

CALIFORNIA COASTAL COMMISSION

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Item Tu17b

Staff: SMR-SF
Staff Report: November 22, 2002
Hearing Date: December 10, 2002

RECORD PACKET COPY

PROPOSED FINDINGS FOR CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-02-CD-03

RELATED VIOLATION FILE: V-1-99-002

PROPERTY LOCATION: 10257 Cabrillo Highway, Pescadero, CA, APN 086-211-040 (**Exhibit 1**)

DESCRIPTION OF PROPERTY: The property is an approximately two-acre parcel of land on the west side of Cabrillo Highway (State Highway 1) in Pescadero, CA.

PROPERTY OWNERS: James E. Arnold and Kenneth A. Miller

VIOLATION DESCRIPTION: A fence blocks the vertical access easement across the property in violation of the terms of a deed restriction recorded in satisfaction of Special Condition 4 of Coastal Development Permit (CDP) No. A-3-SMC-85-207

SUBSTANTIVE FILE DOCUMENTS: Cease and desist order file No. CCC-02-CD-03
Background Exhibits 1 through 13

CEQA STATUS: Categorically exempt (CEQA Guidelines (CG) §§ 15061 (b)(2), 15307, 15308 and 15321)

I. SUMMARY

The subject property is located at 10257 Cabrillo Highway, Pescadero, California. Arnold and Miller are the owners of the property. The subject violation consists of non-complying development (a fence) that blocks the vertical access easement across the property. The fence violates the terms of a deed restriction (San Mateo County Instrument No. 85114450, recorded on October 30, 1985) that was recorded by the owners in satisfaction of the requirements of Special Condition 4 of CDP No. A-3-SMC-85-207, which the Commission granted for the construction of the house on the property.

Commission staff first notified the owners of the violation on the property in September 1998. Commission staff sent additional letters to the owners on November 20, 1998, December 8, 1998, February 23, 1999 and May 11, 1999 regarding the violation. Commission staff set several deadlines for the owners to remove the portion of fence blocking the vertical easement. The owners failed to meet these deadlines and the fence blocking the vertical access way still stands.

On August 3, 1999, San Mateo County recorded Document No 1999-133936, Resolution No. 62989, accepting two Offers To Dedicate (OTDs) for vertical and lateral access easements on the property. The owner's unlawful fence stands as a clear obstacle to the County's management of the easements, and to any improvements the County may make to the easements as part of regional coastal access plans. However, the obligation of the owners to comply with requirements of the deed restriction is separate and distinct from the impact of their unlawful development on the County's management of its easement. Accordingly, the Executive Director has commenced this proceeding for the issuance of a cease and desist order to enforce the terms of the deed restriction.

The cease and desist order would require the owners to comply with the terms of the original permit conditions, by removing the portion of fence that is blocking the vertical easement, and keeping the easement open and free from impediments to pedestrian use at all times.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed cease and desist order are outlined in Section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8. The cease and desist hearing procedure is similar in most respects to the procedures that the Commission utilizes for permit and LCP matters.

For a cease and desist order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their

representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the cease and desist order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

III. MOTION

MOTION: I move that the Commission issue Cease and Desist Order No. CCC-02-CD-03 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the cease and desist order. The motion passes only by an affirmative vote of a majority of Commissioners present.

RESOLUTION TO ISSUE CEASE AND DESIST ORDER:

The Commission hereby issues Cease and Desist Order number CCC-02-CD-03 set forth below and adopts the findings set forth below on grounds that development has occurred in non-compliance with the terms and conditions of CDP No. A-3-SMC-85-207.

IV. PROPOSED FINDINGS

A. Description of Violation

The violation consists of a fence that blocks the vertical access easement across the property, in violation of the terms of a deed restriction recorded in satisfaction of Special Condition 4 of Coastal Development Permit (CDP) No. A-3-SMC-85-207 (the CDP issued for the construction of the house).

B. Background and Administrative Resolution Attempts

On September 8, 1982, San Mateo County approved CDP 82-31 for a new single-family residence on the subject property. This permit was appealed, and after a subsequent hearing

that focused on issues related to public views to the ocean and public access, the Commission issued CDP No. A-3-SMC-85-207. The staff report for the CDP noted long-standing historical use of the site by fishermen and noted the presence of an existing pathway to the bluff top, which generally crossed the middle of the subject property, and access to a sandy pocket beach. The Commission adopted permit conditions to provide vertical access along the southern border of property so that the house could be appropriately sited on the property (the house occupies the site of the original trail across the middle of the property). After the owners complied with the conditions to record both offers of dedication of vertical and lateral easement as well as a deed restriction regarding the areas that were the subject of the dedications, the CDP was issued and the single-family home was constructed on the property.

The terms of the deed restriction state: "The vertical and lateral public access easements required in Special Conditions Nos. 1 and 2 of Coastal Development Permit A-3-SMC-85-207, for which offers of dedication are recorded concurrently herewith, shall be kept open and free from impediments to pedestrian use at all times. Owner shall maintain the access ways in a safe and passable condition at all times, but shall not be required to construct any improvements to the access ways." (**Exhibit 2**).

Commission staff first notified the owners of the violation on the property in a letter dated September 15, 1998 (**Exhibit 3**), after noting on a September 14, 1998 site visit that a fence was blocking the vertical access. Additional letters from Commission staff dated November 20 and December 8, 1998, provided information to the owners about the terms of the deed restriction, explained the special conditions regarding access that were adopted in the CDP that was granted for the residential project on the property, and requested that the portion of fence blocking the vertical access be removed by October 19, 1998 (**Exhibits 4 and 5**). The owners failed to remove the fence by the October 1998 deadline. In a letter dated February 23, 1999, Commission staff requested that the owners indicate their intention to comply with the terms of the deed restriction (**Exhibit 6**).

On May 11, 1999, Commission staff set a second deadline of May 24, 1999 for the removal of the portion of fence blocking the vertical access (**Exhibit 7**). The owners did not remove the fence as of this deadline, but instead delivered to staff a letter dated May 17, 1999 that outlined the owners' concerns regarding safety and management of the access (**Exhibit 8**).

On August 3, 1999, San Mateo County recorded Document No 1999-133936, Resolution No. 62989, accepting two Offers To Dedicate (OTDs) for vertical and lateral access easements on the property (**Exhibit 9**). The County hired a consultant to prepare a Coastal Access Improvement Plan (Plan) for the general area. The San Mateo County Parks and Recreation Division has recommended that the Board of Supervisors (Board) approve the Coastal Access Improvement Plan, but the Board has not yet taken formal actions to approve the plan. In a letter dated May 22, 2002 County Environmental Services Agency staff stated that they would defer any further consideration for planning or development of coastal access improvements on the subject property until the California Coastal Trail is complete in the vicinity of the subject property (**Exhibit 10**).

In a letter dated October 25, 2002, Commission staff issued a Notice of Intent (NOI) to commence cease and desist order proceedings to enforce the terms of the deed restriction (**Exhibit 11**). The cease and desist order would require that the owners remove the portion of fence that is blocking the vertical access and keep the vertical access clear of impediments to pedestrian use.

C. Basis for Issuance of the Cease and Desist Order

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal, which states, in relevant part:

- (a) If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that... is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist.*
- (b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

Inconsistency with terms and conditions of previously issued permit

As discussed in Section B above, the Commission issued CDP No. A-3-SMC-85-207 for the construction of the single-family residence on the subject property. The staff report for this permit noted that continuous public use of the rocky bluff and sandy pocket beach by fishermen had been occurring for many years, that an existing pathway to the bluff top generally crossed the middle of the property and that, accordingly, the pathway may have been impliedly dedicated to the public. The placement of the new residence would necessarily cover part of this existing trail. As the staff report noted: "The project as proposed interferes with the existing vertical access to the bluff." The staff report referred to the adopted Statewide Interpretive Guidelines on public access, which provided in part:

"The actions taken by the Commission should not diminish the potential prescriptive rights in any way. The Commission may, however, allow development to be sited in an area of historic public use where equivalent areas for public access are provided; such compromise dedication areas should provide for equivalent area and use of access ways."

The staff report therefore recommended that the public be granted the right to pass over a vertical access way running along the southern property boundary to the lateral access way along the bluff top and along the rocky bluff area. The staff report noted that "In this way, the owners will receive a substantial benefit from the use of the property and the public's use of the vertical access will not conflict..."

The Commission subsequently adopted permit conditions to provide vertical access along the southern border of property so that the house could be adequately sited on the property while maintaining the historic public access across the property. The owners complied with the conditions to record offers to dedicate and a deed restriction regarding the access easements, the CDP was issued and the single-family home was constructed on the property. The terms of the deed restriction state: "The vertical and lateral public access easements required in Special Conditions Nos. 1 and 2 of Coastal Development Permit A-3-SMC-85-207, for which offers of dedication are recorded concurrently herewith, shall be kept open and free from impediments to pedestrian use at all times. Owner shall maintain the access ways in a safe and passable condition at all times, but shall not be required to construct any improvements to the access ways."

The portion of fence that blocks the vertical access violates the terms of the deed restriction, and therefore is also a violation of Special Condition 4 of Coastal Development Permit (CDP) No. A-3-SMC-85-207. As such, the owners are in violation of the CDP and the Commission may issue an order directing them to cease and desist. In this proceeding, the Commission seeks compliance with the terms of the deed restriction and would order the owners to remove the portion of fence that is blocking the vertical access and to keep the access clear of impediments to pedestrian use.

D. Allegations

The Commission alleges the following:

1. James E. Arnold and Kenneth A. Miller are the owners of the property located at 10257 Cabrillo Highway, Pescadero, CA, APN 086-211-040.
2. The owners complied with the special conditions of CDP No. A-3-SMC-85-207 and recorded the required offers to dedicate and deed restriction regarding the access easements on the property.
3. CDP No. A-3-SMC-85-207 was issued, the single-family residence was built on the property, and the owners have enjoyed the benefits of the CDP.
4. The terms of the recorded deed restriction state that the vertical and lateral public access easements required in Special Conditions Nos. 1 and 2 of Coastal Development Permit A-3-SMC-85-207 shall be kept open and free from impediments to pedestrian use at all times.
5. The owners are required to comply with the requirements contained in the recorded deed restriction.
6. The existing fence blocks pedestrian access to the vertical access across the property, and is in violation of CDP No. A-3-SMC-85-207.

7. The owners have not complied with the terms of the deed restriction.

The owners submitted a Statement of Defense form on November 14, 2002 (**Exhibit 12**). The owners did not expressly admit or contest any of the allegations contained in the NOI but included an "Owners Statement Concerning Coastal Act Violation File No. V-1-99-002." The following section presents the defenses set forth in the Statement of Defense form and Owners Statement dated November 14, 2002 and signed by James Arnold.

E. Violator's Defense and Commission Response

Owners' Defense:

1. "Arnold and Miller signed an OTD in October, 1985. The OTD was a required agreement for a building permit, signed under duress and against their better judgment."

Commission's Response:

If the owners did not agree with the terms of specific permit conditions, they could have sought judicial review of the Commission action; however, no such review was sought. Therefore, the conditions of approval of the permit are considered final and binding on the owners. Moreover, the owners complied with the permit conditions and for the past seventeen years have enjoyed the benefits of the permit granted to them by the Coastal Commission for the construction of the house on the subject property.

Owners' Defense:

2. "The placement of the vertical easement was determined by representatives of the Coastal Commission who apparently were not familiar with the property. The vertical easement does not follow a traditional nor practical path for coastal access. The easement in its present condition would require substantial physical development in order to be of any value as a coastal access. Coastal Commission staff repeatedly made false statements of this easement's destination. Even Linda Locklin, Coastal Access Program Manager, was quoted in several newspapers as saying this easement would lead to a beach "where people could stroll" (Newspaper article enclosed). This vertical easement leads to the almost vertical edge of a 30-foot deep ravine (photo enclosed). The ravine plus additional land separates a user from the ocean or from ocean access by approximately 150 feet."

Commission's Response:

Commission staff disagrees with the assertion that the placement of the vertical access easement was determined by Commission staff that was not familiar with the property. The staff report notes the historic use of fishermen crossing the subject property to access the rocky bluff top and sandy pocket beach. The staff report also notes that while the property was fenced along the road frontage, "the existing pathway to the bluff top generally crosses the middle of

the property.” The adopted findings of the staff report for CDP No. A-3-SMC-85-207 refer to a sandy pocket beach but do not refer to strolling along a beach. As discussed in Section C above, the placement of the easement to relocate vertical access across the site was determined so as to make possible the owners’ use and development of their land. Contrary to the owner’s statement above, the 1995 San Jose Mercury News Article newspaper article regarding beach access (pages 6 & 7 of **Exhibit 12**) does not quote Commission staff Linda Locklin as saying that the vertical easement on the subject property would allow the public to access a beach where people could stroll.

Photographs provided by the owners (pages 8 & 9 of **Exhibit 12**) demonstrate that the easement crosses a steep bluff edge as it extends seaward towards the Mean High Tide Line; however, the vertical easement on the subject property crosses but does not coincide with the historic path down the ravine to the pocket beach that has been established over the years of public use at this site, as can be seen in an aerial photograph of the site (**Exhibit 13**). The vertical easement generally leads in the direction of a ravine, which is not on the subject property but adjacent to it, that is used to access the pocket beach. Use of the pocket beach for fishing activities is not occurring on the subject property but is on prescriptively used beach south of the subject property. An informal trail, visible in the aerial photograph and likely the remnant of the original trail cutting across the property that was noted in the staff report for the CDP, leads from the back deck of the house on the subject property and then off the subject property to the head of the ravine that leads to the sandy pocket beach.

Owners’ Defense:

3. “This site has been described as “dangerous” by San Mateo County. Two drownings have occurred at this site. Last January (2002) a man slipped on the edge of this site and had to be evacuated for a broken back. The premature end of this easement, 150 feet from the water’s edge, and its present condition makes this site particularly hazardous.”

Commission’s Response:

Commission staff is unaware of any assertions by County staff that the site is dangerous. The site description of the subject property in the County’s Coastal Access Improvement Plan states that “steep bluffs make beach access difficult,” but do not refer to the area as dangerous. In addition, the San Mateo County Environmental Services Agency letter to the owners dated May 22, 2002 states “the easements have been used in the past without incident and presumably are safe”. Drowning accidents in the area would have occurred in public waters, not on the subject property.

The vertical easement extends seaward to the Mean High Tide Line and does not “end prematurely 150 feet from the water’s edge”, but there is a steep break in slope where the easement crosses the bluff edge. As discussed in Response #2 above, the vertical easement on the subject property crosses but does not coincide with the historic path that has been established over the years of public use at this site. The location of this trail, visible in an aerial photograph of the site (**Exhibit 13**), indicates that the public does not appear to approach the

bluff edge in the location of the vertical easement on the subject property; rather, the public crosses the subject property and accesses the pocket beach by walking down a ravine that is located on the adjacent property to the south. Use of the pocket beach for fishing activities is not occurring on the subject property but is on prescriptively used beach south of the subject property.

Coastlines with bluff tops, such as the coastline on the subject property, are inherently hazardous, and the public cannot be prevented from being drawn to the coast to explore and use the coast for recreational purposes. Private property owners have statutory immunity from damage claims pursuant to Civil Code § 846:

“An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section...Nothing in this section creates a duty of care or ground of liability for injury to person or property.”

Owners' Defense:

4. “The portion of the Arnold/Miller property where this vertical easement was placed has been fenced continuously for more than 30 years. Any access the public may have had was not at this site nor even from the Arnold/Miller property. Access has always been from other adjacent and non-adjacent properties. During the 14 years between 1985 when the OTD was signed and 1999 when questions concerning this issue first arose, there was never a complaint by the public, San Mateo County or the State concerning this fence. Why is there now such a sudden and great concern by the State, especially since San Mateo County now controls this easement?”

Commission's Response:

The overwhelming weight of available evidence contradicts the assertion that public access of the coast in this area did not use the subject property. The staff report for CDP No. A-3-SMC-85-207 noted the presence of a well-used pedestrian trail generally crossing the middle of the Arnold/Miller property. The placement of the house on the lot would necessarily cover most of the existing trail, and a requirement for an easement in the same location as the existing trail would have interfered with the owners' use and development of the land. Instead, the Commission determined that a vertical access easement along the southern property boundary would relocate but preserve the historic use on the property, while still allowing the owners to receive a substantial benefit from the property through the construction of the single-family residence.

The public continues to access the site today, notwithstanding the blockage of the vertical access with the fence. Commission staff has observed continued public use of the pocket

beach, in the form of fish cutting tables being stored in a cove located adjacent to the pocket beach. Commission staff has learned from County staff that have met with the property owners to the north of the subject property, that the public cuts across this property and then across the subject property to access the shoreline.

Finally, Commission staff disagrees with the assertion that the State's interest in removing the fence is "sudden." Commission staff have been attempting to resolve the violation administratively for the past five years, since their first notification to the owners in September 1998.

Owners' Defense:

5. "San Mateo County has a formal Coastal Access Improvement Plan which has been officially adopted and is being implemented. This plan outlines a proper plan for development of this easement. Until the easement is developed as outlined in the county plan, the site remains an attractive and dangerous nuisance."

Commission's Response:

The terms of the deed restriction, which was required as a special condition of CDP No. A-3-SMC-85-207, have been in place since the date of its recordation in October 1985. Thus, for over seventeen years the owners have been in violation of the terms of that deed restriction. During that time, however, the owners have enjoyed the benefits of this permit, which allowed the construction of the single-family residence on the site. The permit requirements and deed restriction significantly predate the County's area-wide plans for coastal improvements, and are not dependent on whether such a plan is eventually implemented.

As noted in Section B above, the County's consultant has prepared a Coastal Access Improvement Plan (Plan), which includes plans for management of the access easements on the subject property. The San Mateo County Parks and Recreation Division has recommended that the Board of Supervisors (Board) approve the Coastal Access Improvement Plan, but the Board has not yet taken formal actions to approve the plan and it is uncertain when the specific elements of this plan would be implemented. The County Environmental Services Agency has stated, however, in their May 22, 2002 letter to the owners (**Exhibit 10**) that they would defer any further consideration for planning or development of coastal access improvements on the subject property until the California Coastal Trail is complete in the vicinity of the subject property and this may not occur for years. The eventual timing of adoption and/or implementation of regional coastal access plans does not diminish the obligations of the owners to comply with requirements in their permit and with the requirements of the deed restriction to "keep [the dedicated areas] open and free from impediments to pedestrian use."

Owners' Defense:

6. "Leave the site as status quo until the easement is properly developed by San Mateo County as outlined in their Coastal Access Improvement Plan. We as owners recognize

the existence of this vertical easement and approve the basic development plans outlined by San Mateo County. Only when this easement is under active San Mateo County management would (it) be in the interest of the public and public safety to have this easement opened.”

Commission's Response:

Information gathered by Commission staff, during site visits and from discussions with County staff about ongoing public access to and use of the coast in this area, indicates that the public presently continues to access the bluff tops and sandy pocket beach- the public simply traverses across neighboring properties and the subject property to get around the fence that currently blocks the vertical access. This ongoing public use is independent of the implementation of the County's Coastal Access Improvement Plan and is expected to continue regardless of when the Plan is eventually implemented. Moreover, the requirement for this access way arose in the CDP issued for this residence and was both a condition of its approval and based on an acknowledgement of the historic public use of the access route. In continued recognition of the historic public access that has existed and continues to occur on this site, the Commission maintains its view that the vertical access, which was relocated to the southern property boundary so that the existing single-family residence could be built on the property, be opened immediately. Concerns regarding public safety are addressed in Response #3 above.

Staff recommends that the Commission issue the following cease and desist order:

CEASE AND DESIST ORDER

Pursuant to its authority under PRC § 30810, the California Coastal Commission hereby authorizes and orders James E. Arnold and Kenneth A. Miller, all their employees, agents, and contractors, and any persons acting in concert with any of the foregoing to cease and desist from: (1) undertaking any activity in violation of the requirements of the conditions to CDP No. A-3-SMC-85-207; and (2) maintaining on the subject property any structures or other development constructed or erected in violation of the requirements of the conditions to CDP No. A-3-SMC-85-207. Accordingly, all persons subject to this order shall, within 30 days of its issuance, fully comply with paragraphs A, B and C as follows.

- A. Remove the portion of fence at the southeastern property border that is blocking the vertical access easement.
- B. Remove all other impediments to pedestrian use of the area subject to the deed restriction, including: 1) overgrown brush and blackberry vines, or other vegetation that would impede pedestrian use, and 2) any "No Trespassing" signs, that are posted on the fence near the vertical easement.
- C. Keep the area subject to the deed restriction open and free from impediments to pedestrian use at all times.

Within 30 days of the issuance of this order, Commission staff will conduct a site visit to confirm compliance with the terms and conditions of the order.

IDENTIFICATION OF THE PROPERTY

The property that is the subject of this cease and desist order is described as follows:

10257 Cabrillo Highway, Pescadero, CA, APN 086-211-040

DESCRIPTION OF UNPERMITTED DEVELOPMENT

Fence blocking vertical access easement at southeastern corner of property.

EFFECTIVE DATE AND TERMS OF THE ORDER

The effective date of this order is December 10, 2002. This order shall remain in effect permanently unless and until rescinded by the Commission.

FINDINGS

This order is issued on the basis of the findings adopted by the Commission on December 10, 2002, as set forth in the attached document entitled "Proposed Findings for Cease and Desist Order No. CCC-02-CD-03."

COMPLIANCE OBLIGATION

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order as approved by the Commission will constitute a violation of this order and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which such compliance failure persists. Deadlines may be extended by the Executive Director for good cause. Any extension requests must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

DEADLINES

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

APPEAL

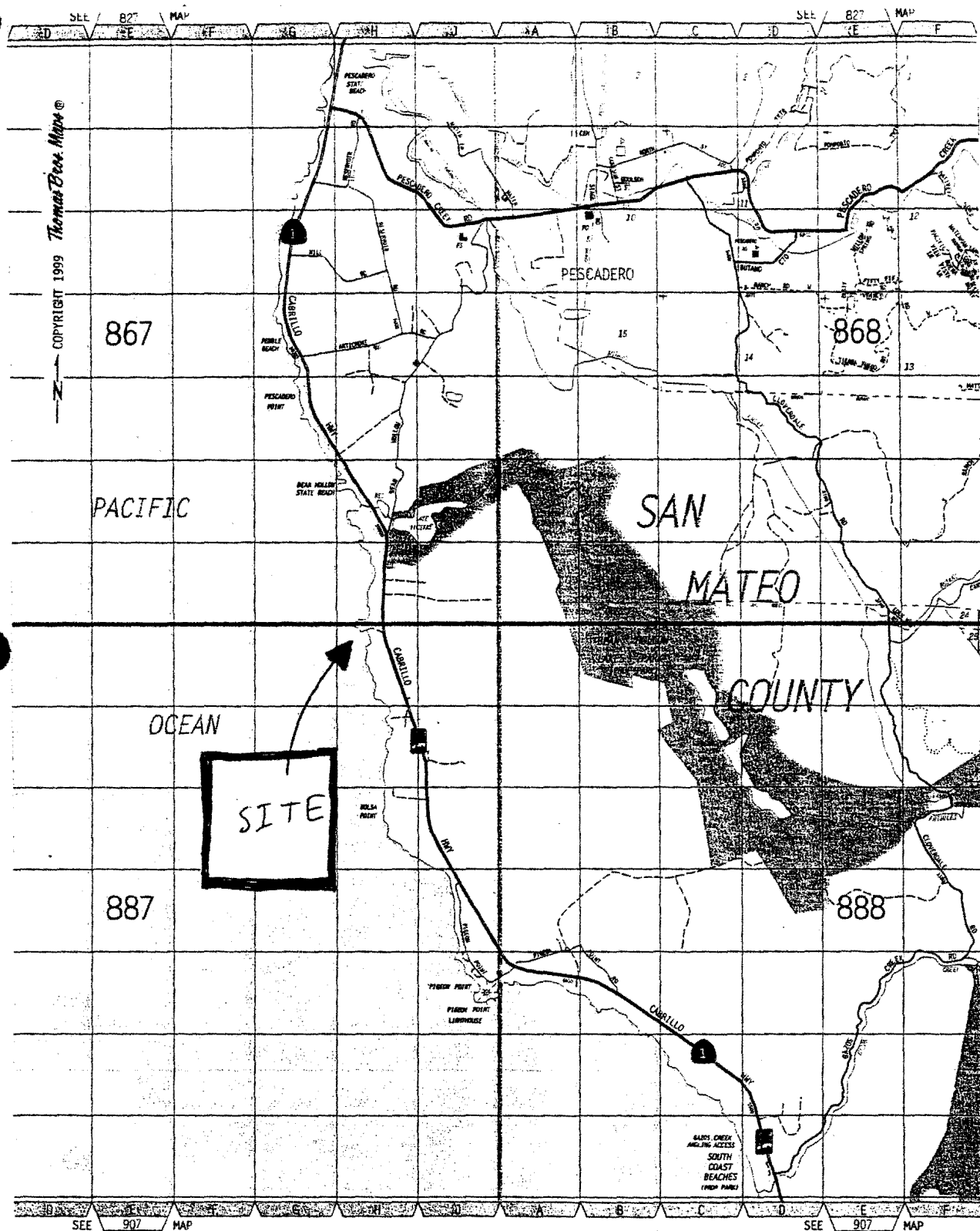
Pursuant to PRC § 300803(b), any person or entity against whom this order is issued may file a petition with the Superior Court for a stay of this order.

Executed in San Francisco on December 10, 2002, on behalf of the California Coastal Commission.

Peter Douglas, Executive Director

Exhibits

1. Locus map for the subject property.
2. Deed restriction (Instrument Number 85114450) recorded in San Mateo County on October 30, 1985.
3. Letter dated September 15, 1998 from Commission staff to owners.
4. Letter dated November 20, 1998 from Commission staff to owners.
5. Letter dated December 8, 1998 from Commission staff to owners.
6. Letter dated February 23, 1999, from Commission staff to owners requesting that the owners indicate their intention to comply with the terms of the deed restriction.
7. Letter dated May 11, 1999, from Commission staff to owners, notifying the owners that the case had been referred to the Commission's Enforcement Unit and setting a May 24, 1999 deadline for the removal of the portion of fence blocking the vertical access
8. Letter dated May 17, 1999 from owners to Commission staff outlining the owners' concerns regarding safety and management of the access.
9. San Mateo County Resolution No. 62989 accepting two Offers To Dedicate (OTDs) for vertical and lateral access easements on the Arnold/Miller property.
10. Letter dated May 22, 2002 from San Mateo County to owners, regarding County timing of implementation of access improvements on the property.
11. Letter dated October 25, 2002, from Commission staff to owners, issuing Notice of Intent (NOI) to commence cease and desist order proceedings to enforce the terms of the deed restriction.
12. Statement of Defense form submitted by owners on November 14, 2002.
13. Aerial photograph of site.



RECORDING REQUESTED BY AND RETURN TO:
STATE OF CALIFORNIA
CALIFORNIA COASTAL COMMISSION
631 HOWARD STREET, FOURTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

DEED RESTRICTION

I. WHEREAS, James E. Arnold and Kenneth A. Miller

hereinafter referred to as Owner(s), is the record owner of the following real property:

(See Exhibit "A")

hereinafter referred to as the subject property; and

II. WHEREAS, the California Coastal Commission is acting on behalf of the People of the State of California; and

III. WHEREAS, the subject property is located within the coastal zone as defined in Section 30103 of the California Public Resources Code (hereinafter referred to as the California Coastal Act); and

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

V. WHEREAS, coastal development permit No. A-3-SMC-85-207 was granted on October 22, 1985 by the California Coastal Commission in accordance with the provision of the Staff Recommendation and Findings, [REDACTED] herein incorporated by reference; and

VI. WHEREAS, coastal development permit No. A-3-SMC-85-207 was subject to the terms and conditions including but not limited to the following conditions:

85114450

4. Prescriptive Rights. PRIOR TO THE TRANSMITTAL OF THIS PERMIT, the permittees shall record a document such as a covenant running with the land agreeing for themselves, successors in interest, or assignees to maintain and otherwise keep open and free from impediments to pedestrian use the vertical and lateral accessways as described in Conditions 1 and 2. The document shall be recorded free of all prior liens and encumbrances except for tax liens, shall run in favor of the People of the State of California, and shall bind the applicant, her heirs and successors in interest. The form and content of the document shall be subject to the review and approval of the Executive Director.

85114450

VII. WHEREAS, the Commission found that but for the imposition of the above condition the proposed development could not be found consistent with the provisions of the California Coastal Act of 1976 and that a permit could therefore not have been granted; and

VIII. WHEREAS, it is intended that this Deed Restriction is irrevocable and shall constitute enforceable restrictions; and

IX. WHEREAS, Owner has elected to comply with the condition imposed by Permit No. A-3-SMC-85-207 so as to enable Owner to undertake the development authorized by the permit;

//

The undersigned Owner, for himself/herself and for his/her heirs, assigns, and successors in interest, covenants and agrees that:

The vertical and lateral public access easements required in Special Conditions nos. 1 and 2 of Coastal Development Permit A-3-SMC-85-207, for which offers of dedication are recorded concurrently herewith, shall be kept open and free from impediments to pedestrian use at all times. Owner shall maintain the accessways in a safe and passable condition at all times, but shall not be required to construct any improvements to the accessways.

This deed restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective, and during the period that the development authorized by said permit, or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the subject property described herein, and to that extent, said deed restriction is hereby deemed and agreed by Owners to be a covenant running with the land, and shall bind Owners and all his/her assigns or successors in interest.

85114450

Owner agrees to record this Deed Restriction in the Recorder's office for the County of San Mateo as soon as possible after the date of its execution.

DATED: October 30, 1985

James E Arnold
OWNER

James E Arnold
TYPE OR PRINT NAME OF ABOVE

Kenneth A Miller
OWNER

Kenneth A Miller
TYPE OR PRINT NAME OF ABOVE

NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons signing on behalf of a corporation, partnership, trust, etc., please use the correct notary jurat (acknowledgment) as explained in your Notary Public Law Book.

State of California, County of San Francisco, ss

On this 30th day of October, in the year 1985, before me the undersigned, a Notary Public, personally appeared James E. Arnold and Kenneth A. Miller, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he/she executed it.



Deborah Benrubi
NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

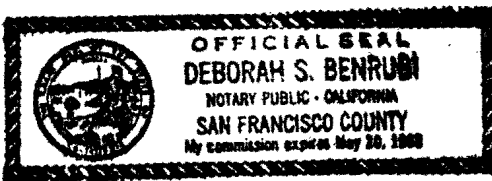
This is to certify that the deed restriction set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. A3-S4C-85-207 on October 22, 1985 and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: October 30, 1985

Carolyn Small
Carolyn Small, Staff Counsel
California Coastal Commission

STATE OF California)
COUNTY OF San Francisco) ss

On October 30, 1985, before me the undersigned a Notary Public, personally appeared Carolyn Small personally known to me to be (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as the Staff Counsel and authorized representative of the California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.



Deborah S Benrud
NOTARY PUBLIC IN AND FOR
SAID STATE AND COUNTY

Description:

EXHIBIT A

All that certain real property situate in an Unincorporated Area, County of San Mateo, State of California, described as follows:

PARCEL I:

A portion of that certain tract of land described as Parcel Four in Deed to Calabrina, Inc., a corporation, recorded November 1, 1957, Book 3302 of Official Records at Page 189 (File No. 94581-P), Records of San Mateo County, California, more particularly described as follows:

BEGINNING at a point which is the most Southeasterly corner of that certain parcel of land described in Deed to Albert A. Dunn, et al, recorded February 24, 1961 in Book 3939 of Official Records at page 506 (File No. 34119-T), Records of San Mateo County, California, said point also being on the Westerly boundary of Parcel II, described in Deed to the State of California, recorded on October 31, 1956, in Book 3120 of Official Records at Page 372 (File No. 238-P), Records of San Mateo County, California; thence from said point of beginning along said Westerly boundary of said Parcel II, Southeasterly on the arc of a curve to the left, tangent to a line bears South 5° 17' 48.7" East, said curve having a radius of 4125.00 feet, and a central angle of 2° 21' 42.3", an arc distance of 170.03 feet; thence leaving said Westerly boundary line, South 84° 27' 24" West to the mean high tide line of the Pacific Ocean; thence Northerly along said mean high tide line to the Southerly boundary line of said lands conveyed to Albert A. Dunn; thence along said last mentioned line, North 84° 27' 24" East to the point of beginning.

PARCEL II:

An easement 10 feet in width for underground water pipe line purposes, with construction and maintenance rights thereof, said easement being described as lying 5 feet on each side of the following described line:

BEGINNING at a point on the Easterly boundary of Parcel II described in Deed to the State of California; recorded October 31, 1956 in Book 3120 of Official Records at Page 372 (File No. 238-P), Records of San Mateo County, California, said point of beginning being distant North 70° 44' 51" East 60.00 feet and North 13° 23' 32" West 6.00 feet from Engineer's Station A3 534+21.39 BC of the Department of Public Works Survey for the State Highway in San Mateo County, Road IV-SM-56-A; thence from said point of beginning North 85° 00' East 350.00 feet to the center of a 25 foot radius storage tank area, and South 31° 00' East 127.00 feet to the center of a 100 foot radius spring area.

DESCRIPTION CONTINUED

TOGETHER WITH the right to construct and maintain a water storage tank, the site of which will be an area bounded by a circle with a 25 foot radius above mentioned.

ALSO TOGETHER WITH the non-exclusive right to supplement said storage tank with water, by means of a non-permanent conduit from an existing reservoir situated North 70° 44' 51" East 440 feet, more or less, from Engineer's Station A3 506+00 of said Department of Public Works Survey.

ALSO TOGETHER WITH the non-exclusive right to use an existing water pipe extending from a point near the Southeasterly corner of a certain 13 acre tract conveyed to Mother Lode Estates, Inc., by Deed recorded October 24, 1962 in Book 4318 of Official Records at Page 275 (File No. 25655-V), Records of San Mateo County, California, to the Southerly boundary of property above described.

The bearings and distances used in the above descriptions are on the California Coordinate System, Zone 3.

Said easements are appurtenant to Parcel I herein and were created by Deed recorded January 23, 1963, Book 4376 of Official Records at Page 461 (File No. 54061-V), Records of San Mateo County, California.

A.F. 1086-211-040

.P.N. 86-21-211-4.

9802AS

05114930

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(408) 427-4883
HEARING IMPAIRED: (415) 904-5200



September 15, 1998

Certified and Regular Mail

**NOTICE OF VIOLATION
OF THE CALIFORNIA COASTAL ACT**

Miller Trust
16565 Kennedy Road
Los Gatos, CA 95032-6453

Subject: **10257 Cabrillo Highway, Pescadero**
APN 86-211-40

Dear Trustee:

In 1985, the California Coastal Commission approved CDP# A-3-SMC-85-207 for Arnold and Miller to construct a single family home. One of the main issues raised by the Commission was the protection of historic public access across to the parcel to the ocean. In order to protect those public rights, the Commission required the recordation of both an Offer to Dedicate a Public Easement and a Deed Restriction. Both documents were recorded by Arnold and Miller.

The Deed restriction states: "The vertical and lateral public access easements ... shall be kept open and free of impediments to pedestrian use at all times. Owner shall maintain the accessways in a safe and passable condition at all times, but shall not be required to construct any improvements to the accessways."

A site inspection of your property on September 14, 1998 revealed that the 10 ft. wide vertical easement, located on the south side of the parcel, has been blocked by the construction of a solid fence (seaward of the frontage road). Installation of this fence, within the deed restricted area, constitutes a violation of the terms of both the coastal permit and the deed restriction.

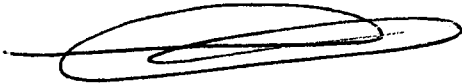
Coastal Act Section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may be inconsistent with any permit previously issued by the Commission, the Executive Director may issue a temporary order directing that person to cease and desist. Coastal Act Section 30810 states that the Coastal Commission may also issue a permanent cease and desist order after a public hearing. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount not to exceed \$30,000. Coastal Act Section 30820(b) states that, in addition to any other penalties, any person who "**intentionally and knowingly**" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 or more than \$15,000 for each day in which the violation persists.

In order to resolve this violation, we request that you remove the 10 ft. long portion of the fence within 30 days (October 19, 1998). Failure to comply will result in referral of this matter to our Statewide Enforcement Unit in San Francisco.

Please contact the undersigned if you have any questions.

Sincerely,



Linda Locklin
Manager, Coastal Access Program

LL/cm

cc: Gary Warren, San Mateo Co. Code Enforcement
George Bergman, San Mateo Co. Planning Dept.
Nancy Cave, CCC, Manager, Enforcement
Bob Merrill, CCC, Manager, North Coast

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(408) 427-4863
HEARING IMPAIRED: (415) 904-5200



November 20, 1998

James Arnold
24142 Big Basin Way
Saratoga, CA 95070

Dear Dr. Arnold:

Thank you for responding to my letter addressed to the Miller Trust. The reason that my letter was dated September 15, 1998 and postmarked November 8, 1998 on the envelope you reviewed at Kenneth Miller's home in Los Gatos, is that I have been trying since September 15 to contact the Trust. The San Mateo County Recorder's Office lists the official mailing address for the Trust's Pescadero parcel as 16565 Kennedy Road, Los Gatos. A certified letter was mailed to that address, as well as to the property at 10257 Cabrillo Highway, Pescadero, on September 15. Both certified letters were returned, marked "unclaimed". In another attempt to make contact with the Trust, we re-mailed the same letter, regular mail, on November 10. Now that you have responded, on behalf of the Trust, we can address the issues raised in our correspondence.

The main issue is the blocking of a vertical accessway, which is guaranteed by a Deed Restriction which was recorded by Miller and Arnold. The Coastal Commission required this Deed Restriction, to permanently protect historic public access rights that have accrued on the property. You, the applicant, had the opportunity to either reject the permit with the access conditions or pursue litigation. You did not choose these alternatives; the home has been constructed but the terms of the Deed Restriction are not being adhered to.

As I stated in the September 15th letter, the Deed Restriction which you recorded states that you will keep the vertical and lateral access easements open and free of impediments to pedestrian use at all times. Our site inspection and the statement in your November 17, 1998 letter confirm that the vertical accessway has been blocked. Thus you are in violation of the terms of your permit and are subject to potential legal action being taken by the Commission.

However, we would prefer to resolve this matter without litigation. I note that in the final plans submitted to the Commission, where the vertical and lateral public accessways are clearly delineated, a gate is shown to be installed in the fence at the beginning of the vertical accessway. Construction of this gate would substantially comply with the terms of the Deed Restriction. The issue of overgrown brush, blackberry vines and no trespassing signs within the easement area would need to be addressed.

I clearly understand your concern for private security, not an uncommon issue for the hundreds of property owners who have recorded such access easements with the


Commission. One technique often employed to clearly delineate the public vertical easement vs. the adjacent private property, is the installation of a fence between the two areas. Should you wish to install a fence in this manner, we can discuss any Commission or County permitting requirements.

As to another point in your letter, the Offer to Dedicate (OTD) Public Access Easement which Arnold and Miller recorded, is valid for 21 years, not 10 years as you state in your letter. The OTD's were recorded in 1985, run for 21 years or 2006. One of the highest priorities for the Commission is the acceptance of these OTD's prior to their expiration date. The Commission has directed staff to ensure that all OTD's are accepted to ensure that these areas are protected in perpetuity for the general public. Thus, you can expect that the OTD will be accepted; it will not expire.

I hope this more clearly explains the situation. Now that you have our September 15 letter and this one, we request that you determine how you are going to comply with the terms of the Deed Restriction and inform us by December 4.

Please do not hesitate to contact me if you have further questions. If you would like us to contact the other members of the Trust directly, please supply us with their names and addresses.

Sincerely,



Linda Locklin
Manager, Coastal Access Program

LL/cm

cc: Gary Warren, S.M. Co., Code Enforcement
George Bergman, S.M. Co., Planning Dept.
Nancy Cave, CCC, Manager, Enforcement
Bob Merrill, CCC, Manager, North Coast

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(408) 427-4863

HEARING IMPAIRED: (415) 904-6200



December 8, 1998

James Arnold
24142 Big Basin Way
Saratoga, CA 95070

Dear Dr. Arnold:

Thank you for your prompt response to my November 20th letter. I appreciate your need for additional information in order to respond to the issues we have raised. To assist you in your evaluation, I am enclosing the following:

1. Offer to dedicate a 10 ft. wide vertical access easement from the state highway to the mean high tide line.
2. Offer to dedicate a lateral access easement, the width of the parcel, from the mean high tide line to a line 25 ft. inland from the edge of the ocean bluff.
3. Deed Restriction for the vertical and lateral areas offered above.
4. Copy of the Coastal Commission's adopted conditions for the residential project.
5. Two booklets produced jointly by the California Coastal Commission and the State Coastal Conservancy. ("Limitations on Liability for Nonprofit Land Managers" and "Happy Trails to You")

As to the legality of the access documents, I am not aware of any court rulings on this. The general legal rule is that the time to contest any conditions imposed by the Commission is immediately after the Commission action (60 to 90 days). That time is clearly long passed.

As to liability, once the easements are accepted, that managing entity is responsible for any liability issues. You will see that the booklet on liability details the current state of the law, which is generally very favorable for landowner protection, especially for undeveloped trails.

Once you have had a chance to look over these materials, contact me so we can discuss the next steps. Please do not hesitate to call me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Locklin".

Linda Locklin
Manager, Coastal Access Program

LL/cm

Enclosures

cc: Bob Merrill

Gary Warren

George Bergman

A:\tr Arnold access 12.8.98.doc

Exhibit 5

CCC-02-CD-03 (Arnold/Miller)

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

725 FRONT STREET, STE. 300

SANTA CRUZ, CA 95060

(408) 427-4863

HEARING IMPAIRED: (415) 904-5200



February 23, 1999

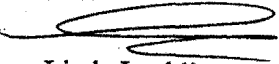
James Arnold
24142 Big Basin Way
Saratoga, California 95070

Dear Mr. Arnold:

I received your letter of January 7, 1999, in which you state that you will contact me by the end of January. As you know that date is well past and we need to know how the owners intend to comply with the terms of the recorded Deed Restriction.

If I do not hear from you by March 12, 1999, this matter will be transferred to our enforcement division for legal action.

Sincerely,



Linda Locklin
Manager, Coastal Access Program

Cc:

Gary Warren, San Mateo County
George Bergman, San Mateo County
Nancy Cave, Enforcement
Bob Merrill, North Coast District

CALIFORNIA COASTAL COMMISSION

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



May 11, 1999

REGULAR AND CERTIFIED (Article No. Z 387 425 306)

James Arnold
24142 Big Basin Way
Saratoga, CA 95070

RE: Our File No. V-1-99-02
Miller 1997 Trust property located at 10257 Cabrillo Highway, Pescadero, CA 94060-9711
APN 086-211-040

Dear Mr. Arnold:

This is to inform you that the above mentioned file has been referred to the Statewide Enforcement Unit for further enforcement action.

As noted in the letter dated September 15, 1998, from Coastal Access Program Manager Linda Locklin to the Miller Trust, the 10 ft. wide fence located on the vertical access easement in violation of the terms and conditions of coastal development permit A-3-SMC-85-207 and the deed restriction (Instrument No. 85114450) recorded at the San Mateo County Recorder's office. The same letter required removal of the impediment before October 19, 1998.

I acknowledge and appreciate your response and continued communication with Linda Locklin. However, we have not received any proposal for the removal of the fence or "a letter of substance" as promised in your January 7, 1999 letter to Locklin. Additionally, Locklin wrote to you on February 23, 1999, stating the same and requesting a response.

To resolve this violation we request that you remove the 10 ft. wide fence before May 24, 1999 and keep the vertical access easement open and free of impediments. Failure to comply will result in the initiation of formal enforcement action which may include monetary penalties accrued every day the violation remains on the property.

If you have any questions please contact me at (415) 904-5248.

Sincerely

A handwritten signature in black ink, appearing to read 'Ravi Subramanian', with a long horizontal stroke extending to the right.

Ravi Subramanian
Coastal Program Analyst
Statewide Enforcement

cc: Nancy Cave, Supervisor, Statewide Enforcement
Bob Merrill, North Coast District Office, Coastal Commission
Linda Locklin, Coastal Access Program Manager
Gary Warren, San Mateo County
George Bergman, San Mateo County

Ravi Subramanian
Coastal Program Analyst
Statewide Enforcement

May 17, 1999

Re: Your File No. V-1-99-02
Miller 1997 Trust property located at 10257 Cabrillo Highway, Pescadero, CA
94060-9711 APN 086-211-040

Dear Mr. Subramanian,

Your letter dated May 11, 1999 makes two requests; One, that we remove a ten foot section of fence. Two, that we open a vertical access easement, free of impediments. Both requests are unreasonable. Neither request follows the guidelines of the California Coastal Plan, nor, our offer to dedicate a vertical easement.

The fence in question, and no trespassing signs, has been across the ten-foot section of land on the south edge of our property, continuously, for more than thirty-five years. The fence was never intended to contain anything, such as live stock. Instead, the fence was erected and has been maintained specifically to prevent trespassers from entering our property.

We know an offer to dedicate (OTD) a vertical easement includes the provision "to keep open and free of impediments" any proposed easement. This provision assumes an opening exists. In reality there never has been an opening. We signed nothing to require to us actively "open up" a new accessway or remove preexisting impediments. We signed the offer to dedicate in 1985. Why do you come to us fourteen years later with this new request and threaten us with fines if we do not comply? This request is not reasonable.

Referring our file to the Statewide Enforcement Unit implies there is a guideline to enforce. Where in the California Coastal Plan, or, in our offer to dedicate an easement, is there a requirement for us to remove a preexisting fence and establish an accessway where none has ever existed? Exactly what provisions will the Statewide Enforcement Unit enforce?

The agreement we signed in 1985 was an offer to dedicate. Even your own publication Happy Trails to You states "OTD's are only *offers* of easements (the italics are yours)" and "the interest belongs to the property owner until an agency or nonprofit organization officially accepts the OTD". Has an agency or nonprofit organization come forward with an offer to manage and maintain this vertical easement? If so, why have we not been informed of this agency's or organization's intentions? If not, why are you

making demands outside the original provisions of the OTD? Such demands are unreasonable.

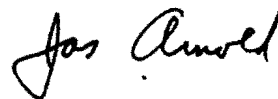
The vertical and lateral easements we offered to dedicate lead to the edge of an unstable cliff. We do not allow guests to approach this edge as it is quite dangerous, nor do we ourselves venture there. Would it be wise to give the uninformed public access to this danger? We believe the public would be endangered and it is not in the public interest to give access to this hazard. Your request for us to give access to a hazard is unreasonable.

As you know, until an agency accepts responsibility for an easement, the property owner is legally liable for any mishaps occurring to persons using the easement. A lawsuit can be ruinous to individuals, or, as your own technical bulletins minimally state, "a personal injury law suit can be costly and time consuming, even if successful". We do not have insurance to cover lawsuits stemming from public access to our property. To ask us as individuals to assume such liability risk is unreasonable and does not follow the guidelines of the California Coastal Plan.

Our response to your request to remove a ten-foot wide section of fence is as follows:

- 1) Upon the advice of legal counsel, we should not, and personally we could not and we will not, place ourselves in legal jeopardy by creating a public accessway onto our property.
- 2) We morally could not open a public accessway that would endanger individuals.
- 3) We will not make an opening in a fence that has been intact and functioning to prevent trespassing for more than thirty-five years.
- 4) We will abide by all provisions in our offer to dedicate an easement. We are willing to work with the Coastal Commission toward that end if an agency or nonprofit organization is willing to accept responsibility for the easement.

Sincerely yours,



James Arnold

P.S. We have always acted as stewards of the California coast, involved in conservation issues and supportive of environmental protection of our coastline. We believe the California Coastal Commission, which we have always supported, is following a misguided tract on this issue.

DOC # 1999-133936

08/06/1999 09:23A R1 Fee:NC

Page 1 of 3

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder

Recorded By SAN MATEO COUNTY



RECORDING REQUESTED BY:

County of San Mateo
County Manager's OfficeReal Property Division
Pony #CM0164

WHEN RECORDED MAIL TO:

County of San Mateo
Real Property Division, 5th Fl
455 County Center
Redwood City, CA 94063-1663

THIS SPACE FOR RECORDER'S USE ONLY

TITLE OF DOCUMENT

RESOLUTION ACCEPTING TWO "IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS
EASEMENT AND DECLARATION OF RESTRICTION" ALONG SAN MATEO COASTAL SHORELINE

Post-it* Fax Note	7671	Date	8-30-99	# of pages	3
To	Deborah Dorot	From	Sam Herzberg		
Co./Dept.	CCC	Co.	San Mateo Co.		
Phone #		Phone #	650/363-1823		
Fax #	415/901-5235	Fax #			

Regularly passed and adopted the 3rd day of August, 1999

AYES and in favor of said resolution:

Supervisors:

MARY GRIFFIN

JERRY HILL

RICHARD S. GORDON

ROSE JACOBS GIBSON

MICHAEL D. NEVIN

NOES and against said resolution:

Supervisors:

NONE

Absent Supervisors:

NONE

STATE OF CALIFORNIA }
COUNTY OF SAN MATEO }

JOHN L. MALTBIE, clerk of the Board of Supervisors, does hereby certify that the above and going is a full, true and correct copy of:

Resolution 62989

and in the minutes of said board.

Witness Whereof, I have hereunto set my hand and the seal of said Board this 6th day of August, 1999

JOHN L. MALTBIE, Clerk of the Board
By Dale Ellen Young, Deputy

MARY GRIFFIN

President, Board of Supervisors
County of San Mateo
State of California

Certificate of Delivery

(Government Code section 25103)

I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.



Dale Ellen Young

DALE ELLEN YOUNG, Deputy
Clerk of the Board of Supervisors

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

RESOLUTION ACCEPTING TWO "IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT AND DECLARATION OF RESTRICTION" ALONG SAN MATEO COASTAL SHORELINE

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, The County has an approved Local Coastal Plan which promotes the goal of providing access to the Coastal Shoreline; and

WHEREAS, Prior to the approval of the County's Local Coastal Plan, the California Coastal Commission received offers to dedicate shoreline access on behalf of the County, and

WHEREAS, County staff has reviewed these offers to dedicate coastal access and recommends that the offers be accepted, and

WHEREAS, Said offers have been presented to this Board of Supervisors for its consideration and acceptance, reference whereby James E. Arnold and Kenneth A. Miller offered to dedicate to the public, access easements recorded under Document Numbers 85114451 and 85114452 recorded on October 30, 1985 in the County of San Mateo. Said offers are on real property identified as Assessor's Parcel Number 086-211-040.

WHEREAS, It is reasonable that said offers should be accepted for the County of San Mateo:

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED:

That the President of this Board of Supervisors accept the two "IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT AND DECLARATION RESTRICTION" as recorded in the Recorder's Office, County of San Mateo under Document Numbers 85114451 and 85114452, recorded on October 30, 1985.



May 22, 2002

RECEIVED

JUN 05 2002

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dr. and Mrs. James E. Arnold
Mr. and Mrs. Kenneth Miller
24142 Big Basin Way
Saratoga, CA 95070

**ENVIRONMENTAL
SERVICES
AGENCY**

Agricultural
Commissioner/ Sealer of
Weights & Measures

Animal Control

Cooperative Extension

Fire Protection

LAFCo

Library

Parks & Recreation

Planning & Building

Dear Dr. and Mrs. Arnold and Mr. and Mrs. Miller:

I am writing to inform you of the status of the Coastal Access Improvement Plan which involves the easements on your property. Last September, our legal counsel sent you a letter outlining the history of the situation and potential options. A copy of the letter is attached. The five (5) options listed in the letter were:

1. To ask the California Coastal Commission to cancel or extinguish the easements.
2. To transfer the easements from the County to another public or private agency acceptable to the Coastal Commission.
3. To delay or defer development of the trail, perhaps until other portions of the Coastal Trail are developed in the immediate area.
4. To move forward to develop the vertical access easement.
5. To consider any other suggestions that will resolve the matter in a mutually satisfactory manner.

In November 2001, you met with Supervisor Richard Gordon, P.K. Diffenbaugh and our legal counsel. The meeting was in response to your request to provide further background on the situation and to discuss counsel's letter. As a result of that meeting, Supervisor Gordon and I visited your property to view the easement sites.

Supervisor Gordon and I then met with staff from the California Coastal Commission. During this meeting, it became apparent that neither the Coastal Commission nor the California Coastal Conservancy will give up the possibility of developing the easements on your property. We came

away from the meeting with the conclusion that the trail will be developed, either by the County or by someone else at some point in time. The options to resolve this matter were significantly reduced from those outlined in the September letter. Option 1 (asking the Coastal Commission to cancel the easements) looks very unlikely. Option 2 (asking the County to transfer the easements to another agency) would probably only result in the development of the easements with less local control and involvement. If the County keeps the easements, the County can control and manage the time of the trail's development. Option 5 (looking at other suggestions) does not seem likely or fruitful at this point. This leaves only two options: (1) to move ahead with construction of the trail or (2) to delay construction until the main coastal trail goes through the area.

After much consideration, we believe that the option to delay construction is the better choice. We will therefore complete the current Draft Coastal Access Improvement Plan so that the planning effort can be brought to a conclusion. We will list the coastal access improvement on your property on County Parks' Capital Project List. However, due to concerns raised related to parking and safety, we will defer any further consideration for planning or development of those improvements until the California Coastal Trail is completed in the vicinity of your property. If necessary, we can revisit the issues related to the lateral easement at that time.

This proposal is contingent upon resolving the situation with the gate and fence that currently block access to the easements. This conflicts with the requirement in your Offers to Dedicate to keep the access open, and you have received a Notice of Violation from the County. You have informed us that you were advised to install the gate by the San Mateo County Sheriff's department in order to protect your property from break-ins and damage. You and members of the community have also voiced concerns whether the easements in their current conditions would be safe for trail use.

While the easements have been used in the past without incident and presumably are safe, we are nevertheless willing to reach an agreement with you that will allow you to keep the gate and fence in place until we begin development of the easements on your property. We will, however, need a written agreement or encroachment permit in order to protect the legal status of the easements and to ensure that we will have adequate access when required. We have asked our legal counsel to draft such an agreement and send it to you for your consideration. You need to know that we are willing to pursue this agreement in order to resolve the County's outstanding Notice of Violation, and we think this is a reasonable and fair resolution for the County. However, we do not speak

for the California Coastal Commission, and the Commission and its staff may disagree with our approach on this matter.

If you have any further questions regarding this matter, please feel free to call Senior Park Planner Sam Herzberg or our legal counsel, Deputy County Counsel Mary Raftery. Mr. Herzberg can be reached at 650/363-1823. Ms. Raftery can be reached at 650/363-4795.

Sincerely,



Marcia Raines
Director, Environmental Services

Agency

cc: Supervisor Richard Gordon
Thomas F. Casey, III, County Counsel
Mary Burns, Director, Parks and Recreation Division
Sam Herzberg, Senior Park Planner

L:\CLIENT\E_DEPTS\ENVSRVCS\letter ArnoldMiller follow up.rtf

CALIFORNIA COASTAL COMMISSION

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

**VIA REGULAR AND CERTIFIED MAIL**

October 25, 2002

Dr. James E. Arnold
Mr. Kenneth A. Miller
24142 Big Basin Way
Saratoga, CA 95070

SUBJECT: Coastal Act Violation File No. V-1-99-002
Property address - 10257 Cabrillo Highway, Pescadero, CA 94060-9711
APN 086-211-040

Dear Dr. Arnold and Mr. Miller:

This letter is to notify you of my intent to commence proceedings for the issuance by the California Coastal Commission of a Cease and Desist Order to address development located on the above-referenced property that has been undertaken in non-compliance with the terms and conditions of Coastal Development Permit (CDP) No. A-3-SMC-85-207.

The non-complying development consists of a fence that blocks the vertical access easement across your property. This fence violates the terms of a deed restriction (San Mateo County Instrument No. 85114450, recorded on October 30, 1985) that you recorded in satisfaction of the requirements of Special Condition 4 of CDP No. A-3-SMC-85-207. The terms of the deed restriction specifically require that "The vertical and lateral public access easements...shall be kept open and free from impediments to pedestrian use at all times," and that "Owner shall maintain the accessways in a safe and passable condition at all times..." A copy of the deed restriction is attached for your review.

History of the Violation Investigation

The Commission staff first notified you of the violation on your property in a September 1998 letter from Coastal Access Program Manager Linda Locklin. On February 23, 1999, Ms. Locklin wrote another letter to James Arnold regarding the violation. On May 11, 1999, enforcement staff wrote to Mr. Arnold and stated that to resolve the violation, the portion of fence blocking the vertical access should be removed and the access kept open and free from impediments.

On August 3, 1999, San Mateo County accepted two Offers To Dedicate (OTDs) for the access easements on your property. The County's management of the easements, and the eventual timing of any improvements the County may make to the easements as part of regional coastal access plans, do not diminish your obligations as owners of the property subject to the easements, to comply with requirements contained within the deed restriction.

Steps in the Cease and Desist Order Process

Pursuant to Coastal Act Section 30810, the Commission has the authority to issue an order directing any person to cease and desist if the Commission, after a public hearing, determines that such person has engaged in "any activity that is inconsistent with any permit previously issued by the Commission." Additionally, the cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act.

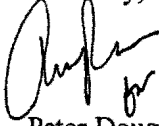
An order issued pursuant to Section 30810 would require that you remove the portion of fence that is blocking the vertical easement, and keep the easements open and free from impediments to pedestrian use at all times.

Please be advised that if the Commission issues a cease and desist order, Section 30821.6(a) of the Coastal Act authorizes the Commission to seek monetary daily penalties for any intentional or negligent violation of the order for each day in which the violation persists. The penalty for intentionally or negligently violating a cease and desist order can be as much as \$6,000 per day for as long as the violation persists.

At this time, the Commission is tentatively planning to hold a hearing on the issuance of a cease and desist order in this matter at the Commission meeting that is scheduled for the week of December 6-9, 2002 in San Francisco, California.

In accordance with the California Code of Regulations, Title 14, Section 13181(a), you have the opportunity to respond to the staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. **The completed Statement of Defense form must be received by this office no later than November 14, 2002.** If you have questions concerning the filing of the Statement of Defense form, please contact Sheila Ryan at (415) 597-5894.

Sincerely,



Peter Douglas
Executive Director

Encl.: Deed Restriction recorded on October 30, 1985
Statement of Defense form

cc (without enclosure): Lisa Haage, Chief of Enforcement
Linda Locklin, Coastal Access Program Manager
Chris Kern, North Central District Supervisor
Mary Raftery, Deputy County Counsel
Marcia Raines, Director, San Mateo County Environmental Services Agency

CALIFORNIA COASTAL COMMISSION

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



Arnold/Miller

STATEMENT OF DEFENSE FORM

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the Executive Director or a notice of intent to initiate cease and desist order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and return it no later than November 14, 2002 to the Commission's enforcement staff at the following address:

Sheila Ryan
45 Fremont Street, Suite 2000
San Francisco, CA 94105

If you have any questions, please contact Sheila Ryan at 415-597-5894.

1. Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in the order):

None

Arnold/Miller

2. Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to paragraph number in the order):

None

3. Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in the order):

None

Arnold/Miller

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

Enclosed is a statement and development
plan from San Mateo County Coastal Access Improvement Plan

5. Any other information, statement, etc. that you want to offer or make:

There are issues of public safety
and public interest.

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

Enclosed -

November 14, 2002

Owners Statement: Coastal Act Violation File No. V-1-99-002

History of Easement:

Arnold and Miller signed an OTD In October, 1985. The OTD was a required agreement for a building permit, signed under duress. The placement of the Vertical easement was determined by representatives of the Coastal Commission who apparently were not familiar with the property. The vertical easement does not follow a traditional nor practical path for coastal access. The described easement is covered with brush and trees which were present before our ownership. No one, since we acquired the property in 1978, has ever walked or attempted to walk the confines of this easement. The easement in its present condition would require substantial physical development in order to be of any value as a coastal access.

Coastal Commission staff wrote the legal description of this easement which appears on the recorded deed. The description provides a precise location and an accurate path of the easement to the mean high tide line. Despite full knowledge of this easement's location, Coastal Commission staff repeatedly made false statements of this easement's destination. Even Linda Locklin, Coastal Access Program Manger, was quoted in several newspapers as saying this easement would lead to a beach, "where people could stroll". (Newspaper article enclosed) Ms Locklin repeated this falsehood to many representatives of San Mateo County in the drive to get this OTD accepted. After San Mateo accepted the OTD and surveyed the exact location of this easement, they discovered the easement does not lead to a beach as Manager Linda Locklin and staff had claimed.

This easement leads to the almost vertical edge of a 30 foot deep ravine (photo enclosed). The ravine plus additional land separates a user from the ocean or from ocean access by approximately 150 feet. This false statement by Coast Commission staff, repeated many times, not only misled San Mateo County in accepting this OTD. Many county residents have also been mislead and now believe this easement leads to a beach. Coastal Commission staff have since changed their description of this easement stating it leads "to a scenic overlook". Public correction of of this misleading information will be needed to prevent citizens from using this easement in order to trespass over private lands to a beach located to the South.

This site has been described as "dangerous" by San Mateo County. Two drownings have occurred at this site. Last January, (2002) a man slipped on the edge of this site and had to be evacuated for a broken back. The premature end of this easement, 150 feet from the water's edge, and its present condition makes this site particularly hazardous.

The portion of the Arnold/Miller property where this vertical easement was placed has been fenced continuously for more than 30 years. Any access the public may have had was not at this site nor even from the Arnold/Miller property. Access has always been from other adjacent and non-adjacent properties. During the 14 years between 1985 when the OTD was signed and 1999 when questions concerning this issue first arose, there was never a complaint by the public, San Mateo County nor the State concerning this fence. Why is there now such a sudden and great concern by the State, especially since San Mateo County now controls this easement?

Present Status of Easement:

The OTD for this easement has been accepted by San Mateo County. San Mateo has a formal Coastal Access Improvement Plan which has been officially adopted and is being implemented. This plan outlines a proper plan for development of this easement. Both the physical development and safety issues are addressed by the adopted plan (parking, signage, fencing, etc.). Until the easement is developed as outlined in the county plan, access to the site would be an attractive and dangerous nuisance.

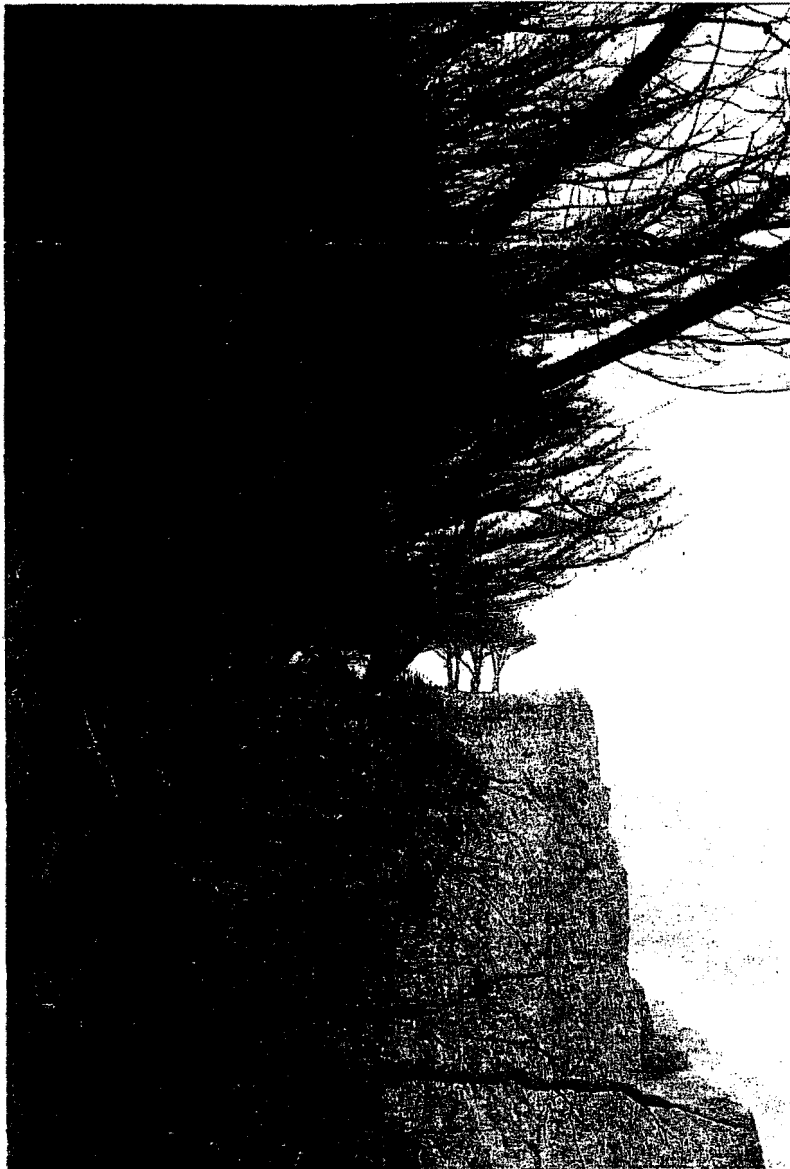
A Suggested Solution:

Leave the site as status quo until the easement is properly developed by San Mateo County as outlined in their Coastal Access Improvement Plan. We as owners recognize the existence of this vertical easement and approve the basic development plans outlined by San Mateo County. Only when this easement is under active San Mateo County management would be in the interest of the public and public safety to have this easement opened.

Signed,


James Arnold

Coast slipping away



The bluff area in Davenport is one of nearly 1,200 coastal areas where access may be lost.

BY JANET RAE-DUPREE
Mercury News Staff Writer

When the crowds gather on the Davenport bluffs in north Santa Cruz County every winter to enjoy the California gray whale migration, they happily peer out to sea, oblivious to the fact that they're standing on private land.

Public losing out as access expires

Up in San Mateo County, drivers speed along Highway 1 past secluded driveways marked with no-trespassing signs, unaware that some of those homeowners grudgingly offered

years ago to let anyone walk across their land to the sea. So far, though, no one has been able to.

Two decades after Californians began their epic battle to keep the coast open to the public, the state could lose hundreds of beach access trails to government inaction, bureaucratic ignorance and fiscal hard times.

The problem involves public access promised by beachfront landowners. In order to get California Coastal Commission building permits, they had to offer to let people cross their land. Although legally binding for a limited

See BEACHES, Back Page

■ BEACHES

from Page 1A

ed time — usually 21 years — the promised easements don't have to be opened to the public unless a government agency, such as a city or county, or a non-profit organization agrees to maintain the trail and assume liability for it.

So far, only 247 of 1,269 access offers have been formally accepted by an agency — fewer than one in five. The rest of the offers begin to expire next year, with hundreds dropping from public control in the early years of the next decade.

"The usual response is that the county already has too much property to administer," said Linda Locklin, coastal access manager for the California Coastal Commission. "I've heard all kinds of explanations: 'We're already overburdened, we don't have enough staff, we don't have enough money, we have shrinking budgets, we can't add to our inventory of responsibilities.' But the fact of the matter is, once these offers expire, they're gone."

3 types of access

There are three types of access offers recorded in the commission's extensive inventory of California's 1,100-mile coastline. Vertical access can be walkways or stairs that allow people to move from a road or bluff-top to the beach. Lateral access parallels the ocean to let people walk along the shore. The commission inventory also records offers to provide inland trails through scenic wilderness areas, usually within a mile of the coast.

In Santa Cruz County, 37 access offers were filed from 1976 to 1991. One already has expired, and four have been rescued by the county and two cities. The remaining 32 begin to expire next year, starting in September with a beach trail along Rio Boca Road next to the Pajaro Dunes in Santa Cruz that was offered for public access in 1976.

County planners insist they're working to preserve the access points, although they acknowledge that they know little about them.

"We didn't even know these existed until I got a letter from Linda Locklin about six months ago," said Mark Deming, the county's principal planner. "We will look at any that are in immediate danger of being lost, and then as the years go on, we'll look at them as they come up. It's not like we're saying, 'Thanks, but no thanks.' We just don't know enough yet about these trails as individual sites."

The county knows little about the access offer that Locklin calls its "crown jewel" — the Davenport bluffs. Owned by RMC Lone Star, a local cement manufacturer, the bluffs are a major tourist attraction for the former whaling community in north Santa Cruz County.

Ken Kannegaard, Lone Star's safety and administrative supervisor, said he has security crews patrol the bluffs daily to make

"It's not like we're saying, 'Thanks, but no thanks.' We just don't know enough yet about these trails as individual sites."

— Mark Deming, principal planner,
Santa Cruz County

sure no one camps there overnight or defaces cliff warning signs. But he said he knows nothing of the access offer set to expire in 2001.

Nose-dive nightmares

"I have to admit that it is one of my discomforting nightmares to think about someone taking a nose-dive off of there," he said. "But as far as I know, those bluffs will remain open."

Lone Star property manager Jim Sheidenberger did not return a telephone call seeking confirmation of the company's intent.

Locklin said that, in theory, Lone Star could try to fence off the bluffs once the access offer lapses. But the company would have to apply for a permit to put up such a fence, and a public agency could file suit asking a judge to rule that long-term public use of the land has created a precedent for continued access.

The situation may be similar to several of the 12 access points offered, but never accepted, in San Mateo County. Planners there admit they, too, knew nothing of the access offers until Locklin informed them of the inventory several months ago.

Five of the offers are in Pacifica's city limits. Although the Coastal Commission inventory lists expiration dates for each of the five, all are developed with staircases, lawns and parking and are open for public use.

Requirement in Pacifica

City Planner John Hill, who said he knows nothing of the offers recorded by the Coastal Commission, said Pacifica required developers to put in the public trails as a condition of project approval.

"Development should not preclude public access to the coast. That's the guiding light," Hill said. Even when the access offers to the commission expire, he said, he believes the city's development permits will still require the landowners to keep the trails open.

But five other access offers in unincorporated county areas have not been opened to the public and may never be.

Two of them, set to expire in 2003, would allow a narrow cliff-side trail and beach path near the Moss Beach Distillery that would provide back-door access to the Fitzgerald Marine Reserve.

County planners say the marine reserve's tide pools already are being trampled to death and

San Jose Mercury News

MONDAY
... SEPTEMBER 25, 1995

Exhibit 12

CCC-02-CD-03 (Arnold/Miller)

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County. Vertical access refers to stairways and trails leading from a cliff top or road to the beach. Lateral access means the public can walk along the shoreline side of the property. Trail access refers to easements that would allow hikers to cross property as much as a mile inland from the coast.

Location	Type of access	Original owner	Expiration
San Mateo County			
Palmetto Ave. north of Esplanade, Pacifica	Lateral	Danpac Investments	2004
100-112 Esplanade, Pacifica	Lateral & Vertical	Points West Villa Inc.	2009
700 Palmetto Ave., Pacifica	Vertical	Pagan (Lowe)	2008
2355 Beach Blvd., Pacifica	Other — Parking	Gil Anda	2008
150 Beech Way, Moss Beach	Lateral & Vertical	Stuart Leeb	2003
2 Mirada Road, Half Moon Bay	Lateral & Vertical	Casa Mira Partnership	2005
East of Stage Road, 1 mi. north of Pescadero	Trail	Virginia & Robert Billings	2001
10249 Cabrillo Hwy., Pescadero	Lateral & Vertical	James Arnold/K & L Miller	2006
Santa Cruz County			
Rockview Drive, near south end, Santa Cruz	Lateral	County of Santa Cruz	2008
326 Harbor Drive, Santa Cruz	Trail	Nicoll Weinrich	2003
2300 Delaware Ave., Santa Cruz	Lateral & Vertical	Synertek Inc.	2001
134 Frederick St., Santa Cruz	Lateral	Marina Knolls	2009
3054 Pleasure Point Drive, Santa Cruz	Lateral	Sager	2008
4520-4580 Opal Cliffs Drive, Santa Cruz	Lateral	Geimer, et. al.	2007
4310 Opal Cliffs Drive, Santa Cruz	Lateral	Leopoldo Villareal	2003
End of New Brighton Road, Santa Cruz	Lateral	Potbelly Beach Club/ SC Sanitation Dist.	2008
201 Sunset Beach Road, Santa Cruz	Vertical & Trail	Monterey Bay Academy	2007
Along Rio Boca Road, Santa Cruz	Vertical & Trail	Triad Investors	1996
528 Stagg Lane, Live Oak	Vertical	William & Ursula Grunwald	2001
115 13th Ave., Live Oak	Lateral	Beck	2008
150 13th Ave., Live Oak	Vertical	Kenneth & Gaelyn Kramer	2002
60 Geoffroy Drive, Live Oak	Lateral	Leo & Pat Raiche	2008
102 24th Ave., Live Oak	Lateral	Gibson	2004
End of 28th Avenue, Live Oak	Lateral	Houston	2007
2-2628 E. Cliff Drive, Live Oak	Lateral	Victoria & Keith Carlson	2009
2-2790 E. Cliff Drive, Live Oak	Lateral	Lang	2008
529 Riverview Drive, Capitola	Lateral	Eugene & Marie Rafaele	2004
101 Grand Ave., Capitola	Lateral	Crest Investors	2010
101 Grove Lane, Capitola	Lateral	Rasmussen	2008
110 Grove Lane, Capitola	Lateral	Stanley Webb	2008
Rio Del Mar	Vertical	Sumner Woods Homeowner's Assn.	2012
674 Bay View Drive, Rio Del Mar	Trail	William Brierty	1999
626 Beach Drive, Rio Del Mar	Lateral	Elizabeth R. Means	2003
628 Beach Drive, Rio Del Mar	Lateral	Richard Replogle	2003
Highway 1, Davenport	Vertical & Trail	Lone Star Industries	2001

Source: California Coastal Commission

MERCURY NEWS

they fear poaching of crab and abalone if people hike into the area unobserved. They hesitate to open new entrances to the county park until they can work out better controls at the access points they already have.

Two other access offers about four miles south of Pescadero would cross between private homes south of Bean Hollow State Beach and let the public stroll up or down what right now is virtually a private beach. Those offers are set to expire in 2006.

"That sounds like the most logical one for us to pursue," said Bob Emert, park superintendent for the county. "We could accept these things without doing any immediate improvements, and we'd have to review the situation carefully, but that's probably one that we could work with."

That's the kind of attitude that Locklin hopes to promote over the next few years. San Luis Obispo County, she said, has set up a veritable land bank by approving a blanket acceptance of all 163 of

But the fact of the matter is, once these offers expire, they're gone.

— Linda Locklin,
coastal access manager,
California Coastal Commission

its access offers. County planners will study the sites one at a time over the next few years to see what can be done with them.

Wall of development

Other counties have not been so flexible. Los Angeles County, where a wall of development shut off access to the coast in many areas in the 1970s and 1980s, has failed to accept 371 of the 461 access offers in its area. Half of the neglected offers are in Malibu, where landowners are fighting acceptance of the offers and private security patrols order the public to stay away from posh

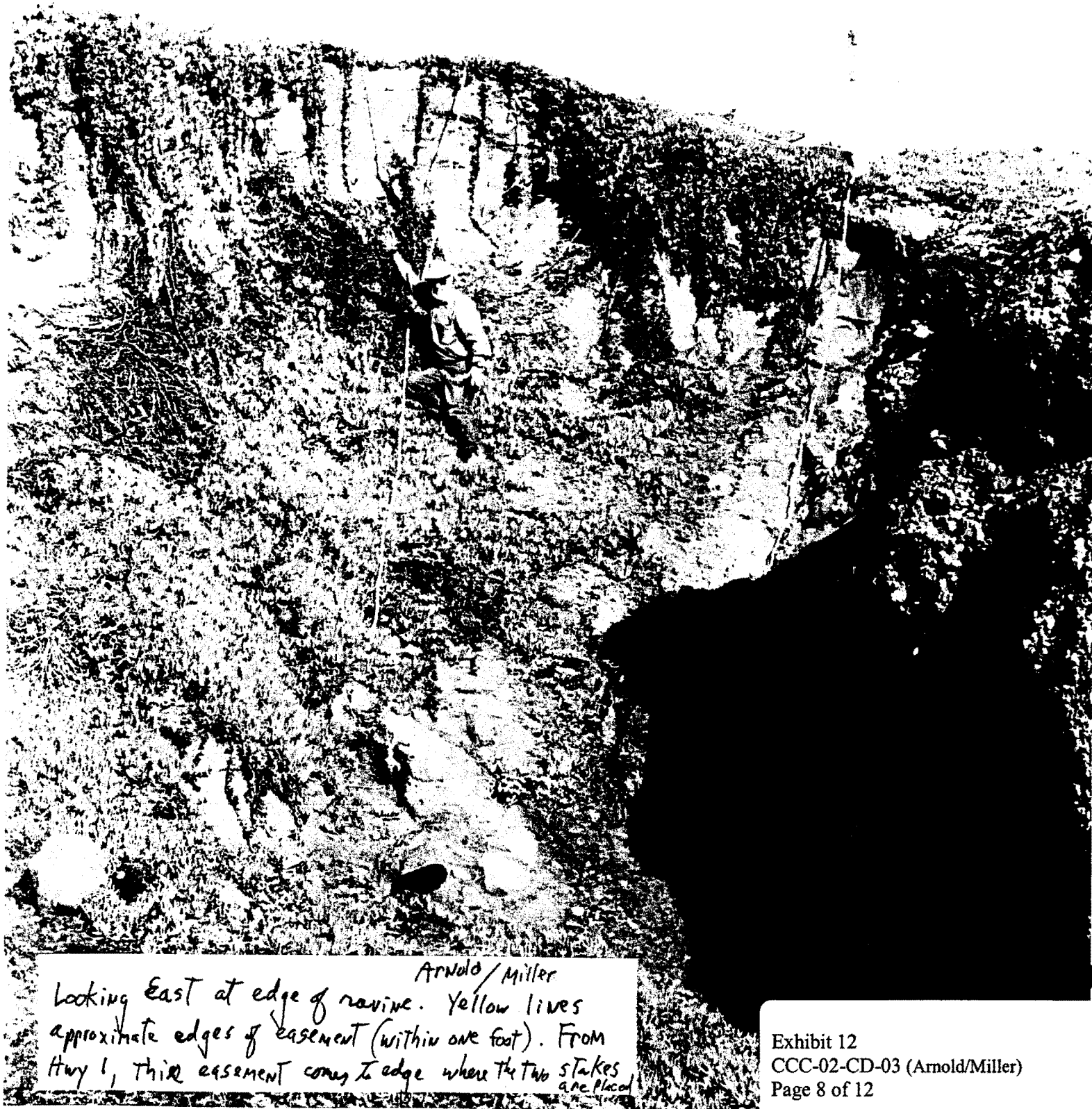
beach homes belonging to movie stars and company executives.

Mendocino County has the second-highest number of unaccepted access offers. Only five of 137 offers filed have been accepted and opened to public use. But a private, non-profit organization in Gualala has recently declared its intent to accept responsibility for one of the sites; if the effort is successful, the group may take on other access offers.

Locklin hopes a similar plan can be worked out in Monterey County, where a 1986 access offer would let hikers travel between Pfeiffer-Big Sur State Park and Los Padres National Forest. Ventana Inn made the offer to win permits to nearly double in size, but so far, no agency has agreed to take responsibility for the trail.

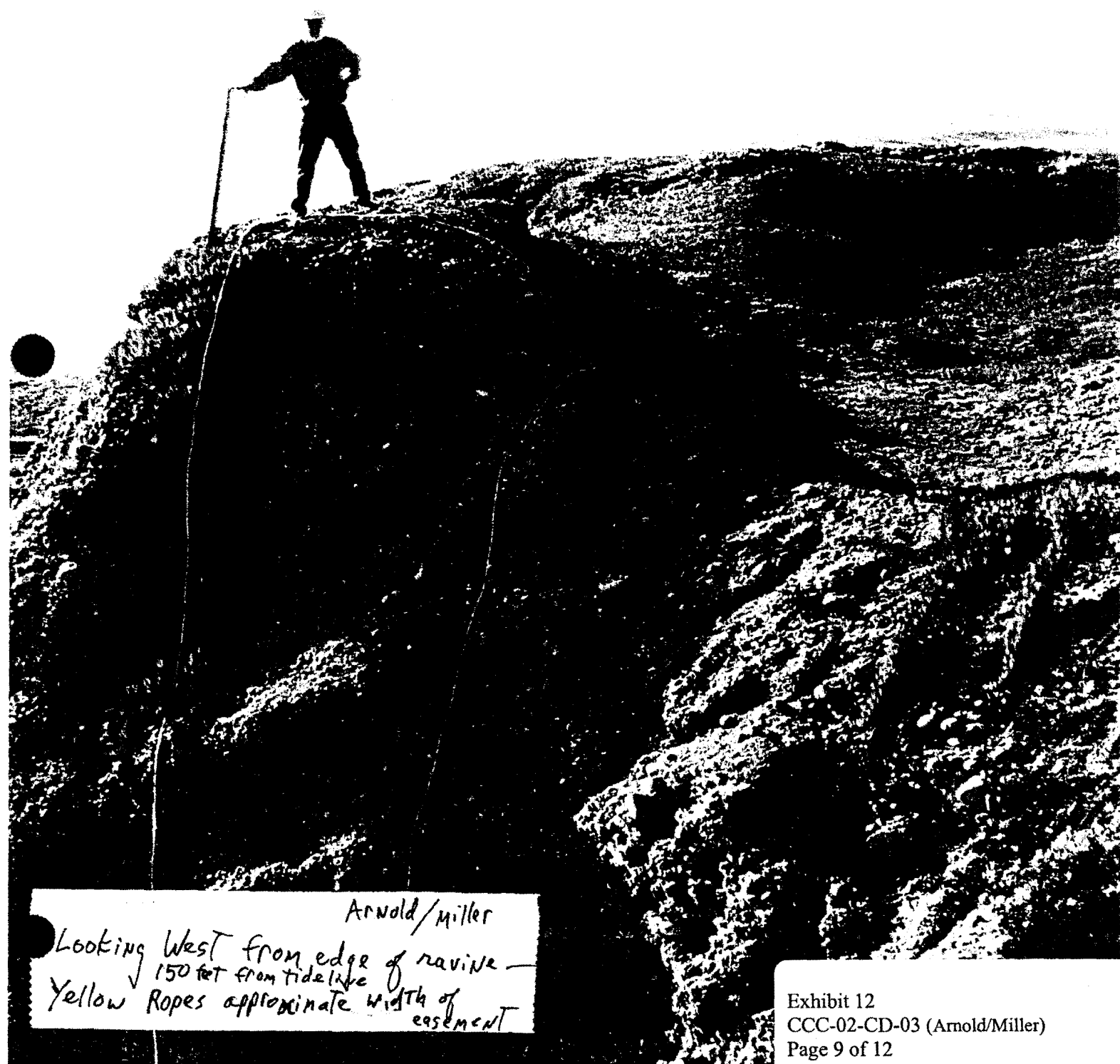
Emert in San Mateo County said the access offers are too valuable to waste.

"These are things that must be pursued before they expire," he said. "You can't just let them lie and, in inactivity, lose them forever."



Arnold/Miller

Looking East at edge of ravine. Yellow lines
approximate edges of easement (within one foot). From
Hwy 1, this easement comes to edge where the two stakes
are placed



Arnold/Miller

Looking West from edge of ravine —
150 feet from tideline
Yellow Ropes approximate width of
easement

final report for

Coastal Access Improvement Plan/ Five Coastal Sites

prepared for the

**Parks and Recreation Division
San Mateo County Environmental Services Agency**

October 21, 2002



Callander Associates Landscape Architecture, Inc.
landscape architecture
park and recreation planning

prepared for the
County of San Mateo

Estimate of Probable Construction Costs

Five Coastal Sites

Preliminary Plan

Arnold/Miller Property

prepared on: 10/21/02

prepared by: SR

checked by: MS

Item #	Description	Qty	Unit	Cost	Item Total	Subtotal
A	Start-up					
1.	Mobilization	Allow	1%	\$400.80	\$400.80	
2.	Bonding	Allow	1.5%	\$601.20	\$601.20	
3.	Staking	Allow	LS	\$3,000.00	\$3,000.00	
						\$4,000.00
B	Demolition					
1.	Clearing and grubbing	4,300	SF	\$0.20	\$860.00	
2.	Asphalt driveway (by Owner)	800	SF	\$0.00	\$0.00	
3.	Wood fence, 10 l.f.	Allow	LS	\$500.00	\$500.00	
4.	Sawcutting	90	LF	\$3.00	\$270.00	
						\$1,630.00
C	Grading and Drainage					
1.	Trail and parking area grading	40	CY	\$20.00	\$800.00	
						\$800.00
D	Site Construction					
1.	Asphalt paving, 800 s.f. (by Owner)	Allow	SF	\$0.00	\$0.00	
2.	Gravel paving	1,600	SF	\$2.50	\$4,000.00	
3.	Decomposed granite paving	2,300	SF	\$3.00	\$6,900.00	
4.	Black vinyl clad welded wire mesh fence, 3' tall	830	LF	\$25.00	\$20,750.00	
						\$31,650.00
E	Site Furnishings					
1.	Signage, access	3	EA	\$500.00	\$1,500.00	
2.	Signage, regulatory	3	EA	\$1,500.00	\$4,500.00	
						\$6,000.00
F	Subtotal					\$44,080.00
G	Contingencies					
1.	Design	Allow	2%	\$881.60	\$881.60	
2.	Construction	Allow	10%	\$4,408.00	\$4,408.00	
						\$5,290.00
H	Total of Construction					\$49,370.00
I	Professional Services					
1.	Topographic and boundary survey (completed 3/15/01)					
2.	Design development, including permits	Allow	LS	\$4,000.00	\$4,000.00	
3.	Environmental documentation					
a.	Mitigated negative declaration	Allow	LS	\$5,000.00	\$5,000.00	
b.	Archaeological	Allow	LS	\$2,500.00	\$2,500.00	
c.	Biological	Allow	LS	\$5,000.00	\$5,000.00	

Callander Associates
Landscape Architecture, Inc.

00049CEArnoldMiller10-21-02.xls

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Landscape Architecture, Inc.

Exhibit 12
CCC-02-CD-03 (Arnold/Miller)
Page 11 of 12

prepared for the
County of San Mateo

Estimate of Probable Construction Costs
Five Coastal Cities
Preliminary

Arnold/Miller Property

prepared on: 10/21

prepared by:

checked by:

Item #	Description	Qty	Unit	Cost	Item Total	Subtotal
	d. Geological	Allow	LS	\$4,000.00	\$4,000.00	
4.	Construction documents	Allow	LS	\$8,000.00	\$8,000.00	
5.	Bidding and construction administration	Allow	LS	\$3,000.00	\$3,000.00	
6.	Reimbursable Expenses	Allow	LS	\$2,000.00	\$2,000.00	
						\$33,500
J	TOTAL OF CONSTRUCTION AND PROFESSIONAL SERVICES					\$82,870

Based on drawing entitled "Public Access Improvements Concept Plan, Arnold/Miller Property" dated 11/1/01

The above items, amounts, quantities, and related information are based on CA's judgment at this level of document preparation and is offered only as reference data. CA has no control over construction quantities, costs and related factors affecting costs, and advises the client that significant variation may occur between this estimate of probable construction costs and actual construction prices.

Callander Associates
Landscape Architecture, Inc.

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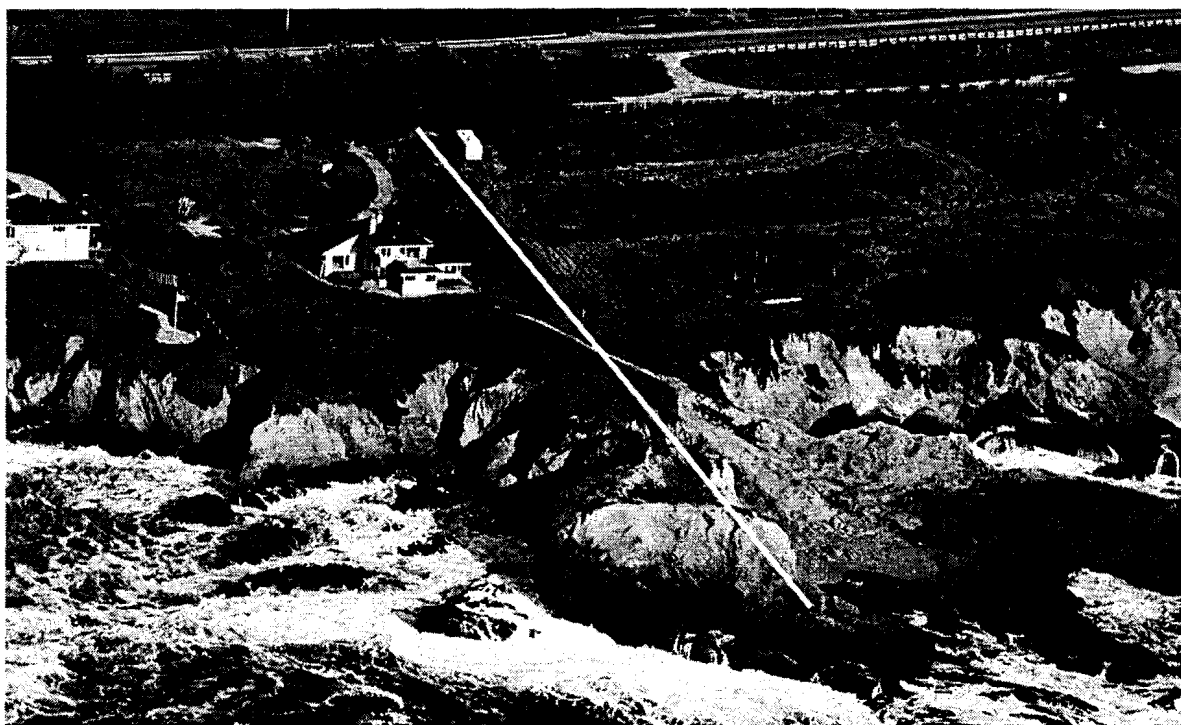
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Landscape Architecture, Inc.

Exhibit 12

CCC-02-CD-03 (Arnold/Miller)

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Exhibit 13. Aerial photograph of subject property. White line drawn by staff on photograph denotes approximate location of southern property boundary, along which the vertical easement runs. Informal trail leading from back deck of residence crosses the easement at an angle and continues south off the subject property to the head of a ravine leading down to the sandy pocket beach.

