CALIFORNIA COASTAL COMMISSION
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AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: A-133-79-A2/F6760-A3

Applicant: Ure & Diane Kretowicz Agent: SB&O, Inc.

Original Project Description: Construction of a 3,066 sq. ft. first floor addition to an existing 1,350 sq. ft. two-story, single-family residence on a 1.3 acre blufftop site.

Proposed Amendment: 1) Change in the location and terms of the offer to dedicate vertical public access easement; 2) request after-the-fact approval for fence/gate across entrance to vertical public access easement area; 3) construct and improve public viewing area in the public right-of-way adjacent to the home; and 4) payment of $200,000.00 towards feasibility investigation, design processing, professional consulting fees and construction costs to replace "Angel's Flight" public beach access stairway as mitigation for the change in terms of the vertical public access easement.

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

STAFF NOTES:

History

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

site. This decision was then again appealed to the State Commission (A-133-79) who found that the appeal raised a substantial issue. On de novo, the State Commission approved the project with an additional condition that required the applicant to record an offer to dedicate a vertical public access easement (5 ft. in width extending from Princess Street along the southern edge of the property next to the garage and then in a northwesterly direction along the top of the slope and then back in a southwesterly direction, traversing down the face of the bluff to the beach), as well as a lateral public access easement. The Commission found that without this condition, the addition would interfere with existing public access (ref. Exhibit #5). The State Commission found that because the residential addition displaced a blufftop viewpoint and trail to the beach on the site, that public access should be required elsewhere on the site. Thus, the State Commission required that the applicant record an offer-to-dedicate (OTD) easement for public access extending from Princess Street to the mean high tide line. However, as noted above, the court had allowed the applicant to continue with the development under the original permit because the petitioners failed to post the necessary bond for their stay while the Commission reviewed the proposal again on remand, and thus, the requirement for recordation of the OTD occurred after the development was already complete. The applicant never recorded the offer required by the State Commission. The property was subsequently sold.

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

Summary of Staff's Preliminary Recommendation:

Staff recommends that the Commission approve the proposed amendment subject to special conditions. The proposed amendment implements the settlement agreement in *Kretowicz v. California Coastal Commission.* The terms of the OTD will be revised so that the easement cannot be opened until the year 2080. However, the easement area will be widened from 5 feet to 20 feet (with the area designated for access limited to 10 feet), which will facilitate construction of a stairway to the beach. In addition, the amendment includes funding toward reconstruction of Angel's Flight stairway, a public stairway that used to extend from a public path (Coast Walk) down to the same beach that is below the subject site. The reconstruction of Angel's Flight would be a substantial public access amenity in this area. Therefore staff recommends the Commission approve the amendment request, subject to the special conditions detailed herein.

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

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution.

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

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

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

II. Special Conditions.

The permit amendment is subject to the following conditions:

The following shall replace Special Condition #1 of CDP #A-133-79-A1/F6760-A2 in its entirety:

1. **Revised Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMT AMENDMENT**, the applicant shall submit to the Executive Director for review and written approval, final plans for the proposed development, including a site plan that has been approved by the City of San Diego. Said plans shall be in substantial conformance with the plans prepared by SB&O, Inc. Planning Engineering Surveying, dated 1/30/07, except they shall be revised as follows:

a. No fencing and/or patio improvements (including the proposed built-in barbeque) shall be permitted in the south side yard area within the area of the Offer-to-Dedicate Access Easement as delineated in the site plan approved by the Executive Director in section (1) above. With the exception of the approved wall and gate, no other improvements shall be permitted which would interfere with this access easement or block public views to the ocean across the area of the access easement. Any accessory improvements needing to be moved to avoid impacts to the access easement may be relocated on the site, subject to review and written approval of the Executive Director.

b. All existing and proposed accessory improvements shall be identified. All accessory improvements (including, but not limited to, patios, decks, walkways, and open shade structures) proposed within the rear yard (west of the residence adjacent to the coastal bluff) area must be "at-grade" and located no closer than 5 ft. from the edge of the existing slope/bluff, as delineated on the site plan dated 1/30/07 by SB&O, Inc.

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

The following shall replace Special Condition #3 of CDP #A-133-79-A1/F6760-A2 in its entirety:

3. <u>Revised Landscape/Yard Area Fence Plans</u>. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval, revised landscaping and fence plans approved by the City of San Diego. The plans shall be in substantial conformance with the plans as submitted by MLA SD, dated 8/31/04, SB&O, Inc. Planning Engineering Surveying, dated 1/30/07, Garbini and Garbini Landscape Arcitecture dated 3/6/07 and by Marengo Morton Architects dated 4/2/07, except for the revisions cited below. The plans shall be revised to keep the side yard (south of the residence) and the proposed public viewing area clear to enhance public views toward the ocean. Specifically, the plans shall be revised to incorporate the following:

a. A view corridor a minimum of 4 ft. wide shall be preserved along the southern side yard. All landscape materials planted after June 12, 2007 within the southern yard area and the proposed public viewing area shall be species with a growth potential not expected to exceed three feet at maturity. In addition, all landscaping in the southern yard area and the proposed public viewing area shall be maintained at a height of three feet or lower to preserve views toward the ocean.

b. The landscape palette for all plants that are planted after June 12, 2007 shall emphasize the use of drought-tolerant native species, but use of drought-tolerant, non-

invasive ornamental species and lawn area, is allowed as a small component. No plant species planted or established after June 12, 2007 and listed as problematic and/or invasive by the California Native Plant Society**,** the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.

c. No permanent irrigation shall be permitted on the site other than in the proposed public viewing area.

d. The proposed fencing/gate in the south yard area shall be revised such that it does not extend beyond the southern property boundary onto the adjacent property, shall be no higher than 92 inches tall, shall not obstruct public views toward the ocean and shall have at least the upper 75 percent of its surface area open to light.

e. A written commitment by the applicant that all required plants on this site and on the public viewing area shall be maintained in good growing condition and whenever necessary, shall be replaced with new plant materials to ensure compliance with the approved landscape requirements shall be included.

f. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.

g. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

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

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

The following shall replace Special Condition #1A of CDP #A-133-79 and is added as new Special Condition #8:

8. <u>Public Lateral Access</u>. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The area of dedication shall consist of the entire width of the property from the mean high tide line to the toe of the bluff. The recorded document shall include legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

The following shall replace Special Condition #1B of CDP #A-133-79 and is added as new Special Condition #9:

9. <u>Vertical Access Condition</u>.

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for public pedestrian access to the shoreline. Upon acceptance of the offer, the easement shall become available for public use no earlier than December 31, 2080. The entire easement area shall be available for siting a footpath or stairway (or both should a foot path be used in lieu of or prior to construction of a stairway) and for construction activities related to a footpath and/or stairway, but once a footpath has been identified and/or a stairway built, public access shall not occur outside of the footpath or stairway except as necessary for repair and maintenance or except as necessary to move the access area because of erosion or other geologic factors affecting the safety of the access. If the easement holder decides to construct a stairway, the easement holder shall consult with the property owner with respect to design of the stairway. A stairway shall not require the property owner to remove the drainpipe outfall that currently exists at the base of the bluff. Once opened by the easement holder, the vertical public access easement shall be open daily, from one half hour before sunrise to one half hour after sunset. The easement holder shall be responsible for maintenance, trash collection and acceptance of liability. After acceptance and when available for public use, the easement holder may replace or modify the gate and fence across the entrance to the easement. After acceptance, the easement

holder will have the right to build a stairway down the bluff leading to the ocean pursuant to all required government approvals. Subject to the easement holder's right of access for repairs and maintenance, the owner of the property shall have the right to construct open fencing consistent with the City of San Diego's standards along the boundary of the 10 ft. vertical public access area to separate the easement area from the residential area of the property, provided that such open fencing does not block or impede the views from or the public's use of the vertical public access easement.

B. The area of dedication shall consist of a corridor 20 feet wide along the southern boundary of the property which shall extend from the Princess Street Right-of-Way to the mean high tide line, except that between the street and the along the house up to the western limit of the house, the vertical public easement shall extend from the southern edge of the house to the southern boundary of the property (ref. Exhibit #2). Although the vertical public easement extends to 20 feet wide, the area of public use for access to the ocean shall be no wider than 10 feet. The easement holder shall have the authority to determine where the 10 foot wide public access area will be located within the 20 foot wide easement area, provided that the public access shall be located as close to the southern property boundary as feasible.

C. The recorded document shall include legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable until December 31, 2080. This easement shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

The following shall be added as new Special Condition #10:

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

The following shall be added as new Special Condition #11:

11. <u>Final Public Viewing Area Plans</u>. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for review and written approval of the Executive Director final plans for the public viewing area that include, at a minimum a bench, sidewalk and steps, landscaping and public access signage. Said plans shall be approved by the City of San Diego and be in substantial conformance with the plans submitted with this application dated 3/6/07 by Garbini & Garbini Landscape Architecture, except they shall be revised as follows:

a. Three signs shall be installed, one facing Princess Street, one facing Spindrift Drive and one on the corner of North Torrey Pines Road and Spindrift Drive, indicating the availability of the viewing area for public use. The signs facing Princess Street and Spindrift Drive may be installed on proposed hand railings or benches as long as they are clearly visible from the streets and shall be 80 square inches in size.

The financial obligation of the applicant for design, processing, professional consulting fees and construction costs of the proposed viewing area improvements shall not exceed $50,000.00. In the event the City refuses to approve the project and issue permits required to development the public viewing area, or if the viewing area improvements are completed for less than $50,000.00, the applicant shall pay all remaining funds to the La Jolla Conservancy pursuant to the requirements of Special Condition #15 of the amendment.

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

The following shall be added as new Special Condition #12:

12. <u>Prior Conditions of Approval</u>. All other terms and conditions of Coastal Development Permit No. A-133-79/F6760, as amended, not specifically modified herein, shall remain in full force and effect.

The following shall be added as new Special Condition #13:

13. <u>Condition Compliance</u>. WITHIN 60 DAYS OF COMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this permit. Failure to comply with this requirement may

result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

The following shall be added as new Special Condition #14:

14. <u>Implementation of Removal and Replacement of Existing Wall and Gate</u>. WITHIN <u>90</u> DAYS OF ISSUANCE OF AMENDED COASTAL DEVELOPMENT PERMIT NO. A-133-79-A2/F6760-A3, or within such additional time as the Executive Director may grant for good cause, the applicant shall remove and/or modify the existing wall and gate located at the south side yard setback area and replace the wall and gate consistent with the plans approved pursuant to Special Condition #3 of this permit amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

The following shall be added as new Special Condition #15:

15. <u>Payment of $200,000</u>.

A. The applicant shall pay $200,000.00 to the La Jolla Conservancy (Conservancy), in accordance with the agreement required in subsection B below, to be used towards feasibility investigations, design processing, professional consulting fees, construction costs (and future maintenance) to replace the Angel's Flight historic stairway leading from the Coast Walk public access path in La Jolla, down to the beach.

B. **IMMEDIATELY UPON ISSUANCE OF AMENDED COASTAL DEVELOPMENT PERMIT No. A-133-79-A2/F6760-A3,** the applicant shall provide to the Conservancy, through a financial instrument subject to review and written approval of the Executive Director (such as a credit card, cashier's check or wire transfer), $200,000.00 as described in subsection A above, payable to the Conservancy. These funds shall be used for the purposes described in subsection A above in accordance with an MOU that the Commission will enter into with the Conservancy outlining the process for exploring the feasibility of and reconstructing the Angel's Flight stairway, which, at a minimum shall include the following provisions: 1) the Conservancy shall take all steps necessary to achieve replacement of the Angel's Flight stairway; 2) the conservancy shall utilize $150,000.00 of the funds for the purpose of feasibility investigations, design processing, professional consulting fees, permitting and construction costs to replace the Angel's Flight stairway; 3) $50,000.00 of the funds shall be set aside in an interest bearing account to be used solely for periodic maintenance of the stairway after construction is complete; 4) the funds must be deposited in separate and independent interest bearing accounts created solely to manage the funds and for future maintenance as well as provisions to limit the use of the funds for administrative costs (which shall not exceed 5% of the total funds); 5) if the Conservancy, in consultation with the Executive Director, determines that the replacement is infeasible, or fails to obtain permits, or fails to construct the

Angel's Flight stairway due to lack of funding, within five (5) years, any remaining funds (including the $50,000.00 put aside for future maintenance), shall be paid to the state Coastal Conservancy Violation Remediation Account for use for access improvements in the La Jolla area.

If, at the time of issuance of the amended coastal development permit, the MOU between the Commission and the Conservancy is not yet finalized, then the applicant shall pay, through a financial instrument subject to review and written approval of the Executive Director (such as a credit card, cashier's check or wire transfer), the $200,000.00 to the State Attorney General's Office to be held on account. Immediately upon finalizing the MOU between the Commission and the Conservancy, the funds shall be released from the State Attorney General's Office account to the Conservancy.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Amendment Description. The proposed project represents an amendment to a coastal development permit approved by the Commission for the construction of a 3,066 sq. ft. addition to an existing 1,350 sq. ft. single-family residence 1979. The proposal is to change the location and terms of the previously required offer to dedicate a public access easements, request after-the-fact approval for a wall and gate across the entrance to the vertical public access easement area, and to construct and improve a public access viewing area in the public right-of-way adjacent to the home. Specifically, the amendment request includes:

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

(a) Emergency Lifeguard Access. Upon approval of the amendment, the applicant proposes to grant to the City of San Diego an easement for emergency lifeguard access to the beach.
(b) Lateral Public Access. Upon approval of the amendment, the applicant proposes to record an offer to dedicate an easement for lateral public access on the beach from the toe of the bluff to the mean high tide line.
(c) Vertical Public Access. Upon approval of the amendment, the applicant proposes to record an offer to dedicate an easement for vertical public access from the street to the beach subject to the following terms and conditions:
- Record an offer to dedicate an easement for general public vertical access in a form and content acceptable to the Executive Director which shall become available for public use no earlier than December 31, 2080, and then, only when a public agency or non-profit organization accepts the easement offer.
- The width of the vertical public easement shall be at least 20 feet wide, except that along the garage/house up to the western limit of the house, the vertical public easement shall extend from the southern edge of the house to the

southern boundary of the property. Although the vertical public easement extends to 20 feet wide, the area of public use for access to the ocean shall be no wider than 10 feet. The easement holder shall have the authority to determine where the 10 foot wide public access area will be located within the 20 foot wide easement area, provided that the 10 ft. public access shall be located as close to the southern property boundary as feasible. The entire easement area shall be available for siting a footpath or stairway (or both should a footpath be used in lieu of or prior to construction of a stairway) and for construction activities related to a footpath and/or stairway, but once a footpath has been identified and/or a stairway built, public access shall not occur outside of the footpath or stairway except as necessary for repair and maintenance or except as necessary to move the access area because of erosion or other geologic factors affecting the safety of the access. If the easement holder decides to construct a stairway, the easement holder shall consult with the property owner with respect to design of the stairway. A stairway shall not require the property owner to remove the drainpipe outfall that currently exists at the base of the bluff. Subject to the easement holder's right of access for repairs and maintenance, the owner of the property shall have the right to construct open fencing consistent with the City of San Diego's standards along the boundary of the 10 ft. vertical public access area to separate the easement area from the residential area of the property, provided that such open fencing does not block or impede the views from or the public's use of the vertical public access easement.

- Once opened by the easement holder, the vertical public access easement shall be open daily, from one half hour before sunrise to one half hour after sunset. The easement holder shall be responsible for maintenance, trash collection and acceptance of liability.
- After acceptance and when available for public use, the easement holder may replace or modify the gate and fence across the entrance to the easement.
- After acceptance, the easement holder will have the right to build a stairway down the bluff leading to the ocean pursuant to all required government approvals.

(2) In exchange for revising the terms and location of the vertical public access easement, the applicant proposes the following:

- Construct a public viewing area within the small triangular area of public right-of-way located across Princess Street from the subject site. Improvements shall include, at a minimum, a public bench, sidewalk, landscaping and signage.
- Contribute $200,000 towards feasibility investigations, design, processing, professional consulting fees, construction and maintenance cost to replace an historic stairway known as "Angel's Flight" that was destroyed by fire in 1960. The stairway will be located just across La Jolla Bay from the subject site and will extend from the Coast Walk public trail down the bluff, following a steep gorge known as the "Devil's Slide", to the beach (the same

beach that the subject site leads to). If reconstruction of the stairway is infeasible and/or cannot be permitted, all remaining funds shall be paid to the State Coastal Conservancy Violation Remediation Fund to be used for public access improvements in the La Jolla area.

(3) The applicant proposes to retain an existing unpermitted wall and gate at the entrance to the vertical access easement along the southeastern portion of the site.

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

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

2. <u>Detailed Project History</u>. The home on the site was originally constructed around 1915. Over the years, the home was added to and remodeled several times. In June of 1977, the Regional Commission denied an application (#F5265) for a substantial addition (3,300 sq. ft.) to the 1,350 sq. ft. home on the site, finding that the development would have a significant adverse impact on scenic resources in the area as it would significantly encroach onto the visually prominent bluff seaward of the existing home.

In June of 1978, the Regional Commission approved CDP #F6760 for construction of a 3,066 sq. ft. addition to the existing 1,350 sq. ft. single-family residence, finding that this "scaled-back" version of the previous application did not project further seaward than the existing line of development, thereby reducing its impact on visual resources. The permit was approved with special conditions requiring that the development comply with the recommendations of the geology report, that the southwest corner of the proposed addition (15 ft. x 15 ft.) be cantilevered to "ensure the integrity of the slope", and that the final drainage plans be submitted. The decision on this matter was subsequently appealed to the State Commission (A-221-78), but the State Commission found that the appeal raised no substantial issues on July 18, 1978. The grounds for the appeal were that inadequate public access findings were made.

A lawsuit was then filed against the Commission for, among other things, not having made adequate findings regarding public access and recreation as required by Section 30604 of the Coastal Act for development located between the first public road and the

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

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

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

The Commission imposed a special condition on the permit requiring the applicant to record offers to dedicate both lateral (across the ocean frontage of the parcel from the toe of the bluff to the mean high tide line) and vertical (5 ft. in width extending from Princess Street along the southern edge of the property next to the garage and then in a northwesterly direction along the top of slope and then back in a southwesterly direction , traversing down the face of the bluff to the beach) public access easements. By the time the Commission imposed the access conditions, the applicant had already completed construction of the proposed addition in compliance with the permit as previously issued. Therefore, the State Commission required that the vertical access be located in a slightly different location than the historic trail in order to accommodate the addition. The offers to dedicate access were not recorded. Because the permit for the addition was remanded, and subsequently issued during the litigation and appeal, it retained the original application number F6760. However, because the State Commission heard a second appeal, it gave the permit a new number – A-133-79. Therefore, the permit for the addition is identified by both numbers: A-133-79/F6760.

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

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

In 1999, the City of San Diego approved a coastal development permit for construction of a pool with spa, a concrete deck, barbecue counter, retaining walls, drains and landscaping in the rear yard of the blufftop site that contains the existing single-family residence. The proposal also included removal of a number of existing unpermitted improvements (wooden timber stairs, retaining walls and palm trees) on the face of the coastal bluff. No changes to the existing single-family residential structure were proposed. The City's decision to approve the development was appealed by the Commission on June 25, 2001 (ref. Appeal #A-6-LJS-01-95). The basis of the appeal was that the proposed development was allegedly inconsistent with the certified LCP as it related to blufftop setbacks, geologic hazards, protection of public views and public access. In particular, a swimming pool was proposed projecting beyond the bluff edge of the subject site. The certified LCP requires such structures to be sited a minimum distance of 25 feet from the edge of the bluff. A second major issue raised with the project was that it was inconsistent with the conditions of approval of Coastal Development Permit #A-133-79/F6760, which required recordation of an offer for a public vertical access easement across the subject site.

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

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

Then in 2006, the applicant requested an amendment to the State/Regional Commission permit to: (1) replace the requirement for recordation of an offer to dedicate a vertical

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

On August 5, 2005, the applicant filed litigation against the Commission regarding its decision to deny the modification to the previously required public access easement (Ref. SDSC Case No. GIC 851915). The Commission subsequently filed a Cross-Complaint, claiming, among other things, violations of the Coastal Act. The proposed amendment request is a result of settlement negotiations between the applicant and the Commission (Ref. Exhibit #6 - Stipulation for Entry of Judgment attached).

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

<u>Section 30210</u>

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

<u>Section 30211</u>

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

<u>Section 30212</u>

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or, ...

Section 30221

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

Section 30223

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

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

> The City should ensure that new development does not restrict or prevent lateral vertical or visual access (as identified in Figure 9 and Appendix G) to the beach on property that lies between the shoreline and first public roadway, or to and from recreational areas and designated public open space easements. Further, in areas where physical vertical access to the shoreline does not exist within 500 feet of a private development project on the shoreline, consideration of a new accessway across private property should be analyzed. (p. 52)
>
> Maintain, and where feasible, enhance and restore existing facilities including streets, public easements, stairways, pathways and parking areas to provide adequate public access to the shoreline. Detailed maps and specific subarea recommendations are provided in Appendix G. (p.57)

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

Relative to public access, the proposed amendment is to revise the terms and location of the previous required public vertical access easement. As described above in the "Detailed Project History" section, the Commission previously required recordation of a an offer to dedicate (OTD) a public vertical access easement from the street to the beach as mitigation for impacts of a substantial home addition on a trail on the site that had historically been used by the public to access the beach in this location. While the OTD has never been recorded, in violation of the terms of the coastal development permit, due to the inaccessibility of the beach below the subject site, the need to provide access to the beach at this location is just as important today as it was when the Commission originally required it in 1979. This has ultimately resulted in litigation filed against the Commission by the property owner. As a means to resolve the litigation, the applicant has proposed the subject amendment.

The subject amendment is to immediately record an offer to dedicate a vertical access easement, but the offer defers to a later date (the year 2080) the requirement that public vertical access to the beach be provided on the subject site in exchange for widening the easement area from 5 feet to 20 feet, payment of $200,000.00 towards another stairway across the bay that accesses the same beach from a public trail, construction of a public viewing area on a public right-of-way adjacent to the subject site and immediate recordation of an offer to dedicate lateral access along the beach and a vertical easement for emergency lifeguard access. To address this amendment, the Commission must decide if the proposed alternative measures are acceptable such that public access will not be diminished. In other words, do the proposed alternative measures provide the same level or greater public access than that previously required by the Commission in the original permit. Each of these components is addressed separately below.

a. <u>Lateral Public Access and Lifeguard Emergency Access</u>.

The first alternative measures proposed by the applicant are to record an offer to dedicate lateral public access on the beach and grant an easement to the City of San Diego for emergency lifeguard access across the site and down to the beach. While both these measures are good and do help facilitate and protect public access, these were both previously required by the Commission with the original permit. However, they, too, were never recorded and remain violations. Thus, the applicant's proposal to record these easements complies with the Commission's previous decision and as such, does not mitigate or provide an "offsetting benefit" for the proposed vertical access revisions.

b. <u>Public Viewing Area</u>.

Another alternative measure proposed by the applicant is to improve a small triangular piece of excess public right-of-way located adjacent to Princess Street and the subject site as a public viewing area. The proposed viewing area site is currently vegetated mostly with natal plum shrubs and includes a narrow series of small uneven steps that descend down a small slope from Sprindrift Drive to Princess Street. From this area, views of the ocean and La Jolla Bay are available over the existing home on the subject site and between the existing home and the home on the property to the south. Although the

public can currently avail themselves of this view, this area is mostly inaccessible due to the slope and vegetation. The views from this location are identified as a major scenic viewshed in the certified Land Use Plan. As such, the applicant is proposing to improve this area by providing wider and more accessible steps down the slope, constructing a concrete viewing platform at the top of the slope with a couple of small benches, installation of public access signage, and landscaping the area with mostly low level landscaping (ref. Exhibit #3). With the proposed improvements, the public will better be able to take advantage of the significant views from this location. Therefore, the proposed public viewing area will result in a public benefit and, while not providing direct public access to the beach, does provide an enhanced viewing experience of the ocean.

c. <u>Payment of $200,000 towards Alternative Access Stairway</u>.

Just down coast and across La Jolla Bay from the subject site is the Coast Walk public access (ref. Exhibit #1). Coast Walk is a dirt path that runs along the top of the coastal bluff overlooking La Jolla Bay and runs between Coast Walk Drive and Coast Boulevard. Spectacular views of the ocean, La Jolla Bay and the north San Diego coastline are available from this very popular public accessway. Prior to around 1962, there used to be public stairway, known as “Angel’s Flight”, leading down a steep gorge, known as the “Devil’s Slide”, from the Coast Walk path to the beach below (ref. Exhibit #8). Sometime around 1962, this historic stairway was destroyed by a fire and to date, has not been reconstructed. Today at this location, there is a “trail” leading down the bluff to the beach. However, it is very steep and only accessible to the most able bodied individuals willing to risk scrambling down the trail.

The applicant is proposing with this amendment to provide $200,000 towards feasibility investigations, design, consulting fees and construction costs to replace the Angel’s Flight historic stairway, as mitigation for changing the terms of the location and date of availability of the public vertical access easement on the subject site.

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

Another positive aspect of the applicant’s proposal to help fund replacement of the Angel’s Flight stairway is that the replacement stairway is located directly off the Coastwalk public path and will likely be more available and accessible to the public than a stairway on the subject site which would be located between two single-family residences. This is not to suggest that an accessway to the beach on the subject site is not

important to improve public access, the proposed stairway at Coast Walk would simply likely get more use by the public due to the existing popularity of the Coast Walk path.

On the other hand, the applicant's proposal does not assure the Angel's Flight stairway will be replaced. The proposal is to provide a portion of the funding necessary to reconstruct the stairway. Commission staff has met with representatives from the City of San Diego Parks and Recreation Department as well as with representatives from the La Jolla Conservancy (a local non-profit organization) to discuss the replacement stairway. While no formal Memorandum of Understanding (MOU) has been drafted, both parties agreed the stairway reconstruction was a good idea. The La Jolla Conservancy expressed interest in being involved in facilitating the stairway reconstruction as well as locating additional funding to complete the project. The City agreed to provide a preliminary estimate and complete a feasibility study to see if the project is viable. Based on the City's very preliminary review, it is estimated the stairway reconstruction could cost close to 1.7 million dollars ($1,700,000.00) and then would also need to be maintained. The applicant's proposal would contribute $200,000 towards the project, of which $50,000 is to be set aside for future maintenance. Thus, while the applicant will be providing a portion of the necessary money to reconstruct and maintain the Angel's Flight stairway, it falls well short of the funds necessary to assure its completion.

To partially address this concern, the applicant's proposal also includes that should it turn out that reconstruction of the stairway is infeasible or permits cannot be obtained or, for any other reason, the stairway cannot be reconstructed, all remaining monies (from the initial $200,000) shall be paid to the State Coastal Conservancy Violation Remediation Account to be used for public access improvements in the La Jolla area.

Again, while replacement of this stairway is not currently on any City list of needed/necessary access improvements for La Jolla, given its previous historic status and the need for safe public access to this beach, there is a strong interest by the public to see this stairway replaced. With the City's support and the help of the La Jolla Conservancy and others, the Commission is optimistic that replacement of this stairway will not only be feasible, but that funding for its complete replacement can be obtained.

In addition, the applicant's proposal to expand the vertical access easement on the subject site from 5 feet to 20 feet will better facilitate the construction of a stairway on this site in the future when the access becomes available. Thus, allowing more people to utilize this access. Therefore, taken together, the Commission finds the applicant's revised access program is acceptable as the proposed alternative access is comparable to that previously required on the subject site and, access on the subject site still will occur; only it will be deferred to a future date.

To assure the applicant's proposed alternative measures are implemented, a number of special conditions are proposed. Special Condition Nos. 8 & 10 address the proposed lateral public access and the emergency lifeguard access. Special Condition #8 requires that prior to the issuance of this permit amendment, the applicant must execute and record an offer to dedicate to a public agency or private association, an easement for

public lateral access on the beach that extends for the length of the property from the toe of the bluff to the mean high tide. Special Condition #10 requires that prior to issuance of the permit amendment, the applicant execute and record a document granting to the City of San Diego an easement for emergency lifeguard access that extends generally along the southern property boundary in a 5 ft. wide corridor from the street to the mean high tide line.

Special Condition #11 addresses the proposed public viewing area improvements. Because these improvements have only been approved in concept by the City of San Diego, this condition requires that prior to the issuance of the permit amendment, the applicant needs to submit final plans for the public viewing area that have been approved by the City of San Diego. The plans must be in substantial conformance with the plans submitted with this application, except that they need to be modified to include the public access signage. Per the settlement agreement and the applicant's amendment proposal, if the City of San Diego refuses to authorize or issue permits for development of the public viewing area, or if the viewing area improvements are completed for less than $50,000.00, then the applicant will be required to pay all the remaining funds to the La Jolla Conservancy to be used towards reconstruction of the Angel's Flight stairway pursuant to an MOU required under Special Condition #15 which is described later in this report. In addition, the preliminary landscape plan for the public viewing area includes both non-natives and invasive plant species (myoporum). Therefore, Special Condition #3b requires that final landscape plans be submitted, that have been approved by the City of San Diego, that include the use of primarily drought tolerant native plants, but in no case are invasive species permitted.

As currently proposed, several private improvements are to be located within the area of the revised 20 ft. access easement. These include a large built-in barbeque and other patio improvements. While at-grade improvements such as a patio are acceptable as they will not interfere with future access and are easily removed, the large barbeque and other more substantial patio improvements, fences, etc. are not. As such, Special Condition #1 requires the applicant to submit final revised plans documenting that, other than the proposed wall and gate, no other improvements that would interfere with access are permitted within the proposed 20 ft. easement area.

Special Condition #9 addresses the proposed revisions to the public vertical access easement. This condition requires that prior to the issuance of the permit amendment, the applicant must execute and record an offer to dedicate to a public agency or private association, an easement for public pedestrian access to the shoreline. As proposed by the applicant, the recorded document includes a number of restrictions, including that the easement, once accepted, shall not become available for public use until at least the year 2080. Other provisions include the location of the easement along the southernmost portion of the site, its width (20 ft.), allowance for revising the access gate in the future, and how and where public access improvements are to be constructed in the future.

Special Condition #15 addresses the mitigation payment proposed by the applicant. This condition requires that the Commission and an identified third party (the La Jolla

Conservancy) enter into a Memorandum of Understanding (MOU) that addresses the disposition of the $200,000. The condition details that the funds must be provided to the La Jolla Conservancy and placed in an interest bearing account and used towards feasibility investigations, design processing, professional consulting fees, permitting and construction costs to replace the Angel's Flight historic stairway as well as for future maintenance of the stairway, once constructed. The condition also includes that if it is determined that the Angle's Fight stairway reconstruction is infeasible, or permits cannot be obtained, or the stairway cannot be constructed due to lack of funding within 5 years, then all remaining money, including the $50,000 put aside for future maintenance, will be placed in the state Coastal Conservancy's Violation Remediation Account for use for other access improvements in La Jolla.

In summary, the proposed amendment will result in changes to previously required public access provisions on a blufftop property in La Jolla. In exchange for delaying the opening of a public vertical access on the subject site until 2080, the applicant will provide lateral access on the beach, emergency lifeguard access down the bluff to the beach, improve a viewing area for the public to take advantage of the significant ocean views available from the subject site and pay $200,000 towards reconstruction of a public access stairway down coast of the subject site (but still accessing the same beach). The Commission has reviewed the applicant's request to revise the location and terms of a public vertical access easement on the site and has determined that the proposed revised access program is acceptable as the proposed alternative access will be at least as good as that previously required, and public vertical access to the beach still will be provided on the subject site, only not opened for public use until 2080. Based on the above discussion, the Commission finds the proposed amendment, as conditioned, is consistent with the above cited access provisions of the Coastal Act and the City's certified LCP.

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

> Public views from identified vantage points, to and from La Jolla's community landmarks and scenic vistas of the ocean, beach and bluff areas, hillsides and canyons shall be retained and enhanced for public use….
>
> Public views to the ocean from the first public roadway adjacent to the ocean shall be preserved and enhanced, including visual access across private coastal properties at yards and setbacks….
>
> Protect public views to and along the shoreline as well as to all designated open space areas and scenic resources from public vantage points…Design and site proposed development that may affect an existing or potential public view to be protected…in such a manner as to preserve, enhance or restore the designated public view….

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

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

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

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

(a) If there is an existing or potential public view and the site is designated in the applicable *land use plan* as a public view to be protected,

(1) The applicant shall design and site the *coastal development* in such a manner as to preserve, enhance or restore the designated public view, and

(2) The decision maker shall condition the project to ensure that critical public views to the ocean and shoreline are maintained or enhanced.

(b) A visual corridor of not less than the side *yard* setbacks or more than 10 feet in width, and running the full depth of the *premises*, <u>shall be preserved as a deed restriction</u> as condition of Coastal Development permit approval whenever the following conditions exist [emphasis added]:

(1) The proposed *development* is located on *premises* that lies between the shoreline and the first public roadway, as designated on Map Drawing No. C-731; and

(2) The requirement for a visual corridor is feasible and will serve to preserve, enhance or restore public views of the ocean or shoreline identified in the applicable *land use plan*.

(c) If there is an existing or potential public view between the ocean and the first public roadway, but the site is not designated in a land use plan as a view to be protected, it is intended that views to the ocean shall be preserved, enhanced or restored by deed restricting required side yard setback areas to cumulatively form functional view corridors and preventing a walled off effect from authorized development.

[…]

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

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

The subject site is located at the northwest corner of Princess Street and Spindrift Drive in La Jolla on a coastal blufftop lot. The site is located within a major scenic viewshed, as identified in the certified Land Use Plan and between the first public road and the sea. The proposed amendment raises several issues with regard to protection of public views. First, the proposed fence/wall and gate at the entrance to the vertical access easement may impact public views from the public right-of-way as well as from the proposed viewing area. Second, the proposed mitigation for deferring vertical access at this time is to fund a stairway down the bluffs to the beach. The stairway on the bluff face could result in public view impacts.

Relative to the fence/wall and gate, as noted above, on properties located between the first public road and the sea and/or on properties that contain designated view sheds, the LCP requires that public views be protected by, among other things, requiring that the side yard setback area(s) be deed restricted to assure structures and landscaping do not interfere with public views. In the case of the subject site, public views of the ocean are available along the south side yard area from Princess Street as well as from the proposed viewing area adjacent to Princess Street. Special Condition #3 of the previous amendment requires the south yard area be restricted for purposes of ensuring public views in this location are maintained. There is an existing concrete stairway in the southern side yard so no new plant materials can be placed in this location. However, beyond the stairway further south along the side yard, there is the potential for the planting of tall trees, etc. which could impede public views to the ocean. While no new landscaping is proposed (other than within the proposed public viewing area), there is the potential that in the future, trees or other tall shrubs could be planted within this side yard area. For this reason, the condition requires the south yard area be maintained free of vegetation (i.e., planted after June 12, 2007) greater than 3 ft. in height, such that no trees or a tall hedge is planted, in order to preserve views of the ocean in this viewshed. In addition, currently there is existing landscaping within the south side yard setback area that partially obstructs views to the ocean from not only the proposed public viewing area, but also from the end of Princess Street looking towards the ocean through the south side yard. While this landscaping need not be removed, Special Condition #3 requires that it be trimmed such that ocean views are not affected. While typically, existing landscaping would not be required to be trimmed, in this particular case, the applicant is proposing the public viewing area as mitigation for deferment of opening up public

access on the property and as such, it is important that public views be afforded to the extent feasible.

However, the fence/wall and gate proposed to be retained will affect public views along this view corridor and are not consistent with the provisions of the certified LCP cited above in that neither the wall nor the fence have been designed such that 75% of their surface area is open. The existing fence/wall and gate extend across the south side yard adjacent to Princess Street. As proposed, the gate is 92 inches tall and 48 inches wide and is constructed with a wood frame (approximately 6 inches wide on either side and approximately 9 inches wide on the top and bottom) with a wire mesh middle section. One side is attached to the home and other to a free standing solid stucco wall that is 92 inches tall and approximately 32 inches wide that extends beyond the property line onto the adjacent property to the south (ref. Exhibit #4 attached). Based on the plans submitted with this application, the proposed gate only retains approximately 50% of its surface area as open and the stucco wall is solid, with no open area. Thus, both the gate and the wall are inconsistent with the certified LCP.

The south side yard area is the only area on the property where public views are available to the ocean. Thus, maintaining these existing public views is important. To assure public views are maintained, Special Condition #3d requires that the fence/wall and gate be revised such that the upper 75% of the surface area of each is open and that no portion extends onto the adjacent property to the south. This condition also requires that revised plans first be approved by the City of San Diego. Because the fence/wall and gate are currently existing, Special Condition Nos. 13 and 14 require that the revised plans, approved by the City of San Diego, be submitted within 60 days of Commission action and that the fence/wall and gate be removed within 90 days of issuance of the amended permit.

With regard to the proposed public viewing area, significant public views are available from this area. Currently, although unimproved, ocean views are available over the existing home and between the existing home and the home to the south from the proposed public viewing area. As proposed, none of the features proposed to improve this viewing area will result in public view impediments; the viewing area includes only low level benches and landscaping. However, landscaping could over time grow such that it results in a view impediment. Therefore, Special Condition #3a requires that all landscaping be a species with a growth potential not expected to exceed three feet at maturity and that all landscaping be maintained at a height of no greater than three feet. With these conditions, the Commission can be assured public views will be maintained into the future.

The last issue raised by the subject amendment relates to the proposed mitigation for revising the vertical access. As noted in the project description, the applicant is proposing to defer the opening of a public access on the subject site by contributing $200,000.00 towards feasibility studies, permitting and construction of a public access stairway across the bay from the subject site. While the construction of a public access stairway down the face of a coastal bluff can result in public view impacts, in this

particular case, the stairway will be located where a stairway previously existed, but was destroyed by fire many yeas ago. In addition, this amendment is not permitting that stairway; a separate coastal development permit will be required for that development as well as for any future stairway on the subject site and impacts on scenic visual resources will be addressed at that time.

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

5. <u>Unpermitted Development</u>. Unpermitted development has been carried out on the subject site without the required coastal development permit. The applicant is requesting after-the-fact authorization for the installation and retention of a wall/fence and gate at the entrance to the vertical access easement. In addition, there are a number of other unpermitted improvements that have been constructed on the site (some that are still under investigation) that are not addressed by this amendment, but will be handled as a separate enforcement action. These include, but are not limited to, landscaping and irrigation on the bluff face, remodel that increased living area and square footage of the home, remodel of a detached historic structure, additional driveway encroachment into public right-of-way, construction of a large wall in the public right-of-way, construction of a second-story patio terrace and grading and recontouring of the bluff face. Additionally, the failure to record the required lateral and vertical offer to dedicate public access easements pursuant to Coastal Development Permit No. A-133-79-A1 is a violation of the California Coastal Act.

To ensure that the matter of unpermitted development is resolved in a timely manner, Special Condition #13 requires that the applicant satisfy all conditions of this permit amendment which are prerequisite to the issuance of this permit amendment within 60 days of Commission action, or within such additional time as the Executive Director may grant for good cause. In addition, because the fence/wall and gate proposed to be retained have already been constructed and through this amendment are required to be revised, Special Condition #14 requires that within 90 days of issuance of the permit amendment, the applicant shall remove the existing wall and gate and replace them consistent with the plans approved pursuant to Special Condition #3 of this permit amendment.

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

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

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

7. <u>Consistency with the California Environmental Quality Act (CEQA)</u>. Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the certified LCP and the public access and recreation policies of the Coastal Act. Mitigation measures, including conditions addressing final plans (adequate blufftop setbacks/ location of offer to dedicate access easement/accessory improvements), revised landscape/yard area fence plans to assure protection of public views and recordation of various easements will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

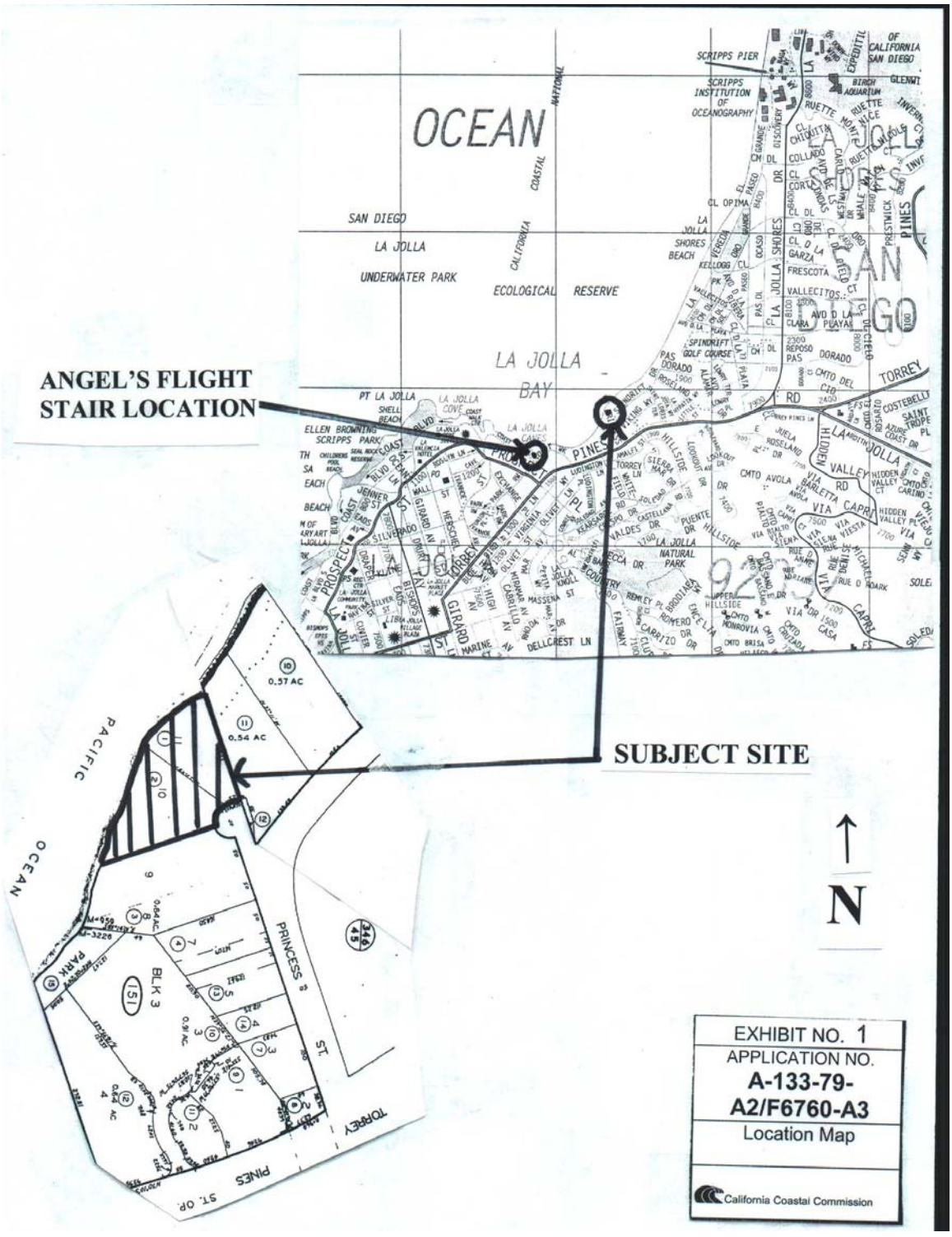


EXHIBIT NO. 1
APPLICATION NO.
A-133-79-
A2/F6760-A3
Location Map

California Coastal Commission

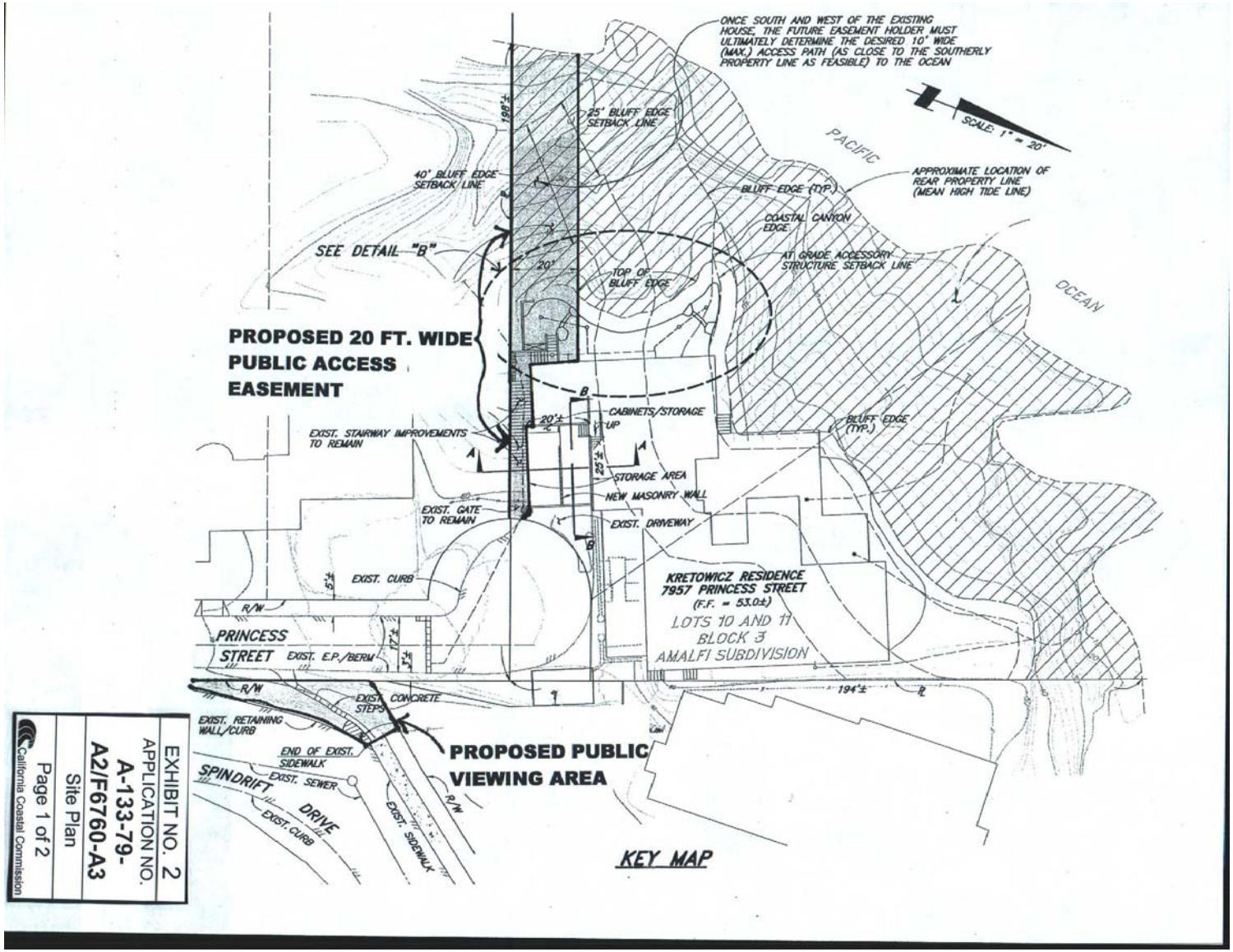
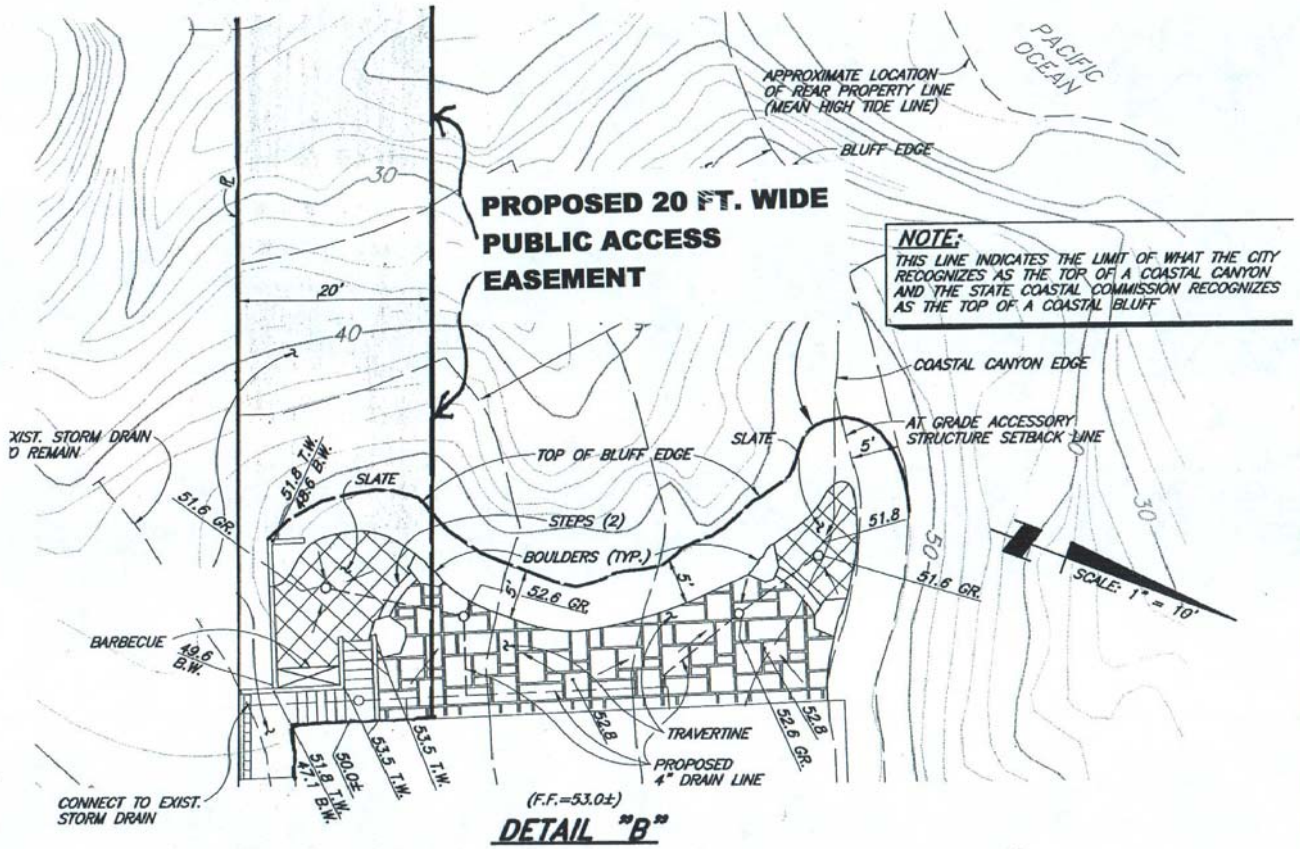
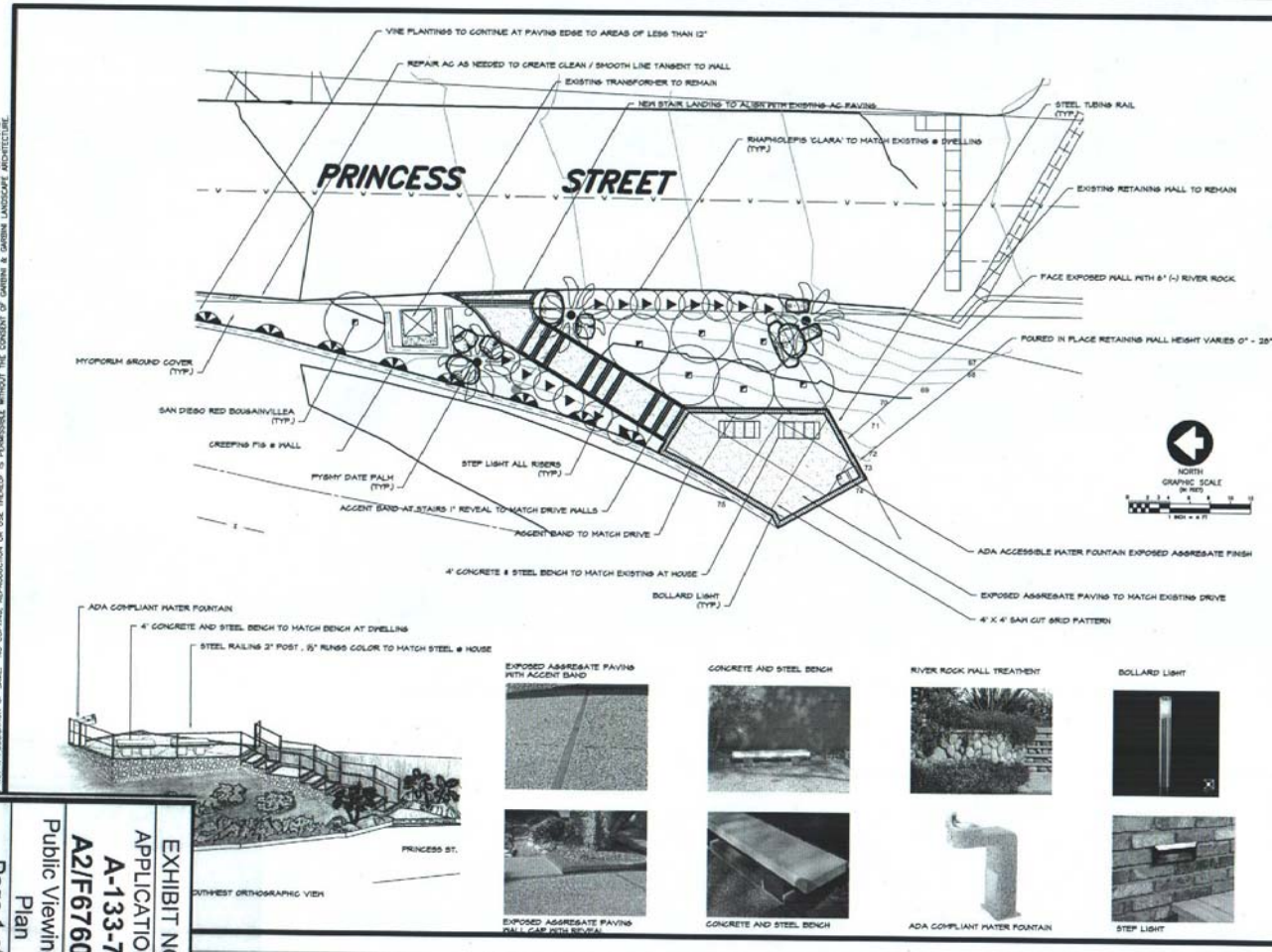


EXHIBIT NO. 2
APPLICATION NO.
A-133-79-
A2/F6760-A3
Site Plan
Page 1 of 2
California Coastal Commission


PACIFIC OCEAN
APPROXIMATE LOCATION OF REAR PROPERTY LINE (MEAN HIGH TIDE LINE)
BLUFF EDGE
PROPOSED 20 FT. WIDE PUBLIC ACCESS EASEMENT
NOTE:
THIS LINE INDICATES THE LIMIT OF WHAT THE CITY RECOGNIZES AS THE TOP OF A COASTAL CANYON AND THE STATE COASTAL COMMISSION RECOGNIZES AS THE TOP OF A COASTAL BLUFF
COASTAL CANYON EDGE
AT GRADE ACCESSORY STRUCTURE SETBACK LINE
XIST. STORM DRAIN
O REMAIN
TOP OF BLUFF EDGE
SLATE
STEPS (2)
BOULDERS (TYP.)
51.6 GR.
52.6 GR.
51.8
BARBECUE
49.6 B.W.
TRAVERTINE
PROPOSED 4" DRAIN LINE
CONNECT TO EXIST. STORM DRAIN
(F.F.=53.0±)
SCALE: 1" = 10'
20'
5'
30
40
50

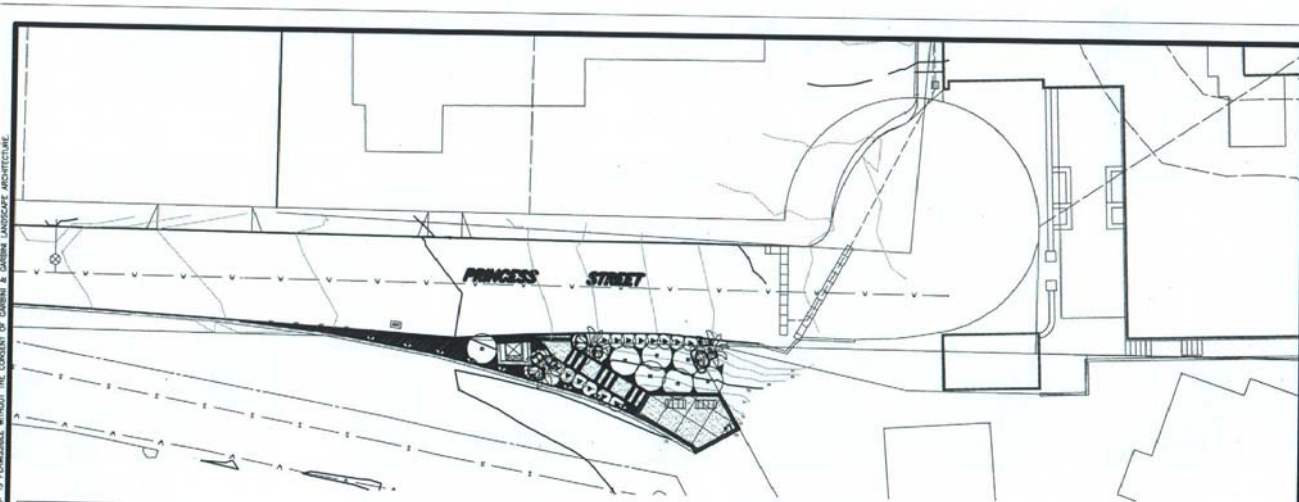
DETAIL "B"



THESE PLANS AND SPECIFICATIONS ARE OWNED BY AND THE PROPERTY OF GARBINI & GARBINI LANDSCAPE ARCHITECTURE, INC. AND WERE PREPARED FOR USE ON THIS PROJECT. NONE OF SUCH PLANS AND SPECIFICATIONS SHALL BE USED BY ANY PERSON FOR ANY PURPOSE OTHER THAN THE ELIGIBILITY, PERMITTING, AND IN CONNECTION WITH THE PROJECT. NONE OF SUCH PLANS AND SPECIFICATIONS SHALL BE USED BY ANY PERSON FOR ANY PURPOSE WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF GARBINI & GARBINI LANDSCAPE ARCHITECTURE. ALL THESE DRAWINGS OR SPECIFICATIONS MUST BE RETURNED AT THE CONCLUSION OF THE PROJECT. THE CONTENT OF GARBINI & GARBINI LANDSCAPE ARCHITECTURE PLANS AND SPECIFICATIONS MAY NOT BE REPRODUCED OR REPRESENTED BY THIS DRAWING ARE OWNED BY AND THE PROPERTY OF GARBINI & GARBINI LANDSCAPE ARCHITECTURE, INC. AND WERE PREPARED FOR USE ON THIS PROJECT. NONE OF SUCH PLANS AND SPECIFICATIONS SHALL BE USED BY ANY PERSON FOR ANY PURPOSE OTHER THAN THE ELIGIBILITY, PERMITTING, AND IN CONNECTION WITH THE PROJECT. NONE OF SUCH PLANS AND SPECIFICATIONS SHALL BE USED BY ANY PERSON FOR ANY PURPOSE WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF GARBINI & GARBINI LANDSCAPE ARCHITECTURE. ALL THESE DRAWINGS OR SPECIFICATIONS MUST BE RETURNED AT THE CONCLUSION OF THE PROJECT. THE CONTENT OF GARBINI & GARBINI LANDSCAPE ARCHITECTURE PLANS AND SPECIFICATIONS MAY NOT BE REPRODUCED OR REPRESENTED BY THIS DRAWING.

EXHIBIT NO. 3
APPLICATION NO.
A-133-79-A2/F6760-A3
Public Viewing Area Plan
Page 1 of 2
California Coastal Commission

ALL IDEAS, DESIGN, ARRANGEMENTS AND PLANS INDICATED OR REPRESENTED BY THIS DRAWING ARE OWNED BY, AND THE PROPERTY OF GARBINI & GARBINI LANDSCAPE ARCHITECTURE, INC. AND WERE CREATED, EVOLVED AND DEVELOPED FOR USE ON, AND IN CONNECTION WITH THIS PROJECT. NONE OF THE IDEAS, DESIGN ARRANGEMENTS OR PLANS INDICATED OR REPRESENTED BY THIS DRAWING WERE CREATED OR DEVELOPED FOR USE ON ANY OTHER PROJECT. NO PART OF THIS DRAWING MAY BE REPRODUCED, COPIED, OR DISCLOSED TO ANY OTHER PERSON OR ENTITY WITHOUT THE WRITTEN PERMISSION OF GARBINI & GARBINI LANDSCAPE ARCHITECTURE. FILING THESE DRAWINGS WITH ANY PUBLIC AGENCY IS NOT A PUBLICATION OF SAME. OWNERSHIP, REPRODUCTION OR USE WITHOUT THE CONSENT OF GARBINI & GARBINI LANDSCAPE ARCHITECTURE.



IRRIGATION CONCEPT

THE LANDSCAPE ASSOCIATED WITH THIS PROJECT SHALL BE IRRIGATED BY MEANS OF AN AUTOMATIC IRRIGATION SYSTEM. THE SYSTEM SHALL INCLUDE THE FOLLOWING.

1. IRRIGATION SYSTEM SHALL BE PROTECTED BY A BACKFLOW PREVENTION DEVICE
2. IRRIGATION SYSTEM SHALL BE AN AUTOMATIC, PERMANENT, BELOW GRADE SYSTEM.
3. HOSE BIBBS AND/OR QUICK COUPLING VALVES SHALL BE INCLUDED TO SERVICE PLANTING AREAS.
4. IRRIGATION SYSTEMS SHALL BE SPRAY AND GEAR DRIVE SYSTEMS.
5. ALL IRRIGATION SYSTEMS SHALL BE DESIGNED TO AVOID RUNOFF, SEEPAGE, AND OVERSPRAY ONTO WALLS, PAVING AND ROADS. WATER SHALL BE CHANNELED INTO DRAINAGE STRUCTURES WHERE POSSIBLE.

MAINTENANCE NOTES:

THE LANDSCAPE ASSOCIATED WITH THIS PROJECT SHALL BE MAINTAINED BY THE CITY OF SAN DIEGO MAINTENANCE PERSONEL. THE MAINTENANCE PROCEDURES SHALL INCLUDE THE FOLLOWING:

1. TREES SHALL BE WATERED DEEPLY AND AT AN INTERVAL TO PROMOTE DEEP ROOTS. TREES SHALL BE FERTILIZED AS REQUIRED BY SOUND HORTICULTURAL PRACTICES.
2. TREES AND SHRUBS SHALL BE PRUNED TO MAINTAIN THEIR INTENDED SHAPES AND SIZES AND TO INSURE THE HEALTH OF THE TREES.
3. PLANTS SHALL BE PRUNED TO AVOID BLOCKING WALKS, PASSAGEWAYS AND SIGHT DISTANCE VIEWS FOR PEDESTRIAN TRAFFIC.
4. DEAD PLANTS SHALL BE REPLACED AND DAMAGED BRANCHES SHALL BE REMOVED.
5. LAWN AREAS SHALL BE FERTILIZED & MOWED AS REQUIRED.

DESIGN CONCEPT STATEMENT

THE INTENT OF THE LANDSCAPE DESIGN IS TO PROVIDE AN AESTHETIC AND CALMING ENVIRONMENT TO THE PATIENTS OF THE FACILITY. IN ADDITION, THE DESIGN ALSO ADDRESSES THE VARIOUS ELEVATION AND DRAINAGE ISSUES POSED BY THE EXISTING SITE CONDITIONS. TO ADDRESS THE CITY'S WATER CONSERVATION NEEDS, THE DESIGN UTILIZES PLANT MATERIAL SUITABLE TO THE AREA. THE SELECTION OF PLANT MATERIAL AND PROPER PLANT GROUPING TO SIMILAR WATER NEEDS AND GROWTH REQUIREMENTS, IN ADDITION TO LIMITING TURF AREAS, WILL PROVIDE A MORE EFFICIENT USE OF WATER IN THE LANDSCAPE AREAS. ALL LANDSCAPE AREAS WILL BE IRRIGATED BY AN AUTOMATIC UNDERGROUND IRRIGATION SYSTEM. THE IRRIGATION SYSTEM WILL USE BOTH DRIP AND SPRAY TYPE SYSTEMS. EXISTING TREES WILL BE RETAINED WHEN POSSIBLE. ALL EXISTING ROCKS ON SITE WILL BE RELOCATED AND USED FOR LANDSCAPE RETAINING WALLS OR AS SITE FEATURES.

DESIGN CONCEPT STATEMENT

1. ALL LANDSCAPE AND IRRIGATION SHALL CONFORM TO THE CITY OF SAN DIEGO TECHNICAL MANUAL AND ALL OTHER APPLICABLE CITY AND REGIONAL STANDARDS FOR LANDSCAPE INSTALLATION.
2. ALL CONCRETE PAVING SHALL BE TYPE C PAVING. REFER TO ARCHITECTURAL SITE PLAN FOR DESCRIPTION OF PAVING
3. THE SELECTION OF SITE FURNISHINGS SHALL CONFORM TO THE CENTRAL MESA PRECISE PLAN
4. EXISTING TREES TO BE PROTECTED IN PLACE SHALL BE PROTECTED BY A 6' TALL CHAIN LINK FENCE DURING CONSTRUCTION. THE FENCE SHALL BE INDICATED ON THE DEMOLITION/DISPOSITION PLAN.
5. THE LIMITS OF WORK EXTEND TO LIMITS OF GRADING. SEE CIVIL DRAWING.

PLANT MATERIAL LEGEND

SYMBOL	BOTANICAL NAME	COMMON NAME	PERCENTAGE/SIZE
	SMALL SCALE PALM TREES SUCH AS:		
	CYCAS SPP	SAGO PALM (STANDARD)	100%/48" BOX
	PHOENIX ROEBELENII	PYGMY DATE PALM (STANDARD)	100%/36" BOX
	MEDIUM SCALE BACKGROUND SHRUBS SUCH AS:		
	DIOSMA 'REEVESII'	WHITE BREATH OF HEAVEN	100%/5 GALLON
	GREVILLEA	GREVILLEA MAGIC LATTERN'	100%/5 GALLON
	HYDRANGEA HORTENSIA	PINK GARDEN HYDRANGEA	100%/5 GALLON
	ILEX CORNUTA DWARF 'DWARF BURFORDII'	BURFORD HOLLY	100%/5 GALLON
	MEDIUM SCALE FLOWERING ACCENT SHRUBS SUCH AS:		
	PHORMIUM TENAX 'SUNDOWNER' NEW ZEALAND FLAX		100%/15 GALLON
	PHORMIUM TENAX 'SUNDOWNER'NEW ZEALAND FLAX		100%/15 GALLON
	SMALL SCALE HEDGING SHRUBS SUCH AS:		
	BUXUS MICROPHYLLA	JAPONICAJAPANESE BOXWOOD	100%/5 GALLON
	RAPHIOLEPIS 'GULF GREEN'	SMALL LEAF INDIAN HAWTHORNE	100%/5 GALLON
	SMALL SCALE HEDGING SHRUBS SUCH AS:		
	BUXUS MICROPHYLLA	JAPONICAJAPANESE BOXWOOD	100%/5 GALLON
	RAPHIOLEPIS 'GULF GREEN'	SMALL LEAF INDIAN HAWTHORNE	100%/5 GALLON

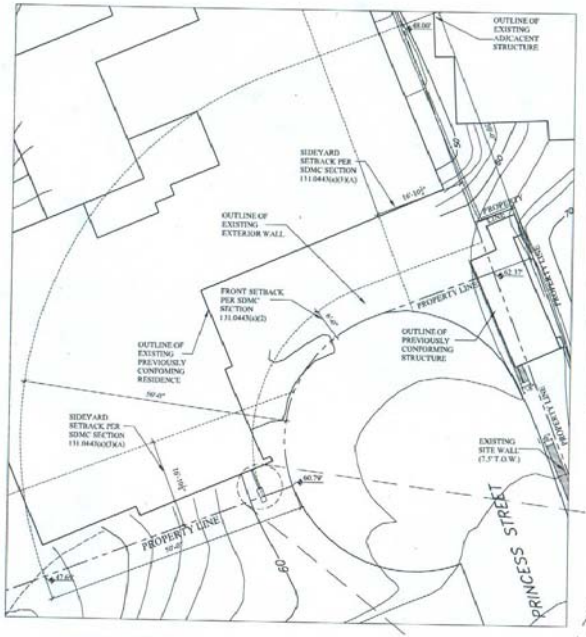
NORTH
GRAPHIC SCALE
(IN FEET)
1 INCH = 20 FT

REVISIONS | BY

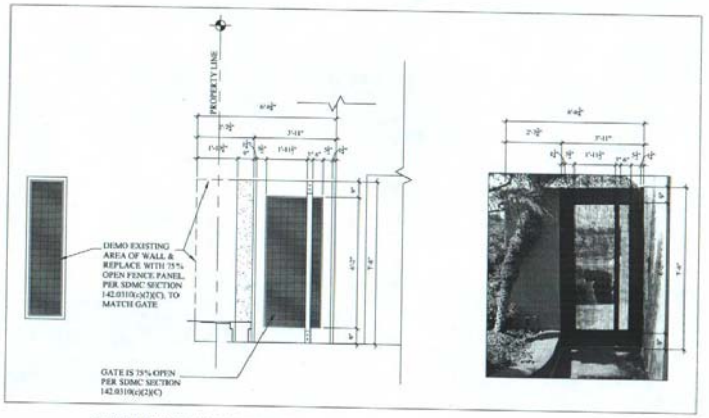
Garbini & Garbini
LANDSCAPE ARCHITECTURE
URBAN DESIGN
7114 "I" STREET, SUITE 207
SAN DIEGO, CALIFORNIA 92111
(619) 233-6747 FAX(619) 233-4312

PRINCESS STREET OBSERVATION AREA

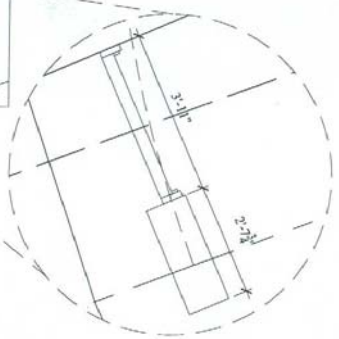
DATE 2.26.2007
SCALE
DRAWN DC
CHECKED RJG
JOB 07512
SHEET
OF SHEETS



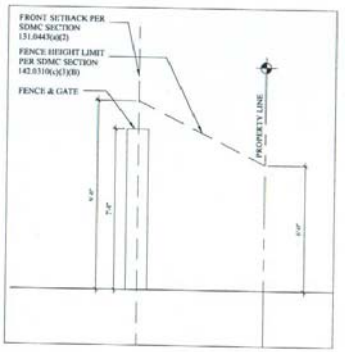
PARTIAL SITE PLAN
SCALE: 1/8" = 1'-0"



GATE ELEVATION & PHOTO
SCALE: 1/2" = 1'-0"



ENLARGED FENCE/GATE PLAN
SCALE: 1" = 1'-0"



FENCE HEIGHT LIMITS
SCALE: 1/2" = 1'-0"

SLOPE GRADIANT CALCULATION

SLOPE GRADIENT AT SOUTHWEST PROPERTY LINE

$$\text{SLOPE} = \frac{60.79' - 47.69'}{50'} = \frac{13.10'}{50'} = 26.2\%$$

THEAST PROPERTY LINE

$$\frac{4.37'}{50'} = 28.7\%$$

Marengo Morton Architects
7855 Ivanhoe Ave.
Suite 110
La Jolla, CA 92037
Tel. (858) 459-3769
Fax. (858) 459-3768
Michael Morton AIA
Claude Anthony Marengo Dec.

KRETOWICZ RESIDENCE
EMRA: SITE WALL
7957 PRINCESS ST.
LA JOLLA, CA 92037

PHASE	CONSTRUCTION DOCUMENTS
PROJECT NO.	2006-43
REVIEWED BY	CAM
DRAWN BY	DL
DATE	2-05-07

SIDE GATE- PLAN

A-1.2

SHEET 1 OF 2

EXHIBIT NO. 4
APPLICATION NO.
A-133-79-
A2/F6760-A3
Wall & Gate Plan

California Coastal Commission

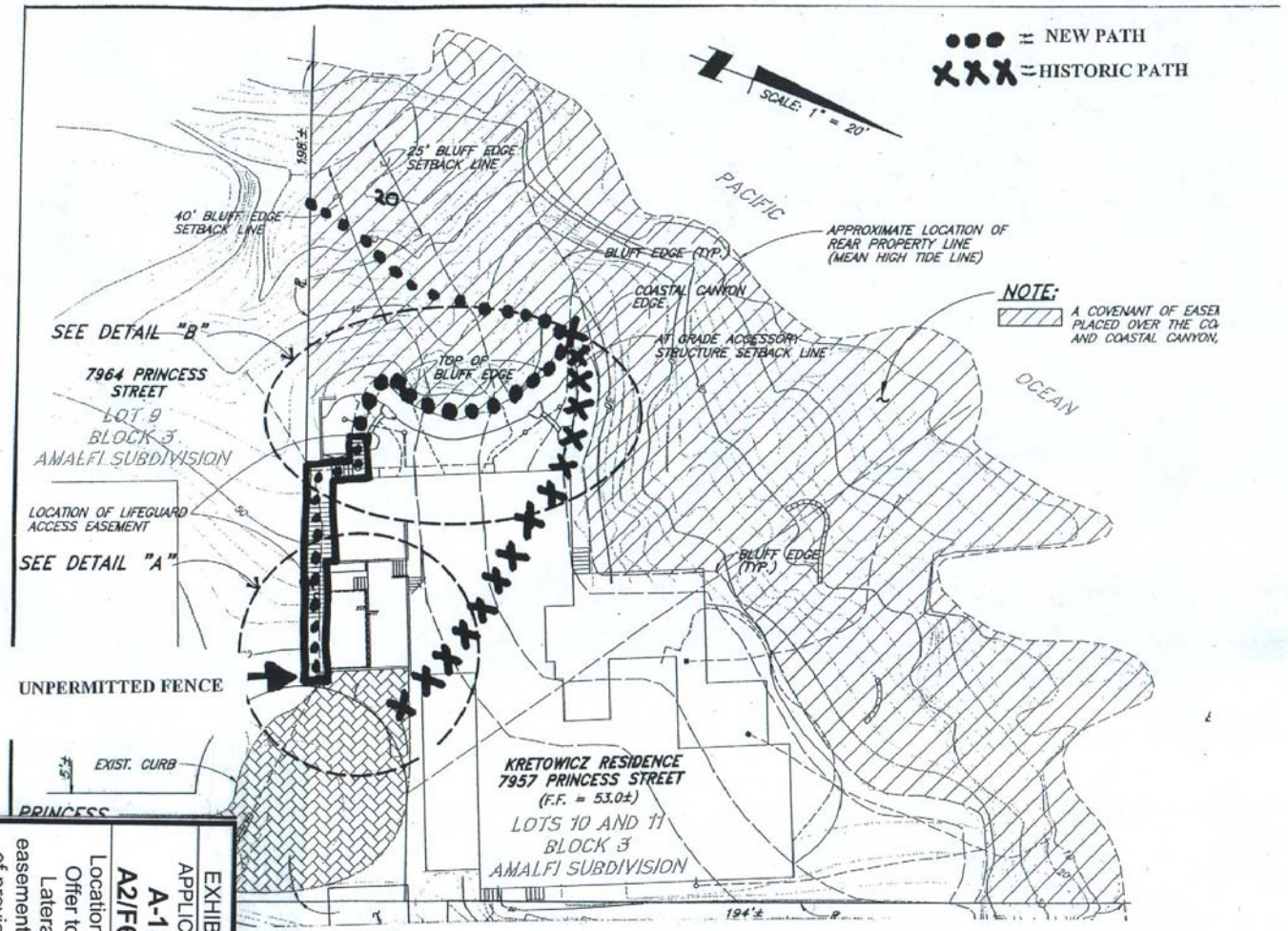


EXHIBIT NO. 5

APPLICATION NO.

A-133-79-A2/F6760-A3

Location of Original Offer to Dedicate Lateral Access easement and location of previous foot trail across subject site.

California Coastal Commission

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DIANNE KRETOWICZ AND URE KRETOWICZ, as Trustees of the Princess Trust, Petitioners/Plaintiffs, v. CALIFORNIA COASTAL COMMISSION, an agency of the State of California and DOES 1 through 100, inclusive, Respondents/Defendants.	Case No. GIC 851915 **STIPULATION FOR ENTRY OF JUDGMENT** Dept.: 74 The Hon. Linda B. Quinn Complaint Filed: August 5, 2005
CALIFORNIA COASTAL COMMISSION, An agency of the Staet of California, Cross-Complainant, v. DIANNE KRETOWICZ AND URE KRETOWICZ, as Trustees of the Princess Trust, and ROES 1 through 100, inclusive, Cross-Defendnants.	

IT IS HEREBY STIPULATED AND AGREED BY AND AMONG THE PARTIES:

This Stipulation for Entry of Judgment ("Stipulation") is a settlement of the above captioned petition for writ of mandate and complaint ("petition/complaint") and related cross

EXHIBIT NO. 6
APPLICATION NO.
A-133-79-A2/F6760-A3
Stipulation for Entry of Judgment (Settlement Agreement)
Page 1 or 15
California Coastal Commission

complaint. This Stipulation is made and effective as of _____, 2007, by and among Dianne Kretowicz and Ure Kretowicz, as Trustees of The Princess Trust (collectively "Kretowicz") and the California Coastal Commission, an agency of the State of California (the "Commission"), with reference to the facts set forth herein.

RECITALS

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

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

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

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

E. The parties to this Stipulation now desire to settle and resolve their differences relating to the Property.

///

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

AGREEMENT

1. Incorporation of Recitals. Recitals A through E, inclusive, are incorporated herein by this reference and acknowledged by all parties hereto as accurate.

2. New Kretowicz Permit Amendment Application. Within 90 days after the execution of this Stipulation, Kretowicz shall submit a new coastal development permit amendment application ("Amendment Application") seeking approval for a.) a change in the location and terms of the offer to dedicate vertical public access identified in Permit A-133-79 consistent with the terms of this Stipulation, b.) the unpermitted gate and fence across the area of the offer to dedicate vertical public access and c.) improvement of the triangular piece of City-owned property as described in Paragraph 4 of this Stipulation. The Amendment Application shall propose the payment as described in Paragraph 5 (for construction of Angel's Flight improvements) as mitigation for the change in the offer to dedicate vertical public access. If the Commission approves the Amendment Application, Kretowicz shall comply with all terms and conditions of the permit amendment within the deadlines set forth in the conditions. Kretowicz shall also comply with all terms and conditions of approval of the Kretowicz Permit Application previously approved in part by the Commission. If the Commission denies the Amendment Application or if the Commission receives written notice from Kretowicz within twenty (20) days after final Commission action on the Amendment Application stating that Kretowicz does not accept the Commission's action, this Stipulation shall be null and void. If the Commission approves the Amendment Application, within thirty (30) days of the Commission's approval, this Stipulation shall be filed with the Court along with a proposed Judgment Pursuant to Stipulation with a request that judgment be entered in accordance with this Stipulation.

2.1 Ancillary Improvements. In addition to those items contained in the Amendment Application as described in Section 2, above, Kretowicz may, at Kretowicz's discretion, include within the Amendment Application: a) the removal of a newly installed, unpermitted wall approximately six to eight feet in height (the "Wall"), and/or b) architectural concrete installed by

Kretowicz in the public right-of-way at the end of Princess Street pursuant to City of San Diego Encroachment Maintenance and Removal Agreement recorded February 21, 2006 (P.T.S. Approval No. 298442, referred to as the "Concrete Improvements"). The Wall and Concrete Improvements collectively shall be referred to as the "Ancillary Improvements". In the event Kretowicz chooses to include one or more of the Ancillary Improvements in the Amendment Application, the Commission's denial of the Ancillary Improvement(s) shall not render this Stipulation null and void. In the event Kretowicz does not include the Ancillary Improvement(s) in the Amendment Application, nor in any subsequent coastal development permit application within ninety (90) days following the date of Commission's decision to approve or deny the Amendment Application, and Kretowicz has not given Commission staff written notice of intention to remove the Ancillary Improvement(s), the Commission may pursue enforcement proceedings with regard to the Ancillary Improvement(s) as may be authorized by applicable law. By entering into this Agreement the Parties do not waive, and hereby expressly retain, all rights, defenses and remedies in connection with the Ancillary Improvements. Moreover, by entering into this Agreement Kretowicz does not admit or concede that the Ancillary Improvement(s) are unlawful or that the Commission has jurisdiction over the Ancillary Improvements. Any future dispute between the Parties with regard to the Ancillary Improvements shall be addressed in legal proceedings separate from the Kretowicz Action and Commission Cross-Complaint, in which case Section 6 of this Agreement shall not apply.

3. Grant of Easements. If the Commission approves the Amendment Application, Kretowicz will record an easement deed in favor of the City of San Diego for emergency lifeguard access as described in paragraph 3.1 of this Stipulation, and Kretowicz shall also record, for the benefit of the People of the State of California, an irrevocable offer to dedicate non-exclusive easements for lateral and vertical public access along the southern boundary of the Property from Princess Street to the mean high tide line and lateral public access from the toe of the bluff to the mean high tide line ("Access Easements") in a form mutually acceptable to the parties, as described in Paragraphs 3.2 and 3.3 of this Stipulation. The Access Easements shall consist of the following:

///

3.1 Emergency Lifeguard Access. Kretowicz will grant the City of San Diego ("City") an easement for emergency lifeguard access and no other purpose ("Lifeguard Easement"). The grant of easement shall be recorded no later than sixty (60) days after the Commission's approval of the Amendment Application. The Lifeguard Easement shall be effective upon acceptance by the City and recordation in the Official Records of the County of San Diego.

3.2 Lateral Public Access. Kretowicz will record an offer to dedicate an easement for lateral general public access ("Lateral Public Easement"), in a form and content acceptable to the Commission's Executive Director, which shall include the following terms and conditions: The Lateral Public Easement shall extend from the mean high tide line to the toe of the bluff. A draft of the offer to dedicate lateral public access, prepared using a Commission approved form, shall be submitted to Commission staff within thirty (30) days after approval of the Amendment Application. The offer to dedicate lateral public access shall be recorded within thirty (30) days after the Commission staff approves of the draft document.

3.3 Vertical Public Access: Kretowicz shall record an offer to dedicate an easement for vertical general public access ("Vertical Public Easement") in a form and content acceptable to the Commission's Executive Director which shall include the following terms and conditions: The Vertical Public Easement shall become available for public use or any other purpose no earlier than December 31, 2080, and then only when a public agency or non-profit organization accepts the Vertical Public Easement ("Easement Holder"). The Easement Holder may replace or modify the gate and fence across the Vertical Public Easement when available for public use. The Easement Holder shall have the right to construct a stairway down the bluff leading to the ocean pursuant to all required government approvals. The owner of the property shall have the right to construct open fencing consistent with the City of San Diego's standards along the boundary of the Vertical Public Easement to separate the easement area from the residential area of the property, provided that such open fencing does not block or impede the public's use of the Vertical Public Easement or views therefrom. The width of the Vertical Public Easement shall be at least 20 feet wide, except that between the street and along the house up to the western limit of the house, the Vertical Public Easement shall extend from the southern edge of the house to the

southern boundary of the property. Although the Vertical Public Easement extends to twenty (20) feet wide, the area of public use for access to the ocean shall be no wider than ten (10) feet. The Easement Holder shall have the authority to determine where the ten (10) foot wide public access area will be located within the twenty (20) foot wide easement area, provided that the public access shall be located as close to the southern property boundary as feasible. The entire easement area shall be available for siting a footpath or stairway (or both should a foot path be used in lieu of or prior to construction of a stairway) and for construction activities related to a footpath and/or stairway, but once a footpath has been identified and/or a stairway built, public access shall not occur outside of the footpath or stairway except as necessary for repair and maintenance or except as necessary to move the access area because of erosion or other geologic factors affecting the safety of the access. If the Easement Holder decides to construct a stairway, the Easement Holder shall consult with the Property owner with respect to design of the stairway. A stairway shall not require the property owner to remove the drainpipe outfall that currently exists at the base of the bluff. Once opened by the Easement Holder, the Vertical Public Easement shall be open daily, from one half hour before sunrise to one half hour after sunset. The Easement Holder shall be responsible for maintenance, trash collection and acceptance of liability. With the assistance of Commission staff, Kretowicz shall submit a draft offer to dedicate the Vertical Public Easement for review and approval of the Commission's Executive Director within forty-five (45) days after Commission approval of the Amendment Application. Kretowicz shall record the offer to dedicate within thirty (30) days after approval of the draft documents by the Commission staff.

4. Viewing Area Improvements. Kretowicz shall improve a triangular piece of City-owned property located across Princess Street, as generally depicted on Exhibit "A attached hereto, to provide at a minimum a public bench, sidewalk, public access signs and if economically and physically feasible, a drinking fountain (collectively, "Viewing Area Improvements"). Kretowicz shall be responsible for obtaining all discretionary approvals required from the City of San Diego to construct the Viewing Area Improvements prior to issuance of the approved Amendment Application. Kretowicz will present a conceptual design of the Viewing Area Improvements to Commission staff for concurrence before submitting the same for City review and approval. The

financial obligation of Kretowicz for the design, processing, professional consulting fees and construction costs of the Viewing Area Improvements shall not exceed $50,000.00 and Kretowicz shall plan a project that does not exceed $50,000.00. In the event the City refuses to issue the permits and approvals required to develop the Viewing Area Improvements, or if the Viewing Area Improvements are completed for less than $50,000.00, Kretowicz shall pay all remaining amounts in accordance with Paragraph 5 (e.g., toward construction of the Angel's Flight improvements).

5. Angel's Flight Improvements. An historic staircase known as "Angel's Flight" connecting Coast Walk to the shoreline below was destroyed by fire in approximately 1960. Upon the issuance of the approved Amendment Application, Kretowicz agrees to contribute an amount not to exceed $200,000.00 ("Coastal Access Fund") towards feasibility investigations, design, processing, professional consulting fees and construction costs to replace Angel's Flight on the following terms and conditions:

5.1 Kretowicz will not be the applicant or otherwise be responsible for processing permits, applications or approvals necessary to replace Angel's Flight. Instead, the Commission shall select a third party, such as the City of San Diego or the La Jolla Conservancy, to explore the feasibility of, and to replace if feasible, Angel's Flight. The Commission and the third party will enter into a Memorandum of Understanding (MOU) outlining the process for exploring the feasibility and constructing Angel's Flight if feasible. The MOU shall provide that the third party will take all steps necessary to achieve replacement of Angel's Flight. The MOU will also provide that $200,000.00 will be paid to the third party for purposes of feasibility investigations, design, processing, professional consulting fees and construction costs to replace Angel's Flight. Additionally, the MOU will provide that $50,000.00 of the $200,000.00 will be set aside in an interest bearing account to be used solely for periodic maintenance of the stairs after construction. If the third party determines that replacement is infeasible or fails to obtain permits or fails to build the Angel's Flight stairs because of lack of funding, within specified deadlines, any remaining amount of the monies that had been forwarded to the third party pursuant to the MOU will be paid to the State Coastal Conservancy Violation Remediation Account. Within thirty (30)

days after the MOU has been signed by the Commission and the third party, but in no event prior to the issuance of the approved Amendment Application, Kretowicz shall deposit $200,000.00 into an account held by the third party for use in accordance with the terms of the MOU.

5.2 Contribution of the funds by Kretowicz shall constitute complete satisfaction of its obligations under Section 5 of this Stipulation.

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

7. Commission Access to Site. Upon reasonable advance notice by Commission staff, Kretowicz agrees to provide access to the subject property at reasonable times to Commission staff. Nothing in the Judgment is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of law. Commission staff may enter and move freely about the portions of the property on which the development which is the subject of this stipulated judgment is located, and on adjacent areas of the property to view the areas where the development is being performed pursuant to the requirements of the Judgment for purposes including but limited to inspecting records, operating logs, and contracts relating to the site and

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overseeing, inspecting and reviewing the progress of Kretowicz in carrying out the terms of the Judgment.

8. Mutual Release. The parties hereto intend and agree that this Agreement shall be effective as a full and final accord in satisfaction and general release of and from all claims, rights or causes of action arising out of or related to the Kretowicz Action and the Commission Cross-Complaint ("Released Matters"). In furtherance thereof, the parties acknowledge that they are familiar with Section 1542 of the Civil Code of the State of California which provides as follows:

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

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

9. Miscellaneous

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

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

9.3 Court's Retention of Jurisdiction. The Court retains jurisdiction over this matter for the purpose of enabling either party to apply to the Court for any further orders or directions as may be necessary and appropriate for the Judgment's construction, execution, modification, and enforcement.

9.4 Waiver of Appeal. The parties waive any statement of decision and all rights of appeal from the Judgment.

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

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

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

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

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

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

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

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

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

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

To Kretowicz:

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

With a copy to:

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

To Commission:

California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108
And a copy to Chief of Enforcement
California Coastal Commission
45 Fremont Street, 20th Floor
San Francisco, CA 94105-2219
Facsimile: (619)767-2384
Telephone: (619) 767-2370

With a copy to:

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

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

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

Dianne Kretowicz

By: Dianne Kretowicz

Ure Kretowicz

By:

California Coastal Commission

By:
Its:

By:
Its:

To Commission:

California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108
And a copy to Chief of Enforcement
California Coastal Commission
45 Fremont Street, 20th Floor
San Francisco, CA 94105-2219
Facsimile: (619)767-2384
Telephone: (619) 767-2370

With a copy to:

Jamee Jordan Patterson, Esq.
Supervising Deputy Attorney General
State of California
P.O. Box 85266
110 West A St., Suite 1100
San Diego, CA 92186-5266
Facsimile: (619) 645-2012
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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

Dianne Kretowicz

By: Dianne Kretowicz

Ure Kretowicz

By:

California Coastal Commission

By:
Its: Executive Director

By:
Its:

APPROVED AS TO FORM:

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: _____
Jeffrey A. Chine, Attorney for Dianne Kretowicz and Ute Kretowicz, as Trustees of The Princess Trust

OFFICE OF ATTORNEY GENERAL

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

ORDER

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED that the Stipulation for Entry of Judgment be entered as the judgment in the above-captioned case.

Dated: _____ By: _____
Hon. Linda B. Quinn
Judge of the Superior Court

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350-15

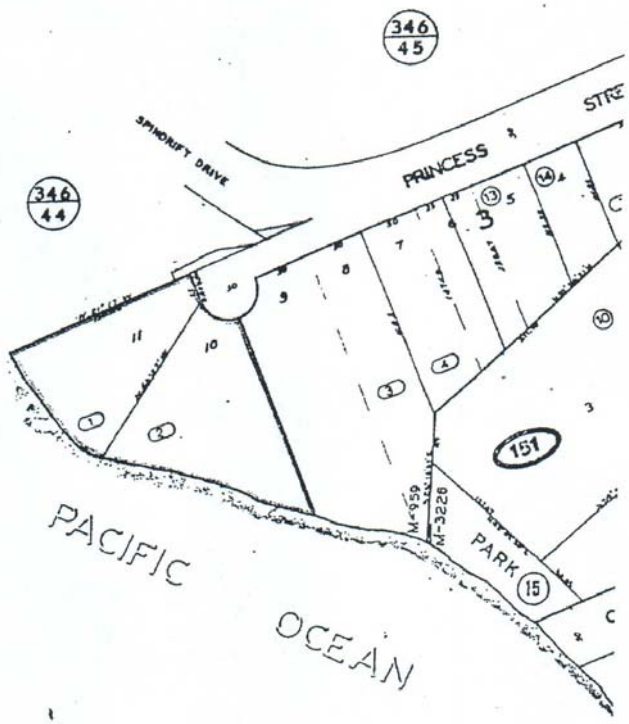

EXHIBIT "A"

SAN DIEGO COUNTY
ASSESSOR'S MAP

STAFF RECOMMENDATION

PASSED UNANIMOUSLY 9/20/79

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

DECISION OF REGIONAL COMMISSION: Permit granted with conditions by San Diego Coast Regional Commission

PERMIT APPLICANTS: Jane B. Baker

APPELLANT: Anthony Ciani

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

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

PUBLIC HEARING: Opened on June 19, 1979 in Los Angeles

ADDITIONAL SUBSTANTIVE FILE DOCUMENTS: La Jolla Community Plan

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STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that, as conditioned, the development is in conformity with the provisions of Chapter 3 of the Coastal Act, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the public road nearest the sea and is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quali Act.

II. Conditions.

This permit is subject to the following condition:

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

EXHIBIT NO. 7
APPLICATION NO.
A-133-79-A2/F6760-A3
Original Staff Report with Public Access Special Conditions for CDP A-133-79
California Coastal Commission

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

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

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

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

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

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description and History. The applicant proposes to construct a one-story, 3,566-sq. ft. addition to an existing 1,250-sq. ft. single-family house. The existing dwelling is two stories in height but is situated primarily below street level. The proposed addition, two ft. higher than the existing structure with the exception of a rotunda projecting six feet above the new roofline, would be 7½ ft. above the centerline of the frontage road. The proposed project would be set back 35 ft. from the irregularly-shaped bluff and 2½ ft. from the frontage road. No exterior grading would be required.

The proposed addition would be constructed on a parcel consisting of the lot on which the existing structure is situated and an adjacent undeveloped lot (Exhibit 2). The proje site is a blufftop parcel located on a promontory overlooking the San Diego-La Jolla Under water Park and Ecological Reserve, about ½ mile east of La Jolla Cove. The site is locate at the end of Princess Street, a residential cul-de-sac (Exhibit 2).

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

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

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

2. Public Access. The proposed project site is located between the first public road and the sea on a promontory overlooking the San Diego-La Jolla Underwater Park and Ecological Reserve, about ½ mile east of La Jolla Cove. The Coastal Act of 1976 requires that public access to and along the shoreline be maximized. In accordance with this policy statement Sections 30210 - 30212 of the Act provides:

> In carrying out the requirement of Section 4 of Article 10 of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. (30210)
>
> Development shall not interfere with the public's right of access to the sea where acquired through use...or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. (30211) (Emphasis Added)
>
> Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. (30212)

The project site is a blufftop lot overlooking the rocky shoreline adjacent to the La Jolla Underwater Park ecological reserve. To the south of the site is the .16 acre Charolette Pa: Public access to the shoreline below and to the City park is currently available only at lo tide by walking down coast from an accessway at La Jolla Shores ¼-mile north of the site.

The Commission finds that access to this pocket beach is only available at low tide due to the promentories which impede access to the beach from the nearest assessway to the shoreline which is located ¼ mile up coast. The Commission concludes, therefore, that adequate access does not exist nearby. Although the public has historically had access over the project site, construction of the project has preceeded the use of this accessway, thereby diminishing the public's right of access to the state owned tidelands. An alternative accessway must, therefore, be provided to offset the burdens this development has placed on public's constitutional right of access and to assure the conformity of the project to the provisions of Section 30212 of the Act. The applicant contends that, because of the steepness of the bluff, the accessway would not be safe and therefore need not be provided under subsection (3) of Section 30212. This site has historically been used for access to the shoreline below. A site inspection revealed that it was not difficult to walk down the bluff face and, if minor improvements were made, the access way could be easily traversed with little damage to the landforms. The Commission concludes that public access can be provided consistent with public safety and must, therefore, be provided to find the proposed project consistent with the Coastal Act.

Prior to the construction of the proposed addition, the site was the last remaining vacant parcel adjacent to the subject pocket beach and Charolette Park. Numerous letters have been submitted stating that the public had continuously used the project site to gain access to the shoreline and to the adjacent Charolette Park. This is the only trail to gain access to this pocket beach and city-owned Oceanfront park. Evidence of a well worn trail currently exists on the edge and face of the bluff, although the portion of the trail extending from the road to the bluff top has been covered by the addition to the residence which is the subject of this application. The appellants contend that since the addition interfers with public access as established through historic use, the project can not be found consistent with Section 30211 of the Coastal Act. The appellants concede, however, that since the addition is constructed denial of the project may not be an acceptable solution. The Commission notes that the Coastal Act requires that public perscriptive rights be protected wherever the exist. However, as set forth in the Statewide Interpretive Guidelines on public access development may be sited in an area of historic public use where equivelant areas for public access are provided. The Commission has noted in previous appeals [401-78 (Tree)] and the guidelines that such relocated accessways to compensate for the lost public accessway and find the project consistent with Section 3021 of the Act. The Commission finds that the submitted documents give clear indication of th historic use of the parcel. Because of the historic use and the fact that access to the cove beach below the site and city-owned oceanfront park adjacent to the site would be totally precluded by approval of the project without provisions for public access the Commission cannot find the project as proposed consistent with the provisions of either Sections 30211 or 30212 of the Act. Only, as conditioned, to provide an access path equivalent to the historic use area of the site and to provide lateral access along the shoreline can the commission conclude that the project is consistent with the public access provisions of the Coastal Act.

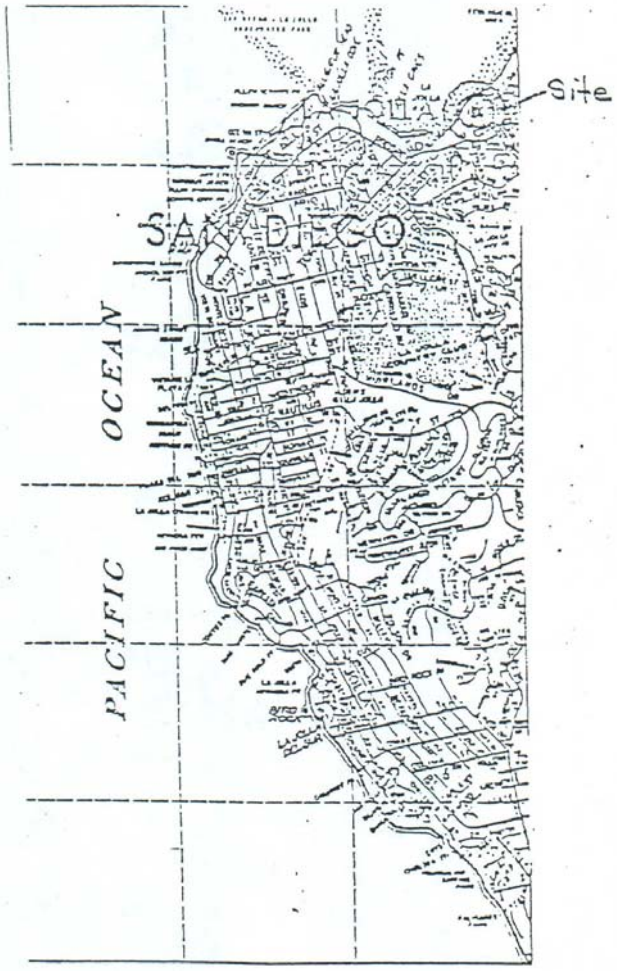

EXHIBIT 1

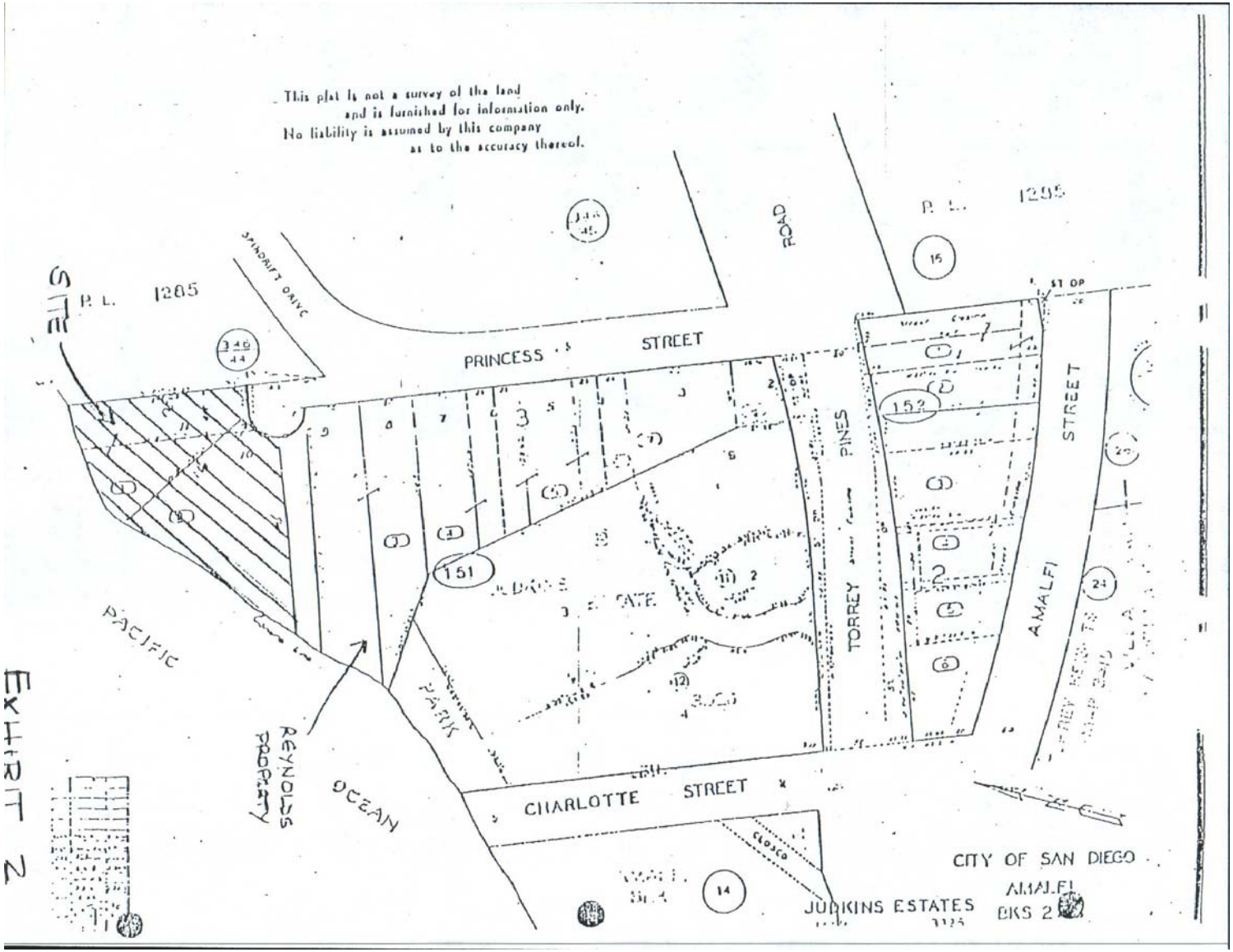
This plat is not a survey of the land
and is furnished for information only.
No liability is assumed by this company
as to the accuracy thereof.
SITE
P. L. 1285
P. L. 1295
SPINDRIFT DRIVE
PRINCESS STREET
ROAD
PINES
TORREY
AMALFI
STREET
151
152
15
14
24
PACIFIC
OCEAN
PARK
REYNOLDS PROPERTY
CHARLOTTE STREET
CLOSCO
JUDKINS ESTATES
CITY OF SAN DIEGO
AMALFI
BKS 2

EXHIBIT 2

EXHIBIT
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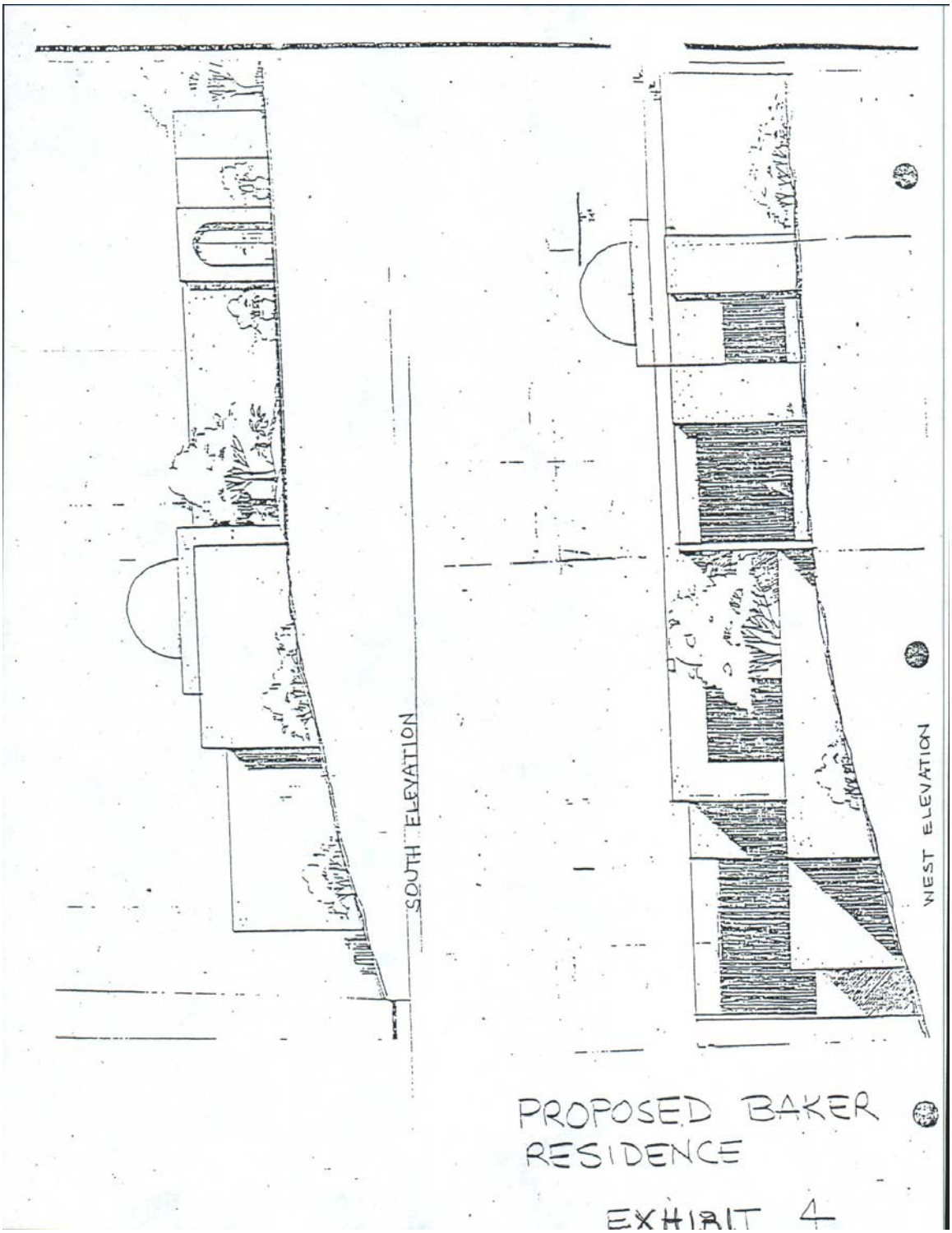
BASE OF CLIFF
TOP OF CLIFF
485
EXISTING HOUSE
ADDITION
52
EXHIBIT 3



PROPOSED BAKER RESIDENCE

EXHIBIT 4

The Coast Walk Trail

Legal Description:

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

Historical Background:

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

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

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

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

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

EXHIBIT NO. 8
APPLICATION NO.
A-133-79-A2/F6760-A3
History of Coast Walk/Devil's Slide and Angel's Flight Stairway

California Coastal Commission

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

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

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

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

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

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

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

to the beach were burned beyond repair.

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

Historical Significance:

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

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

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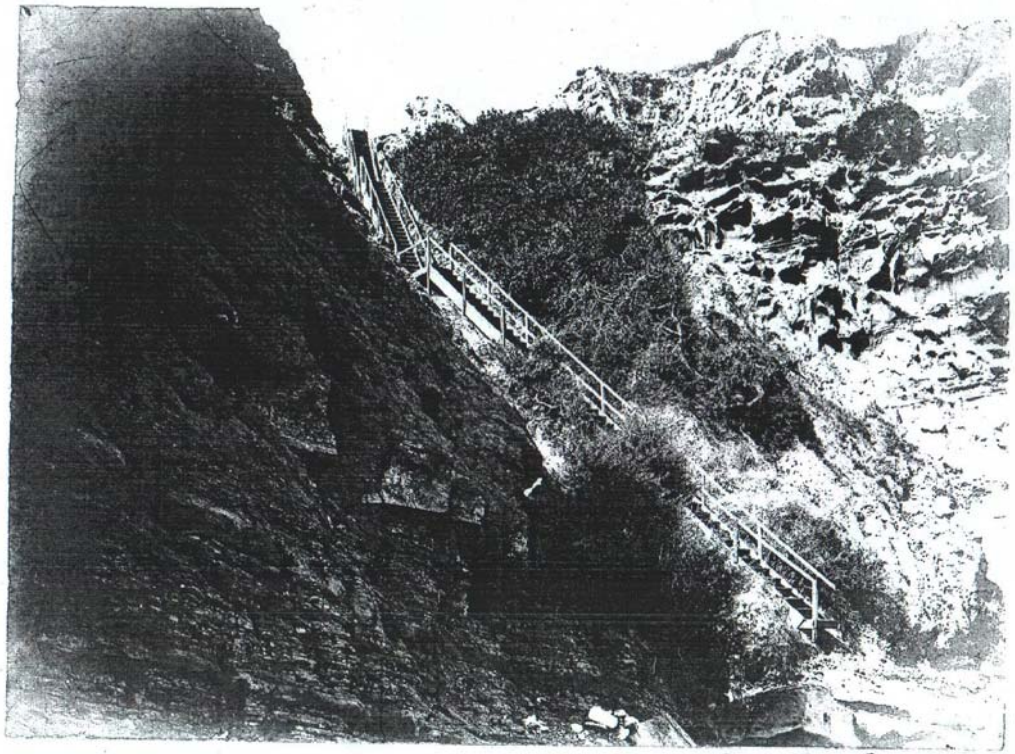

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