

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



Th 14a & b

Addendum

Click here to go
to the original staff report.

July 12, 2011

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Th 14a & b**, Coastal Commission Permit Application
#A-133-79-A5/F6760-A6 (Kretowicz), for the Commission Meeting of
July 14, 2011

Staff recommends the following changes be made to the above-referenced staff report:

1. On the first page of the staff report, the project description shall be revised as follows:

Proposed

Amendment: Modify the requirements pertaining to an offer to dedicate a vertical public access easement as follows: 1) Record an OTD for public vertical access on the subject site consistent with the requirement of the original Commission decision on the appeal, but the OTD will not be opened or made available for use by the public until sometime in the future. Specifically, the applicants are proposing that once accepted, the easement could not be opened until the first of the following occurs:~~upon either,~~ (1) the sale of the property (not including transfer of title to their children); ~~or,~~ (2) ~~the latest of the following events:~~ (a) neither permittee nor their children if they no longer occupy the home as their primary residence; ~~or,~~ (c) 45 years. What this would mean is that the OTD would be recorded prior to issuance of the permit and could then be accepted by an appropriate agency/entity (subject to the approval of the Executive Director), but could not be opened to the public until an unknown date, not to exceed 15 years from the death of the current owners ~~which could be as late as 45 years from recordation of the OTD.~~ In addition the applicants are proposing after-the-fact approval for improvements, modification and additions to the existing residence resulting in a 7,388 sq. ft. two-level home and installation of a spa/water feature in the southwestern rear yard area.

2. On Page 2 of the staff report, the last paragraph shall be revised as follows:

Summary of Staff's Preliminary Recommendation:

Staff recommends that the Commission approve the proposed amendment subject to special conditions. Relative to public access, there is evidence of historic public access on the site and the Commission has previously found that public access should be provided on the subject site. However, given the unusual circumstances surrounding development on the site and property ownership, Staff recommends that the Commission accept the applicants' request to defer the opening until the property is sold or upon the non occupancy or death of both the current applicants. However, staff recommends the Commission not accept such a deferment for 45 15 years after the death of the two applicants, as proposed by the applicants. A hard-deadline of as many as 4-15 years after the death of the applicants is too long, especially given that public access has not been available on the subject site since 1979, and could result in the opening of the accessway being delayed for many years into the future. Special Condition #1 details the revised OTD provisions.

3. On Page 3 of the staff report, the first complete paragraph shall be revised as follows:

The applicants are also seeking approval for a number of improvements to the blufftop home that have been completed without benefit of a CDP, including an addition to the home and ~~a new jacuzzi-spa and decks~~. The City has reviewed and approved these improvements through both Neighborhood and Site Development permits. Staff has found that most of the proposed after-the-fact improvements are acceptable and consistent with the certified LCP. However, the project includes the construction of a new ~~jacuzzi-spa~~ that partially extends over the canyon edge ~~into the steep hillside area of the site~~. Spas are specifically prohibited in steep hillside areas under the provisions of the certified LCP. However, the applicants have provided technical reports that suggest that the upper limits of the coastal canyon on the site are comprised of fill, and therefore are not natural. Given that the Steep Hillside provisions of the certified LCP only protect steep slopes with a natural gradient that exceeds 25%, if the upper limits of the slope are determined not to be a natural gradient, the steep hillside provisions would not apply in this area. Because we have only conceptual plans at this time ~~Therefore~~, staff is recommending that ~~revised-final~~ plans be submitted which ~~relocate~~ document that the spa is sited outside of the natural steep hillside area. In addition, staff recommends that all "prior to issuance" special conditions be satisfied within 60 days of Commission action and that ~~the portions of the home to be removed~~ the removal of all improvements required to be removed occur with 90 days of issuance of the permit amendment. With the proposed conditions, the project is consistent with the certified LCP and public access provisions of the Coastal Act. Therefore, staff recommends the Commission approve the amendment request, subject to the special conditions detailed herein.

- ### **1. Lifeguard Emergency Vertical Access.**

AMENDMENT, the applicants 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 be consistent with the final plans approved by the Executive Director pursuant to Special Condition #4a, which generally consists of a corridor 5 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 4 feet from the southern edge of the house to the southern boundary of the property (ref. revised Exhibit #12). The grant of easement shall require the permittee to provide the grantee with a key to the gate or other means to allow access by the lifeguards. The grant of easement shall include a formal legal description of the entire project site and a metes and bounds legal description and corresponding graphic depiction prepared by licensed surveyor of the easement area. 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.

5. On Page 5 of the staff report, Special Condition #2 shall be revised as follows:

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. The document shall provide that the offer of dedication shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property.
- B. The document shall provide that upon acceptance of the offer, the easement shall not may be opened and available for public use until when the first of the following occurs: 1) fee title of the property is transferred from the current fee title holder to any other person(s) or entity(ies) except to the applicants' children (Ravean Kretowicz and Alexandra Kretowicz); 2) neither permittee (Ure Kretowicz and Dianne Kretowicz) nor either of their children (Ravean Kretowicz and Alexandra Kretowicz) occupies the home as their primary residence and either of their children, or both of them, do not succeed to title to the property; or 3) neither permittee (Ure Kretowicz and Dianne Kretowicz) occupies the home as their primary residence and either of their children, or both of them, do succeed to title to the property, but neither of them occupy the property as their principal residence or if so occupied initially, cease such occupation; or, 4) upon the death of both permittees (Ure Kretowicz and Dianne Kretowicz).
- C. The entire easement area (described in Special Condition 2(E)) shall be available for a footpath, stairway, or any combination of footpath and stairway, and an additional 5 feet of easement area shall be available for construction and maintenance activities related to a footpath and/or stairway and for open fencing and landscape screening as described in Special Condition 2(D). Once a footpath has been delineated and/or a stairway built, public access shall not occur outside the alignment of the footpath or stairway except as necessary for repair and maintenance, or as necessary to relocate the accessway due to erosion or other geologic factors affecting the safety of public access.
- D. After acceptance of the easement and when available for public use, the grantee shall have the right to build a public access stairway down the bluff leading to the ocean pursuant to all required government approvals, and shall replace or modify the gate and fence across the entrance to the easement to allow for public use in an architectural style and materials consistent with the home at the time. Upon completion of construction of access improvements and prior to opening the accessway to the public, the grantee shall install open fencing and landscape screening consistent with the City of San Diego's standards and the existing landscaping and architecture of the residence along the boundary of the vertical public access area (within the construction easement area) to separate the easement area from the residential portion of the property, provided that such open fencing does not block or impede the public views from, or the public's use of the vertical public access easement. The vertical public access easement shall be open daily, from one half hour before sunrise to one half hour after sunset. The grantee accepting the easement shall assume responsibility for maintenance of the easement and liability for public use of the easement.

- E. The area of dedication shall be consistent with the final plans approved by the Executive Director pursuant to Special Condition #4a, and shall generally consist of: (1) an area 4 ft. wide measured from the southern edge of the house between Princess Street Right of Way and the western limit of the house; (2) two approximately 5 ft. wide easement areas: (a) The first shall be a corridor 5 feet wide generally along the southern boundary of the property, and shall extend from the western limit of the house to the coastal canyon floor, and (b) from the Princess Street Right of Way to the mean high tide line, 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 (ref. Exhibit #12). The second easement area shall consist of a 5 foot wide construction/maintenance easement that shall be provided adjacent to the access easement in order to facilitate construction of and any necessary maintenance for the accessway and to provide an area in which the grantee may establish fencing and landscape screening, as provided in Special Condition 2(C) and 2(D); and, (3) a 10 foot wide area within which a 5 foot wide accessway shall be established following the canyon floor's natural topography first northwest then southwest to the lateral access easement at the toe of the bluff, required by Special Condition #3. After construction of the accessway, the grantee may use the area of the construction/maintenance easement to perform maintenance on the accessway upon providing 3 business days written notice to the property owner prior to performing any such maintenance. A map identifying these areas is shown on revised Exhibit #12.
- F. The recorded document shall include a legal description of both the entire project site and a metes and bounds legal description and corresponding graphic depiction prepared by licensed surveyor of the easement area (including the 5 foot wide construction easement area). 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 ~~80~~ 21 years, such period running from date of recordation. 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.
6. On Page 7 of the staff report, Special Condition #4 shall be revised as follows:

4. Revised Final Plans. **WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT,** or within such additional time as the Executive Director may grant for good cause, the applicants 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 Marengo Morton Architects, dated 3/15/10, except the plans shall be revised as follows:

a. The location of the offer to dedicate a vertical public access easement, as described in greater detail in Special Condition #2, shall be clearly delineated on the site plan. The easement shall be ~~540~~ ft. in width, with approximately 5 ft. depicted as an access easement and an additional 5 ft. wide construction/maintenance easement. The easement area shall commence at the street along the southern side yard in the area where there are steps. Beyond the existing steps/stairway, the access easement shall extend in a westerly direction along the southern property boundary until approximately the 25 ft. MSL elevation contour (coastal canyon floor) where it shall then extend in a northwesterly direction for approximately 45 ft. following the canyon floor's natural topography, then southwesterly traversing down the face of the bluff to the beach (ref. revised Exhibit #12).

b. The proposed spa/water feature located in the rear yard shall ~~be revised such that it does not~~ extend into the LCP identified steep hillside area (as depicted on Exhibit #2). The location of the steep hillside area identified on Exhibit #2 may be revised, subject to review and approval of the Executive Director, based on further review of existing or additional geotechnical information documenting the extent of fill on the hillside area. In addition, the spa cannot be sited any closer than 25 ft. from the edge of the coastal bluff. A spa protection plan, prepared by a licensed professional, must also be prepared to mitigate for potential geologic instability caused by leakage of the proposed spa. The protection plan must include, at a minimum, the following measures: 1) installation of a spa leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the spa which is separate from the water meter for the house to allow for the monitoring of water usage for the spa; 2) use of materials and spa design features, such as, but not limited to, double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and, where feasible 3) installation of a sub drain or other equivalent drainage system under the spa that conveys any water leakage to an appropriate drainage outlet. The design and improvement of the spa shall comply with the final spa plan approved by the Executive Director.

[...]

d. 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~~ seaward of the residence adjacent to the coastal bluff) area must be "at-grade" and located no closer than 5 ft. from the top edge of the existing ~~slope~~/bluff. Accessory improvements in the rear yard west of the home and adjacent to the coastal canyon area shall also be identified and shall be consistent with the accessory improvements shown on the plan approved pursuant to Special Condition #4b.

- e. The following shall be added as a note on the project plans:

“~~Other than those improvements approved herein, No~~ development within 25 ft. of the identified bluff edge shall be allowed except for at-grade accessory improvements that are at least 5 ft. from the identified bluff edge.”

The applicants 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.

7. On Page 8 of the staff report, Special Condition #5 shall be revised as follows:

5. Revised Landscape/Yard Area Plans. **WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, or within such additional time as the Executive Director may grant for good cause,** the applicants shall submit to the Executive Director for review and written approval, revised landscaping plans approved by the City of San Diego. The plans shall be in substantial conformance with the plans as submitted by Marengo Morton Architects dated 3/15/10, except for the revisions cited below. The plans shall be revised to keep the side yard (south of the residence) clear to enhance public views toward the ocean. Specifically, the plans shall be revised to incorporate the following:

[...]

8. On Page 10 of the staff report, Special Condition #9 shall be revised as follows:

9. Future Development. This permit is only for the development described in coastal development permit No. ~~A-133-79-A5/F6760-A6~~, as amended. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future improvements to the proposed single family residence, including, but not limited, to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. A-133-79-A5/F6760-A6, as amended from the California Coastal Commission.

9. On Page 11 of the staff report, Special Condition #10 shall be revised as follows:

10. Open Space Restriction. No development (except for removal of flood lights, capping or removal of irrigation, replacement of dead vegetation to prevent erosion, construction of public access improvements (including open privacy fencing and landscape screening), as defined in section 30106 of the Coastal Act shall occur on that portion of the bluff face seaward of the bluff edge and the steep hillside area in the southwestern portion of the site (as depicted on the plan approved pursuant to Special

Condition #4b documenting the location of the steep hillside area in its current location on “Site Plan” by Marengo Morton Architects dated 3/15/10). This prohibition on development shall apply to the bluff face as the location of the bluff edge changes over time, due to erosion or other disturbances. The current location of the bluff face and steep hillside area shall be described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

[...]

10. On Page 11 of the staff report, the following shall be added as new special condition #14:

14. Memorandum of Agreement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the property owner(s) shall enter into a Memorandum of Agreement (MOA) with the Commission, agreeing to provide notice to the District Manager of the Commission’s San Diego District Office if any of the following occur:

- fee title of the property is transferred from the current fee title holder to any other person(s) or entity(ies) except to the applicants’ children (Ravean Kretowicz and Alexandra Kretowicz).
- neither permittee (Ure Kretowicz and Dianne Kretowicz) nor either of their children (Ravean Kretowicz and Alexandra Kretowicz) occupies the home as their primary residence.
- upon the death of both permittees (Ure Kretowicz and Dianne Kretowicz).

The applicant shall record the MOA as a deed restriction on the parcel(s) governed by this permit. The deed restriction shall be in a form and content acceptable to the Executive Director. The document shall be recorded free of prior liens and other encumbrances.

11. On Page 12 of the staff report, the Amendment Description shall be revised 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 3,693 sq. ft. addition to an existing 2,970 sq. ft. single-family residence in 1979. The proposal is to revise the terms of the requirement to record an offer to dedicate vertical public access easement and approval of various other improvements, both new and after-the-fact. Specifically, the amendment request includes:

(1) The applicants propose to revise the terms of the existing requirement for recordation of an offer to dedicate vertical public access easement as follows:

- (a) Vertical Public Access: The applicant will record an irrevocable offer to dedicate to a public agency or private association approved by the Executive Director, an easement for public pedestrian access to the shoreline which shall be 4-5 ft. wide

and run within a 10 ft. area generally along the southern property boundary as depicted generally on Exhibit #12. However, the easement will not be opened and made available to the public until the first of the following occurs: 1) either the applicants sell the property to a third party; 2) neither the applicants nor their children occupies the home as their primary residence; or 3) 15 years following the death of both the applicants~~both applicants pass away and do not leave the property to their children, or, if the property is left to the children, so long as it is occupied as one child's principal residence, for a period of 45 years from the date of recording.~~

[...]

12. The last paragraph on Page 20 and the first paragraph on Page 21 shall be revised as follows:

The applicants have proposed at this time to record an OTD for public vertical access on the subject site consistent with the requirement of the original Commission decision on the appeal. However, the applicants are also proposing that the OTD not be opened or made available for use by the public until sometime in the future. Specifically, the applicants have proposed that once accepted, the easement could be opened upon either, (1) the sale of the property (not including transfer of title to their children); ~~or,~~ (2) ~~the latest of the following events: (a) if they~~ the applicants or their children no longer occupy the home as their primary residence; or, (3) 15 years following (b) upon the death of both applicants; ~~or (c) 45 years.~~ What this would mean is that the OTD would be recorded prior to issuance of the permit and could then be accepted by an appropriate agency/entity (subject to the approval of the Executive Director), but could not be opened to the public until an unknown date, which could be as late as ~~45~~ 15 years following the death of both the applicants ~~from recordation of the OTD.~~

In this particular case, the Commission has found previously that there was historic public use of the site for beach access and as such, access across the site must be protected. While the applicants' proposal has merit and will assure public access is eventually provided, deferring such access for as long as ~~45~~ 15 years from the death of both applicants is too long, especially given that access has not been available on the site since 1979. However, given the unusual circumstances associated with the subject site and the fact that the current property owner was not the owner when the original access easement was required (but is several times removed), the Commission finds that it can accept the applicants' request only if the provision to wait up to ~~45~~ 15 years from the death of both applicants is deleted. Without this provision, the access could be opened and made available to the public upon the earlier of the transfer of the property, or upon non occupancy by the permittees or their children, or the death of the current property owners. Special Condition #2 is proposed to reflect the change to the OTD from the applicants' proposal and the requirements that must be included in the OTD. The condition details when the easement will be opened, its general alignment and the type(s) of improvements that could occur within the easement to facilitate public access. Special Condition #14 addresses how the Commission office is to be notified when one of the triggers is met in the future to allow the access to be open.

This condition requires a Memorandum of Agreement (MOA) between the applicants and the Commission be drafted and recorded. The MOA requires that the property owner(s) notify the local Commission office when there is a transfer of the property, non-occupancy by a family member and/or upon the death of either of the applicants.

13. On Page 29 of the staff report, the last paragraph continuing onto Page 30 shall be revised as follows:

More importantly, as cited above, the steep hillside guidelines specifically prohibit encroachment into steep hillsides for accessory improvements such as spas. Thus, if the proposed spa ~~that~~ encroaches onto steep hillsides, it is not consistent with the certified LCP. However, at this time, the exact extent and location of the steep hillside area has not been determined due to the applicant's assertion that the upper limits of the canyon area has been filled in the past and is thus not a natural gradient. The applicant has presented geotechnical information supporting that fill exists in this area. The Commission's Staff Geologist has reviewed the presented information and confirms that fill is present in this location. However, he cannot, based on his review of the information, identify the extent of the fill at this time and thus, the location of the steep hillside area cannot be specifically identified. After further review of the information and possibly some additional soil borings, the Commission's staff geologist could better identify the extent of the fill. Therefore, Special Condition #4b allows for the submittal of additional information for review and approval of the Executive Director, documenting the extent of the fill and the location of the steep hillside area and also requires that the applicants submit ~~revised-final~~ plans that show the spa ~~has been relocated such that~~ is does not encroach into the LCP defined steep hillside area of the site as determined by the Executive Director. In order to reduce the potential for impacts to the adjacent natural hillside and bluff area resulting from a leaking spa, Special Condition #4b also requires that a spa protection plan be prepared and, that the applicants include such plan in the design and improvement of the spa.

14. Replace Exhibit #12 attached to the staff report with the revised Exhibit #12.



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Th 14a/b

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Received at Commission
Meeting

JUN 15 2011

From: _____

Date and time of communication:

June 13, 2011 1:30pm

Location of communication:

Conference Call

(If communication was sent by mail or
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication:

Dana Murray
Sarah Sikich - ~~Hartley Bay~~

Identity of person(s) receiving communication:

Dayna Bohco ORCA

Name or description of project:

La Jolla Public Access Easement
Kretowicz

Description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

Offer to dedicate shouldn't be removed
unless access (safe) to same beach.
Locals very opposed. Low tide/
unsafe access - other access not
safe.

6/13/11

Date

JUN 11 2011

Signature on file

Signature of Commissioner

If communication occurred seven (7) or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director **within** seven (7) days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven (7) days of the hearing, **complete** this form, provide the information **orally** on the record of the proceeding **and** provide the Executive Director with a copy of any written material that was part of the communication.

Ex Parte Communications

APPENDIX 2

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Th 14 a/b

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS**

Name or description of project, LCP, etc.: Th 14 a&b Permits No F6760-A6 & A-133-79-A5 (Kretowicz, San Diego)

Date and time of receipt of communication: 7/5/11 9:00 am

Location of communication: Office of the Board of Supervisors, Santa Cruz, CA

Type of communication: In-person Meeting

Person(s) initiating communication: Sarah Damron
Margie Kay
Grant Weseman

Person(s) receiving communication: Mark Stone

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

JUL 11 2011

Speaking for: Sierra Club North County Coastal Group

Discussion of claims made by applicant's legal representative concerning lack of disclosure of requirement to make OTD for public access across property upon purchase of property.

Discussion of claims made by applicant's legal representative concerning cause of extended time frame for reaching settlement on disputed items. Suggested that applicant's own actions were as much to blame for delay with repeated postponements, withdrawals and re-applications being the norm.

Discussion of previous owner's (Baker) failure to sign CDP in 1979 and effect of that on applicant's performance or lack of same vis a vis recording of OTD.

Noted that previous owner's CDP was returned to CCC after appeal and judicial review found public access elements lacking.

Additional observations made concerning historical/pre-historical values at play in area of Princess St. Presence of ancient artifacts and indications that Native American

cultures used this same access point to forage for food on the beach and tidepools some 6,000 years ago were discussed.

Popularity of this area, encompassing the La Jolla Cove, Caves and Park as well as underwater reserve in close proximity to the immensely popular La Jolla Shores area for families and recreationists of all types puts the Princess St. access very high on the priority list for immediate and long term preservation

Date: 7/6/11 Signature of Commissioner: Signature on file

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred within seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used; such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

27

Th14a/b

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION

RECEIVED

JUL 07 2011

CALIFORNIA
COASTAL COMMISSION

Date and time of communication:

July 7, 2011-10a.m.

(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

Location of communication:

Commissioner McClure's Office

(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Person(s) initiating communication:

Maggy Herbelin, Local ORCA Representative

Person(s) receiving communication:

Commissioner Marsha McClure

Name or description of project:

a. Permit No. F6760-A6 (Kretowicz, San Diego) Request by Ure and Dianne Kretowicz to amend permit for home addition to revise the terms of required public access easement and after-the-fact authorization for various improvements to home on blufftop lot, at 7957 Princess Street, La Jolla, San Diego, San Diego County. (LJM-SD)
b. Permit No. A-133-79-A5 (Kretowicz, San Diego) Request by Ure and Dianne Kretowicz to amend permit for home addition to revise the terms of required public access easement and after-the-fact authorization for various improvements to home on blufftop lot, at 7957 Princess Street, La Jolla, San Diego, San Diego County. (LJM-SD)


Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

Ian Trowbridge as member of San Diego ORCA chapter.

Deny amendment, it sets an unacceptable precedent.

Date: July 7, 2011

 Signature on file
Martha McClure, Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Coastal Commission Fax: 415 904-5400

JUL 11 2011

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July 11 2011

Th14a/b

July 10, 2011

To: California Coastal Commissioner Sanchez
Via: email: esanchezccc@aol.com

RE: Coastal Commission Hearing on July 14, 2011, Agenda Item 14a and 14b. Permit Numbers: F6760-A6 and A-133-79-A5 (Kretowicz, San Diego)

Dear Coastal Commission Sanchez:

Thank you for your comments on this matter at the Commission's June hearing on this matter. I am writing to provide you as the regional representative of the California Coastal Commission (CCC), with information from the Commission's record that supports preserving the State Commission's September 20, 1979 decision to protect the public's historic trail to the beach at the subject site. Since that period and during the last decade, the Staff and Commission (and the Community and City of San Diego) have wrestled with the applicants (Kretowicz) over their many unpermitted development activities. During the hearings on these matters the applicants and their representatives have argued their ignorance of the regulations and past decisions to regulate development at this site. Please consider the following information that I believe may have not been directly included in the Staff Reports or made clear to the Commissioners during their deliberations on this matter.

1) 1977/8: CCC Permit 5265 (Baker) to redevelop this property was denied by the Commission due to its large scale on the coastal bluff. The Staff Recommendation recommended denial, HOWEVER, it included access findings that if approved, recommended an Offer to Dedicate and Easement to protect the public's historic access to the shoreline from Princess Street across the subject site.

2) September 20, 1979: CCC Permit F6760 and Appeal 133-79 (Baker) After the efforts of the community organizations and individuals, local, State, and Federal agencies and other Californians failed; and upon a Writ of Mandamus, the State CCC voted unanimously to require Special Conditions for an Offer To Dedicate an Easement to protect the public's access to the shoreline in a manner to accommodate the applicant's previously approved expansion of their house. (It is important to understand that the size and alignment of the proposed easement was carefully delineated based upon the State CCC Guidelines to protect the privacy of the applicant and to allow them the full benefit and enjoyment of their development. That easement was crafted at an onsite tour with CCC Staff and local officials from the City Park and Recreation, Lifeguards, SD Diving Council. It was intended to provide the general public's access and protect the occasional emergency access use by the Lifeguards.)

3) December 6, 1979: "...Ciani filed a violation complaint with the Commission alleging that the Bakers had failed to make an irrevocable offer of dedication, and instead had physically blocked the public access easement by constructing an 8 foot wrought iron fence at the entrance to the easement." (Excerpt from letter in the CCC record to Anthony Summers, Deputy AG and copy to CCC from USD Environmental Law Clinic dated January 30, 1980.

4) January 30, 1980: Ibid - Same letter: "Some time after the violation complaint was filed the Commission, in Executive Session, voted to find a violation and refer the matter to your [Anthony Summers, Deputy AG] office."

5) April 9, 1980: AG Memorandum to: Bill Boyd, Staff Legal Counsel, CCC from Anthony M. Summers, Deputy AG, Subject: Enforcement Action -- Baker Permit: "In December 1979, the State Commission requested our office to undertake an enforcement action relating to the access requirement of the Baker Permit. As you will note from the attached memorandum, on January 11, 1980, I requested that the necessary information to commence an enforcement action be forwarded. No information has been received as of this date." (penciled on the bottom of that memo: "Caren please send him the staff rec on Jane Baker (179 action) and all memos in the file from T.Ciani's group about the violation Thanks, Jan (Tuik) the key CCC Staff member.")

The point is that throughout the last decade including at the last June 2011 hearing, the applicant/applicant's agents have argued there has been no action, no interest in this access point. And, Staff has not refuted that claim with the empirical evidence from the record. Moreover, Mr. Kretowicz is a General Contractor and has owned and operated several large home-building company's, which according to the State Licensing Board started in Del Mar, California in 1983. According to those records, he has renewed his license/s in the coastal areas of California since then. Therefore, it is hard to believe he was not aware of the CCC jurisdiction at the time he purchased the subject site in 1994, and did not then review the current applicable development and zoning regulations, including the adopted 1983 La Jolla LCP Land Use Plan in effect. The Coastal Act of 1976 and the policies in LJ LCP were in effect when he commenced his unpermitted spree of development starting in the late 1990's.

6) LJ LCP Addendum (1983) was the effective law of the land when Mr. Kretowicz purchased the property and when much of the work part of this permit amendment was conducted without permits. Pages 42-43 Subarea D under Shoreline Access, Site a. Description states: "Princess Street. As a condition of a permit to build a single family house, the State Coastal Commission required the Owner of the bluff top lot to dedicate a 4-foot wide vertical easement along one side of the property from the Princess Street cul-de-sac to the shoreline." It goes on to describe the possibility of future litigation by the AG.

7) 2000 - Present: The applicant had factual notice of this requirement when he was informed by the City and CCC in the late 1990's and early 2000's, that he needed a CDP for the work he was performing without City and/or Coastal Permits (The Community and Sierra Club and other individuals opposed that work at that time and demanded.) At the June 2011 hearing the applicant's agent, Sherman Stacy, stated that for 22 years no one said anything about the access, no one cared about it.... "Not one writing until 2001." "The Commission promptly forgot about the [1979] decision." IN FACT, A VIOLATION COMPLAINT WAS FILED IN 1979; AND, DURING THE APPROVAL OF THE LCP LUP, THE REQUIREMENT FOR AN OTD WAS NOT FORGOTTEN; IT WAS ADOPTED INTO THE LCP IN 1983 FOR FUTURE IMPLEMENTATION. AT LEAST SINCE THE TIME HE WAS ORDERED TO STOP WORK AND OBTAIN PERMITS, ca. 2000, HE HAS KNOWINGLY BEEN IN THE JURISDICTION OF THE CCC, BUT WILLFULLY CONTINUED HIS IRREFUTABLE UNPERMITTED DEVELOPMENT ACTIVITIES.

THE APPLICANT'S DEVELOPMENT IS A FLAGRANT VIOLATION THAT MUST BE PURSUED AS VIOLATIONS.

HIS WORK IN THE PUBLIC ROW MUST BE DENIED AND REMOVED, NOT APPROVED AFTER-THE-FACT.

ALL OF THE CONSTRUCTION THAT WOULD NOT HAVE BEEN APPROVED IN 1979, SHOULD NOT BE APPROVED TODAY BECAUSE THE PROTECTION STANDARDS HAVE BEEN INCREASED REGARDING BLUFF TOP DEVELOPMENT.

ALL OF THE CONSTRUCTION IN THE REQUIRED VERTICAL ACCESS OTD EASEMENT AREA, AND THE OTHER LATERAL ACCESS AREAS MUST BE DENIED AND REMOVED, NOT APPROVED AS AFTER-THE-FACT PERMISSIONS.

FINES AND PENALTIES MUST BE APPLIED TO COVER THE SIGNIFICANT ADVERSE IMPACTS AND LOSS OF PUBLIC ACCESS SINCE A MINIMUM, THE YEAR 2000 WHEN THE APPLICANT WAS DIRECTLY MADE AWARE OF THE LAW AND HIS VIOLATIONS.

3

July 10, 2011

To: Coastal Commissioner Sanchez

RE: Coastal Commission Hearing on July 14, 2011, Agenda Item 14a and 14b. Permit Numbers: F6760-A6 and A-133-79-A5 (Kretowicz, San Diego)

Cont.
FINALLY, TO THE MERITS OF THE PUBLIC'S ACCESS: THE FOUR (4) BOXES OF CCC FILES ARE FULL OF WRITTEN AND PHOTOGRAPHIC EVIDENCE OF THE PUBLIC'S INTEREST IN SECURING ACCESS AT THIS LOCATION TO THIS POCKET BEACH, NOT ANOTHER ONE. AND THAT INTEREST IS SUPPORTED TODAY BY MORE LETTERS FROM CITIZENS AND COMMUNITY GROUPS. IT IS OF PARAMOUNT INTEREST TO PROTECT THE INTEGRITY OF THE COASTAL ACT AND PAST COMMISSION'S DECISIONS TO PROTECT THE PUBLIC'S INTEREST AND ENJOYMENT OF THE COASTAL RESOURCES AND ACCESS TO THEM.

A DECISION TO APPROVE THE PROPOSED AMENDMENTS, THAT CURRENTLY, AND WOULD INTO THE FUTURE, INTERFERE WITH THE PUBLIC'S ACCESS WOULD BE CONTRARY TO THE COASTAL ACT (CA SECTION 30211). APPROVAL OF THE PROPOSED DEVELOPMENT IS NOT SUPPORTED BY THE OVERWHELMING EVIDENCE IN THE RECORD; AND, IT WOULD BE AN ABUSE OF DISCRETION TO APPROVE THAT CONSTRUCTION TODAY.

For 32 years, the various property owners of the subject property, have enjoyed the benefit of the entire large development they originally sought and built on a sensitive coastal bluff. They have had and continue to have a reasonable and beneficial use of their land. On the other hand the public has been locked out of the historical trail that dates back before the land was subdivided (as evidenced by archaeological discoveries of the La Jollan I and II periods from more than 4,000 years ago) and testimony from the 20th century in the CCC's files. Now, even a portion of the dedicated Public Right of Way has been privatized by the applicants with unpermitted private walls, fences and paving.

There is so much rich and wonderful information in the Commission's files about the intrinsic value and importance of this section of shoreline, which is a State Marine Reserve and Underwater Park that has provided enjoyment and education for so many past generations, and with the capacity to serve current and future generations; it must not be neglected any longer by the Commission.

Sincerely,

Tony Ciani
(858) 454-7141

32

Th 14a/b

Lee McEachern

From: Jay McDonald [jaymcd@verizon.net]
Sent: Monday, July 11, 2011 12:11 PM
To: Lee McEachern
Subject: Re; Kretowicz Permit # A-133-79-A5/F6760-A6

Dear Mr. McEachern and California Coastal Commission members,

We the undersigned are the beneficiaries of the Jean Holmes McDonald Trust which is the owner of record of the property at 1834 Spindrift Dr.

For many years now Mr. Ure Kretowicz has been developing his property without bothering to notify, let alone obtain the approval of, the California Coastal Commission. He has added walls, and rooms, effectively doubling the size of his house and vastly increasing its value.

Mr. Kretowicz's insistence on playing by his own rules and thumbing his nose at the coastal commission for so many years should not be allowed. I would hope that the California Coastal Commission would require Mr. Kretowicz to demolish those parts of his house that were built without approval. At the least we would request that Mr. Kretowicz be assessed a fine commensurate in some degree with the increased value of his illegally modified home and that he be required to demolish any structures or improvements if any that have been built on public lands or right of ways or for which permits would have been denied had they been applied for. I notice with some irony that Mr. Kretowicz after years of acting as his own court of approval has now decided to actually ask the coastal commission for permission to build yet another improvement.

At some point a couple of years ago Mr. Kretowicz, as I understand it, offered to donate land for a postage stamp Park and pay an undisclosed sum in exchange for the coastal commission retroactively permitting all of his improvements. This strikes me as being akin to a criminal proposing his own sentence to a judge.

We have also noted over the years that Mr. Kretowicz has been manipulating the scheduling of Coastal Commission hearings so as to make it as difficult as possible for his neighbors to attend. We received notice of the public hearing on Tuesday, July 6 only eight days before the hearing itself. We do not believe that Mr. Kretowicz's hearing is in San Rafael California by accident. We understand that the Coastal Commission is under a deadline vis-à-vis this property and that this is the last possible hearing date but feel that Mr. Kretowicz has been using delays and smokescreens over the last several years to mitigate if not eliminate local opposition.

Thank you for your time and attention to this issue,

Sincerely Yours,
Jay H. McDonald
Virginia McDonald Miller

Letters of Comment

33

By Facsimile from Becky & Ralph O'Connor, 1819 Spindrift Drive, La Jolla, CA 92037

July 12, 2010

California Coastal Commission
c/o Mr. Lee McEachern, Coastal Planner
San Diego Coast District Office
7575 Metropolitan Drive, Ste. 103
San Diego, CA 92108-4402

Re: Application NOs. A-133-79-A5/F6760-A6; 7957 Princess Street, La Jolla Agenda Items 16.a and b. (Wednesday, June 15, 2011)

Honorable Commissioners:

Personally we are in favor of NO vote on the establishment of a public beach access between the residence of Ure and Dianne Kretowicz at 7957 Princess Street and the residence of David and Marlene Reynolds at 7964 Princess Street in La Jolla, California 92037.

We feel that all the neighbors have made good points about safety and need for more beach access on our coast; however, I think we are missing the big issues.

Our gut feeling is that at the location for the 5 foot access under discussion is a disaster waiting to happen. If approved, down the road, our neighborhood will be saddened by a horrible accident as the access is unsafe. In our opinion, we (State of California) would be better off spending any money derived from this hearing on beach access at a safer location.

Most Sincerely,

Signature on file



Ralph S. O'Connor
1819 Spindrift Dr.
La Jolla, CA 92037

Signature on file



Becky G. O'Connor
1819 Spindrift Dr.
La Jolla, CA 92037

JUL 12 2011

34

California Coastal Commission

July 11, 2011

RE: KRETOWICZ-A-133-79-A5/F6760-A6

Dear Commissioners,

This is my third letter regarding Kretowicz/Princess Street beach access and I also spoke at the June meeting. I will not repeat what I have said previously but will address the proposed amendment to modify the requirement of a vertical access easement.

I regret that I will not be able to attend this meeting and present my concerns in person this time. I had made plans to travel to San Rafael for the meeting, but had to cancel them due to circumstances that arose last week. The unfortunate consequence of having a hard deadline on the appeal process is that it can result in a decision being made at a meeting not held in the southern California area where the public and affected parties could reasonably attend and participate.

I was heartened at the June meeting when more than half of the commissioners understood that accepting the proposed settlement would result in the de facto creation of a private beach. Several commissioners also understood that the proposed alternate of rebuilding the Angel's Flight stairs would not make the Princess Street beach accessible as it is a long distance from Angel's Flight and the beach at Princess Street can't be reached at higher tides.

I am against the proposed amendment to modify the requirements for an offer to dedicate a vertical access. I believe that the OTD Easement should be recorded immediately and without conditions. The Coastal Commission in 1979 concluded that public access to this pocket beach was important, doable, and required by the Coastal Act. Their decision was an easement should be recorded. Through a series of errors and oversights it never was. Quite simply, this decision you are making now is the only opportunity the public will have for reasonable access to this pocket beach.

The amended conditions being proposed for an OTD Easement to be recorded: on the sale of the property, when the property is no longer the primary residence (how is that determined?), upon the death of both applicants, or after 45 years, will mean that there is little chance for the public to gain access for many, many years.

It is too bad that the vertical easement and the non-conforming structure issues are tied together. They really are two separate issues. Most, if not all of, the non-conforming structures and irrigation/drainage issues occurred after the 1979 Coastal Commission decision and should not be part of the beach access issue. The OTD Easement should be decided separately based on the 1979 decision and the subsequent neglect to file the easement through the years by the various owners.

I ask you to re-affirm the findings which were passed unanimously by the 1979 Coastal Commission and require an OTD easement be filed immediately without conditions, and to not accept any settlement that does not give this result.

Sincerely,

Tim Lucas
8152 Calle del Cielo
La Jolla, CA 92037

35

Th 14a/B

July 11, 2011

California Coastal Commission

VIA EMAIL: Jeff Steban jsteban@coastal.ca.gov

RE: July 14, 2011 Agenda Item 14a & 14b, F6760-A6/A-133-79-A5 (Kretowicz)

Dear Coastal Commissioners:

I am writing to you again in hope that although this case has been procedurally long and complex, you will focus on the central issue in this matter: Balance conflicting Private and Public interests, to allow development of a private home on a sensitive coastal bluff, and protection of coastal resources and public (historic) access and recreational activities to a pocket cove beach that is part of the San Diego Underwater Park and State Ecological Marine Reserve.

I strongly urge you to reject the current staff recommendation and uphold the unanimous decision on September 20, 1979 (133-79, Baker) by the State Coastal Commission, and its findings and approval with Special Conditions to protect vertical and lateral access at the subject site. As is the case today, in 1979, the commission had to address how to carry out the provisions of the Coastal Act after the applicant's house addition was built over a known historic path from the road to the beach. Their decision allowed the development to be completed, but required an Offer to dedicate an "equivalent" easement next to the solid wall of the new garage to connect to the historic trail, at a point out well away from the house to provide privacy to the occupants; and to preserve the public access to the beach. Once again, I believe you must honor the predecessor commissioners' decision as it were yours, and for the same reasons. Therefore, please consider the following:

Private Interests: The property owner/s have had and still have the beneficial and reasonable use of their land.

Public interests: Based upon a preponderance of written and photographic evidence in the record in 1979, the Commission determined: "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." "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 landforms." "The Commission finds that the submitted documents give clear indication of the historic use of the parcel. Because of the historic use and 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 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 access provisions of the Coastal Act."

Now, 32 years later, the record has been expanded with more letters and testimony from citizens and community groups imploring you to protect the access at this site and location. In order for the commission to protect coastal resources, public access and recreational opportunities at this location, and the integrity of the Coastal Act and other precedent cases, you must take all necessary actions to enforce the special conditions of Appeal No. 133-79; and, not approve any violations and/or, after-the-fact amendments that would nullify and/or contradict the predecessor commission's findings and unanimous approval with special conditions.

Respectfully,

Tony Ciani

340 Dunemere Drive, La Jolla, California 92037

37
Letter of Opposition
to STAFF Recommendation

By Facsimile from Becky & Ralph O'Connor, 1819 Spindrift Drive, La Jolla, CA 92037

July 12, 2010

California Coastal Commission
c/o Mr. Lee McEachern, Coastal Planner
San Diego Coast District Office
7575 Metropolitan Drive, Ste. 103
San Diego, CA 92108-4402

Re: Application NOs. A-133-79-A5/F6760-A6; 7957 Princess Street, La Jolla Agenda Items 16.a and b. (Wednesday, June 15, 2011)

Honorable Commissioners:

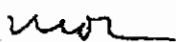
Personally we are in favor of NO vote on the establishment of a public beach access between the residence of Ure and Dianne Kretowicz at 7957 Princess Street and the residence of David and Marlene Reynolds at 7964 Princess Street in La Jolla, California 92037.

We feel that all the neighbors have made good points about safety and need for more beach access on our coast; however, I think we are missing the big issues.

Our gut feeling is that at the location for the 5 foot access under discussion is a disaster waiting to happen. If approved, down the road, our neighborhood will be saddened by a horrible accident as the access is unsafe. In our opinion, we (State of California) would be better off spending any money derived from this hearing on beach access at a safer location.

Most Sincerely,

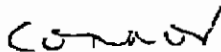
Signature on file



Ralph S. O'Connor
1819 Spindrift Dr.
La Jolla, CA 92037



Signature on file



Becky G. O'Connor
1819 Spindrift Dr.
La Jolla, CA 92037

Date of Public Hearing -- July 14, 2011
Permit Number A-133-79-A5/F6760-A6
Agenda No. TBA
Position -- All of the undersigned are opposed.

July 11, 2011

Sent Via Facsimile and U.S. Mail
Facsimile # (619) 767-2384

Mr. Lee McEachern, Coastal Planner
California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

Members of the Coastal Commission:

All of the undersigned are neighbors of Ure and Dianne Kretowicz.

We wish to state our strong opposition to the development of the proposed public beach access between the residence of Ure and Dianne Kretowicz at 7957 Princess Street and the residence of David and Marlene Reynolds at 7964 Princess Street in La Jolla, California 92037.

An existing public beach access exists just eight houses down the block from the proposed public beach access. The existing public beach access is located on the side of the Marine Room at 2000 Spindrift Drive in La Jolla. The undersigned respectfully suggest that two public beach accesses are not required in such close proximity to each other, and that available funds in this difficult economy could be better utilized to create another public beach access at another location.

The City of San Diego prohibits parking on the narrow portion of Princess Street that terminates at the Kretowicz residence. This portion of Princess Street is only 14 feet wide.

Although several no parking signs are currently in place, automobiles are frequently parked illegally on the narrow portion of Princess Street that terminates at the Kretowicz residence. With the development of the proposed public beach access, there will be an almost certain increase in the number of illegally parked automobiles on this very short and very narrow portion of Princess Street.

Mr. Lee McEachern
California Coastal Commission
July 11, 2011
Page 2

There is very limited room for parking on the portion of Princess Street and Spindrift Drive that is located above the Kretowicz residence. As a matter of fact, the City of San Diego prohibits parking on the portion of Princess Street and Spindrift Drive that is nearest to the proposed public beach access.

The overflow parking from the existing public beach access that is located on the side of the Marine Room will make a very difficult parking situation even more difficult. The development of the proposed public beach access will result in blocked driveways and illegal and double parking throughout our neighborhood.

Drivers often exceed posted speed limits on the portion of upper Princess Street and Spindrift Drive that is located above the proposed beach access. Drivers have traveled onto the sidewalk and run over and knocked down large speed limit signs of the City of San Diego on several occasions in recent years.

Everyone in our neighborhood recognizes that the development of the proposed public beach access could result in an accident between fast-moving traffic and pedestrians who utilize the proposed access.

The undersigned respectfully request the members of the California Coastal Commission to vote no on the establishment of a public beach access between the residence of Ure and Dianne Kretowicz at 7957 Princess Street and the residence of David and Marlene Reynolds at 7964 Princess Street in La Jolla, California 92037.

Respectfully,

The signatures to this letter appear in counterpart as additional pages.

Patrick W. Daniels
7907 Princess Street
La Jolla, CA 92037

Jeanie Daniels
7907 Princess Street
La Jolla, CA 92037

Note -- Patrick W. Daniels is currently traveling in the Netherlands. This letter was discussed with him in detail via telephone, but he was unable to receive a final draft of the letter and counterpart signature page. During a telephone conversation on Monday, July 11, he expressed his strong opposition and the strong opposition of his wife, Jeanie Daniels, to the proposed public beach access between the residences of David and Marlene Reynolds and Ure and Dianne Kretowicz. The counterpart signatures of Patrick and Jeanie Daniels will be forwarded to the Coastal Commission.

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Signature on file

David Reynolds
7964 Princess Street
La Jolla, CA 92037

Signature on file

Marlene Reynolds
7964 Princess Street
La Jolla, CA 92037

Signature on file

Philip Wise
7949 Princess Street
La Jolla, CA 92037

Signature on file

Claire Wise
7949 Princess Street
La Jolla, CA 92037

Signature on file

Joseph W. Checota
7956 Princess Street
La Jolla, CA 92037

Signature on file

Ellen Checota
7956 Princess Street
La Jolla, CA 92037

Signature on file

Ned Buoyamaster
7944 Princess Street
La Jolla, CA 92037

Signature on file

Kathleen Buoyamaster
7944 Princess Street
La Jolla, CA 92037

Signature on file

Elizabeth Court
7931 Princess Street
7939 Princess Street
La Jolla, CA 92037

Signature on file

Jean Reynolds Trimble
7964 Princess Street
La Jolla, CA 92037

Signature on file

Virginia McDonald Miller
1834 Spindrift Drive
La Jolla, CA 92037

Signature on file

Todd Fry
7920 Princess Street
La Jolla, CA 92037

Virginia McDonald Miller
1834 Spindrift Drive
La Jolla, CA 92037

Signature on file

Jay H. McDonald
1834 Spindrift Drive
La Jolla, CA 92037

Signature on file

William Nyhan
1825 Spindrift Drive
La Jolla, CA 92037

Christine Nyhan
1825 Spindrift Drive
La Jolla, CA 92037

Note -- Christine Nyhan is in the hospital and she has approved this

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



Th 14a & b

Filed: 10/29/10
180th Day: 4/27/11
Extension Request: 3/8/11
Final Date for
Commission Action: 7/26/11
Staff: L. McEachern- SD
Staff Report: 6/30/11
Hearing Date: 7/13-14/11

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: A-133-79-A5/F6760-A6

Applicant: Ure & Diane Kretowicz

Agent: Sherman Stacey

Original Project

Description: Construction of a 3,693 sq. ft. first floor addition to an existing 2,970 sq. ft. two-story, single-family residence on a 1.3 acre blufftop site.

Proposed

Amendment: Modify the requirements pertaining to an offer to dedicate a vertical public access easement as follows: 1) Record an OTD for public vertical access on the subject site consistent with the requirement of the original Commission decision on the appeal, but the OTD will not be opened or made available for use by the public until sometime in the future. Specifically, the applicants are proposing that once accepted, the easement could be opened upon either, (1) the sale of the property (not including transfer of title to their children); or, (2) the latest of the following events: (a) if they no longer occupy the home as their primary residence; (b) upon the death of both applicants; or (c) 45 years. What this would mean is that the OTD would be recorded prior to issuance of the permit and could then be accepted by an appropriate agency/entity (subject to the approval of the Executive Director), but could not be opened to the public until an unknown date, which could be as late as 45 years from recordation of the OTD. In addition the applicants are proposing after-the-fact approval for improvements, modification and additions to the existing residence resulting in a 7,388 sq. ft. two-level home and installation of a spa/water feature in the southwestern rear yard area.

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 a 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. The State Commission found that because the residential addition displaced a blufftop viewpoint and trail to the beach on the site, 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 a 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 and the property was subsequently sold. To date, the offer has not been recorded. For a more detailed history, see the Detailed Project History section of this report, beginning on Page 14.

Summary of Staff's Preliminary Recommendation:

Staff recommends that the Commission approve the proposed amendment subject to special conditions. Relative to public access, there is evidence of historic public access on the site and the Commission has previously found that public access should be provided on the subject site. However, given the unusual circumstances surrounding development on the site and property ownership, Staff recommends that the Commission accept the applicants' request to defer the opening until the property is sold or upon the non occupancy or death of both the current applicants. However, staff recommends the Commission not accept such a deferment for 45 years, as proposed by the applicants. A hard deadline of as many as 45 years is too long, especially given that public access has

not been available on the subject site since 1979. Special Condition #1 details the revised OTD provisions.

The applicants are also seeking approval for a number of improvements to the blufftop home that have been completed without benefit of a CDP, including an addition to the home and a new jacuzzi spa and decks. The City has reviewed and approved these improvements through both Neighborhood and Site Development permits. Staff has found that most of the proposed after-the-fact improvements are acceptable and consistent with the certified LCP. However, the project includes the construction of a new jacuzzi spa that partially extends over the canyon edge into the steep hillside area of the site. Spas are specifically prohibited in steep hillside areas under the provisions of the certified LCP. Therefore, staff is recommending that revised plans be submitted which relocate the spa outside of the steep hillside area. In addition, staff recommends that all “prior to issuance” special conditions be satisfied within 60 days of Commission action and that the portions of the home to be removed occur with 90 days of issuance of the permit amendment. With the proposed conditions, the project is consistent with the certified LCP and public access provisions of the Coastal Act. 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:

1. Lifeguard Emergency Vertical Access.

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT

AMENDMENT, the applicants 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 be consistent with the final plans approved by the Executive Director pursuant to Special Condition #4a, which generally consists of a corridor 5 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 #12). The grant of easement shall require the permittee to provide the grantee with a key to the gate or other means to allow access by the lifeguards. The grant of easement shall include a formal legal description of the entire project site and a metes and bounds legal description and corresponding graphic depiction prepared by licensed surveyor of the easement area. 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.

- B. This emergency access easement shall remain valid until the first of the following occurs: 1) fee title of the property is transferred from the current fee title holder to any other person(s) or entity(ies), except to the applicants' children; 2) neither permittee (Ure Kretowicz and Dianne Kretowicz) occupies the home as their primary residence and either of their children, or both of them, do not succeed to title to the property; 3) neither permittee (Ure Kretowicz and Dianne Kretowicz) occupies the home as their primary residence and either of their children, or both of them, do succeed to title to the property, but neither of them occupy the property as their principal residence or if so occupied initially, cease such occupation; or, 4) the death of both permittees (Ure Kretowicz and Dianne Kretowicz). The offer to dedicate a public vertical access easement required in Special Condition #2 shall be recorded prior to the recordation of the offer to dedicate the emergency lifeguard access required by this condition.

The following shall replace Special Condition #1B of CDP #A-133-79/F6760 and is added as new Special Condition #2:

2. Public Vertical Access.

- 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. The document shall provide that the offer of dedication shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property.
- B.** The document shall provide that upon acceptance of the offer, the easement may be opened and available for public use when the first of the following occurs: 1) fee title of the property is transferred from the current fee title holder to any other person(s) or entity(ies) except to the applicants' children; 2) neither permittee (Ure Kretowicz and Dianne Kretowicz) occupies the home as their primary residence and either of their children, or both of them, do not succeed to title to the property; 3) neither permittee (Ure Kretowicz and Dianne Kretowicz) occupies the home as their primary residence and either of their children, or both of them, do succeed to title to the property, but neither of them occupy the property as their principal residence or if so occupied initially, cease such occupation; or, 4) the death of both permittees (Ure Kretowicz and Dianne Kretowicz).
- C.** The entire easement area (described in Special Condition 2(E)) shall be available for a footpath, stairway, or any combination of footpath and stairway, and an additional 5 feet of easement area shall be available for construction activities related to a footpath and/or stairway and for open fencing and landscape screening as described in Special Condition 2(D). Once a footpath has been delineated and/or a stairway built, public access shall not occur outside the alignment of the footpath or stairway except as necessary for repair and maintenance, or as necessary to relocate the accessway due to erosion or other geologic factors affecting the safety of public access.
- D.** After acceptance of the easement and when available for public use, the grantee shall have the right to build a public access stairway down the bluff leading to the ocean pursuant to all required government approvals, and shall replace or modify the gate and fence across the entrance to the easement to allow for public use. Upon completion of construction of access improvements and prior to opening the accessway to the public, the grantee shall install open fencing and landscape screening consistent with the City of San Diego's standards along the boundary of the vertical public access area (within the construction easement area) to separate the easement area from the residential portion of the property, provided that such

open fencing does not block or impede the public views from or the public's use of the vertical public access easement. The vertical public access easement shall be open daily, from one half hour before sunrise to one half hour after sunset. The grantee accepting the easement shall assume responsibility for maintenance of the easement and liability for public use of the easement.

- E The area of dedication shall be consistent with the final plans approved by the Executive Director pursuant to Special Condition #4a, and shall generally consist of two approximately 5 ft. wide easement areas. The first shall be a corridor 5 feet wide generally along the southern boundary of the property and shall extend from the Princess Street Right-of-Way to the mean high tide line, 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 (ref. Exhibit #12). The second easement area shall consist of a 5 foot wide construction/maintenance easement that shall be provided adjacent to the access easement in order to facilitate construction of and any necessary maintenance for the accessway and to provide an area in which the grantee may establish fencing and landscape screening, as provided in Special Condition 2(C) and 2(D).
- F. The recorded document shall include a legal description of both the entire project site and a metes and bounds legal description and corresponding graphic depiction prepared by licensed surveyor of the easement area (including the 5 foot wide construction easement area). 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 80 years. 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 replace Special Condition #1A of CDP #A-133-79 and is added as new Special Condition #3:

3. Public Lateral Access. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants 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 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 a legal description of the entire project site and a meets and bounds legal description and corresponding graphic depiction prepared by a licensed

surveyor of 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.

4. Revised Final Plans. WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMT AMENDMENT, the applicants 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 Marengo Morton Architects, dated 3/15/10, except the plans shall be revised as follows:

- a. The location of the offer to dedicate a vertical public access easement shall be clearly delineated on the site plan. The easement shall be 10 ft. in width, with approximately 5 ft. depicted as an access easement and an additional 5 ft. wide construction/maintenance easement. The easement area shall commence at the street along the southern side yard in the area where there are steps. Beyond the existing steps/stairway, the access easement shall extend in a westerly direction along the southern property boundary until approximately the 25 ft. MSL elevation contour where it shall then extend in a northwesterly direction for approximately 45 ft., then southwesterly traversing down the face of the bluff to the beach (ref. Exhibit #12).
- b. The proposed spa/water feature located in the rear yard shall be revised such that it does not extend into the LCP identified steep hillside area (as depicted on Exhibit #2). In addition, the spa cannot be sited any closer than 25 ft. from the edge of the coastal bluff. A spa protection plan, prepared by a licensed professional, must also be prepared to mitigate for potential geologic instability caused by leakage of the proposed spa. The protection plan must include, at a minimum, the following measures: 1) installation of a spa leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the spa which is separate from the water meter for the house to allow for the monitoring of water usage for the spa; 2) use of materials and spa design features, such as, but not limited to, double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and, where feasible 3) installation of a sub drain or other equivalent drainage system under the spa that conveys any water leakage to an appropriate drainage outlet. The design and improvement of the spa shall comply with the final spa plan approved by the Executive Director.
- c. 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.

- d. 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.
- e. The following shall be added as a note on the project plans:

“No development within 25 ft. of the identified bluff edge shall be allowed except for at-grade accessory improvements that are at least 5 ft. from the identified bluff edge.”

The applicants 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.

5. Revised Landscape/Yard Area Plans. WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit to the Executive Director for review and written approval, revised landscaping plans approved by the City of San Diego. The plans shall be in substantial conformance with the plans as submitted by Marengo Morton Architects dated 3/15/10, except for the revisions cited below. The plans shall be revised to keep the side yard (south of the residence) 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 new landscape materials within the southern yard area (adjacent to the home) shall be species with a growth potential not expected to exceed a height of three feet above the elevation of the adjacent street as depicted on the plans by Marengo Morton Architects dated 6/13/11. In addition, all landscaping in the southern yard area shall be maintained at a height that preserves views toward the ocean.
- b. The landscape palette for all proposed new plants 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 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 closer than 25 ft. from the bluff edge (except for the planter area adjacent to the north side of the home).

d. A written commitment by the applicants that all required plants on this site 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.

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

f. Five years from the date of issuance of the coastal development permit, the applicants 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 applicants, 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 applicants 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.

6. No Future Bluff or Shoreline Protective Device.

A(1) By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-133-79-A5/F6760-A6, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

A(2) By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In

the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

7. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit amendment, the applicants acknowledge and agree (i) that the site may be subject to hazards from waves, storm waves, bluff retreat and erosion; (ii) to assume the risks to the applicants and the property that is the subject of this permit amendment of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

8. Deed Restriction. **WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

9. Future Development. This permit is only for the development described in coastal development permit No. A-133-79-A5/F6760-A6. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future improvements to the proposed single family residence, including, but not limited, to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. A-133-79-A5/F6760-A6 from the California Coastal Commission.

10. Open Space Restriction. No development (except for removal of flood lights, capping or removal of irrigation, replacement of dead vegetation to prevent erosion, construction of public access improvements (including open privacy fencing and landscape screening), as defined in section 30106 of the Coastal Act shall occur on that portion of the bluff face seaward of the bluff edge and the steep hillside area in the southwestern portion of the site (as depicted in its current location on "Site Plan" by Marengo Morton Architects dated 3/15/10). This prohibition on development shall apply to the bluff face as the location of the bluff edge changes over time, due to erosion or other disturbances. The current location of the bluff face and steep hillside area shall be described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

WITHIN 30 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT AND PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT

AMENDMENT, the applicants shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a meets and bounds legal description and coresponding graphic depiction by a licensed surveyor of the easement area of the current location of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #9 attached to this staff report.

11. Prior Conditions of Approval. The conditions of this amendment shall supersede and replace all others prior special conditions of Coastal Development Permit No. A-133-79/F6760, as amended.

12. Condition Compliance. Within the specified times required in each condition 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.

13. Implementation of Removal of Improvements. WITHIN 90 DAYS OF EXECUTIVE DIRECTOR APPROVAL OF REVISED PLANS REQUIRED IN SPECIAL CONDITION NOS. 4 AND 5 OF AMENDED COASTAL DEVELOPMENT PERMIT NO. A-133-79-A5/F6760-A6, or within such additional time as the Executive Director may grant for good cause, the applicants 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 #4 of this permit amendment. The applicants shall also remove the floodlights on the bluff face and cap or remove all irrigation on the site within 25 ft. of the bluff edge (except for the planter area adjacent to the northern portion of the home). Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

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 3,693 sq. ft. addition to an existing 2,970 sq. ft. single-family residence in 1979. The proposal is to revise the terms of the requirement to record an offer to dedicate vertical public access easement and approval of various other improvements, both new and after-the-fact. Specifically, the amendment request includes:

(1) The applicants propose to revise the terms of the existing requirement for recordation of an offer to dedicate vertical public access easement as follows:

- (a) Vertical Public Access: The applicant will record an irrevocable offer to dedicate to a public agency or private association approved by the Executive Director, an easement for public pedestrian access to the shoreline which shall be 4-5 ft. wide and run within a 10 ft. area generally along the southern property boundary as depicted generally on Exhibit #12. However, the easement will not be opened and made available to the public until either the applicants sell the property to a third party, both applicants pass away and do not leave the property to their children, or, if the property is left to the children, so long as it is occupied as one child's principal residence, for a period of 45 years from the date of recording.
- (b) Emergency Lifeguard Access. Upon issuance of the permit amendment, the applicants propose to grant to the City of San Diego an easement for emergency lifeguard access to the beach which shall be 4-5 ft. wide and run along the southern property boundary.

The following components have already been constructed and are proposed to remain and be approved after-the-fact:

- (2) Construct concrete stairways along the south and eastern property boundaries.
- (3) Construct wall and fence across south side yard area (to be lifeguard emergency access).
- (4) Install decorative paving in City Right-of-Way leading up the house.
- (5) Construct new planter walls, entry trellis and 4 ft. high planter in public Right-of-Way.
- (6) Construct new fountain adjacent to eastern exterior stairway.
- (7) Replace second-story deck and add partial roof.

- (8) Construct new second-story cantilevered balcony.
- (9) Construct a 28 ft. long, 6 ft. high masonry wall in public right-of-way.
- (10) Extend height of existing retaining wall from 3 ft. 6-inches to 7 ft. 6-inches.
- (11) Construct modifications to non-conforming accessory structure (Casita) located partially within public right-of-way to include 52 sq. ft. bathroom addition, new doors, windows and expansion of existing walls.
- (12) Add approximately 844 sq. ft. to existing home (bedrooms, music and exercise room) by converting unimproved area beneath main home to living area, portions of which are located within 25 ft. of the bluff edge.
- (13) Remove wooden timber stairs and portion of retaining wall on bluff face.

The following components are new:

- (14) Interior garage improvements to include excavation and removal of approx. 130 cy. of uncompacted fill material to allow an additional parking space, a car lift and storage.
- (15) Remove floodlights from bluff face.
- (16) Remove or cap irrigation on bluff face.
- (17) Construct new trellis over second story deck
- (18) Install a new jacuzzi spa/water feature in rear yard adjacent to the coastal canyon.
- (19) Install a photovoltaic system on the roof.

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 and requires modification of prior conditions of approval, 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. Detailed Project History. 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) by Ms. Baker for a substantial addition (3,300 sq. ft.) to the existing 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 Ms. Baker's CDP #F6760 for construction of a 3,693 sq. ft. addition to the existing 2,970 sq. ft. single-family residence, finding that the project did not project further seaward than the existing line of development, thereby reducing its impact on visual resources (there is a discrepancy with the square footages called out in this permit and the subsequent actions. After review of the final plans approved for the original project, the actual size of the addition and of the existing home is greater). 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 (ref. Exhibit #6 - Original Staff Report). By the time the Commission imposed the access conditions, however, 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 then-owner, Ms. Baker, did not record the offers to dedicate access.

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 (Ms. Baker) 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 1994, the property became bank-owned through a foreclosure and the bank sold to Mr. and Mrs. Kretowicz, the now current owners and applicants. As noted above, the offers to dedicate lateral and vertical access had not been recorded.

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 applicants. Subsequently, on May 14, 2002, the project was withdrawn by the applicants, which resulted in no permit for the development at the City or the Coastal Commission. The City subsequently sued the applicants over the unpermitted development that was present on the site (excavation in the garage). At this time, the applicants 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 applicants), the applicants entered into a "Stipulated Judgment" with the City of San Diego, dated April 4, 2004, and, as agreed upon by the City and the applicants, the applicants 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 applicants would block access to the area of the offer to dedicate a public access easement that was required in CDP A-133-79/F6760.

Then in 2004, the applicants 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) a contribution of \$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 applicants' 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 applicants 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. Subsequently, a settlement was reached and the applicants submitted an amendment request to modify the terms of the access easement (such that it would not be available for public access until 2081), pay \$200,000 towards the reconstruction of a nearby failed public access stair and install a public viewing platform pursuant to the terms of the settlement agreement (ref. CDP #A-133-79-A2/F6760-A3/Kretowicz). However, at the June 14, 2007 hearing on this item, the Commission raised concerns with the applicants' request and the matter was postponed by the applicants and subsequently withdrawn on November 20, 2007. The applicants and the Commission then negotiated an amended settlement agreement and the applicants applied to the City for approval. On December 2, 2008, the applicants received approval from the City of San Diego for Neighborhood and Site Development Permits for the development and then submitted a new amendment application to the Commission (ref. A-133-79-A3/F6769-A4). However, due to Permit Streamlining Act deadlines, this application was subsequently withdrawn.

The applicants then submitted another amendment request for the same project and a staff report was prepared for the October 2010 Commission hearing (ref. A-133-79-A4/F6760-A5). At the applicants' request the matter was postponed from the October 2010 hearing. However, due to Permit Streamlining Act deadlines, the applicant again withdrew the amendment request and then submitted another request.

This matter was scheduled for review by the Commission at the February 2011 Commission hearing in San Diego. However, at the applicants' request, the item was postponed. Since the last report was prepared and circulated for the October 2010 Commission hearing, Commission staff have received many calls and a number of letters from members of the public opposed to the proposed amendment (see Exhibit #10 attached). The concerns identified are many, but almost all request that the requirement to record the OTD on the subject site remain as it was originally required by the Commission in 1979.

The project was again scheduled for review by the Commission at its June 15, 2011 hearing. After opening the hearing and discussing the project, the Commission continued the matter in order to have the applicants and staff try to work on an agreeable proposal to have the easement remain on the subject site, but have its opening deferred to a later date. Staff has met with the applicants and the subject amendment is the result of those discussions which no longer includes the request to pay \$3.3 Million to remove the easement.

3. Public Access. 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:

Section 30210

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

Section 30211

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

Section 30212

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, 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.

As described above in the “Detailed Project History” section, the Commission previously required recordation of 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. The public access requirement has ultimately resulted in litigation filed against the Commission by the property owner. As a means to resolve the litigation, the applicants have proposed the subject amendment.

The subject amendment is to revise the requirements pertaining to recordation of a vertical public access OTD such that the OTD be recorded, but that the access not be opened and made available to the public (except for emergency lifeguard access) until a later date. There are many other components to the proposed amendment, but no others that affect public access.

In the original appeal (#A-133-79), the Commission found that there is evidence of historical public access on this site. The Commission found substantial evidence that the public had obtained rights of access through that use – i.e., that there has been such use as would support the conclusion that an area has been impliedly dedicated to public use.

The intent of the Commission's action on that appeal was to preserve public access at this site.

Although the Commission cannot determine whether public prescriptive rights actually do exist, as that determination is made by a court of law, Section 30211 requires the Commission to prevent development from interfering with the public's right of access to the sea where acquired through use. As a result, where there is substantial evidence that such rights may exist, the Commission must ensure that proposed development would not interfere with any prescriptive rights which may exist. As such, the Commission concluded in 1979 that there is substantial evidence of such rights, and that the development approved under that permit did interfere with the exercise of those rights.

The Commission, in its review of the 1979 appeal, found that because access to the small pocket beach that exists below the subject property and to the south is only available at the lowest of tides due to the protrusion of several promontories, and because there are no other vertical access points to this beach, that adequate access does not exist nearby. The Commission further found that although the public had historically had access over the project site, construction of the residential addition precluded the public from using the historic access, thereby diminishing the public's right to access the beach and as such, an alternative access must be provided to offset the burden the development placed on the public's constitutional right of access and assure consistency with 30212 of the Coastal Act. Therefore, the Commission required the applicant to record an OTD easement for public vertical access to the beach.

Although many years have passed since the original permit was approved and the property has changed hands several times, the essential facts remain the same--the site was previously used for public access to the beach and this access was blocked as a result of the addition to the home by the former owner of the property. Further, while the access easement will extend over a steep hillside area, the Coastal Commission's staff Coastal Engineer has reviewed the project site and a concept stairway plan and has determined that it would be feasible to construct improvements to facilitate access to the beach on the subject site if a 5 ft. wide access easement and a 5 ft. wide construction/maintenance area were provided.

The applicants have proposed at this time to record an OTD for public vertical access on the subject site consistent with the requirement of the original Commission decision on the appeal. However, the applicants are also proposing that the OTD not be opened or made available for use by the public until sometime in the future. Specifically, the applicants have proposed that once accepted, the easement could be opened upon either, (1) the sale of the property (not including transfer of title to their children); or, (2) the latest of the following events: (a) if they no longer occupy the home as their primary residence; (b) upon the death of both applicants; or (c) 45 years. What this would mean is that the OTD would be recorded prior to issuance of the permit and could then be accepted by an appropriate agency/entity (subject to the approval of the Executive Director), but could not be opened to the public until an unknown date, which could be as late as 45 years from recordation of the OTD.

In this particular case, the Commission has found previously that there was historic public use of the site for beach access and as such, access across the site must be protected. While the applicants' proposal has merit and will assure public access is eventually provided, deferring such access for as long as 45 years is too long, especially given that access has not been available on the site since 1979. However, given the unusual circumstances associated with the subject site and the fact that the current property owner was not the owner when the original access easement was required (but is several times removed), the Commission finds that it can accept the applicants' request only if the provision to wait up to 45 years is deleted. Without this provision, the access could be opened and made available to the public upon the earlier of the transfer of the property, or upon non occupancy by the permittees or their children, or the death of the current property owners. Special Condition #2 is proposed to reflect the change to the OTD from the applicants' proposal and the requirements that must be included in the OTD. The condition details when the easement will be opened, its general alignment and the type(s) of improvements that could occur within the easement to facilitate public access.

The applicants are also proposing to immediately grant an easement to the City of San Diego for emergency lifeguard access across the site and down to the beach. While this measure is good and does help somewhat with public access, this was previously required by the Commission with the original permit. However, it too, was never recorded and remains a violation. Thus, the applicants' proposal to grant emergency lifeguard access will help facilitate public access such that lifeguards would be able to use the site for rescues should they be necessary, as current access to the beach in this location is very limited. Special Condition #1 reflects the applicants proposal and details the requirement for the emergency lifeguard access.

In summary, the proposed amendment will result in changes to previously required public access provisions on a blufftop property in La Jolla where the Commission has previously found that historic public access exists and that public access should be provided. While the proposal will not get the access easement opened immediately, once accepted, it will be opened and made available to the public once the property is sold or the applicants move or die. Again, while this is not ideal, in this particular case, given the unusual circumstances regarding the history of the site, the Commission finds that public access will be protected, consistent with the above cited provisions of the Coastal Act.

4. Blufftop Setbacks/Geologic Safety. The subject site is located on a blufftop lot located at the north end of the cul-de-sac of Princess Street where it meets Spindrift Drive in La Jolla. The proposed project includes various accessory improvements close to the bluff edge as well as additions to the home within 40 ft. of the bluff edge and some closer than 25 ft. from the bluff edge. The bluffs are steep and exist on both the north and west sides of the subject site. The existing residence is located on the flat part of the site close to the street frontage. From the street frontage, access to the rear yard is gained from the south side of the residence where there is a gate. Beyond the gate, there is a concrete

walkway and steps which lead down in elevation to the back yard. As one turns the corner of the house in the back yard, there is a small flat lawn area immediately adjacent to the house. Grass and other vegetation then cascades down the north-facing bluff face of the subject site. Also in the rear yard, on the north side of the residence, there is an improved at-grade concrete patio and a deck at the upper story of the residence. The shoreline below the site is a rocky shoreline and there is no existing improved physical access to this area due to the steepness of the bluffs. There are no existing seawalls or bluff retaining walls on the subject site and none are proposed with the subject amendment request.

The proposed development raises several concerns related to the shoreline hazards provisions of the certified LCP as they relate to blufftop setbacks. Pursuant to the City's certified LCP, all proposed development on a coastal bluff must observe a required setback of 40 feet from the bluff edge, unless a site-specific geology report is completed which makes findings that a lesser setback can be permitted. Specifically, Section 143.0143 addressing Development Regulations for Sensitive Coastal Bluffs states the following:

- (f) All *development* including buildings, *accessory structures*, and any addition to existing *structures* shall be set back at least 40 feet from the *coastal bluff edge*, except as follows:
 - (1) The City Manager may permit *structures* to be located between 25 and 40 feet from the bluff edge where the evidence contained in a geology report indicates that the site is stable enough to support the *development* at the proposed distance from the *coastal bluff edge* and the project can be designed so that it will not be subject to or contribute to significant geologic instability throughout the anticipated life span of the primary *structures*, and no shoreline protection is required. Reductions from the 40-foot setback shall be approved only if the geology report concludes the *structure* will not be subject to significant geologic instability, and not require construction of shoreline protection measures throughout the economic life span of the *structure*. In addition, the applicants shall accept a deed restriction to waive all rights to protective devices associated with the subject property. The geology report shall contain:
 - (A) An analysis of bluff retreat and coastal stability for the project site, according to accepted professional standards;
 - (B) An analysis of the potential effects on bluff stability of rising sea levels, using latest scientific information;
 - (C) An analysis of the potential effects of past and projected El Nino events on bluff stability;

(D) An analysis of whether this section of coastline is under a process of retreat.

- (2) Accessory *structures* and landscape features customary and incidental to residential uses shall not be closer than 5 feet to the *coastal bluff edge* provided, however, that these shall be located at *grade*. Accessory *structures* and features may be landscaping, walkways, unenclosed patios, open shade *structures*, decks that are less than 3 feet above grade, lighting standards, *fences* and wall, seating benches, *signs*, or similar *structures* and features, excluding garages, carports, building, pools, spas, and upper *floor* decks with load-bearing support *structures*.

In addition, the policies and guidelines of the certified La Jolla-La Jolla Shores LCP also contain the following related provisions:

“The shoreline bluffs are one of La Jolla’s most scenic natural resources...Over time, as the bluffs continue to recede, existing developments will become increasingly susceptible to bluff hazards. In many cases, seawalls, revetments, and other types of erosion control structures will be required to stabilize the bluff. Such structures, while necessary to protect private property, are poor substitutes for adequate site planning....”

The LCP then goes on to cite the following guidelines:

[...]

“The geotechnical report...should document that the “area of demonstration” is stable enough to support the proposed development and that the project can be designed so that it will neither be subject to nor contribute to significant geologic instability throughout the estimated lifespan of the project structures....”

To find the proposed project consistent with the above-cited provisions of the LCP, the Commission must find that the proposed improvements will be safe and not require a seawall or other shoreline protective device to protect them into the future. To determine an appropriate safe setback for new development, the LCP requires the submission of an analysis of the stability of the bluff be completed according to accepted professional standards, which includes that not only the long-term erosion rate be adequately identified but also that the geotechnical report demonstrate an adequate factor of safety against slope failure (i.e., landsliding), of 1.5 or greater will be maintained throughout its economic life.

To that end, the applicants’ geotechnical representatives have prepared quantitative slope stability analyses for the site. The analyses show that the factor of safety for the most critical failure surfaces varied from 1.73 to 1.99 seaward of the existing residence after 75 years. Thus, the geotechnical reports completed for the project conclude that the new development will not be affected by bluff instability, will not contribute to significant

geologic instability and will not require any shoreline protection measures, throughout the anticipated 75 year economic life span of the structure(s). The Commission's staff geologist has reviewed the applicants' technical reports and has concurred that the proposed residential improvements/additions will be safe for their anticipated 75-year expected life, consistent with the LCP requirements cited above.

The proposed improvements include accessory improvements and various additions/revisions to walls and decks, the majority of which are located inland of the geologic setback area. However, as part of the after-the-fact improvements, the applicants are proposing to maintain an 844 sq. ft. addition to the home on the lower level that was constructed by enclosing existing non-habitable/unimproved areas and patios to create a gym and bedroom. When the major addition to the home was approved in 1978, the Commission allowed the newly added portions of the home to extend, in some locations, up to 5 ft. from the bluff edge. Since that time, the City has adopted ordinances, as cited above, which prohibit residential structures any closer than 25 ft. from the bluff edge. While the entire addition proposed for approval with this amendment is located below and within the footprint (albeit non-conforming) of the existing home, portions of this addition extend beyond the 25 ft. bluff edge setback. There are two areas of the proposed addition that extend into the 25 ft. setback area (ref. Exhibit #3). One is located on the northern most portion of the site. This area was expanded to create a bedroom and extends approximately 3 ft. into the 25 ft. setback area (total area of 7.35 sq. ft.). The other area is located on the northwestern portion of the site. It was expanded to create a gym and extends approximately 7 ft. into the 25 ft. setback area (total area of 65.6 sq. ft.).

In addition, the applicants are proposing to install a new spa in the rear yard area, but outside the 25 ft. blufftop setback area. As noted above, the applicants' technical consultants and the Commission's staff geologist both conclude that the proposed improvements are safe and will not be subject to threat for their estimated life. The City found, in its review of the project (Site Development Permit) for the additions, that because the addition areas would be located below and within the footprint of the existing home and no new grading or ground disturbance was necessary, the project could be found consistent with the City regulations.

While the LCP does not contain any specific provisions to allow such an exception, in this particular case, the Commission finds the proposal acceptable. One of the reasons for the minimum 25 ft. bluff edge setback in the LCP on ocean fronting properties such as this one is to acknowledge that estimating the safety of structures and determining safe geologic setbacks is not an exact science. There have been many instances in San Diego County where a geologic report states a certain bluff edge setback is adequate and then some years later, the bluff fails and the property owners are requesting emergency permits to construct seawalls. Thus, the minimum 25 ft. setback provides a "buffer" area should the bluff sustain an unexpected failure in the future. In addition, the minimum 25 ft. setback area also serves to keep structures back from the edge to reduce their visibility from the beach and other off-site public locations. However, in the case of the proposed development, the Commission's staff geologist concurs with the provided analysis that

they are not expected to be subject to threat. In addition, the residential addition area is below and within the footprint of the existing approved home and is not visible from offsite locations. Thus, the proposed improvements are expected to be safe and therefore should not cause any adverse impacts to coastal visual resources.

Additionally, pools and spas, due to their weight and potential for leakage, are also treated as principal structures and must also maintain a minimum 25 ft. bluff edge setback. In the case of the proposed spa, it will be located at least 25 ft. from the bluff edge and the Commission's staff geologist has found that, from a geologic standpoint, it is expected to be safe from threat in its proposed location. In addition, Special Condition #4b requires that the spa include special design provisions to assure it will not leak and result in impacts on the bluff. The spa is proposed to encroach into a steep hillside area and that impact is addressed in a subsequent section of this report.

The subject amendment also includes a request for after-the-fact authorization for removal of several unpermitted improvements beyond the bluff edge and on the face of the coastal bluff. These improvements included several wooden timber stairs, retaining walls and palm trees. However, as noted, all of these improvements have been removed. The applicants are also proposing with this application to remove some additional improvements that are also on the face of the bluff. These include a couple of flood lights and capping or removing existing irrigation on the face of the bluff. All of these improvements can be removed without disturbing the bluff and do not raise any coastal resource issues. Again, as these improvements already exist, Special Condition #13 requires that they be removed within 90 days of issuance of the amended permit.

All other existing or proposed accessory improvements will observe a minimum 5 ft. setback from the bluff edge and are at-grade, consistent with the certified LCP. Given that the accessory improvements are closest to the bluff edge, there is the potential for these improvements to be subject to threat from erosion in the future leading to a request for shore/bluff protection. However, the certified LCP does not allow for shoreline protection devices to protect accessory improvements. In addition, since the applicant has assured the Commission that the proposed improvements can be constructed without requiring shoreline protection in the future, pursuant to the certified LCP cited above, Special Condition #6 requires the applicant to waive all rights to future protection for the improvement approved pursuant to this permit. Such a condition will assure that the bluff will be protected to the maximum extent possible from unnatural alteration of the bluff, consistent with the certified LCP.

Although the Commission finds that the proposed improvements to the home have been designed to minimize the risks associated with their construction, the Commission also recognizes the inherent risk of blufftop development. There is a risk of damage to the proposed improvements as a result of erosion and sea level rise over time. Given that the applicants have chosen to construct these improvements despite these risks, the applicants must assume the risks. Accordingly, Special Condition #7 requires the applicants to acknowledge the risks associated with this development, waiving any claims against the Commission for injury or damage that may result from such hazards,

and agreeing to indemnify the Commission against claims for damages that may be brought by third parties against the Commission as a result of its approval of this permit. Special Condition #8 requires the permit and findings be recorded to assure future property owners are aware of the permit conditions.

Special Condition #9 has been attached to require that an amendment be approved before any future additions to the residence or other developments as defined by the Coastal Act, is constructed on the subject site. Requiring an amendment for all future development allows the Commission to insure that such development will not create or lead to the instability of the coastal bluffs, impacts to public access, adverse visual impacts or result in the construction or enlargement of the existing structure in a high risk area. To further protect the geologic integrity of the coastal bluff seaward of the residence, Special Condition #10 requires that an open space deed restriction be placed over the bluff face to prohibit construction or the placement of any structures on it (with the exception of the removal of the unpermitted improvements, irrigation piping, the construction and maintenance of the public accessway and privacy fencing and landscape screening) and to protect it in perpetuity.

In summary, the applicants have documented and the Commission's technical staff has concurred that the proposed improvements can be sited safely on the site without the need for shoreline protection in the future. Therefore, the proposed development, as conditioned, is consistent with the provisions of the certified LCP addressing geologic hazards and blufftop setbacks.

5. Protection of Steep Hillsides/Coastal Canyons. The project site also contains a steep hillside area that is also referred to as a coastal canyon. Steep Hillsides are defined in the City's certified implementation plan (Land Development Code) as follows:

Steep hillsides means all lands that have a slope with a natural gradient of 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater and a minimum elevation differential of 50 feet, or a natural gradient of 200 percent (1 foot of horizontal distance for every 2 feet of vertical distance) or greater and a minimum elevation differential of 10 feet.

The City's certified LUP contains provisions addressing steep hillsides. Policy 4 (Page 51/52) of the Natural Resources and Open Space Element of the certified La Jolla LUP states, in part:

4. Steep Hillsides

- a. The City shall apply the Environmentally Sensitive Lands regulations to all new development on property in La Jolla having slopes with a natural gradient of 25 percent or greater and a minimum differential of 50 feet. The Environmentally Sensitive Lands regulations provide supplementary development regulations to underlying zones such as development encroachment limits for natural steep slopes, erosion control measures and

compliance with design standards identified in the Steep Hillside Guidelines. Development on steep hillsides shall avoid encroachment into such hillsides to the maximum extent possible. When encroachment is unavoidable, it shall be minimized and in accordance with the encroachment limitations standards contained in the plan....

Plan Recommendation 5 (Pages 61-64) of the Natural Resources and Open Space Element of the certified La Jolla LUP states, in part:

5. Steep Hillsides

In addition to the recommendations contained in the Residential Element of this plan and the requirements of the Land Development Code, including the Environmentally Sensitive Lands regulations and the Steep Hillside Guidelines of the Land Development Manual, the following Hillside Development Guidelines shall be used as requirements in evaluating new development on all properties containing slopes in La Jolla which equal or exceed 25 percent:

- a. Keep driveways, parking areas, tennis courts, swimming pools, and other accessory uses to a minimum, and locate them on more level portions of the site in slopes below 25 percent.

[...]

- k. Set back large residential structures from the top of steep hillsides so that the design and site placement of a proposed project respect the existing natural landform and steep hillside character of the site. This is especially important for those locations that are visible from natural open space systems, parklands, major coastal access routes and the seashore. The reservation of the natural character of these areas depends upon minimizing visual intrusions.

The Environmentally Sensitive Lands (ESL) Regulations of the City's Land Development Code address development on steep hillsides. The following provisions of the ESL Regulations are applicable to the proposed development.

Section 143.0142 Development Regulations for Steep Hillsides

Development that proposes encroachment into steep hillsides or that does not qualify for an exemption pursuant to Section 143.0110(c) [not applicable here] is subject to the following regulations and the Steep Hillside Guidelines in the Land Development Manual.

- (a) Allowable Development Area

[...]

- (4) Within the Coastal Overlay Zone, steep hillsides shall be preserved in their natural state....

[...]

- (D) for the purposes of Section 143.0142, encroachment shall be defined as any areas of twenty-five percent (25%) or greater slope in which the natural landform is altered by grading, is rendered incapable of supporting vegetation due to displacement required for the building, accessory structures or paving...

[...]

In order to help the City interpret the development regulations for steep hillsides, the City of San Diego has developed the Steep Hillside Guidelines (which are included as a component of the City's certified LCP). The following provisions of the guidelines are applicable to the proposed development.

DESCRIPTION OF REGULATIONS

[...]

(B) 143.0113 Determination of Location of Environmentally Sensitive Lands, Applicability of Division and Decision Process

[...]

- (4)(a) Within the Coastal Overlay Zone, projects proposing to encroach into steep hillsides shall be subject to the discretionary regulation identified in Section 143.0142(a)(4) of the Environmentally Sensitive Lands regulations. Projects shall be evaluated on a case-by-case basis to determine if encroachment, as defined in Section 143.0142(a)(4)(D) of the Environmentally Sensitive Lands regulations, can be permitted. It is the intent of the regulations and the Steep Hillside Guidelines that development be located on the least sensitive portions of a site and that encroachment into areas containing steep hillsides, sensitive biological resources, geologic hazards, view corridors identified in adopted land use plans or viewsheds designated on Map C-720, be avoided or minimized if unavoidable. Projects proposing to encroach into steep hillsides shall demonstrate conformance with the Environmentally Sensitive Lands regulations and the Design Standards in Section II of the Steep Hillside Guidelines and result in the most sensitive design possible.

Encroachment shall not be permitted for the following:

- Projects where the encroachment is solely for purpose of achieving the maximum allowable development area;
- **Accessory uses or accessory structures including, but not limited to patios, decks, swimming pools, spas, tennis courts, other recreational areas or facilities, and detached garages, ...**
[emphasis added]

As noted in the project description, the subject site contains an existing single-family residence. While the project site is bordered by the ocean to the north and west, the southwestern portion of the site is considered a steep hillside in the LCP as it is part of a small coastal canyon area that intersects the bluff at this location. Based on the LCP definition of a coastal canyon, the sloping area on the southwestern portion of the site is defined as being part of a coastal canyon and as such is considered a steep hillside, rather than a coastal bluff under the LCP. The Commission's staff geologist has reviewed the project and concurs that the southwestern slope area meets the definition of a coastal canyon (ref. Exhibit #7 attached).

The above cited LCP definition of a steep hillside indicates that to be considered a steep hillside, the area must have a slope with a natural gradient of 25% or greater and a minimum elevation differential of 50 feet. In the case of the subject site, the Commission's staff geologist has looked at the topographic survey prepared by the applicant's consultant (ref. Topographic Survey by SB&O Planning and Surveying dated March 15, 2010), and determined that the coastal canyon area on the southwestern portion of the site is entirely comprised of slopes that exceed 25% grade. In addition, in looking at the topographic survey, the elevational differential in this area exceeds 50 feet. Thus, the coastal canyon area meets the definition of a steep hillside pursuant to the LCP.

The purpose and intent of the Steep Hillside Regulations is to assure that development occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area. The reservation of the natural character of these areas depends upon minimizing visual intrusions. The applicant is proposing to install a Jacuzzi spa in the rear yard of the home, partially extending into steep slopes of 25% grade or more. The above-cited steep hillside regulations require that development on steep hillsides be avoided and that if unavoidable, development be minimized. The LCP provisions allow for some encroachment into steep hillsides, but only in those circumstances where such an encroachment cannot be avoided due to a predominance of steep slopes rendering the site otherwise undevelopable. For the proposed development, such is not the case. The applicants already have achieved reasonable use of the site with the existing single-family residence and its associated yard and patio areas, which were constructed on the flat, non-steep portions of the site. As such, based on the above-cited LCP provisions, there is no requirement that encroachment onto steep hillsides be permitted.

More importantly, as cited above, the steep hillside guidelines specifically prohibit encroachment into steep hillsides for accessory improvements such as spas. Thus, the

proposed spa that encroaches onto steep hillsides is not consistent with the certified LCP. Therefore, Special Condition #4b requires that the applicants submit revised plans that show the spa has been relocated such that it does not encroach into the LCP defined steep hillside area of the site. In order to reduce the potential for impacts to the adjacent natural hillside and bluff area resulting from a leaking spa, Special Condition #4b also requires that a spa protection plan be prepared and, that the applicants include such plan in the design and improvement of the spa.

To protect the LCP defined steep hillside area from development in the future as required under the LCP, Special Condition #10 requires that an open space deed restriction be placed over the steep hillside portions of the site (and the coastal bluff area as described in the previous section of this report) to prohibit construction or the placement of any structures on it (with the exception of the removal of the unpermitted improvements and irrigation piping, the construction and maintenance of the public access way, and privacy fencing and landscape screening) and to protect it in perpetuity. With these special conditions, the steep natural hillside area will be protected, consistent with the above cited LCP provisions.

6. Public Views. 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*, shall be preserved as a deed restriction 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 a couple of 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 an existing informal viewing area on Spindrift Drive. The second relates to the existing and proposed landscaping in the view corridor along the southern property boundary.

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 an informal viewing area adjacent to Spindrift Drive over the residence. There is an existing concrete stairway in the southern side yard. However, beyond the stairway further south along the side yard, there is an existing hedge which could impede public views to the ocean. While no new landscaping is proposed, there is the potential that in the future, trees or other tall shrubs could be planted within this side yard area. For this reason, Special Condition #5 requires that all new landscape materials within the southern yard area (adjacent to the home) shall be species with a growth potential not expected to exceed a height of three feet above the elevation of the adjacent street as depicted on the plans by Marengo Morton Architects dated 6/13/11. In addition, currently there is existing landscaping within the south side yard setback area that could obstructs views to the ocean from not only the existing informal 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 #5 requires that it be maintained such that ocean views are not affected. This condition also requires that any new plant materials be mostly drought-tolerant native species (no invasive species) and that in 5 years a landscape monitoring report be submitted documenting that the landscaping is consistent with the landscape plans approved with this action.

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. 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 #4c 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. 12 and 13 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.

Currently, ocean views are available over the existing home and between the existing home and the home to the south from an informal public viewing area along Spindrift Drive. None of the proposed improvements will result in public view impediments from this viewing area. While the project does include the installation of photovoltaic panels on the roof of the home, the roof is flat and surrounded by a small parapet wall, which will screen the panels from offsite views. With the requirement that landscaping be trimmed to maintain views and the fence/gate be modified in the south yard area, the Commission can be assured public views will be maintained into the future.

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 is low level, not to exceed three feet in height, public views will be protected, consistent with the above-cited provisions of the certified LCP.

7. **Unpermitted Development.** Unpermitted development has been carried out on the subject site without the required coastal development permit. The applicants are requesting after-the-fact authorization for numerous improvements to the existing home to include construction of concrete stairways, walls and fences, garage improvements, decorative paving in the public Right-of-Way, new planters and trellises, second story-deck and roof and balcony and modifications to a non-conforming structure located partially in the public Right-of-Way. Also, requested are after-the-fact additions to the home.

To ensure that the matter of unpermitted development is resolved in a timely manner, Special Condition #12 requires that the applicants satisfy all conditions of this permit amendment within the specified times required in each condition, or within such additional time as the Executive Director may grant for good cause. In addition, because many components of the amendment have already been constructed and through this amendment are required to be revised, Special Condition #13 requires that within 90 days of Executive Director approval of the required revised plans pursuant to Special Condition Nos. 4 and 5, the applicants shall remove the existing improvements consistent with the plans approved pursuant to Special Condition Nos. 3 and 4 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.

8. Local Coastal Planning. 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.

9. Consistency with the California Environmental Quality Act (CEQA). The Commission incorporates its findings above in sections 1 through 7 regarding Coastal Act consistency and LCP consistency at this point in support of its CEQA findings. 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 the recordation of public access OTD, revised plans and open space on the bluff face and steep hillside area 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.



2008 photograph of subject site from Coastal Records Project (Copyright © 2002-2010 Kenneth & Gabrielle Adelman - Adelman@Adelman.COM).

OCEAN

SAN DIEGO

LA JOLLA

UNDERWATER PARK

ECOLOGICAL RESERVE

LA JOLLA BAY

ANGEL'S FLIGHT
STAIR LOCATION

SUBJECT SITE



EXHIBIT NO. 1
APPLICATION NO.
A-133-79-
A5/F6760-A6
Location Map

SINGLE FAMILY DWELLING

| AREA (S.F.) | PERMITTED | PROMISED - A | NEW TOTAL |
|----------------|-----------|--------------|-----------|
| LOWER LEVEL | 1276 | 844 | 2122 |
| UPPER LEVEL | 4478 | 4189 | 8667 |
| GUEST QUARTERS | 201 | 446 | 647 |
| GARAGE | 636 | 3 | 639 |
| TOTAL | 2541 | 1342 | 3883 |

NOTE:
ALL EXTERIOR LIGHTING ON COASTAL BLUFF TO BE REDUCED
SURFACE DRAINAGE FROM REAR PATIOES AT LOWER LEVEL TO BE REDUCED TO
SLUMP PUMP & PUMPED TO THE DRAINAGE SYSTEM AT THE SOUTH SIDE OF THE
PROPERTY

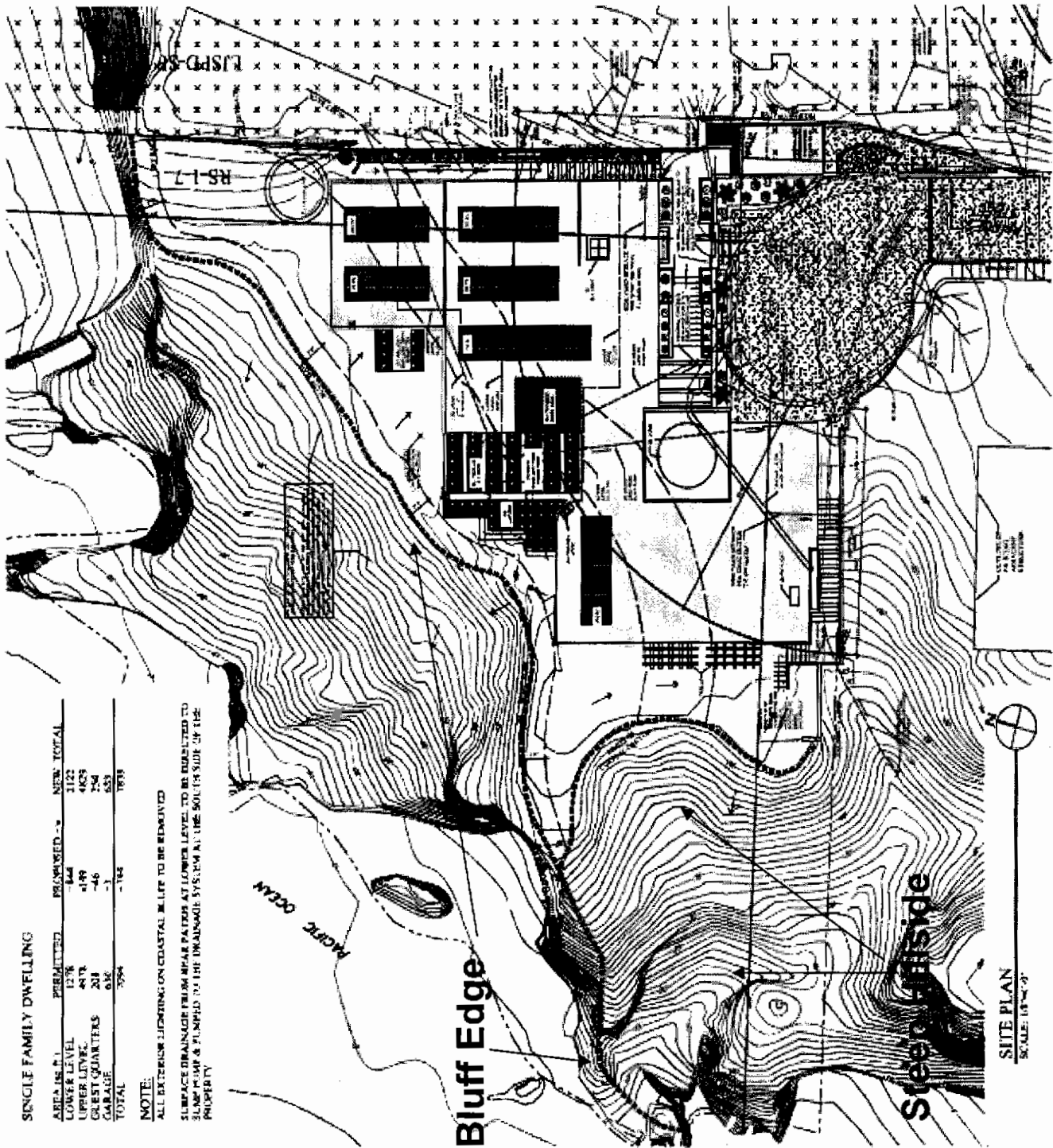
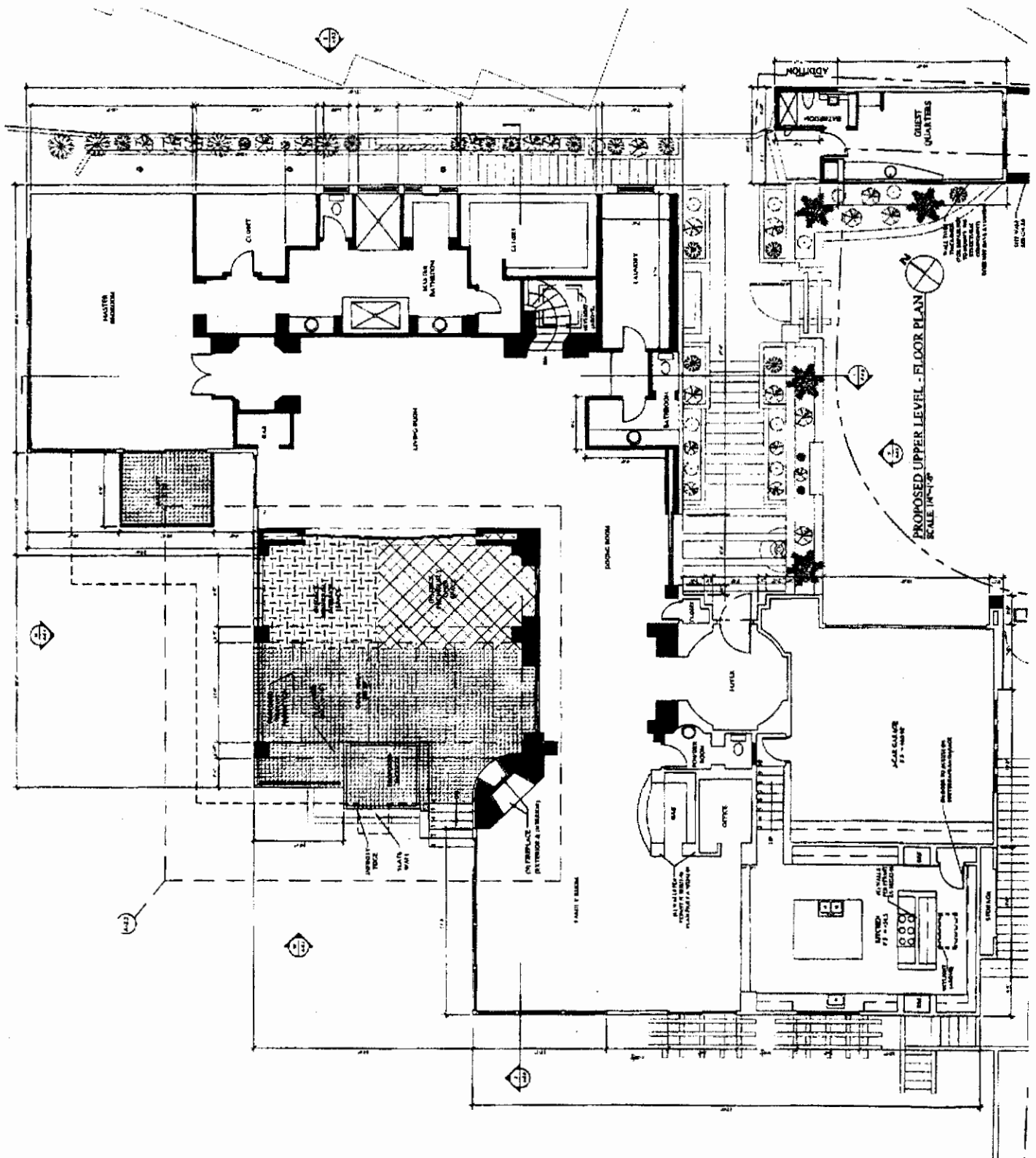
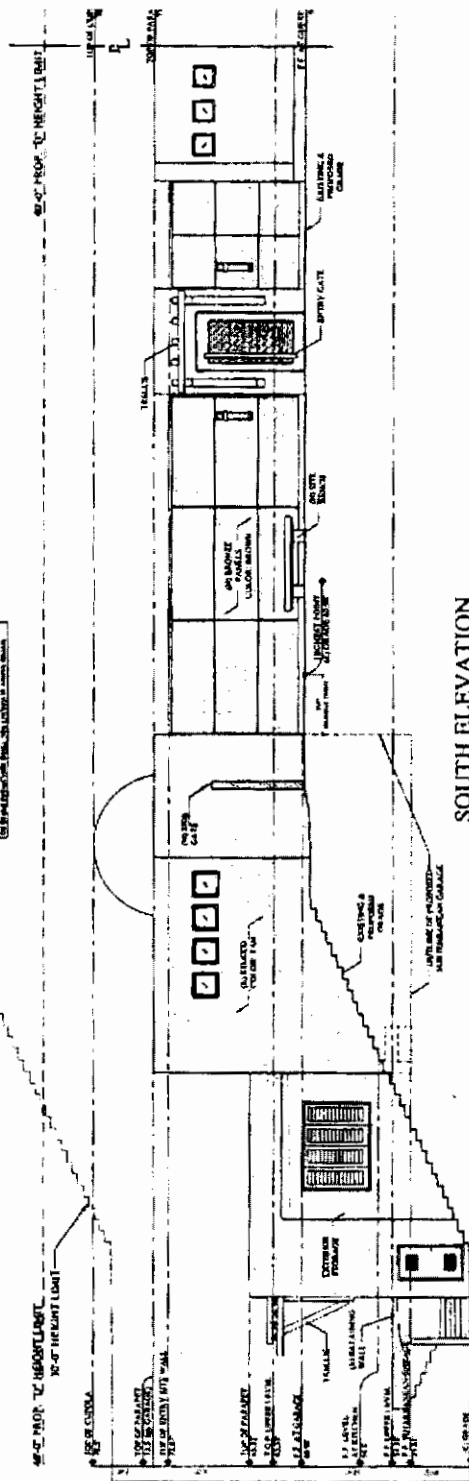


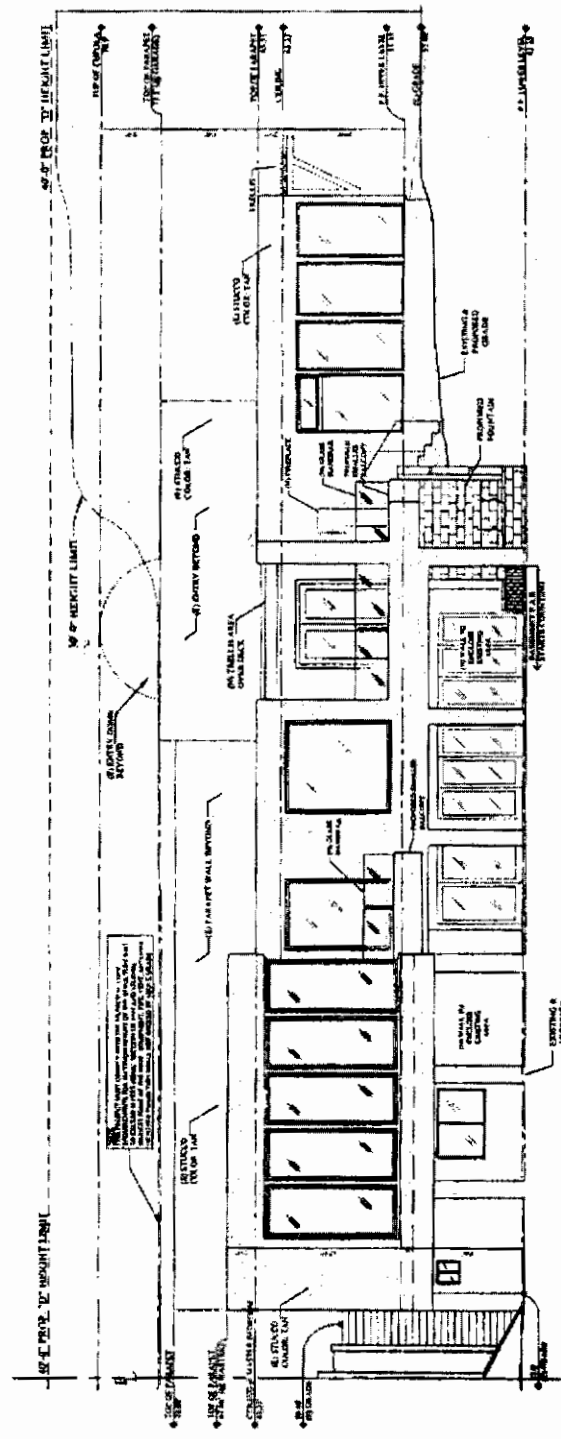
EXHIBIT NO. 2
APPLICATION NO.
A-133-79-
A5/F6760-A6
Site Plan







SOUTH ELEVATION
SCALE: 1/4" = 1'-0"



NORTH ELEVATION
SCALE: 1/4" = 1'-0"

EXHIBIT NO. 5
APPLICATION NO.
A-133-79-
A5/6760-A6
Elevations

1 of 2

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

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 Quality 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

9/18-1

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| EXHIBIT NO. 6 |
| APPLICATION NO. |
| A-133-79- |
| A5/F6760-A6 |
| Original Staff Report for CDP #A-133- 79/F6760 |
| 1 of 6 |
| 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 existing 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 concurrence 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 project site is a blufftop parcel located on a promontory overlooking the San Diego-La Jolla Underwater Park and Ecological Reserve, about ½ mile east of La Jolla Cove. The site is located 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 the 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 $\frac{1}{2}$ 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 Park. Public access to the shoreline below and to the City park is currently available only at low tide by walking down coast from an accessway at La Jolla Shores $\frac{1}{4}$ -mile north of the site.

The Commission finds that 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 $\frac{1}{4}$ 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 interferes 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 prescriptive rights be protected wherever they 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 equivalent 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 30211 of the Act. The Commission finds that the submitted documents give clear indication of the 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.

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.

1205

P. L.

SPINDRIFT DRIVE

1205

P. L.

340
14

PRINCESS STREET

TORREY PINES

STREET

AMALFI

2

151

10

11

12

13

14

15

PACIFIC

REYNOLDS PROPERTY

OCEAN

CHARLOTTE STREET

CITY OF SAN DIEGO

AMALFI

JACKSON ESTATES

BOOK 2

14

151

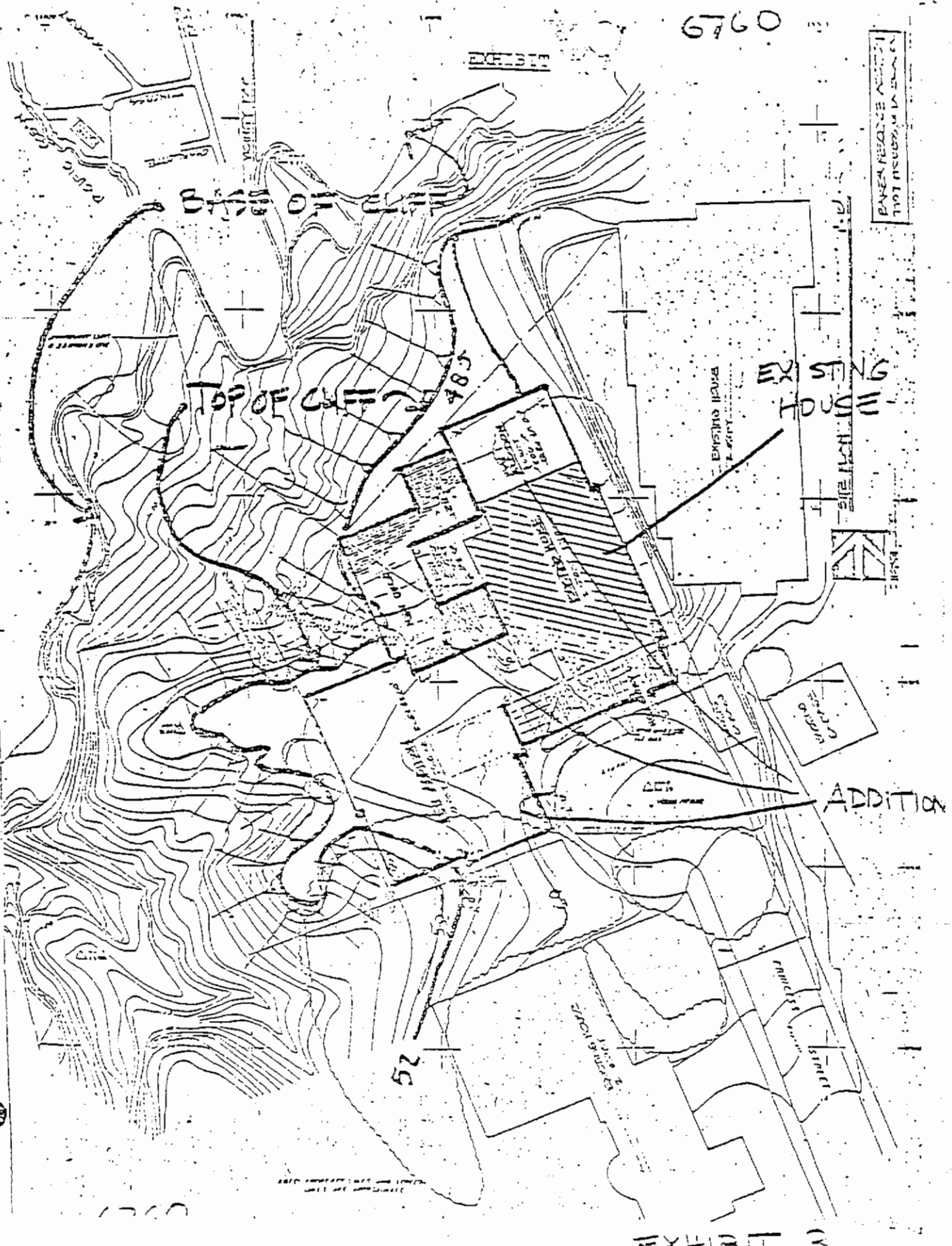
14

EXHIBIT 2

6760

EXHIBIT

PAVED HIGHWAY AND
TRAIL THROUGH VALLEY



ALL DIMENSIONS ARE APPROXIMATE

EXHIBIT

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



8 June 2011

GEOTECHNICAL REVIEW MEMORANDUM

To: Lee McEachern, San Diego District Manager
From: Mark Johnsson, Staff Geologist
Re: Kretowicz Appeal (A-133-79-A5)

In connection with the above-referenced appeal, I have reviewed the following documents:

TerraCosta Consulting Group, 2011, "Bluff edge determination, 7957 Princess Street, La Jolla, California, Kretowicz residence", 10 p. letter report dated 6 June 2011 and signed by R.N. Hawk (CEG 1299 GE 2909).

In addition, I revisited the site on 11 February 2011 where I met with Mr. and Mrs. Kretowicz and their architect, Claude-Anthony Marengo.

Regarding the delineation of the bluff edge on the subject site, I concur with the above-referenced report that a "coastal bluff" exists on the northern side of the property, but the bluff edge on the western side of the property meets the definition of the edge of a coastal canyon, under the certified LCP, which states, in pertinent part

...the coastal bluff edge is defined as the portion of the site which drains directly into the ocean. That portion of the side which drains first to the canyon (landward of the drainage divide) is not considered to be a sensitive coastal bluff.

The southwestern portion of the subject property does, indeed, drain into the large coastal canyon lying mostly on the property to the south a few feet before that canyon empties to the ocean. Accordingly, the ridge line between the coastal bluff to the north and the coastal canyon to the south meets the definition of the bluff edge given in the LCP. Accordingly, I agree that the depiction of the "Coastal Bluff Limit" in Figure 6 of the above-referenced report meets the LCP-definition of the bluff edge.

I note, however, that this definition is inconsistent with the definition of the bluff edge in the Coastal Commission's regulations. CCR § 13577 (h) (2) states in part:

The termini of the bluff line, or edge along the seaward face of the bluff, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the seaward face of the bluff, and a line coinciding with the

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| EXHIBIT NO. 7 |
| APPLICATION NO. |
| A-133-79- |
| A5/F6760-A6 |
| Staff Geologist |
| Memo |
| California Coastal Commission |

general trend of the bluff line along the inland facing portion of the bluff. Five hundred feet shall be the minimum length of bluff line or edge to be used in making these determinations.

The requirement that a minimum length of 500 feet be used in making these differentiations provides that minor undulations of the bluff edge, such as on the Kretowicz property, do not interrupt the bluff edge delineation. However, the standard of review for this appeal is the certified LCP, which does not contain such a provision.

I hope that this review is helpful. Please do not hesitate to contact me with any further questions.

Sincerely,

Signature on file

Mark Johnsson, Ph.D., CEG, CHG
Staff Geologist

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is effective this 14 day of July, 2008, by and between 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") in relation to San Diego County Superior Court Case No. GIC 851915, entitled *Dianne Kretowicz and Ure Kretowicz v. California Coastal Commission, et al.* and related cross complaint, 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 was ever recorded.

C. On July 22, 2004, Kretowicz submitted an application to the Commission to modify 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. On January 19, 2007, the parties entered into that certain Stipulation for Entry of Judgment ("Original Stipulation") to settle and resolve their differences relating to the Property. Among other things, the Original Stipulation required the Commission to consider approval of an amended coastal development permit. At a hearing held on June 14, 2007, the Commission refused to grant the proposed amendment.


F. Taking into consideration guidance received from the Commission at the June 14, 2007 hearing, the parties now desire to settle and resolve their differences relating to the Property as set forth below.

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

101099204.3
Settlement Agreement
Kretowicz/California Coastal Commission

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EXHIBIT "A"

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| EXHIBIT NO. 8 |
| APPLICATION NO. |
| A-133-79- |
| A5/F6760-A6 |
| Settlement Agreement |
| 1 of 10 |
|  California Coastal Commission |

AGREEMENT

1. Incorporation of Recitals. Recitals A through F, inclusive, are incorporated herein by this reference and acknowledged by all parties hereto as accurate.
2. Original Stipulation Void. This Agreement is intended to supersede and replace the Original Stipulation in its entirety. The parties hereby agree that the Original Stipulation is void.
3. New Kretowicz Permit Amendment Application. Within ninety (90) days after the execution of this Agreement, Kretowicz shall submit a new coastal development permit amendment application ("Amendment Application") consistent with the Kretowicz Permit Application, and also seeking approval for (i) deletion of the requirement to offer to dedicate vertical public access identified in Permit A-133-79, (ii) an unpermitted gate and fence, and (iii) the other existing improvements to the Property constructed without the benefit of a coastal development permit as listed in Exhibit A, and (iv) a proposal to pay \$3.3 million. Kretowicz shall provide any additional information that Commission staff deems necessary to complete the Amendment Application within 30 days of receipt of notice from Commission staff that such information is necessary, subject to Kretowicz's appeal right to the Coastal Commission pursuant to California Code of Regulations, title 14, section 13056. If the Commission approves the Amendment Application ("Approved Amendment"), Kretowicz shall comply with all terms and conditions of the Approved Amendment within the deadlines set forth in the conditions. If the Commission denies the Amendment Application in full or if, within twenty (20) days following the date of the final Commission action on the Amendment Application, Kretowicz provides written notice stating that Kretowicz does not accept the Commission's action, this Agreement shall be null and void.
4. City Permit Process. The parties acknowledge that Kretowicz has submitted development applications to the City of San Diego ("City") pursuant to the January 8, 2008 City Administrative Hearing Officer determination which include, without limitation, a site development permit amendment ("City Permit Application"). The City will process the City Permit Application and consider its approval in advance of the Commission's discretionary action on the Amendment Application. Although the City is not exercising coastal development permit jurisdiction in connection with the City Permit Application, the parties acknowledge that the City's decision to approve, deny or conditionally approve the City Permit Application may affect the scope and content of the Amendment Application. Accordingly, within thirty (30) days following the final determination by the City in connection with the City Permit Application, in their sole discretion Kretowicz either will make revisions necessary to bring the Amendment Application into conformity with the City's action on the City Permit Application or will notify the Commission that Kretowicz does not accept the City's action, in which event this Agreement shall be null and void.
5. Grant of Emergency Lifeguard Easement. If the Agreement is not terminated pursuant to Section 3 hereof, Kretowicz will grant the City of San Diego ("City") an easement for emergency lifeguard access and no other purpose ("Lifeguard Easement") upon the issuance of the permit for the Approved Amendment. The Lifeguard Easement shall be four (4) feet wide along the southern Property boundary.
6. Payment. If the Agreement is not terminated pursuant to Section 3 or Section 4 hereof, Kretowicz will pay a total of Three Million Three Hundred Thousand Dollars

(\$3,300,000.00) ("Financial Obligation"), in installments as set forth below, to the State Coastal Conservancy or other entity as directed by the Executive Director of the Commission. The Commission may direct use of the payment to fund various coastal access projects in the La Jolla area, including a grant of \$300,000 to the City of San Diego exclusively for such purposes, although Kretowicz will have no involvement in such projects and this Agreement is not contingent upon any such project.

6.1 Payment Schedule. Subject to the provisions of Section 6.2 below, the Financial Obligation shall be satisfied as follows:

6.1.1 \$800,000 shall be paid within 120 days of the Commission's approval of the Approved Amendment; provided, that if prior to the expiration of said 120 days the Commission staff notifies Kretowicz in writing of its intention to issue the Approved Amendment, Kretowicz shall make the initial payment as a condition of permit issuance. The Commission staff shall give ten (10) days advance written notice of its intention to issue the Approved Amendment.

6.1.2 An additional \$1,000,000 shall be paid every twelve months thereafter, not to exceed a total payment of \$3,300,000.

6.1.3 The twelve month deadline referenced in Section 6.1.2 shall run from the previous payment deadline, regardless of whether the prior payment was timely made.

Late payments shall include interest at the legal rate (presently 10%) in accordance with Code of Civil Procedure section 685.010. Interest shall be in addition to any penalties imposed pursuant to section 8 hereof.

6.2 Issuance of Approved Amendment. Commission staff will use best efforts to review all documents that must be approved by the Executive Director prior to issuance of the Approved Amendment and will timely process and issue the Approved Amendment following the Commission's approval of the same. Kretowicz will timely submit all documentation necessary for the issuance of the Approved Amendment.

6.3 Security. The Financial Obligation will be memorialized in a promissory note secured by a second position trust deed on the Property, which shall be a condition of issuance of the Approved Amendment. At any time, Kretowicz shall have the unilateral right to replace the promissory note and deed of trust with a letter of credit in a form reasonably satisfactory to the Executive Director of the Commission. The Commission agrees to sign, notarize and record a reconveyance or other document adequate to release the encumbrance of the trust deed from the Property upon such substitution of security. The security shall be subject to the following requirements:

6.3.1 The first trust deed on the Property shall not exceed \$3 million.

6.3.2 As a condition of the issuance of the Approved Amendment, Kretowicz shall obtain a MAI appraisal certifying that the fair market value of the Property is at least ten million dollars (\$10,000,000). Kretowicz shall obtain a renewed MAI appraisal every twelve months thereafter, until all payments have been made.

6.3.3 The fair market value (as reflected in the annual appraisal) at all times shall exceed the combined outstanding principal balances of the first trust deed and the second trust deed (or substituted security pursuant to Section 6.2) by \$3,700,000. If such equity is not maintained, Kretowicz shall promptly substitute the second trust deed and promissory note with a letter of credit in an amount equal to the then-outstanding Financial Obligation. The form of letter of credit shall be reasonably acceptable to the Executive Director of the Commission.

7. Dismissal of Claims; Court's Retention of Jurisdiction. Within 45 days of the date hereof, the parties shall seek entry of an order in a form mutually acceptable to the parties providing that the Court shall retain jurisdiction to enforce this Agreement until performance in full of its terms pursuant to Section 664.6 of the California Code of Civil Procedure. Within 30 days following entry of such order, Kretowicz shall dismiss the Kretowicz Action without prejudice and the Commission shall dismiss the Commission Cross-Complaint without prejudice. The parties shall be permitted to re-file these actions if the Settlement Agreement is terminated or deemed null and void, in which case the parties shall revert to their respective legal positions before this Agreement was executed, as if the litigation had been tolled. Neither party shall assert any defense or theory which would prevent the other party from re-instituting its claims.

8. Violation of Terms of Agreement Pursuant to Stipulation. Should Kretowicz violate any term set by this Agreement, 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 has failed to cure the violation, 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 Agreement. Payment of such penalty shall not relieve Kretowicz of his duties under the Agreement. 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.

9. Commission Access to Site. Kretowicz agrees to provide access to the Property upon receipt of 24 hours advance notice and an opportunity for Kretowicz to be present. Nothing in the Agreement is intended to limit in any way the right of entry or inspection that any agency may otherwise have under applicable law. Commission staff may enter and move freely about the portions of the Property on which the development which is the subject of this Agreement is located, and, to the extent allowed by law, on adjacent areas of the Property to view the areas where the development is being performed pursuant to the requirements of the Agreement for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of Kretowicz in carrying out the terms of the Agreement.

10. 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 Agreement constitutes a waiver of the Commission's authority to enforce violations of the Coastal Act that are not addressed in the Amendment Application.

11. Enforcement of Settlement Agreement.

11.1 Kretowicz and the Commission hereby jointly request the Court to retain jurisdiction of this case and over Kretowicz and the Commission personally until final performance of this Agreement and to hear and determine motions to enforce this Agreement under Code of Civil Procedure section 664.6. This joint request includes tolling of any applicable statute, rule or court order affecting timely prosecution of this action, including without limitation the 5-year statute (Code of Civil Proc. section 583.330).

11.2 The Court also retains jurisdiction for the purpose of enabling any party to this litigation to apply to the Court for any further orders or directions as may be necessary and appropriate for the Agreement's construction, execution, and enforcement of the Agreement pursuant to California Code of Civil Procedure sections 128(a) (4) and 664.6.

12. Miscellaneous.

12.1 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.

12.2 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.

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

12.4 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.

12.5 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 in a timely manner.

12.6 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.

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

12.8 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.

12.9 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 and shall run with the land.

12.10 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.

12.11 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.

12.12 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:

Lee McEachern
California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108
Facsimile: (619) 767-2384
Telephone: (619) 767-2370

And a copy to Lisa Haage, Chief of Enforcement
California Coastal Commission
45 Fremont Street, 20th Floor
San Francisco, CA 94105-2219
Facsimile: (415) 904-5400
Telephone: (415) 904-5200

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, Trustee

California Coastal Commission

By: *Signature on file*

By: _____
Its: _____

Ure Kretowicz, Trustee

Signature on file

By: _____

By: _____
Its: _____

APPROVED AS TO FORM:

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

Signature on file

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

OFFICE OF ATTORNEY GENERAL

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

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, Trustee

California Coastal Commission

Signature on file

By: _____

By: _____
Its: Peter Douglas, Executive Director

Ure Kretowicz, Trustee

By: _____

By: _____
Its: _____

APPROVED AS TO FORM:

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

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

OFFICE OF ATTORNEY GENERAL

Signature on file

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

EXHIBIT A

1. Construction of stairways along the south and eastern property boundaries;
2. Extending height of garage roof;
3. Removal of rear wood timber stairs on the face of the bluff (already removed) and portion of a retaining wall within the five foot coastal bluff setback;
4. Installation of decorative paving of City ROW leading up to home;
5. Masonry wall (6 ft. high) in City ROW as well as the extension in height of an existing retaining wall from 3'6" to 7'6", not in City ROW;
6. Modifications to non-conforming accessory structure "casita" (partially within City ROW) to include new plumbing and electrical, new doors and windows, expansion of existing walls and rehab and thickening of some exterior walls;
7. New planter walls, entry trellis and new 4' high max. planter in ROW;
8. New fountain adjacent to eastern exterior stair;
9. Second-story deck reconstructed and partial roof added;
10. New second-story cantilevered balcony;
11. Native vegetation removal on face of bluff;
12. Landscaping (non-native ice plant) and removal of irrigation on bluff face;
13. New square footage added, portions within 25 ft. of the bluff edge (bedrooms, music room and exercise room), constructed below house;
14. Flood lights on bluff face;
15. Drainage pipe down bluff face to collect and discharge drainage from northern patios/landscaped areas;
16. Wall and Fence in required vertical public access (lifeguard access);

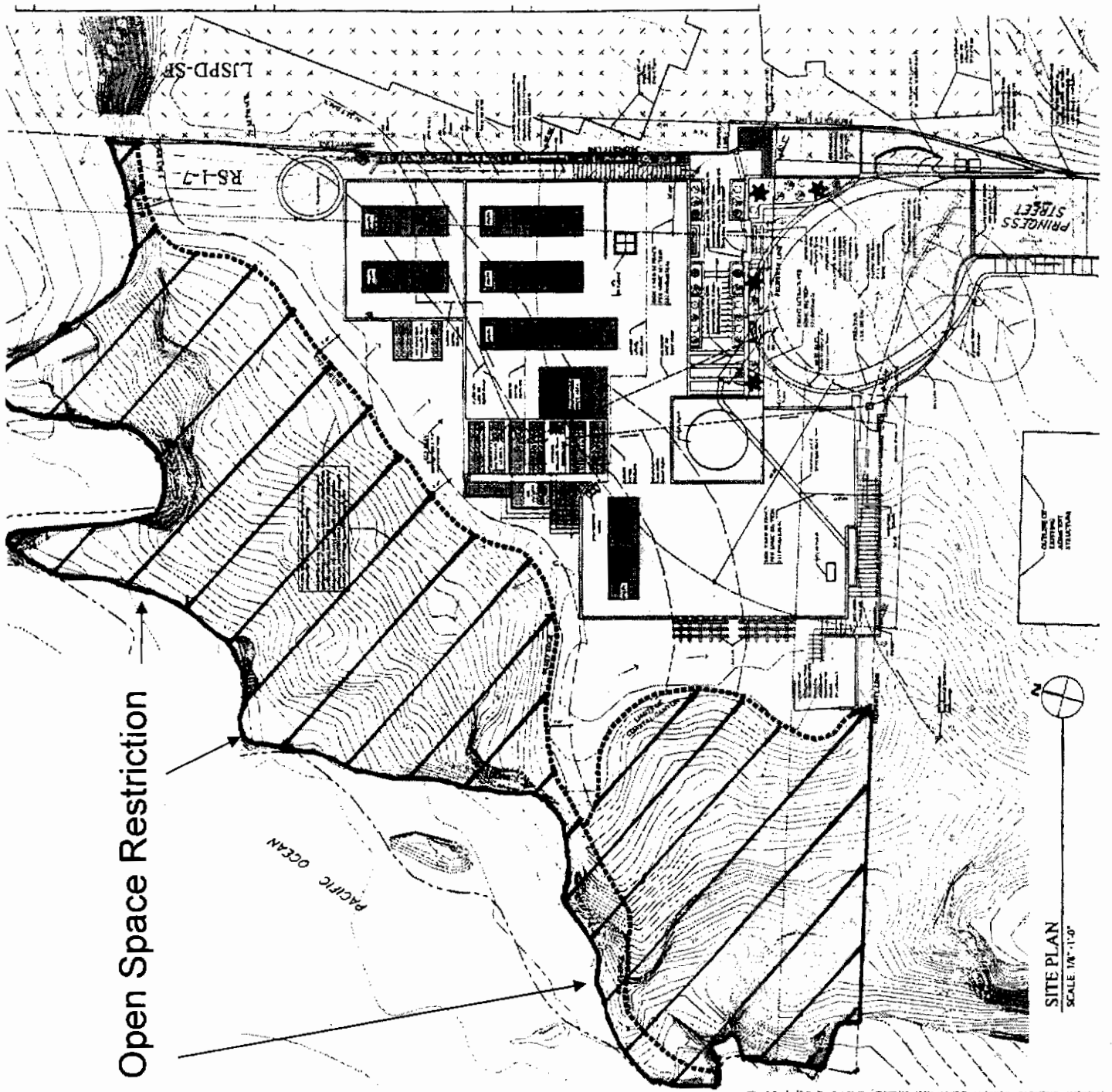


EXHIBIT NO. 9
APPLICATION NO.
A-133-79-
A5/F6760-A6
Open Space
Restriction

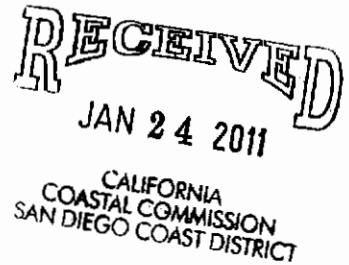
January 24, 2011

February 10, 2011, Items 16a & 16b

California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive, Suite 103
San Diego, California, 92108

Attention: Lee McEachern

Re: Kretowicz – File A-133-79-A5 / F6760-A6



I am writing to clarify the position of the La Jolla Conservancy (LJC) regarding this matter. On December 7, 2010, the LJC voted unanimously to supplement the letter it sent the commission on September 23, 2010 with the following statement:

The La Jolla Conservancy favors the restoration and maintenance of access to the public beach at 7957 Princess Street, regardless of any other recommendations concerning possible uses of funds that may be recovered as a result of past and current coastal permit infractions at the subject property.

The LJC also stands by the letter it sent to the Commission on September 23, 2010 which states:

On September 22, the Board of the La Jolla Conservancy voted unanimously to support the Commission's efforts to protect the public's use of this historic access to the La Jolla Underwater Park and State Ecological Reserve, with the proposed off-site mitigation fee to restore it. Angel's Flight access is located at the heart of the Coast Walk Trail and footbridge which are a designated historical landmark and visitor destination of worldwide significance. The La Jolla Conservancy stands ready to assist the Coastal Commission and other state and local agencies to successfully carry out the goal to enhance the public's access and enjoyment of this treasured California coastal resource.

When the Offer to Dedicate an Easement for the Public's access is recorded, then it can be accepted by local or state agencies or nonprofit organizations such as the La Jolla Conservancy.

Respectively

Signature on file

John Redinger, Secretary
760-635-8566

Secretary

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| EXHIBIT NO. 10 |
| APPLICATION NO. |
| A-133-79- |
| A5/F6760-A6 |
| Comment Letters |
|  California Coastal Commission |



LA JOLLA PARKS & BEACHES INC.

MEET 4TH MONDAY, MONTHLY
AT 615 PROSPECT STREET

December 14, 2010

California Coastal Commission San Diego Area
Application # A-133-79-A4/F6760-A5
Send to lmceachern@coastal.ca.gov Att: Lee McEachern
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

Re: Application No. A-133-79-A4/F6760-A5
Applicants: Ure and Diane Kretowicz

Members of the California Coastal Commission:

On Monday January 24, 2011, La Jolla Parks & Beaches Inc. voted 8-1-1 (chair abstains from voting) to "Support letter from La Jolla Shores Association to the California Coastal Commission".

Applicants Ure and Diane Kretowicz are private property owners who, through the architectural design firm of Marengo Morton, propose closure of public access to the south end of La Jolla Shores at Princess Street in exchange for installment payments totaling \$3.3 million to fund other access improvements. On October 13, 2010 and again on December 8, 2010, the Board of Directors of the La Jolla Shores Association met and held a properly noticed public hearing on the issue of whether or not to support the proposed action which is the subject of the above referenced application. After hearing overwhelming opposition from members of the public on this issue, the board has unanimously rejected the proposal which seeks to deny the public both lateral and vertical access to the beachfront. Our reasons are set forth below.

In the first instance, the Princess Street access to La Jolla Shores is vitally important to the safety and well-being of the beach-going public. This access point sits south of the La Jolla Shores at the approximate halfway point between the Shores and the Cove. Testimony heard at one hearing of the La Jolla Shores Association made a strong case that there are no similar beach access points in the area, leaving swimmers, kayakers, divers, tide-poolers, and hikers potentially stranded (and at risk of drowning) if they are blocked at high tide from egress at the Princess Street access. Applicants' suggestions that a lifeguard can be called to unlock a gate or that the public can simply swim to other La Jolla Shores egress points (such as Angel's Flight) seem unrealistic in an emergency situation.

Second, our community has expressed its strong disapproval of the sale of such an important public right of way. The California Coastal Commission is charged with a duty to protect, for the benefit of all citizens, our coastline and beaches from the overreach of a greedy few. The idea that, at any price, a private party can "buy-off" an invaluable obligation to the public, is contrary to this Commission's duty to protect the public's access to California beaches. Our community is left wondering: How is it that this Commission would allow a wealthy property owner to barter for the permanent abandonment of the public's beach access – beach access which, once sold off, can never be replaced?

While a sale of irreplaceable beach access at any price seems anathema to most, others are left shuddering at the low-ball nature of the applicants' offer. In other words, from a purely business point of view, the \$3.3 million installment offer seems grossly insufficient given the permanent nature of the private beach access being taken from the public. And, there are no guarantees that the applicants will make the scheduled payments (which are to be stretched out over a three year period of time) and no remedy left to the State in the event of a default. This is no minor point, when you consider the economic times.

Moreover, there are no guarantees that this money will be spent on other public accesses in La Jolla. While suggested, there is no mandate that the funds be so used and there remains ample opportunity in the proposal for the monies to be spent elsewhere in the region, leading to no access benefits for La Jolla.

Finally, the public has, in large part, been unaware of the proposal. Matters such as this, with long running permit and legal issues, are by their nature difficult to get timely information on. As a consequence, until recently the public has not been in a position to become informed on the issues and intricacies involved nor have their opinions fully heard and considered by the Commission. The recent hearings at the La Jolla Shores Association were the first public forums to address this proposal. It is vitally important to have this matter fully addressed and receive broad public input at the Coastal Commission Meeting. We are pleased that the item will be heard in San Diego, as that will provide for full community participation by those who stand to lose the most should the proposed action be approved.

In short, the applicants' proposal is not in the public's best interest as it denies, in perpetuity, the public's right to access an invaluable public resource, which no person (wealthy, powerful or otherwise) should be able to buy – at any price. The La Jolla Shores Association formally requests that the proposed action be denied and that this public access be preserved, forever, for the public's use and enjoyment.

La Jolla Shores Association

Joseph G. Dicks, Chair

cc: Office of the California Attorney General

JOSEPH G. DICKS, CHAIR
LA JOLLA SHORES ASSOCIATION
P.O. BOX 64
LA JOLLA, CA 92038

DEC 14 2010

Sent Via Personal Delivery and U.S. Mail

December 14, 2010

California Coastal Commission
San Diego Area
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

Re: Application No. A-133-79-A4/F6760-A5
Applicants: Ure and Diane Kretowicz

Members of the California Coastal Commission:

Applicants Ure and Diane Kretowicz are private property owners who, through the architectural design firm of Marengo Morton, propose closure of public access to the south end of La Jolla Shores at Princess Street in exchange for installment payments totaling \$3.3 million to fund other access improvements. On October 13, 2010 and again on December 8, 2010, the Board of Directors of the La Jolla Shores Association met and held a properly noticed public hearing on the issue of whether or not to support the proposed action which is the subject of the above referenced application. After hearing overwhelming opposition from members of the public on this issue, the board has unanimously rejected the proposal which seeks to deny the public both lateral and vertical access to the beachfront. Our reasons are set forth below.

In the first instance, the Princess Street access to La Jolla Shores is vitally important to the safety and well-being of the beach-going public. This access point sits south of the La Jolla Shores at the approximate halfway point between the Shores and the Cove. Testimony heard at one hearing of the La Jolla Shores Association made a strong case that there are no similar beach access points in the area, leaving swimmers, kayakers, divers, tide-poolers, and hikers potentially stranded (and at risk of drowning) if they are blocked at high tide from egress at the Princess Street access. Applicants' suggestions that a lifeguard can be called to unlock a gate or that the public can simply swim to other La Jolla Shores egress points (such as Angel's Flight) seem unrealistic in an emergency situation.

Second, our community has expressed its strong disapproval of the sale of such an important public right of way. The California Coastal Commission is charged with a duty to protect, for the benefit of all citizens, our coastline and beaches from the overreach of a greedy few. The idea that, at any price, a private party can "buy-off" an invaluable obligation to the public, is

contrary to this Commission's duty to protect the public's access to California beaches. Our community is left wondering: How is it that this Commission would allow a wealthy property owner to barter for the permanent abandonment of the public's beach access – beach access which, once sold off, can never be replaced?

While a sale of irreplaceable beach access at any price seems anathema to most, others are left shuddering at the low-ball nature of the applicants' offer. In other words, from a purely business point of view, the \$3.3 million installment offer seems grossly insufficient given the permanent nature of the private beach access being taken from the public. And, there are no guarantees that the applicants will make the scheduled payments (which are to be stretched out over a three year period of time) and no remedy left to the State in the event of a default. This is no minor point, when you consider the economic times.

Moreover, there are no guarantees that this money will be spent on other public accesses in La Jolla. While suggested, there is no mandate that the funds be so used and there remains ample opportunity in the proposal for the monies to be spent elsewhere in the region, leading to no access benefits for La Jolla.

Finally, the public has, in large part, been unaware of the proposal. Matters such as this, with long running permit and legal issues, are by their nature difficult to get timely information on. As a consequence, until recently the public has not been in a position to become informed on the issues and intricacies involved nor have their opinions fully heard and considered by the Commission. The recent hearings at the La Jolla Shores Association were the first public forums to address this proposal. It is vitally important to have this matter fully addressed and receive broad public input at the Coastal Commission Meeting. We are pleased that the item will be heard in San Diego, as that will provide for full community participation by those who stand to lose the most should the proposed action be approved.

In short, the applicants' proposal is not in the public's best interest as it denies, in perpetuity, the public's right to access an invaluable public resource, which no person (wealthy, powerful or otherwise) should be able to buy – at any price. The La Jolla Shores Association formally requests that the proposed action be denied and that this public access be preserved, forever, for the public's use and enjoyment.

La Jolla Shores Association

Signature on file

Joseph G. Dicks, Chair

cc: Office of the California Attorney General

LA JOLLA TOWN COUNCIL

Draft Minutes - LJTC

Thursday, January 13, 2011, Page Two

Action Item:

Approved Motion: Bache-Kerr made a motion for Van Inwegen to work with Ed Quinn and the community group to figure out the next step for the helicopter flying overhead close to shoreline. (Bache-Kerr/Hildt 12-0-1) Abstained: Van Inwegen

Comments from Government Representatives –

John Weil from Supervisor Pam Slater-Price: Present; made report.

Sterling McHale from Assemblymember Nathan Fletcher: Present; made report

LJTC Community Organizations-

UCSD-Anu Delouri: Present; made report

BRCC-Michelle Faulks-Present; made report

LJ CPA - Joe LaCava: Present; made report.

LJTC Committee Reports –



Streetscape/Beautification-Esther Viti: Present; made report

PDO-Crystall Hasson: Present; made report

T&T-Rob Hildt: Present; made report

Parks & Beaches- MerryWeather presented La Jolla Shores letter regarding item #7 Princess St. access, Kretowicz residence.

Action Item:

 **Approved Motion:** Rasmussen made a motion to approve the general position of the La Jolla Shores letter in regards to the Princess St. access and for La Jolla Town Council to possibly write a letter in support. (Rasmussen/Haskins 12-0-1) Abstained: Dorsee 

Consent Agenda: Approved motion regarding the December Consent Agenda with exception of pulling item K. Change in Parking time limits at 7427 Fay Ave- (Courtney/Haskins 13-0-0).

Lee McEachern

From: Melinda Merryweather [mbeherenow@sbcglobal.net]
Sent: Monday, January 24, 2011 2:18 PM
To: Lee McEachern
Subject: Fw: Princess st

----- Forwarded Message -----

From: Melinda Merryweather <mbeherenow@sbcglobal.net>
To: lmceachern@costal.ca.gov
Sent: Mon, January 24, 2011 1:57:54 PM
Subject: Princess st

To Commission Staff. Re Kretowicz/Princess beach access/San Diego Feb.10, 2011

Asking to restore public beach access at Princess st. forever.

My name is Melinda Merryweather and I have served on Park and Beaches in La Jolla for 19 years I also helped write our community plan,as a trustee of the La Jolla Community Planing Association.My duties were to map all the beach accesses.I am also the founder of Friends of Windansea who raised over \$200,000.00 for the historic preservation of Windansea beach in La Jolla.

I have lived in La Jolla most of my life,and in the 60s lived next to Princess st. and used the beach access all the time ,to go surfing (I was then married to Mike Hynson of the Endless Summer surf movie) we went down the path to the Beach and Tennis Club we went down to dive and snorkel,myself and my friends used it all the time.We also used it in the 70s and 80s. I am asking you on behalf of all of us,to please restore the beach access.It has also become a safety issue through the years if you go to that beach at low tide and the tide comes up you are trapped, as Mr Kretowics locks a gate across the access,and if you can get help from the lifeguards the have to use the house and kindness of a neighbor to get you out,yesterday there were

over 60 kayaks in that bay.

Mr Kretowicz will tell you the path is unsafe yet I have seen his own children take their kayak down the hill. He will claim when he bought the house he did not know there was a beach access there, good grief there was a huge sign there.

Please do not let this access that is so important to us be bought, I do not see any possibility of a access at Angel's Flight, as the bluffs are collapsing, and at most tides you can not reach that beach from there. And the neighbors have hired a attorney to fight it. I have also been told Kretowics will not have the funds. Last year he even took the city beach access sign down.

I believe the Eagle Scouts can come in and improve the trail, and if need be some stairs can be put in, we did it at Windansea.

Please lets put this nightmare of almost 30 years behind us and

Get our beach access back please.

Thank you for all your good work sincerely
Melinda Merryweather.

January 23, 2011

To: California Coastal Commission

From: Bill Booth, Jr.

**Re: Historical Overview of Princess Street Access to Beach(La Jolla Slides)
and its cultural precedent.**

To whomever it concerns:

I am the son of Jane B. Baker, deceased, who owned the "Hopi House" and adjacent vacant lot at the foot of Princess Street, La Jolla, CA. from 1960 through 1989. The "Hopi House", fronting the Irving Gill home "Hilario", has been an architectural icon of La Jolla since 1916 with its strategic setting and accessibility to La Jolla's finest jewel, the La Jolla Cove. As real estate agent/consultant who represented my Mother, I assisted Robert Klitgaard, attorney of record for Jane Baker, in the negotiation with Helen Reynolds regarding the aforementioned Princess Street access. Helen Reynolds, owner of the Irving Gill home, had enjoyed a rich family history since 1907 with Princess Street and she provided an opposition to my Mother, who misinformed, had closed a seventy year, grandfathered access to the Slides.

Chronology of Beach Access/Implied Easement at 7957 Princess Street, La Jolla, CA.

1916: "Hopi House" site consecration; authentic pueblo home construction with indigenous Indian labor; bamboo garden installation between "Hopi House" and "Hilario" for bluff retention; cliff pathway hand dug for dedicated, public access to cobblestone beach of La Jolla Slides.

1916-1960: Bailey/North family succession of Princess Street, "Hopi House" ownership. Note: Wheeler North, eminent oceanographer and cousin to Helen Reynolds, jack hammered five subterranean caves into sandstone, shale cliffs, creating storage for marine artifacts below the "Hopi House".

1961: Jane Baker purchases "Hopi House"

1962/1964: Condemnation of bluff caves due to arson and vandalism.

1968: First "Hopi House" modification/addition/renovations. Prior to local scrutiny/historical preservation.

1977: Second "Hopi House" addition commencement.

1978: Jane Baker enjoined from further construction. Coastal Commission, Tony Ciani(architect/watch dog), and Helen Reynolds discover "string line" violations, parapet roof violations, and unlawful closure of beach access with curbside erection of chain link fence through a portion of Helen Reynolds front yard.

1979: Brokered peace achieved between Ciani, Klitgaard, and Coastal Commission. Jane Baker agrees to accept quiet, grandfathered easement in return for construction completion. It is stipulated that City of San Diego Lifeguards and staff of Scripps Institution of Oceanography(SIO) shall be granted "any time" access through locked gate to the La Jolla Slides with authorized keys. All grantees and grantor agree to minimum scope of usage until cliff pathway can be upgraded to general public use.

1982: Historical El Nino storms destabilize bluffs, undermine 70 year old path's integrity, and ultimately render easement impassable with cliff escarpment. All grantees use alternate access, the "Hopi House" side yard stairway, for emergencies, academic field investigations, and general access.

1989: Jane Baker sells "Hopi House". The buyer, Chris McKellar, acknowledges and accepts written disclosure regarding unrecorded easement and its historical continuity.

Synopsis: The unique geology and littoral bathymetry of La Jolla Slides was, in part, a primary feature of the siting of Scripps Institution of Oceanography in 1912 at its present campus. Pioneer oceanic research of La Jolla Cove with its submarine canyon, magnificent cliffs, bird life, kelp beds, and abundant sea life insured SIO's foundation. Fishermen, divers, swimmers, and surfers have always, and indisputably, used this cultural access to the beach below.

I would conclude with this: the Princess Street right of way needs to be returned to the public domain as it was established over a century ago.

Bill Booth, Jr.

To Calif. Coastal Commission.
Re: Princess St. LA Jolla

Dear La Jolla Town Council and Committee Representatives,

I have recently been made aware of a 'former' emergency rescue access that has not been widely known or used by lifeguards in the last five to ten years. I toured the Princess St. "limited" access last Friday, April 15, and was very encouraged to find out that this access may be made available to lifeguards during emergencies. As a lifeguard supervisor in La Jolla for the past four years, I am aware of a number of times where this access route would have been beneficial to the victim(s) as well as the rescuers.

From a public safety standpoint, I encourage the La Jolla Town Council to support the sustainment of a emergency access at the foot of Princess St. for the benefit of all La Jollans and visitors to the La Jolla coastline.

Sincerely,

Sgt. John Sandmeyer
San Diego Lifeguards
Off.(619)221-8879
cell(619)980-0895
jsandmeyer@sandiego.gov



SCRIPPS CLINIC

10666 NORTH TORREY PINES ROAD
LA JOLLA, CALIFORNIA 92037
858 455-9100
www.scrippsclinic.com

Paul S. Teirstein, M.D., F.A.C.C.

Chief of Cardiology

Director, Interventional Cardiology

Division of Cardiovascular Diseases

October 30, 2010

Direct Line: 858 554-9905

Fax Line: 858 554-6883

E-Mail: pteirstein@scrippsclinic.com

300-1000

NOV 08 2010

California Coastal Commission
San Diego Coast District

California Coastal Commission

San Diego Coast District Office

7575 Metropolitan Drive, Suite 103

San Diego, CA 92108

Attention: Lee McEachern

Re: Kretowicz-Off Site Mitigation

File A-133-79-A4 / F6760-A5

We are writing to voice our disapproval of the proposed amendments to the Coastal Development Permits for this property. We are specifically opposed to the mitigation plans that call for building the Angel's Flight staircase on Coast Walk as an alternate public access.

Concerns surrounding the impact of such a project are as follows:

Public Safety-

- Access for emergency crews is limited at best along the single lane dead end street.
- Current bridge and surrounding soil reveals years of neglect. The walking bridge bears a temporary repair (metal plate) which has been in place for several years. Increased foot traffic and access will further deteriorate the bridge as well as the walking path at a faster rate, affecting safety.
- Congestion builds when vehicles try to access limited parking spots along Coast Walk.
- Currently, expert swimmers and surfers use the beach. If a new staircase down the bluff is created, less skilled swimmers and surfers will use the area resulting in a potential increase of emergency services if an easier access is built.
- A lifeguard rescue using the proposed Angel's Flight staircase will be extremely dangerous due to the steepness and length of the required staircase
- At high tide, the proposed Angel's Flight staircase is cut off from the rest of the inlet, making lifeguard rescue more risky

Environment

- Due to weather and usage, Coast Walk Path is in desperate need of re-grading the soil along the entire walking path. There are places that storm water runoff pipes are exposed with large screws are exposed and when drainage occurs it is not walk able.
- A man-made stairway is counter to a "preservationist" solution for beach access
- A man-made stairway will endanger the already unstable bluff
- As noted in the Commission staff report (page 27) of 9/29/10, "...construction of a public access stairway down the face of a coastal bluff can result in public view impacts..."

If the Coastal Commission's staff approves the current recommendations, funds will be available to construct the Angel's Flight staircase. Building a staircase may be a solution for beach access in resolution for this lawsuit, but it is not a systemic solution for the whole of the path that is part of Coast Walk, and for the reasons outlined above, creates major new safety and environmental threats to the community.

We believe it is imperative that the Coastal Commission be alerted that there is intense community concern about the potential proposed settlement. Before approving a settlement and collecting \$3.3M, (earmarking the majority of the \$3.3M to the proposed stairs) the commission should know that their mitigation plans will be vigorously opposed by us as well as many neighborhood residents. The commission should also understand the important reasons why the proposed settlement does not provide the anticipated mitigation, but instead, threatens public safety and the environment.

Respectfully,

Signature on file

Paul S. Teirstein

1515 Coast Walk, La Jolla, CA 92037

858-554-9909

pteirstein@scrippsclinic.com

Signature on file

Jackalynn Wilson

1515 Coast Walk, La Jolla, CA 92037

858-459-5005

Jackalynn@san.rr.com

6344

JOEL FISLER M.D.

For: [illegible]

NOV 08 2010

California Coastal Commission

November 3, 2110

Dear California Coastal Commission:

We strongly disapprove of the proposed amendments to the Coastal Development Permits for this property. We are specifically opposed to the mitigation plans that call for building the Angel's Flight staircase on Coast Walk as an alternate public access and as mitigation to 7957 Princess St lawsuit.

Concerns surrounding the impact of such a project are as follows:

Public Safety-

- Access for emergency crews is limited at best along the single lane dead end street.
- Current bridge and surrounding soil reveals years of neglect. The walking bridge bears a temporary repair (metal plate) which has been in place for several years. Increased foot traffic and access will further deteriorate the bridge as well as the walking path at a faster rate, affecting safety.
- Congestion builds when vehicles try to access limited parking spots along Coast Walk.
- Currently, expert swimmers and surfers use the beach. If a new staircase down the bluff is created, less skilled swimmers and surfers will use the area resulting in a potential increase of emergency services.
- Lifeguard rescue using the proposed Angel's Flight staircase will be extremely dangerous due to the steepness and length of the required staircase
- At high tide, the proposed Angel's Flight Staircase is cut off from the rest of the inlet, making lifeguard rescue more risky

Environment

- Due to weather and usage, Coast Walk Path is in desperate need of re-grading the soil along the entire walking path. There are places that storm water runoff pipes are exposed with large screws are exposed and when drainage occurs it is not walk able.
- A man-made stairway is counter to a "preservationist" solution for beach access
- A man-made stairway will endanger the already unstable bluff
- As noted in the Commission staff report (page 27) of 9/29/10 "... construction of a public access stairway down the face of a coastal bluff can result in public view impacts... "

If the Coastal Commission's staff approves the current recommendations, funds will be available to construct the Angel's Flight staircase. Building a staircase may be a solution for beach access in resolution for this lawsuit, but it is not a systemic solution for the whole of the path that is part of Coast Walk, and for the reasons outlined above, creates major new safety and environmental threats to the community.

Before the Coastal Commission decides to accept this mitigation, you should know that Angel Flight stairs would be the "stairs to nowhere". There is no beach at the base as well as no way to reach the beach in front of the Princess Property. Please be advised that due to the condition of Coast Walk not being able to support more traffic as well as other environmental and safety concerns we our greatly

opposed.

Respectfully,

Signature on file

Joel D. Fisler

Signature on file

Linda S. Fisler

1531 COAST WALK, LA JOLLA, CA. 92037
PHONE (858)454-2209 * FAX (858)454-6999
EMAIL JFISLER2@SAN.RR.COM

California Coastal Commission -
Supervising Deputy Attorney General -
La Jolla Conservancy -

11-1-10

RECEIVED
DEC 06 2010

Please open up the unlawful, selfish
closure of Princess Street beach access.
This was originally intended for public use
to reach the ocean. It was available
until owners of 1957 Princess closed it off, as
if it were their own, 30 years ago.

Please do not even consider building an
expensive, dangerous, precipitous stairway
from the Coast Walk bridge down to jagged
unsafe rocks below.

Please address erosion of Coast Walk cliffs
and necessary repair of the deteriorated
walk itself.

Sincerely,

I Signature on file JOW

46 year resident of Coast Walk

October 24, 2010

California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108
Attention: Mr. Lee McEachren

DEC 06 2010

RE: KRETOWICZ – A-133-79-A4/F6760-A5

Dear Commissioners:

After reading the Amendment Request, Staff Report and Preliminary Recommendation dated September 20, 2010, a group of concerned residents living along Coast Walk Trail gathered on October 24, 2010 to discuss the proposed settlement recommended by the California Coastal Commission Staff.

It was alarming to learn of the years of blatant permit abuse by the past residents of 7957 Princess Street and the lack of consequences for non-compliance. If there were ever a case on record to demonstrate the need for public oversight of coastal abuses, this long-standing litigation would serve as its poster child.

Consideration of this settlement appears to be at odds with the mission of the Coastal Commission to:

Protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations.

The actions by the past residents of 7957 Princess Street, and the non-actions of the Coastal Commission, have managed to cut off previously public beach access for nearly 30 years. Additionally, the unpermitted construction that has been granted by after-the-fact permissions over the past decade has further damaged the bluffs and intertidal areas. The result is a direct impact to the sustainability of the coastal bluff and shoreline, which the Coastal Commission has direct responsibility for protecting.

With respect to the proposed settlement, while we believe some form of mitigation may be necessary, we vigorously oppose the mitigation proposed in the Coastal Commission staff report of September 20, 2010. The staff proposal does not constitute appropriate mitigation, because it a) does not provide adequate access to the disputed beach, b) raises enormous safety concerns, and c) threatens the sensitive Coast Walk Trail, an environmentally important trail, which is already at risk due to abuse and neglect.

Our concerns about the environmental impact of this proposal to the fragile Coast Walk Trail have resulted in our taking steps to form a Coast Walk Conservancy group to work on preservation and protection of this valuable resource.

14 Similar
Letters Submitted

We support and encourage new ideas for the dispute on Princess Street. It is our hope that a more meaningful and beneficial resolution can be found.

Respectfully yours,

Signature on file *Signature on file*
Signature(s)

Walter & Styliani (Estel) Binder
Printed Name(s)

1327 Coast Walk L.A. 90034
Address

Telephone (Optional)

styanib@att.net
E-Mail (Optional)

Anthony A. Ciani
340 Dunemere Drive
La Jolla, CA90237

May 25, 2011

California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

RE: KRETOWICZ – A-133-79-A4/F6760-A5

Dear Commissioners:

I urge you to conclude this matter, by approving only the development of the proposed CDP amendments with special conditions that definitely will not harm Coastal Resources and the public's enjoyment of them.

Specifically, I request that you:

- 1) protect the sensitive bluffs and adjacent shoreline and La Jolla Marine Reserve Conservation Area – and Underwater Park ;
- 2) protect the public's right of access from Princess Street to the adjacent shoreline;
- 3) protect existing public views over the site to the adjacent shoreline, La Jolla Caves and Cove;
- 4) require a significant mitigation fee to enhance public access to the adjacent shoreline;
- 5) require that the existing, unapproved irrigation of the bluffs be eliminated, and that future irrigation be designed and controlled to avoid urban runoff in the ecological reserve;
- 6) require that the current storm drainage system and applicant's storm drainage system, be diverted away from the bluff and sea using a sump pump with a gas-powered generator backup; and,
- 7) based upon the permit history for this site, I request the Commission require a monitoring program to insure compliance with the conditions for these amendments.

In support of my request:

- A) There is an abundance of evidence regarding the public's historical use in the record of the California Coastal Commission's previous decision to require an offer to dedicate a vertical public access at this site;
- B) there is substantive evidence of the current owner/applicant performing significant development after being informed to stop work and to obtain all required permits including a CDP; portions of those new improvements, on their own, interfere with the public's right of access to the shoreline (CA Section 30211); and
- C) there is a preponderance of public opinion about the significance of the adjacent beach, ocean and tide pools and importance of protecting the public's right of access to them.

Sincerely,

Signature on file

Anthony A.

RECEIVED

MAY 26 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

RECEIVED

FEB 04 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Audrey D. Keane
8141 El Paseo Grande
La Jolla, CA 92037

California Coastal Commission San Diego Area
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

February 4, 2011

To Whom it May Concern:

The property located at 7957 Princess Street is full of history, including a legally recognized beach access. Located on the point of Princess St overlooking the ocean, tide pools, and caves, the access to the beach was walked by ancient Native Americans. Amateur and professional marine biologists and geologists still explore the tide pools today, but the only access is by walking south from the public access next to the Marine Room and crossing the rocks at low tide. This week during low tide, I saw several people exploring the area including a man with a small child.





As you can see from several of the photos, the area is beautiful and full of sea life.

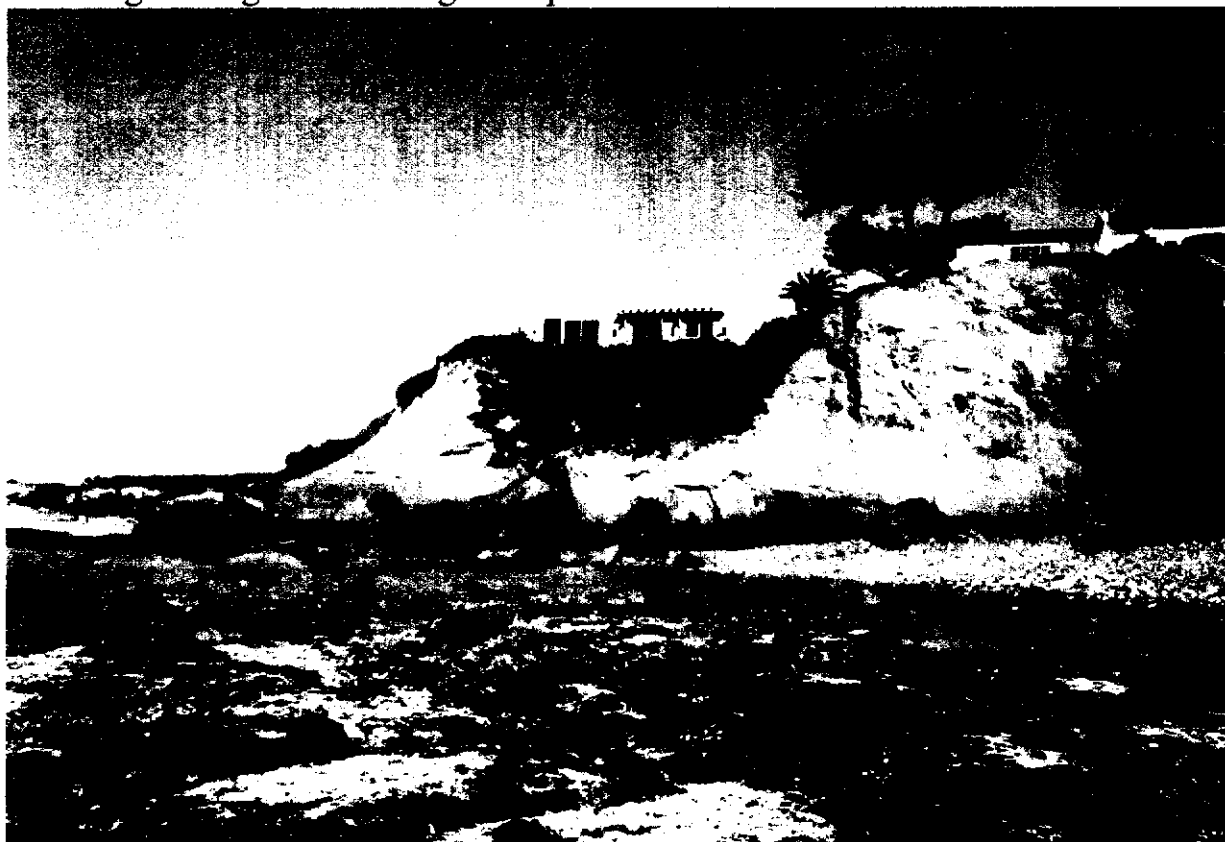


At low tide, there appears to be a walkway created by the cement retaining wall beaconing the public south toward the tide pools.

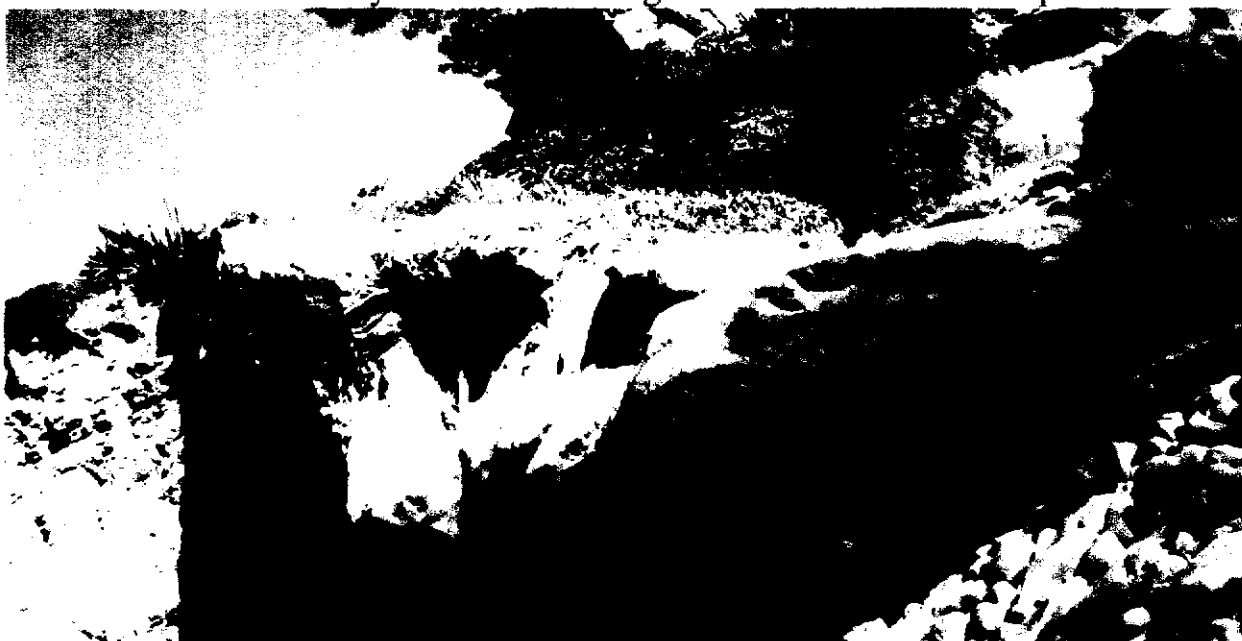


Unfortunately, as the tide rises, there is no obvious exit from the beach.

The property located at 7957 Princess Street has a long history of violations, including closing off the designated public beach access.



Potential former walkway from beach overgrown with bushes and iceplant.



Furthermore, there appears to be a drain pipe extending from the property directly into the coastal reserve.



It is important to recognize that this area is an important part of the La Jolla Marine Reserve. As the sign says on the Marine Room entrance, "Public Access Always Permitted."



The California Coastal Commission has a responsibility to preserve the coast and the marine reserve. No private property owner should have the right to buy public access in exchange for payment of fines for building violations. If you set a precedent by rewarding such behavior, other coastal property owners will act the same way. Private beach front property is worth much more than a mere \$3.3 million and will continue to grow in value over time.

Although the beach access in that area is not obvious and may have eroded over time, it is possible to build stairs or a safety platform. The money could be used to improve signage indicating the existence of the underwater park, including warnings to not disturb wildlife plus educational signage. Tide charts would be helpful so that people have warning of the time limits.

Money from the fine could also be used to support park ranger(s) and lifeguards to monitor the area. The beach is in a blind corner from the La Jolla Shores Lifeguard station, so monitoring must be done via jet ski or paddle board.



In conclusion, it is important to retain the public's legal right to access at Princess Street. The fine should be used to support activities in the La Jolla Marine Reserve area to promote the health and safety of people and the marine life in the reserve.

Thank you for your consideration,

Signature on file —

Audrey D. Keane

Lee McEachern

From: David Little [dlittle1@san.rr.com]
Sent: Friday, February 04, 2011 9:32 AM
To: Lee McEachern
Subject: We Need Public Beach Access at Princess Street

Please restore public access to the public beach at Princess Street in La Jolla.

Public beach access in this area is scarce and this access was in existence years ago.

If our beaches are to remain public, we need public access - not a locked gate.

Thank you .

**David Little
5511 Linda Rosa Ave
La Jolla, Ca**

2475 Hidden Valley Road
La Jolla, CA 92037-4021
January 26, 2011

California Coastal Commission San Diego Area
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

Subj: Princess Street Access to the Pacific Ocean

To: California Coastal Commission

I'm a senior citizen and a life-long resident of San Diego. As a child lucky enough to grow up in La Jolla, I remember very well having access to the rocky shoreline via Princess Street. My best friend lived on Torrey Pines at the intersection of these two streets. We explored the shore, the tide pools, and at the lowest tides, the caves. It is a delightful remembrance.

I now tide pool with our young grandchildren. Sadly, the Children's Pool cannot be enjoyed by them. Princess Street access has also been taken away. What next?

I fully support re-opening this coastal path access.

Respectfully,

Signature on file

Daira Paulson

858-454-7708

RECEIVED

JAN 31 2011

**CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT**

DM
Tamara Rible
2485 Hidden Valley Road
La Jolla, CA 92037-4021

California Coastal Commission San Diego Area
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

RECEIVED

FEB 02 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

To whom it may concern,

I was born and raised in La Jolla and was blessed with a joyful childhood of swimming and tide pooling. I spent countless days at Slide Beach with my best friends exploring the incredible tide pools and nearby caves. It was where I learned all I know about the diversity of the seashore. The memories of wonderment, adventure, and independence are dear to me.

Now I have grandchildren, and although they don't live in La Jolla, they do visit and what draws them is exactly what captivated me when I was young. I feel that children who cannot experience what I did, who cannot look and reach into the miniature world of tide pools, are missing some of life's more enchanting experiences.

I was stunned to learn that the nearby property owners built a fence which prevents all their neighboring tax payers, as well as anyone else with curiosity and an appreciation of nature, access to such a unique area. No other area has tide pools as wonderful as the ones of Slide Beach.

Perhaps I live in a bygone era, one which held that Mother Nature's beauty should be appreciated and shared by all. It seems immoral to block access to a beach. In this day of waste and pollution, the younger generation needs to know and care about the earth. If intriguing places like Slide Beach are not accessible, how will our youngest citizens learn?

I respectfully urge the committee to keep access to Slide Beach open.

Sincerely,

Ta *Signature on file*
Tamara Rible

RECEIVED

FEB 07 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

California Coastal Commission
San Diego Area
7575 Metropolitan Drive
Suite 103
San Diego, CA 92108-4421

February 3, 2011

Dear Sirs:

I write you regarding restoration of beach access at Princess Street, in La Jolla. This access, long available to various users of La Jolla Cove, should be restored.

Thank you for allowing me to voice my opinion on this important matter.



Glenn Vanstrum, M.D.
1261 Rhoda Drive
La Jolla, CA 92037



La Jolla Community Planning Association

4 February 2011

California Coastal Commission - San Diego Area
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

ATTN: Lee McEachern

Re: Application No. A-133-79-A4/F6760-A5
Applicants: Ure and Diane Kretowicz

Members of the California Coastal Commission:

The La Jolla Community Planning Association (LJCPA) is officially designated by the San Diego City Council to make recommendations to the City Council and other governmental agencies on land use matters, specifically, concerning the implementation of the La Jolla Community Plan and Local Coastal Program Land Use Plan.

At its regular scheduled meeting on February 3, 2011 duly noticed to the public in conformance with the Brown Act, the LJCPA considered the subject application, specifically with regards to the staff recommendation.


By a unanimous 16-0 vote, the LJCPA adopted the following motion:

The La Jolla Community Planning Association supports the restoration and maintenance of the historic full and open public beach access at 7957 Princess Street and not simply "emergency lifeguard" access. And, incorporating this access into the La Jolla Community Plan and Local Coastal Program.

Furthermore any funds that the Coastal Commission may seek to recover as mitigation for previous obstruction of such access and/or for non-conforming development at the subject property must be restricted for use solely within the La Jolla coastal area.

Please modify the staff recommendation accordingly as part of your consideration of this application.

Sincerely,
La Jolla Community Planning Association

Signature on file 

Joe LaCava, President

Lee McEachern

From: Jim Fitzgerald [jimfitz1@pacbell.net]
Sent: Friday, February 04, 2011 12:01 PM
To: Lee McEachern
Subject: Charlotte Public Beach Access at 7957 Princess Street, La Jolla, 92037

Honorable Members of the California Coastal Commission:

Re: Charlotte Public Beach Access at 7957 Princess Street, La Jolla, 92037

I am a 22-year resident of La Jolla and an elected Trustee of the La Jolla Community Planning Association (LJCPA).

At the February 3, 2011 LJCPA meeting, the Trustees voted unanimously to request free and open public access to Charlotte Beach and not to limit access for emergency purposes only. The result of this vote has been transmitted to you by Joe LaCava, President of the LJCPA.

I want to add my voice as a private citizen to the request to allow free and open public access to this beach-- as was the case at this location for decades. The legal history of this property has been complicated by the failure of authorities to formally record a public-access easement to the beach (as was intended by the Coastal Commission many years ago) and by subsequent encroachments into the public right-of-way by property owners.

These complications notwithstanding, beaches are public assets to be accessed and enjoyed by all citizens. Given the extensive development along the coast in La Jolla (and elsewhere), opportunities for the public to access beaches are very limited in certain areas—and this is one of these areas.

I strongly urge the Commission to fulfill one of its prime responsibilities by guaranteeing the public's free and open access to Charlotte Beach.

Thank you for your consideration.

Respectfully yours,

Jim Fitzgerald
6942 Via Estrada
La Jolla, CA 92037
858-456-6255

California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

February 6, 2011

RE: KRETOWICZ-A-133-79-A4/F6760-A5

Dear Commissioners,

The Commission should require an Offer to Dedicate (OTD) Easement on the Kretowicz parcel, consistent with its 1979 findings, with the goal that the public will once again gain access to this unique beach area. Access to this the beach from this location is still as feasible and is as important today as it was in 1979 when the Commission found: (Page 13 of the current staff report)

"The Commission finds that 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.

This paragraph continues, with one of the most compelling arguments for restoring the beach access. (This this part of the paragraph was left out of this section of the staff report, although the complete 1979 Commission report appears later in the addendum.)

"...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 the proposed project consistent with the Coastal Act."

Pictures taken as part of the Coastal Commission's staff report in 1979 look remarkably similar to photos taken today. There has been very little erosion at the base of the cliff where it meets the beach area, indicating that this location is stable enough for stairs or other structures to be located. The main area of concern is on the hillside itself, which has suffered some erosion over the years due to non-conforming irrigation and drain systems. The Commission's findings in 1979 still stand today: vertical beach access is practical, important, required by the Coastal Act, and should be restored.

From page 17 of the current staff report:

"...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..."

And from page 13 of the current staff report regarding the history of the project:

"...By the time the Commission imposed the access conditions, however, 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 then-owner, Ms. Baker, did not record the offers to dedicate access.”

It is my understanding from conversations with supervisor McEachern at the San Diego office, that the main reasons for the staff recommendation to accept the 3.3 million dollar mitigation rather than require an OTD easement, is based on the assumption that the city is unwilling to accept such an easement. This opinion apparently was given years ago by a representative working for the Park and Recreation Department who is no longer with the department. The reason given was that there weren't any funds available at the time to restore the historical access and there was a general unwillingness to add another expense to the budget. I have not seen this position from the City in writing, and if the Commission does have such a letter, it should be provided to the city immediately so that further research can be made on the issue to develop a current position. The mayor's office when contacted was not aware of this previous position. One thing is certain, there was no community input taken regarding the OTD easement for beach access issue by the Park and Recreation department, nor any other entity of the city.

The new director of the San Diego Park and Recreation Department only became aware of the beach access issue last week. The department is currently searching their records and to date has not found any letter or memo stating any position on the beach access OTD easement. They are also in the process of evaluating the issue but will need 30 days to complete their work and provide a position on this issue.

The public has been unaware of this issue until recently. In the past two months the community had its first opportunity for input since the Commission hearing in 1979. The La Jolla Shores Association, the La Jolla Town Council, the La Jolla Parks and Beaches committee, and the La Jolla Community Planning Association have all heard this issue and provided a forum for public input. The overwhelming response is that the community would like the OTD easement granted, and beach access restored. All of these community organizations have passed motions in favor of restoring this access way.

While it is true that the San Diego Park and Reception Department currently does not have funds budgeted to develop an acceptable access at this site, it does not mean that funds can't be located or raised in the near future to allow restoration of the access. Now that the community is involved, I anticipate that funding sources will be found to once again open access.

One of the important mandates of the Coastal Act is to insure public access to our beaches and coastline. This is the best opportunity, and probably the only opportunity, for public access to this beach to be restored. I ask you to re-affirm the findings which were passed unanimously by the 1979 Coastal Commission and not to accept the 3.3 million dollar mitigation, but instead require an OTD easement with the purpose of restoring the historical beach access way at this location.

Sincerely,

Tim Lucas
8152 Calle del Cielo
La Jolla, CA 92037

To Whom it May Concern,

Many years ago, in 1962, I lived with my family on Park Row in La Jolla. My father had just finished his doctorate in Marine Biology at Cal and we rented the big white 2 story from "Miz Sibley" realtor Sib Sellew's widow. We had the whole run of the Village area in those days, especially on Sundays when it was mainly deserted. We ranged from Windansea to the south and Torrey Pines to the north and EVERYWHERE in between! We explored every access to every beach; permitted, legal, private or public. We swam into the caves and ran up the steps to knock on the door to the Shell Shop, hoping to startle anyone who might be in that store shopping! We had a "fort" near the stairs down Devil's Slide, which we used most often, as it was at the end of the north "spoke" of Park Row. And, yes, Princess Street beach access was used sometimes as well, both to get down to that beach (and to climb up!) if we wanted to take a short cut to the "Indian Bath" area of those tide pools at low tide (sadly, since eroded and worn away; the other, below Torrey Pines, is still there.) It was way quicker than going all the way down to the Marine Room walkway! Over the years my brothers, I, and many others continued to use this secret, "locals only" beach access, even as the cliff eroded and it became a bit dicey. It was a great way to sneak out (for a surf) at the Cove on bigger days without drawing too much attention to the fact. A rope was used for many years as an aid to climb up with. The last time I probably used Princess St. was during the big swell of 1983, I'd gotten caught inside on a big set, lost my board, and was happy to be able to recover it on the rocks below and get out of there! However I have gone to end of Princess and looked out many times since then, and have noted the unfortunate changes made over the last many years by private individuals. It would be a shame to disregard the really useful, historic public access that Princess Street represents.

Respectfully submitted, Wm Hansen Newman
La Jolla Elementary
Muirlands Jr. High
La Jolla Explorer Post 4 1968-73
Graduate of La Jolla High School 1973
B.A. University of California Berkeley 1979
Su Casa Restaurante 1975-05
Windansea Surf Club past president 1983-87
Friends of Windansea Co-founder
Trustee of the La Jolla Town Council 2003-05

Father, Dr. Wm A. Newman
B.S. & M.A. University of California Berkeley 1952
Doctorate @ Cal 1962 in Marine Biology
Fanning Island Expedition 1963
Associate Professor, Comparative Zoology, Harvard College 1963-65
Professor Emeritus, Benthic Invertebrates.
Scripps Institute of Oceanography 1962-present

Brother, Dr. James H. Newman
(Schooling as above, LJHS '74)
Dartmouth College 1978
University of Mainz, Germany
Doctorate Rice University, Astrophysics 1983

NASA 1983-2009 Mission Specialist STS 51, 69, 88, and 109
US Director Space Flight Program Star City Russia 2002-05
Associate Professor, Naval Post-Graduate School, Monterey
Still surfs...well!

Brother, Eric H. Newman
(Schooling as above, LJHS '76)
Su Casa Restaurante 1974-80
Seaport Village 1980-83
University of Montana Missoula Director of Foodservice 1984-87
Seastar Restaurant, Big Fork, Mt.
Bozeman Food Co-op Montana
National Sales Director, Nature Valley Dairy
Better surfer than any of us ever were...

RECEIVED

MAY 18 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Fw: Spindrift access

"Boucher, Saxon"

Add to Contacts

Saxon Boucher

----- Original Message -----

From: Boucher, Saxon

To: 'mbeherenow@sbcglobal.net' <mbeherenow@sbcglobal.net>

Sent: Wed May 11 21:36:11 2011

Subject: Spindrift access

To whom it may concern,

My name is Saxon Boucher, I was born and raised here in La Jolla and am fortunate enough to still call it my home. I grew up in the water and on the beach and made a career as a pro surfer and now work in the surf industry at Surfer magazine. I used the accesses all around La Jolla as a kid and adult to get to and from all my favorite beaches. The Spindrift access in particular is special just in order to get to that part of the beach and use it to go surf or walk the beach for shells or just to be able to enjoy that secluded part of our "jewel". I beg that this access remain on the OPEN list forever so that current and future generations can enjoy what I have. Thanks.

Saxon Boucher

Saxon Boucher

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MAY 12 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

*Surfing with style***RECEIVED**
MAY 03 2011CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICTJune 6th 2007

Dear California Coastal Commission

I am writing to you regarding a-133-79-a2/f6760-a3. The date is June 14th 2007 #the 10 A . Ure & Dianne Kretowicz

First Thank you for your time in this matter. I am a long time resident of La Jolla since 1967. I started surfing in 1969 & surfed La Jolla Shores & the inside break there since 1969. There is a white stairway that you could go down to the beach, its called "Slides". It is a beautiful area of La Jolla Cove.

I served as president of the non-profit corporation Windansea Surf Club for 7 Years
www.windanseasurfclub.org & also serve as member of the non-profit group The Coalition of Surfing Clubs, www.surfclubs.org currently.

I was with my children Emma DeJourday 7 years old & my son Dylan De Jourday 13 years old & their 3 friends on Sunday June 3rd 2007. We walk down the trail at slides in between Coast Walk & Princess St there. After a while being at the beach & tide pooling with the kids we decided to head home but the climb back up the trail was to steep for my daughter Emma so I told the kids there was another public access out so we headed up the Princess st. trail that now has a new black fence we had to climb over to get back home.

I was telling the kids that this was a public access they can use & all of a sudden this lady started yelling that it was not a public access & frightened the kids. She later said it was down the road but there is only one way & now they have a fence blocking the way down with the new fence. Please do something about this. This is now a safety issue for the many Kayackers & swimmers that use this area. If there were big waves & you had to make a rescue this exit a Princess St would be the safest & quickest way to get out or to get help.

I have always admired our California Coastal Commission for all it does.
Please help us.

Sincerely

Ozstar De Jourday

*Signature on file**Signature on file**www.windansea.org*



COUNCILMEMBER SHERRI S. LIGHTNER

FIRST DISTRICT
CITY OF SAN DIEGO

May 25, 2011

Mr. Lee McEachern
California Coastal Commission
San Diego Area
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

RECEIVED

MAY 25 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: Application No. A-133-79-A4/F6760-A5
Applicants: Ure and Diane Kretowicz

Dear Mr. McEachern:

Thank you for the opportunity to comment on the application for a Coastal Development Permit for improvements that have already been completed to the Kretowicz residence at 7957 Princess Street, La Jolla.

I offer the following comments regarding the Special Conditions, as referenced on page 4 of the staff report.

1. Payment of \$3,300,000 in mitigation

Coastal Commission staff has made a preliminary recommendation that \$3,000,000 in mitigation funds be used for the reconstruction of Angel's Flight public access stairway. Per the April 18, 2011 letter from City of San Diego Chief Operating Officer Jay Goldstone (attached), I would also recommend that these funds instead be used exclusively to reconstruct and improve existing public accesses and stairways within the La Jolla Community Planning Area, as determined by the City and approved by the Coastal Conservancy. Within the La Jolla Community Planning Area, there are 14 existing public access points that are identified as being in the top 50 access points in the City of San Diego that are in need of improvements, and that money could best be spent on improving these locations (rather than building a new public access at Angel's Flight in a location that has not been deemed appropriate by San Diego Lifeguards and Park and Recreation Department staff).

I join the City in supporting the additional \$300,000 grant to be issued to the City for other public access areas within La Jolla.

2. Lifeguard Emergency Vertical Access at Princess Street

I also support the City of San Diego's recommendation that the City be provided the use of an easement at Princess Street for an emergency lifeguard access, which will be paid for by the applicant. This is consistent with the current La Jolla Community Plan/Local Coastal Program, which calls for an emergency lifeguard access at Princess Street.

In addition, numerous La Jolla constituents along with three community groups, the La Jolla Community Planning Association, La Jolla Shores Association and La Jolla Parks and Beaches Committee, support the upgrading of the Princess Street access to a full public coastal access. This is an important historical access point, and as such, the community would appreciate maintaining the option to restore it to a full public access in the future.

To that end, I respectfully request that the Coastal Commission also preserve the option of an offer to dedicate the Princess Street access as a full public access for the next 21 years in the event that circumstances change and funds become available to upgrade this location so that it can safely accommodate a full public access. (Funds would also be needed for the accompanying amendment to the La Jolla Community Plan/Local Coastal Program to change this location from an emergency access to a full public access.)

Thank you very much for your consideration. Please do not hesitate to contact my office at sherrilightner@sandiego.gov or (619) 236-6611 if I may provide any additional information.

Sincerely,

Signature on file

Sherri S. Lightner
Councilmember, City of San Diego, District One

cc: Jay Goldstone, Chief Operating Officer, City of San Diego
Stacey LoMedico, Park and Recreation Director
Javier Mainar, Fire-Rescue Chief
Rick Wurts, Lifeguard Chief
Kathleen Hasenauer, Park and Recreation Deputy Director
Darren Greenhalgh, Engineering and Capital Projects Deputy Director
Ali Darvishi, Engineering and Capital Projects Project Officer II
Lesley Henegar, Community Investment and Community Planning
Tony Crisafi, Chair, La Jolla Community Planning Association
Audrey Keane, Chair, La Jolla Shores Association
Patrick Ahern, Chair, La Jolla Parks and Beaches Committee

California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

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JUN 09 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

June 9, 2011

RE: KRETOWICZ-A-133-79-A4/F6760-A6 - updated letter

Dear Commissioners,
This is an update to my letter of February 6, 2011.

The Commission should require an Offer to Dedicate (OTD) Easement on the Kretowicz parcel, consistent with its 1979 findings, with the goal that the public will once again gain access to this unique beach area. Access to this the beach from this location is still as feasible and is as important today as it was in 1979 when the Commission found: (Page 13 of the current staff report)

"The Commission finds that 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.

This paragraph continues, with one of the most compelling arguments for restoring the beach access. (This this part of the paragraph was left out of this section of the staff report, although the complete 1979 Commission report appears later in the addendum.)

"...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 the proposed project consistent with the Coastal Act."

Pictures taken as part of the Coastal Commission's staff report in 1979 look remarkably similar to photos taken today. There has been very little erosion at the base of the cliff where it meets the beach area, indicating that this location is stable enough for stairs or other structures to be located. The main area of concern is on the hillside itself, which has suffered some erosion over the years due to non-conforming irrigation and drainage systems. The Commission's findings in 1979 still stand today: vertical beach access is practical, important, required by the Coastal Act, and should be restored.

From page 17 & 18 of the current staff report:

"...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..."

And from page 13 of the current staff report regarding the history of the project:

Letters of Comment

"...By the time the Commission imposed the access conditions, however, 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 then-owner, Ms. Baker, did not record the offers to dedicate access."

It is my understanding from conversations with supervisor McEachern at the San Diego office, that the main reasons for the staff recommendation to accept the 3.3 million dollar mitigation rather than require an OTD easement, is that the city is unwilling to accept such an easement. The City has recently sent a letter saying that they want the 3 million dollar portion of the agreement to go to other improvements in the area (that the city is short of funding for) and not to reconstruct the Angel's Flight stairs. It appears that the City of San Diego is using this as a solution for their fiscal management issues at the expense of beach access to the public. This response from the city is a great disappointment to me as there were no community forums held by the city to discuss their decision on this issue.

The City letter cited safety issues with patrolling this beach if the public were to have access again. This situation is no different from any other beach the public has access to. The City is responsible for patrolling any beach, existing or new. Recently, the popular Casa Beach was difficult to access for many months due to the closure of the stairs just south of the Children's Pool. The city closed the stairs for repairs, but did not repair them. This saved on repair costs and also lifeguard costs. The stairs were finally opened back up, but only after members of the community became active and fought for access to be restored. The Princess Street Access is a similar situation and unfortunately the City's position is being driven by monetary interests, rather than the long term benefit to the public. It is to the City's advantage (budget-wise) to have fewer beaches accessible.

The Coastal Commission Staff recommendation to have \$3,000,000 for reconstruction of the Angel's Flight stairs spent within 5 years sounds good on the surface, but will never happen. The City's position is clear: they do not want any beach access to this area EVER, because that would mean having to fund lifeguards and maintenance.

The 5 year deadline spend the funds is unreasonable short. If there is no resistance from the community and city, the process will take a minimum of 2 to 3 years to gain public input, develop a workable design, and then go through the Coastal Commission approval process. However, the City will fight against beach access, and the Angel's Flight area residents will fight it due to traffic and parking concerns on their dead-end street that connects to one of the most traveled roads of city. The 5 year deadline will easily be missed, and the city will shift the funds to other projects. Thus, the staff proposal will not achieve the objective of restoration of beach access to the public.

If the Commission does indeed decide in favor of the staff recommendation and settlement, then a condition needs to be added to the settlement agreement: **in the event of any default of the \$3,300,000 payment, an offer to dedicate shall be recorded immediately by the owners (or for-closers) of the property.** Without this clause a situation could arise where the Coastal Commission is holding a lean on the property, which would be more valuable if there was no beach access. This would be a potential conflict of interest with the Commission's mandate for public access versus higher value the property would sell for with no access.

Late last year, the community had its first opportunity for input on this issue since the Commission hearing in 1979. The La Jolla Shores Association, the La Jolla Town Council, the La Jolla Parks and



Beaches committee, and the La Jolla Community Planning Association have all heard this issue and provided a forum for public input. The overwhelming response is that the community would like the OTD easement granted, and beach access restored. All of these community organizations have passed motions in favor of restoring this access way.

While it is true that the City of San Diego currently does not have funds to develop an acceptable access at this site, it does not mean that funds can't be located or raised in the near future to allow restoration of the access. Now that the community is involved, I anticipate that funding sources will be found to restore this access.

One of the important mandates of the Coastal Act is to insure public access to our beaches and coastline. This is the best opportunity, and probably the only opportunity, for public access to this beach area to be restored. I ask you to re-affirm the findings which were passed unanimously by the 1979 Coastal Commission and not to accept the 3.3 million dollar mitigation, but instead to require an OTD easement with the purpose of restoring the historical beach accessway at this location.

Sincerely,

Tim Lucas
8152 Calle del Cielo
La Jolla, CA 92037





*Preserve, Restore, and
Protect Coastal Resources*

RECEIVED
MAY 31 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

May 27, 2011

California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive, Suite 103
San Diego, California, 92108

Attention: Lee McEachern

Re: Kretowicz/ File A-133-79-A4 / F6760-A5

Dear Mr. McEachern:

On May 3, 2011, the Board of the La Jolla Conservancy voted unanimously to support the California Coastal Commission's efforts to protect the public's use of the historic access from Princess Street to the La Jolla Underwater Park and State Ecological Reserve, and to require the proposed off-site mitigation fee. The La Jolla Conservancy stands ready to assist the Coastal Commission and other state and local agencies to successfully carry out the goal to enhance the public's access and enjoyment of this treasured California coastal resource.

Respectfully,

Signature on File

Steve Haskins
La Jolla Conservancy Board



June 14, 2011

Client-Matter: 44295-032

BY FEDERAL EXPRESS AND ELECTRONIC MAIL

California Coastal Commission
c/o Lee McEachern
San Diego Coast District Office
7575 Metropolitan Drive, Ste. 103
San Diego, CA 92108-4402

RECEIVED
JUN 15 2011
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

**Re: Application Nos. A-133-79-A5/F6760-A6: 7957 Princess Street, La Jolla
Agenda Items 16.a. and b. (Wednesday, June 15, 2011)**

Honorable Commissioners:

Manatt, Phelps, & Phillips, LLP ("Manatt") represents George Krikorian, whose home is adjacent to 7957 Princess Street ("Project Site") in the La Jolla community of the City of San Diego ("City"). Mr. Krikorian is opposed to the Coastal Commission's approval of Application Nos. A-133-79-A5/F6760-A6 ("Project") because the Project violates the Coastal Act's public access and bluff development policies and effectively rewards homeowners Ure and Diane Kretowicz ("Applicants") for a long history of unpermitted development. The Commission's approval of the Project would also establish a dangerous precedent whereby an extraordinary payment would excuse years of illegal and unpermitted development.

At the outset, we would like to express its frustration with the innumerable delays that have accompanied the Coastal Commission's consideration of the Project. The hearing scheduled for June 15, 2011, is the third scheduled hearing date in the last eight months alone. With each delay comes a slightly modified staff report and new revisions to the Project itself, thereby requiring additional review by interested members of the public like our client. The continued delays and negotiations have given the Applicants an opportunity to further their unpermitted development (as recently as June 9, 2011). We hope that the delays are over, and that the Commission will conduct the Project's scheduled hearing on June 15.

1. PROJECT BACKGROUND

The proposed Project has three key features. First, it deletes the requirement to record an offer to dedicate a vertical public access easement (the "OTD") that was imposed as a special condition in 1979 in order to "...offset the burdens [that the original] development has placed on the public's constitutional right of access and to assure the conformity of the project with the

California Coastal Commission
June 14, 2011
Page 2

provisions of Section 30212 of the Act.” (Application No. A-133-79-A5/F6760-A6, *Amendment Request Staff Report and Preliminary Recommendation* filed May 25, 2011 [“Staff Report”] at Page 13.) In place of the OTD requirement, the Project has been conditioned to include a lifeguard-only, emergency vertical access requirement (Condition No. 2). The size and location of this restricted access is identical to the original public vertical access required under the OTD.

Second, the Project would permit the Applicants to pay \$3.3 Million to fund various public coastal access projects as mitigation for the deletion of the public access easement. Although the Staff Report states that this payment will mitigate the loss of public access at the Project Site, it also concedes that there is no guarantee that the \$3.3 Million will actually result in the construction of any public access facilities or that any such facilities would even be located in the La Jolla area.

Third and finally, the Project requests after-the-fact approval for a host of improvements, modifications and additions to the existing residence that were built without permits - during nights and weekends - that result in a 7,388 square foot two-level home. The improvements would include accessory structures located within five (5) feet of the edge of the coastal bluff.

2. THE PROJECT VIOLATES THE COASTAL ACT BY INHIBITING PUBLIC ACCESS

The promotion of public access to California’s coastline for public enjoyment and recreation is at the heart of the Coastal Act. Toward that end, a number of Coastal Act policies (e.g., Sections 30210-30212 and 30223), as well as the policies of the La Jolla Community Plan and Local Coastal Program Land Use Plan (the “Community Plan”) require that new development protect or enhance public access and recreational opportunities to and along the shoreline. Notwithstanding this clear mandate, Coastal Commission staff has recommended that the Commission accept payment of \$3.3 Million so that the Project can be freed of its OTD requirements.

a. Deleting Public Access Violates Numerous Coastal Act Policies

The Project Site is located between the sea and the first public road parallel to the sea. Therefore, pursuant to California Public Resources Code Section 30604(c), any development must comply with the public access and recreation policies of the Coastal Act and include specific findings to that effect. As discussed below, the proposed Project is inconsistent with the Coastal Act’s public access policies and therefore the Coastal Commission cannot make the public access findings required by California Public Resources Code Section 30604(c.)

- **Section 30210** – *“In carrying out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.”*

In the case of the Project, access consistent with Section 30210 would be a public path 5 feet in width extending from Princess Street along the southern edge of the Project Site down the face of the bluff to the beach. This was the access required by the OTD. Under Section 30210, such access may be restricted if required by (a) public safety needs and the need to protect public rights; (b) the need to protect rights of private property owners; and/or (c) the need to protect natural resource areas from overuse. Clearly, because the Project includes a Lifeguard Emergency Vertical Access in the same location as the OTD, (a) and (c) are not at issue here. If the 5 foot wide path was unsafe or would harm natural resources, it would be unsuitable for both lifeguards and the public. Also, tellingly, the Project’s staff report does not rely on either (a) or (c).

Since subsections (a) and (c) are inapplicable, “maximum access” must be provided unless such access somehow affects the rights of the private property owner. But even subsection (b) is inapplicable given that the Project Site was purchased by the Applicants in 1994, or 15 years after the OTD requirement was initially imposed. The Applicants—and particularly Mr. Kretowicz, who is a sophisticated real estate professional—had sufficient notice of the public access requirement and should have factored that requirement into their decision to purchase the home. Because requiring compliance with the 1979 public access requirement on owners with notice is not a violation of the Applicant’s property rights, neither subsections (a), (b) or (c) excuse the Coastal Commission from requiring “maximum access” consistent with Section 30210.

- **Section 30211** – *“Development shall not interfere with the public’s right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.”*

The Project *would* interfere with public access acquired through historic use of the Project Site. This conclusion is based on the Coastal Commission's original determination that additional public access provisions should be required over the Project Site: "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 [Coastal] Act." (Staff Report at Page 13.)

- **Section 30212** – "... (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected."

The Project constitutes "new development" under Section 30212 because it includes improvements that have increased the floor area of the structure, that block or impede public access, and that have resulted in a seaward encroachment by the structure. (See Pub. Res. Code § 30212(b)(3).) The three exceptions from Section 30212(a) do not apply in the case of the Project; therefore public access to the shoreline from Princess Street is required. First, providing a public path 5 feet in width extending from Princess Street along the southern edge of the Project Site down the face of the bluff to the beach is not inconsistent with public safety, military security needs, or the protection of fragile coastal resources. We know this because the Project includes a Lifeguard Emergency Vertical Access in the same location as the deleted OTD path. Second, adequate public access does not exist nearby. The beach below and to the south of the Project Site is bounded by steep bluffs and 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. Third and finally, no agricultural activities would not be adversely affected by the Project. Public access

from the Project Site consistent with the 1979 OTD is therefore required under Public Resources Code Section 30212.

- **Section 30223** – *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

There is nothing infeasible about providing public access to the shoreline from Princess Street across the Project Site. We know this because the Project has been conditioned to include a “Lifeguard Emergency Vertical Access” requirement (Special Condition No. 2). The size and location of the Lifeguard Emergency Vertical Access and the original public vertical access are identical. If the Lifeguard Emergency Vertical Access is feasible, then vertical public access in the same location would also be feasible.

b. Deleting Public Access Violates The La Jolla Community Plan and Local Coastal Program Land Use Plan

- **Policy 5.d** – *“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.”* (Community Plan, Page 52.)

The Project Site is located on property that lies between the shoreline and first public roadway, therefore Policy 5.d requires that new development not restrict vertical access to the beach. In violation of that policy, the Project proposes to delete the 1979 OTD.

Policy 5.d also requires an analysis of a new accessway across private property in areas where, as here, vertical access to the shoreline does not exist within 500 feet of a project site. The beach below and to the south of the Project Site is bounded by steep bluffs and 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

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formal access to this beach from the south due to the existence of steep coastal bluffs and rocky shorelines. Therefore, Policy 5.d. requires consideration of vertical public access in connection with the Project.

c. The Mere Possibility of Angel's Flight is Not a Replacement for the OTD

The Staff Report states that payment of \$3 Million to reconstruct the Angel's Flight stairway would serve as an adequate substitute for the OTD. We disagree. There is an important difference between the *actual access* that could be provided at the Project Site and the *mere possibility* that the \$3 Million would adequately fund needed improvements. As the Staff Report acknowledges, "the applicant's proposal does not assure that the Angel's Flight stairway will be replaced." (Staff Report at Page 19.) We agree with staff on this point: the Project simply provides a pool of money that may or may not be sufficient to fund and maintain a new Angel's Flight. It does not account for the delays or project changes that could occur during the entitlement process, environmental studies, and/or community concerns. Nor does it set a timeline or benchmarks for providing public access. It is access in theory only, which contrasts unfavorably to the actual, physical, access that would result if the Commission required the Applicants to fulfill their 30+ year old obligation to dedicate vertical access across their property.

Making matters worse, the June, 2011 staff report creates doubt that the \$3 Million payment will even be used to enhance public access in the La Jolla area.¹ Specifically, Special Condition 1.A has been revised such that the Applicants' \$3 Million payment could be used to fund beach access improvements *anywhere in Southern California* if those funds are not used to reconstruct Angel's Flight within 5 years of the Conservancy's acceptance of such funds. This revision undermines and contradicts the following conclusion in the Staff Report:

The Commission has reviewed the applicants' request and has determined that the proposal to pay \$3.3 Million for public access improvements elsewhere is acceptable, as it will provide access to the same beach as the access required in the original permit or in very close proximity. Thus, this beach will arguably be more accessible to the public than under the original requirement, and the funds will restore an historic public accessway. Thus, the proposed alternative access will be at least as good as that previously required.

¹ The June, 2011 staff report also marks a change in tone regarding the feasibility of the Angel's Flight replacement. Specifically, while the February 2011 staff report stated that "the Commission is optimistic that replacement of [Angel's Flight] *will be feasible*," the June 2011 staff report indicated that "the Commission finds that the replacement of [Angel's Flight] *should still be feasible*." This is a deliberate change in tone, and emphasizes the fact that the \$3.3 Million payment may not fund improvements in La Jolla at all.

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(Staff Report at Page 21, emphasis added.) As the Commission well knows, new development on coastal bluffs, like Angel's Flight, will require design, engineering, permits, environmental studies, and public hearings. Then, even if approved, it could be the subject of litigation. The public should therefore assume that 5 years *will not* be enough time for the Conservancy to reconstruct Angel's Flight, and that the Applicants' \$3 Million payment *will* go toward alternative coastal access improvements in other parts of Southern California. Such an outcome is inconsistent with the rationale expressed in the staff report for supporting the Applicant's payment because the ultimate public access that is funded by the Applicant could be in Malibu or Laguna Beach or anywhere *other than* the beach below the Project Site.

d. Other Agencies may Accept the OTD

A threshold question to be asked when considering the proposed deletion of the OTD is "why can't the OTD be built on the property as originally required?" We understand that the Applicants would prefer not to provide public access, but their preferences do not override the Coastal Act or obligations imposed on their predecessors to provide public access. The Staff Report answers this question as follows:

When first approached with this idea [to delete the OTD] from the applicant [in 2004], Commission staff inquired if the City was willing to pick up or accept the OTD on the subject site if it was recorded. At the time, City staff indicated that the City was not interested in accepting lateral/vertical access easements on the subject site, but instead would only consider an emergency lifeguard access. As such, the applicant's request [to delete the OTD] was further analyzed.

(Staff Report at Page 19.) The deletion of the OTD therefore has its roots, in part, in a decision made seven years ago by one agency, the City of San Diego. This begs a number of questions. For instance, has the City been asked *lately* if they would consider accepting the OTD? If the City still refuses, what other capable agencies or organizations have been asked? Toward that end, it is instructive to note that Section 30212 of the Coastal Act specifically contemplates that either a public agency *or* a private association can agree to accept responsibility for maintenance and liability of a public accessway. The willingness to accept the City's 2004 response as the final word, and the failure to follow up with alternative agencies or organizations, such as a land trust or conservancy, violates the Coastal Act's public access mandates. There is no evidence in the Staff Report that any other organizations or agencies have been asked if they could accept the OTD. Before the Coastal Commission takes action on this matter, we believe that it should make a good faith effort to contact other agencies and organization before it declares the OTD infeasible.

e. Precedential Nature of the Settlement Payment

Approval of the Project would set a dangerous precedent for the Coastal Commission. If approved as proposed, future applicants subject to vertical public access requirements will be able to rely on the Commission's reasoning to argue that they, too, should be able to contribute funds to future, unplanned, public access projects instead of providing that access across their property. Such *in lieu* public access payments could have the effect of reducing the number of new public access points along California's coastline, in violation of the Coastal Act's public access policies.

3. PROTECTION OF COASTAL BLUFFS

a. The Project is Inconsistent with the Community Plan

The Community Plan, which is part of San Diego's certified LCP, contains a host of issues, goals, and policies that require the protection of La Jolla's sensitive coastal bluffs, including the following:

- **Community Issues** – *“The need to protect and preserve sensitive natural resources, including ... bluffs and canyons The seismic and geological instability of the area should be a consideration in such efforts.”* (Community Plan, Page 7.)
- **General Community Goals** – *“Conserve and enhance the natural amenities of the community such as its ... bluffs ... and achieve a desirable relationship between the natural and developed components of the community.”* (Community Plan, Page 8.)
- **Goals** – *“Preserve the natural amenities of La Jolla such as its ... bluffs,”* (Community Plan, Page 39.)
- **Goals** – *“Protect the environmentally sensitive resources of La Jolla's open areas including its coastal bluffs”* (Community Plan, Page 39.)

These policies would all be violated by the Project, which includes various accessory improvements within 5 feet of the bluff edge as well as additions to the home within 40 feet of the bluff edge. (See photos at **Exhibit 1**.) Allowing development this close to the bluff edge is inconsistent with the protection, preservation, and conservation goals advocated in the Community Plan.

b. The Project's Nominal Setbacks are Unsafe

The Community Plan's *Shoreline Areas and Coastal Bluffs* policies advise that development on coastal bluffs must be set back from the bluff edge in order to protect against erosion, as follows:

- **Shoreline Areas and Coastal Bluffs Policy 3(a)** – “...development should be avoided in areas that will eventually be damaged or require extensive seawalls for protection.” (Community Plan, Page 51.)
- **Shoreline Areas and Coastal Bluffs Policy 3(c)** – “Development on coastal bluffs should be set back sufficiently from the bluff edge to avoid the need for shoreline or bluff erosion control devices so as not to impact the geology and visual quality of the bluff and/or public access along the shoreline.” (Community Plan, Page 51.)

The Project is conditioned such that structures (e.g., the home and spa) are set back 25 feet from the bluff edge, while at grade accessory structures are allowed within 5 feet of the bluff edge. Although the Applicant's geologist attests to the safety of this arrangement, the Commission's staff report expresses clear reservations. For instance, on Page 23, the Staff Report notes that “... estimating the safety of structures and determining safe geologic setbacks is not an exact science. There have been many instances in San Diego County where a geologic report states a certain bluff edge setback is adequate and then some years later, the bluff fails and the property owners are requesting emergency permits to construct seawalls.” (Staff Report at Page 23.) The Staff Report goes on to state that “[t]here is a risk of damage to the proposed improvements as a result of erosion and sea level rise over time.” (Staff Report at Page 24.) Given the identified risks associated with placing structures within 25 feet and 5 feet of the bluff edge, the Coastal Commission cannot find that the Project is consistent with Community Plan Policies 3(a) or 3(c).

c. The Project is Located in a Geographically Sensitive Area

According to Figure 5 of the Community Plan, the Project Site is located in what is perhaps the most geologically sensitive area of La Jolla. The Project Site is sandwiched between five faults that run perpendicular to the Pacific Coast, and is immediately south of the active Rose Canyon Fault Zone. (See **Exhibit 2**, attached.) The Community Plan describes the Rose Canyon Fault as follows:

The Rose Canyon Fault is identified in The City of San Diego Seismic Safety Study as active due to its recorded pattern of earthquake activity and seismic

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movement. The geological activity along the Rose Canyon Fault has shaped much of La Jolla's coastline including the jagged edges of La Jolla Cove. (Staff Report at Page 25.)

The Rose Canyon Fault has been rated as a 'high' geotechnical risk, according to the seismic safety study, indicating that significant ground failure could happen should an earthquake occur along this fault line. (Staff Report at Page 83, emphasis added.)

The Project Site is also identified as an “unstable bluff” and is adjacent to a “Slide Prone Formation.” The lack of bluff stability is apparent upon even a casual inspection of the Project Site’s existing geography. As shown on **Exhibit 3**, attached, the bluffs are victim to surf-related erosion. Over the years, these waves have whittled caves and crevasses into the bluff which undermine the home’s foundation. Under the City’s certified LCP, structures may be located between 25 and 40 feet from the bluff edge only where the evidence indicates that the site is stable enough to support the development at the proposed distance from the coastal bluff edge. (San Diego Municipal Code §143.0143.) In light of the Project Site’s “unstable bluff” designation and the obvious erosion shown in **Exhibit 3**, it is difficult to see how the required stability finding can be made here.

From a geological stability perspective, everything about the Project Site therefore indicates that the utmost caution should be taken when developing near the coastal bluff. Yet, paradoxically, the Project proposes just the opposite. Structures are proposed to be located as close as 25 feet from the bluff edge (the minimum buffer allowed by the LCP) while other development will occur as close as five feet from the bluff edge. Even more surprising than the limited setbacks is the fact that the multitude of faults surrounding the Project Site and their earthquake potential are not even referenced in the Project’s staff report. Additional, objective, study of the Project Site’s geology—including detailed analysis of the Site’s marked seismic hazards—is required prior to the Commission’s approval of the Project.

d. New Project Features Could Destabilize Coastal Bluff

Two Project features disclosed for the first time in the June, 2011 Staff Report could further destabilize the already-unstable Project Site bluff. First, until recently, the Coastal Commission staff had been very clear that no permanent irrigation would be allowed on the Project Site. Clearly, they recognized the potential for irrigation to destabilize the already-unstable bluff. Now, however, drip irrigation is allowed for existing landscaping beyond the 40-foot blufftop setback area. Moreover, permanent irrigation is not allowed for the adjacent residences, yet no reasons have been provided as to why the Kretowicz residence should be treated differently than its neighbors and given a benefit that could potentially result in

significant injury to the adjacent homes. Second, in the June, 2011 Staff Report, the public learned for the first time that the following improvement was *proposed*, not *existing*: “Interior garage improvements to include excavation and removal of approx. 130 cy. of uncompacted fill material to allow an additional parking space, a car lift and storage.” Both of these new Project features have the potential to further destabilize the already-unstable bluff. However, to our surprise, the Staff Report contains no discussion regarding how these features could further destabilize the Project Site’s coastal bluff. Such analysis is required before the Coastal Commission takes any action that could endanger the Project area.

4. RODENTICIDES WILL HARM LOCAL AVIAN POPULATION

One of the changes in the June, 2011 Staff Report is the removal of the following prohibition: “Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.” According to the American Bird Conservancy, one of the permitted poisons—Brodifacoum—is “extremely dangerous to birds through secondary exposure, *especially raptors feeding on poisoned rats and mice*. Hundreds of avian and other wildlife mortalities have been reported across North America.”² Therefore, by sanctioning the use of rodenticides, the Coastal Commission has endangered the seahawks and other birds who commonly prey on rodents in La Jolla.

5. THE COMMISSION SHOULD NOT REWARD THE APPLICANTS’ BAD BEHAVIOR

The Applicants have exhibited a pattern and practice of flaunting the Coastal Act’s restrictions. Development was conducted on the Project Site continuously over the course of years—all without proper permits, Coastal Commission oversight and review, and without complying with prior Coastal Commission conditions relating to the OTD. Our client and neighbors will attest that much of this development was conducted during nights and on weekends in order to minimize the opportunity to be caught by code enforcement officers. Instead of facing a Notice of Violation and Cease & Desist Order—as would be typical of other Coastal Act offenders—the Applicants are being allowed to pay a settlement of \$3.3 Million. Given the gravity of the offenses, and the magnitude of the settlement offer, there is no way to avoid the appearance that the Applicants’ are simply buying their way out of a Coastal Commission violation.

² *Pesticide Profile - Brodifacoum* at <http://www.abcbirds.org/abcprograms/policy/toxins/Profiles/brodifacoum.html>. Emphasis added.

**6. ADDITIONAL SAFEGUARDS SHOULD BE REQUIRED TO
GUARANTEE THE \$3.3M PAYMENT**

The History section of the June, 2011 Staff Report makes it clear that the Applicants are not in a rush to settle this matter. It has been six years since the Applicants were first before the Commission in connection with the Project, during which time the required payment increased from \$10,000 to \$3,300,000. The inability to resolve this matter at \$10,000 raises questions about whether and when the State Coastal Conservancy will receive the promised \$3,300,000. The fact that Special Condition 1.B currently allows the payments to be paid over several years only adds to this concern. There is no guarantee that the Applicant will make timely payments; nor is there a process by which the Coastal Commission can quickly enforce a breach of this agreement and permit. Given that the Applicants have the benefit of their residence, which will now be considered a “permitted development,” if the Commission approves the mitigation payment—which our client opposes—it should at least require the Applicants to render the \$3,300,000 payment prior to issuance of any Coastal Development Permit associated with the Project. Alternatively, the Commission could require that the Applicants post a \$3,300,000 performance bond guaranteeing the construction of the public access improvements contemplated by Special Condition 1.A. The bond obligation should be added to Special Condition 1.B, and should be guaranteed by a lien against the 7957 Princess Street residence.

7. CONCLUSION

We realize that the Coastal Commission should not needlessly litigate matters where it is possible to settle them amicably; however, even in litigation, the Coastal Commission does not act in a vacuum. The Coastal Act policies regarding public access and bluff stability must be followed. Unless and until the Project is redesigned to incorporate the OTD and to respect the Project Site’s sensitive coastal bluff environment, it will be inconsistent with the Coastal Act and the LCP.

As an adjoining landowner who has watched the Applicants flaunt the City’s building codes and the Coastal Act requirements, and now faces the potential for increased instability and damage to his residence due to the unpermitted work undertaken by the Applicants and the staff’s recommendation to allow irrigation, our client strongly opposes the Project and hopes that the Coastal Commission imposes substantially stronger requirements on the Applicant to ensure that the Project is brought into compliance with the Coastal Act.

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The Commission is obligated by law to uphold the policies of the Coastal Act and to protect the coastal resources that we all rely on to guard our homes and the public's access to the beach. As explained in this letter, approval of the Project would contradict that mission—and violate the Coastal Act itself—by allowing the Applicants buy their way out of a longstanding public coastal access obligation in a manner that is not consistent with Coastal Act policies and Coastal resource protection.

Respectfully submitted,

 *Signature on file*

Susan K. Hori
Manatt, Phelps & Phillips, LLP

cc: George Krikorian
Jamee Patterson, Esq.
Sharilyn Sarb

300210215.4

Exhibit 1

Pictures showing Project's proximity to bluff edge

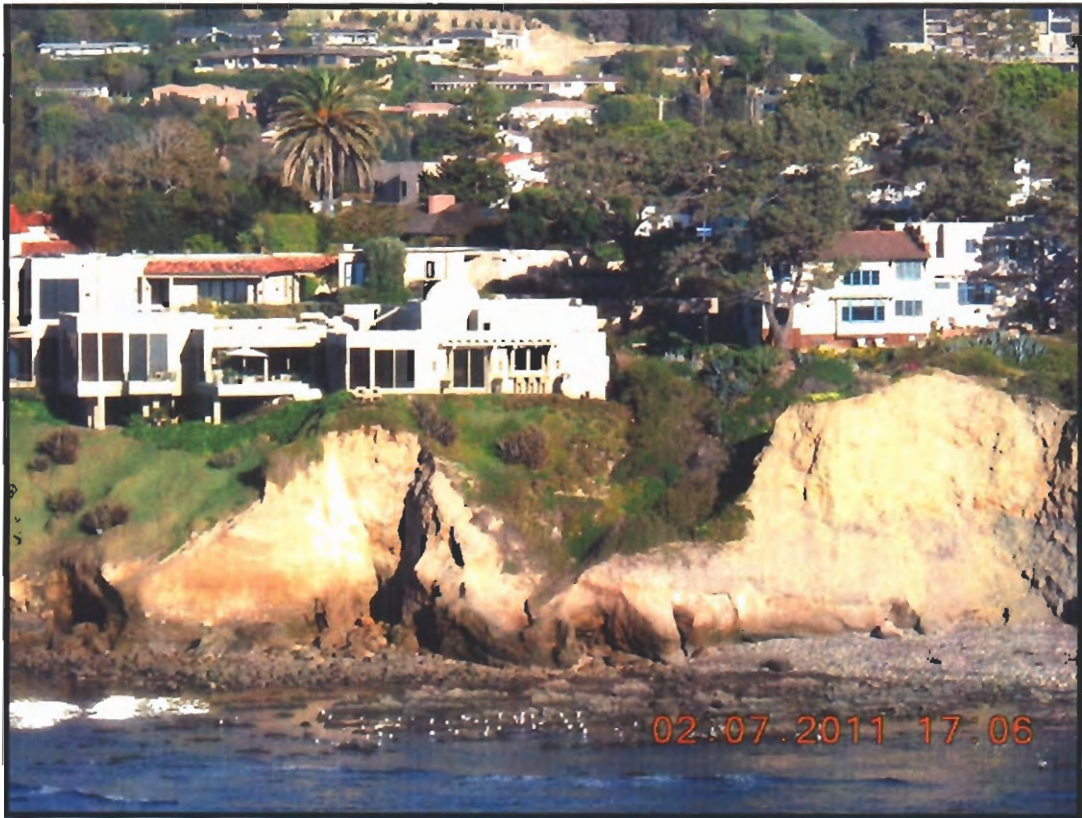





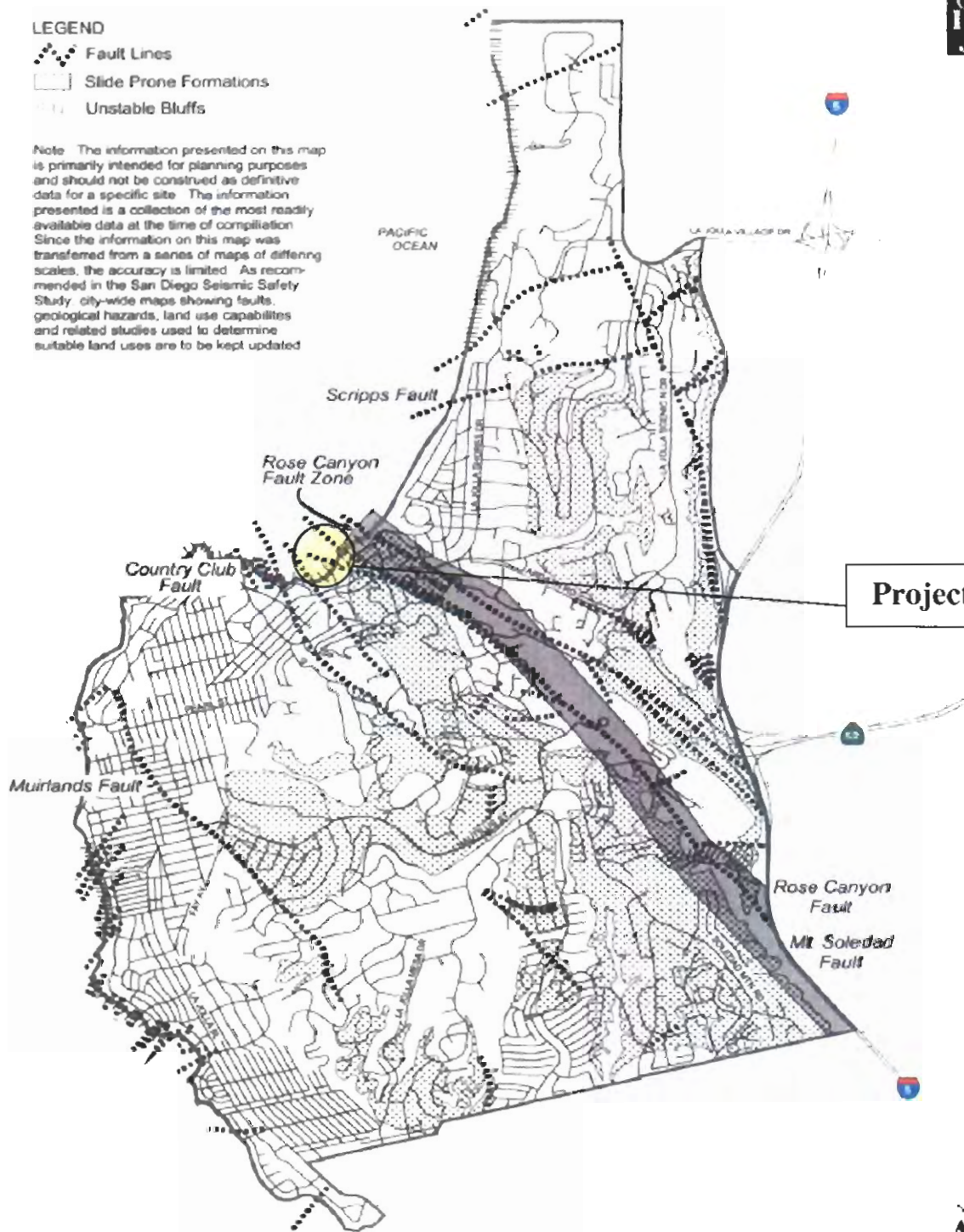
Exhibit 2

**Figure 5: La Jolla Community Plan and
Local Coastal Program Land Use Plan**

LEGEND

-  Fault Lines
-  Slide Prone Formations
-  Unstable Bluffs

Note: The information presented on this map is primarily intended for planning purposes and should not be construed as definitive data for a specific site. The information presented is a collection of the most readily available data at the time of compilation. Since the information on this map was transferred from a series of maps of differing scales, the accuracy is limited. As recommended in the San Diego Seismic Safety Study, city-wide maps showing faults, geological hazards, land use capabilities and related studies used to determine suitable land uses are to be kept updated.



Project Vicinity



Geological Fault and Hazard Areas

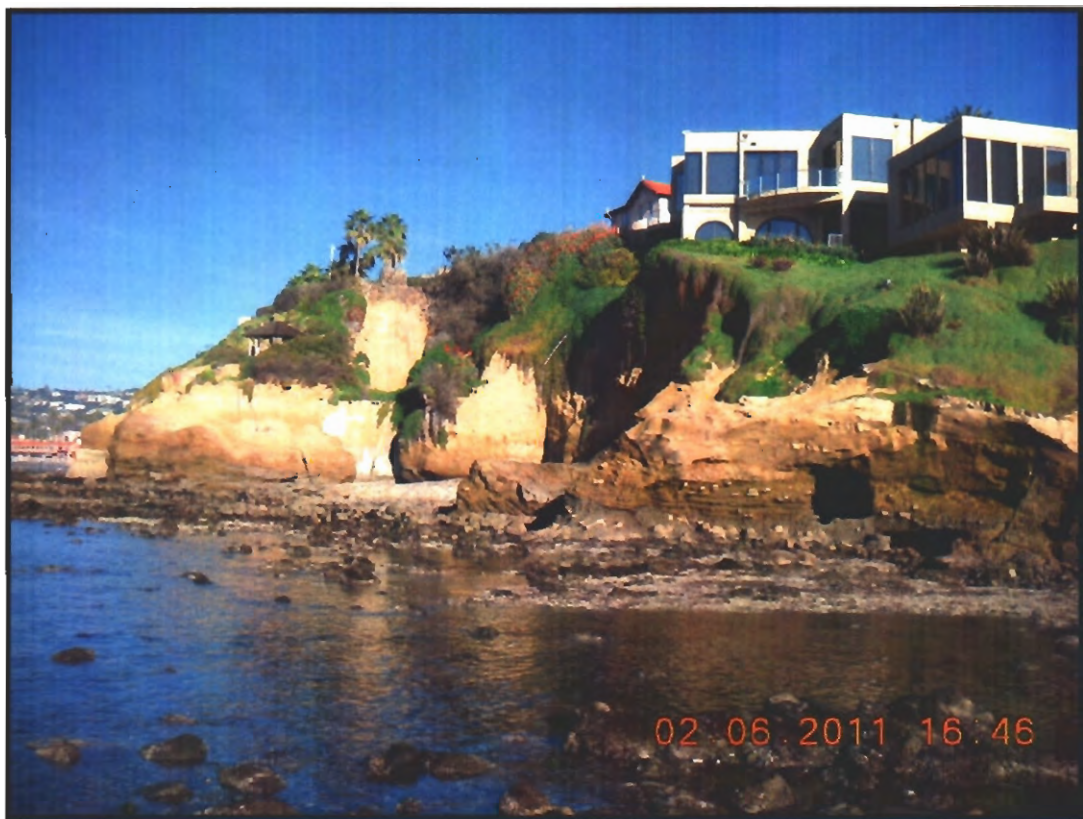
La Jolla Community Plan
City of San Diego • Planning Department



Figure 5

Exhibit 3

Pictures illustrating lack of bluff stability





THE CITY OF SAN DIEGO

RECEIVED

APR 22 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

April 18, 2011

Mr. Lee McEachern
San Diego Office Area
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Dear Mr. McEachern:

Subject: Application No. A-133-79-A4/F6760-A5 /Kretowicz

In January 2011 the City of San Diego (City) became aware of the above-referenced Coastal Commission permit application and Coastal Commission staff report with preliminary recommendations which in part include approval of the permit with certain conditions.

City of San Diego staff was not asked to provide input to the Coastal Commission staff recommendations at the time of the report. As such this letter is the official City of San Diego response to the Coastal Commission's report outlining the preliminary recommendations which impact locations within the City of San Diego's La Jolla Local Coastal Program (LCP).

Responses to the Special Conditions (as referenced on page 4 of the report)

1. Payment of \$3,300,000

The Coastal Commission staff recommends funds be used for the "reconstruction of Angel's Flight public access stairway" and various other public access improvements in La Jolla area, including a grant to the City for \$300,000 to be used exclusively for other public access improvements. In addition, if the \$3,000,000 identified for the reconstruction of Angel's Flight Stairway is not used by the State Coastal Conservancy for this purpose the funds shall be used by the Conservancy for other such public access improvements within the coastal area of Southern California.

The City supports the \$300,000 grant to be issued to the City for other public access areas within La Jolla, but disagrees with the recommendation of \$3,000,000 or any funding for the Angel Flight Stairway. The City of San Diego's La Jolla Community Plan, which also is the LCP for the area was developed by the residents of the La Jolla Community area and adopted by the City Council in 2004. This adopted Community Plan does not recommend this location as a future public access point to the beach below. In addition, various City staff, including staff from the Fire and Life Safety and the Park and Recreation Departments does not support a new stairway in the area. For these reasons we would recommend that the Coastal Commission change this Special Condition to include \$3,000,000 for the exclusive use to reconstruct and improve existing public access/stairways in the La Jolla Community



EXHIBIT NO. 11
APPLICATION NO.
**A-133-79-
A5/F6760-A6**
Letter from City

Planning Area, as determined by the City and approved by the Coastal Conservancy. In 2003 the City completed a comprehensive Coastal Access Site Improvement Assessment of 131 public access points along the coast. The 2003 survey prioritized the areas for improvements based upon the site assessments. Of the 131 sites, many within the La Jolla Community Planning Area and 14 of these La Jolla locations are within the top 50 identified priorities. With limited funding for such improvements it could take upwards of 15 years to complete all the improvements identified. As such the City could use the funds to make improvements only to public access points within the La Jolla Community Planning Area.

2. Lifeguard Emergency Vertical Access (at Princess Street)

The City of San Diego agrees with the recommendation to provide the City of San Diego an emergency easement for the use of Lifeguards for emergency access which will be paid for by the applicant. The City of San Diego agrees with the recommendation to provide the City with an emergency easement to be used by Lifeguards or other emergency responders for the purpose of accessing the water and shore, which will be paid for by the applicant. The City of San Diego does not recommend the access be opened to the general public at this time. First and foremost, the La Jolla Community Plan, as adopted in 2004, does not recommend full public access, only emergency access, which is recommended by City staff as well. After further evaluation of the site by Lifeguard staff full access at this point could pose a safety issue to those who access the beach below due to the limited beach space and the possibility for users to become stranded on adjacent beach areas at high tide or during periods of high surf. Additionally, there is restricted visibility of the beach from established lifeguard observation points and the approach to the beach from the seaward side is severely impeded by a shallow rocky reef. There is a strong likelihood that increased public access at this location would result in an increase in emergency responses to the area.

The Lifeguard staff has evaluated the access as it exists today and provides the following recommendations for improvements along with the easement to be recorded with the City of San Diego.

- I. Lifeguards shall be provided 24-hour emergency access via a key to the gate, the combination to a lock, or through access to an onsite lock box that has a key. The owner of the property shall be responsible for maintaining any lock or gate to ensure that emergency access is not impeded.
- II. The emergency access shall allow lifeguard access to the water along a path that is unobstructed from vegetation or property improvements. Improvements to this path shall be allowed if necessary in order to gain or improve the emergency access.
- III. Lifeguards shall be permitted to use the access for emergency calls, gaining visual site lines of the area, conduction area familiarization training, and other on duty activities that fall under the purview of the Lifeguard Division.


Page 3
Mr. Lee McEachern – Coastal Commission
April 18, 2011

- IV. Lifeguards shall be allowed to construct a rope rescue system along the emergency access corridor in order to access or extricate a trapped or injured person. Any such system shall be constructed on site, and removed after operations are concluded. These systems may also be constructed for the purposes of training guards in cliff rescue skills.
- V. Lifeguards shall be provided final permits prior to submittal to the City's Development Services Department and/or Coastal Commission.


As the local governmental agency that has jurisdiction of the areas as identified in this application we appreciate the opportunity to provide input and the Coastal Commission member's serious consideration of the alternatives and comments provided. If you have any further questions, please contact Stacey LoMedico, Park and Recreation Director at slomedico@sanidiego.gov or at (619) 236-6643 or Rick Wurts, Lifeguard Chief at rwurts@sanidiego.gov or at (619) 221-8832.

Sincerely,


Signature on file

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Jay M. Goldstone
Chief Operating Officer

cc: Council Member Sheri Lightner
Stacey LoMedico, Park and Recreation Director
Javier Mainar, Fire-Rescue Chief
Rick Wurts, Lifeguard Chief
Kathleen Hasenauer, Park and Recreation Deputy Director
Darren Greenhalgh, Engineering and Capital Projects Deputy Director
Ali Darvishi, Engineering and Capital Projects Project Officer II
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Tony Crisafi, Chair, La Jolla Community Planning Group



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Professional Engineer
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Exp. 12-31-2007

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| | | | |
|---|----------------|-------------|----------------|
| PROJECT NO. | 001-071-001 | DATE | 06-11-2011 |
| DESIGNED BY | Michael Morton | CHECKED BY | Michael Morton |
| DRAWN BY | Michael Morton | DATE | 06-11-2011 |
| SCALE | AS SHOWN | PROJECT NO. | 001-071-001 |
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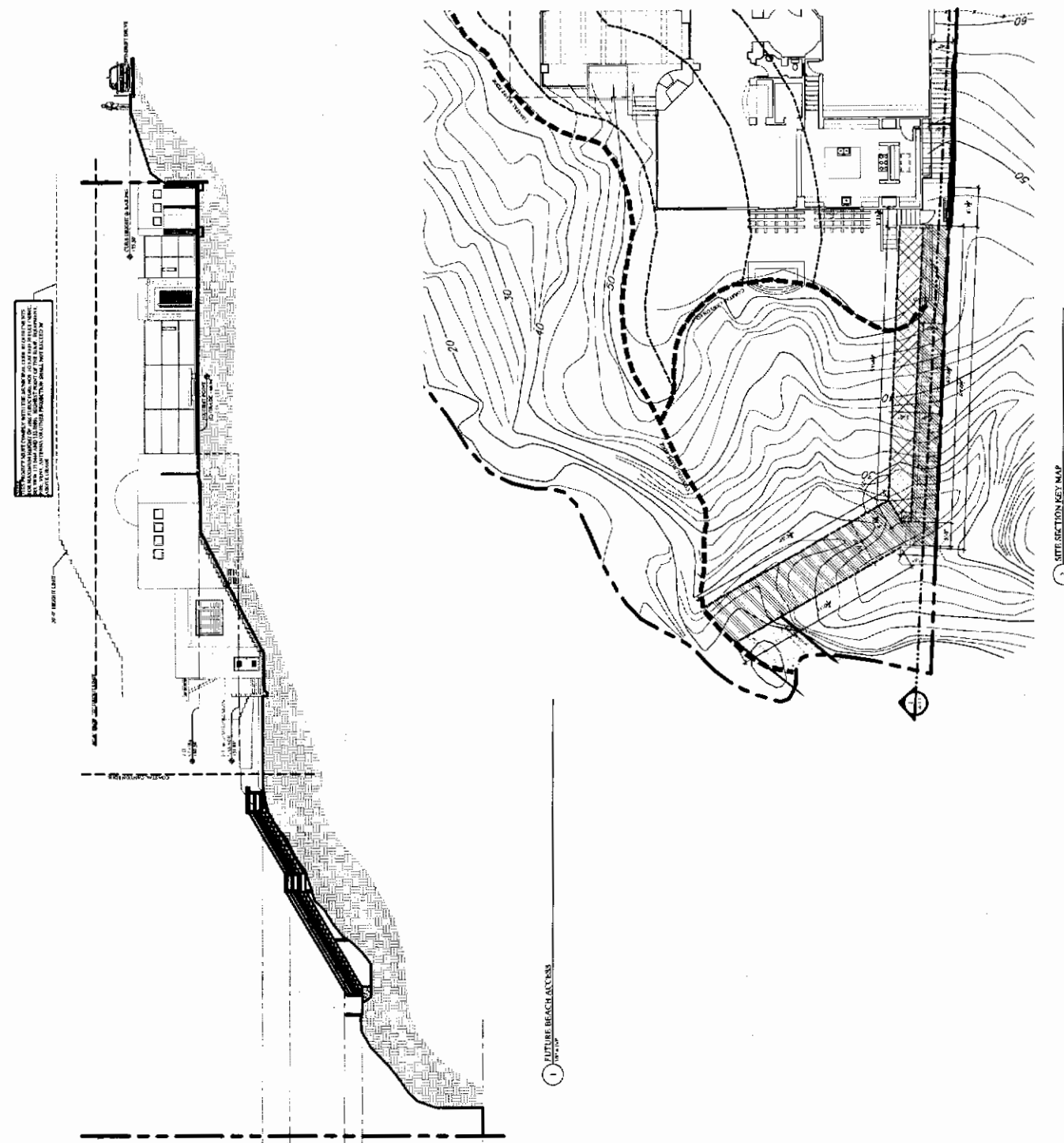


EXHIBIT NO. 12

APPLICATION NO.

A-133-79-

A5/F6760-A6

General Location of Access Easement



California Coastal Commission