public parking area, etc. As Commissioners, I would hope that you would refresh your memories by reading the case again before using the Santa Cruz appeal as the basis of precedent for the situation that exists here on Breakers Way. In addition, perhaps the Commissioners should review the gates that have already been approved in Ventura County beach communities (namely, Rincon, Seacliff, Faria, and Solimar), so that, as residents of this county, we feel that we are being treated equitably.

Finally, if the Commissioners re-examine the original four reasons brought up by the appellant, and carefully read the response from the County of Ventura they will see that due consideration was given to the Ventura County Local Coastal Plan and the Coastal Act. Thus we believe that none of those four items demonstrates that our project is out of compliance with any applicable regulation. Items 1 & 3 regarding the vertical access policy are met by the exception that adequate access is nearby (and our gate does NOT CHANGE current access patterns); item 2 regarding Figure 13 is dispensed in the Staff Report itself which shows that Breakers Way is a private road; and item 4 regarding the removal of "no trespassing" signs is a factual error, since no "no trespassing" signs exist, and all signs that are on Breakers Way are posted legally.

We thank you for your consideration.

Sincerely,



Tamara Scott & Geoffrey Wallace
Treasurer & Vice-President
Breakers Way Property Owners Association

6741 Breakers Way
Ventura, CA 93001

January 5, 1999
To: California Coastal Commission
RE: Appeal of Breakers Way Property Assn. Ltd.
JAN 06 1999

Dear Commissioners,

I am a property owner at 6776 Breakers Way at Mussel Shoals, and from reading your staff report, I get the feeling that you may be unaware of the situation that exists here. We who live here love the beach and enjoy seeing others using it and appreciating it. It is not pedestrian beachgoers that we are interested in limiting. It is the vehicles that race down our street.

The particular vehicles of concern include the following: 1. Those whose passengers have seen the "oil island" as they approach on the highway, and nip in to see if they can drive out there. 2. The people in cars who have traditionally used the north end of the street as a "lovers lane" and drinking spot, and 3. Drivers looking for an alternative route when the highway traffic backs up.

Our dead-end street is narrow and has no turn-around. Therefore, drivers must pull into private driveways to turn around. During the summer months, and on weekends, when the homes are full and we have lots of visitors to our community, these vehicles create a dangerous situation for pedestrians, skaters, bicyclists, guests, children and pets.

The carloads that hang out on this street at night, are not interested in enjoying the beach. They are drinking, relieving themselves, breaking into cars, running through backyards, throwing

potted plants, stealing flags, and tossing twelve-packs of beer bottles and cans about. We care about our community, and that is why almost everyone living on our street picks up this litter and repairs damages. That is why when your inspectors come, they do not report the problems we are facing.

We are trying to solve these problems and would very much appreciate seeing the Coastal Commission support the installation of the security gate, for Mussel Shoals, as already exists at Seal Cliff, Bates, Faria and Solimar Beaches.

Please think about the situation we have here. Because we have no sidewalks, and no front or back yards, our private street is our gathering place and playground.

I hope you will take these things into consideration when you cast your vote.

Sincerely,
Pat Benner

