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Staff:	K. Geisler - SC
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STAFF REPORT: REGULAR CALENDAR

Application: **2-10-039**

Applicant: **Land's End Associates**

Location: Along the bluff top, bluff face, base of bluff, and sandy beach seaward of 100 and 101 Esplanade Avenue in the City of Pacifica, San Mateo County (APNs 009-023-070 and 009-024-010).

Description: Consolidated coastal development permit (CDP) application to permanently authorize development constructed pursuant to two Coastal Commission emergency CDPs (2-10-007-G and 2-11-005-G) and one City of Pacifica emergency CDP (CDP-328-10) as well as authorize newly proposed development, consisting of: 1) an approximately 650-foot long, 35-foot high and 28-inch thick semi-vertical contoured concrete tie-back seawall, with 8,825 tons of rock for toe protection; 2) an approximately 660-foot long ledge, excavated into bedrock about 23 to 43 feet seaward of the seawall and filled with rock riprap; 3) riprap wedges at the ends of the seawall (approximately 60 tons of riprap at each end); 4) a 530-foot long grade beam and caisson buried wall system (54 caissons in total, each 30 inches in diameter and extending subsurface up to 65 feet) located approximately 15 to 35 feet inland from the edge of upper bluff; 5) replace previously required but subsequently damaged public access improvements including a blufftop public access path and overlook, and a bluff path to a stairway to the beach; 6) extinguish existing public access easements and replace with new alternative public access easements; and 6) site drainage, landscaping, and related development, including benches, signage and an interpretive kiosk.

Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project is located seaward of the Land's End apartment complex at 100-101 Esplanade Avenue in the City of Pacifica's Edgemar neighborhood in the northern portion of the City, and includes shoreline armoring as well as public access and related improvements. Much of the project was constructed under the second of the two emergency CDP authorizations listed above after 50 to 90 feet of bluff eroded away in 2011.This application proposes to retain that development via a regular CDP, including a seawall, a grade beam and caisson buried wall system, an access walkway, an access overlook, and a path and a stairway providing access to the beach (all replacements for previously required public access improvements). In addition, the Applicant proposes to install toe protection along the length of the seawall, and retain portions of a rock riprap filled trench located approximately 23 to 43 feet seaward of the seawall that was originally placed for toe protection during the emergency permit process. Finally, the Applicant proposes to modify existing public access easements required by prior local government and Commission CDP conditions.

Staff believes that the project meets the armoring need tests of the Coastal Act, and that impacts to sand supply, public access and visual character can be appropriately mitigated through conditions of approval. In terms of the former, staff, including the Commission's senior coastal engineer and geologist, have evaluated the relevant project materials, have visited the site multiple times, and have determined that the apartment structures and public access improvements were in danger from erosion as understood in a Coastal Act sense. The poorly cemented bluff materials proved little match for ocean storms, including significant retreat of up to 90 feet in some areas of the site preceding the emergency work, and damaging the public access stairway. Absent a project, a single significant storm event could have resulted in loss of structures and related infrastructure at the site.

In this case, staff recommends that the Commission find it is appropriate to mitigate for the project's beach access and sand supply impacts in two ways: first by addressing the beach area itself that would be lost due to encroachment and passive erosion through an in-lieu fee that is based on the cost of nearby land values; and second, by addressing the sand retention loss through the provision of an in lieu fee based on the cost to replace the retained sand. Staff recommends that the Commission calculate the beach area mitigation fee based on the land value of the area of beach that is no longer accessible to the public due either to direct physical encroachment by the seawall or because of the loss of area that would otherwise have been available for public access in the future had a seawall not blocked natural bluff retreat. Staff recommends that the Commission <u>not</u> base this beach area mitigation fee only on the cost of the volume of sand beneath a seawall or beneath the area of beach that would have been created. While the Commission has long recognized that beach nourishment can address some of the losses that are directly attributable to seawall projects, the one-time provision of beach through nourishment does not adequately address the long-term and persistent impacts from encroachment and fixing the back of the beach because the main coastal resource concerns for these latter impacts arises from the losses in recreational use that result from the loss of available beach area. With respect to sand retention, Staff <u>does</u> recommend that the Commission impose a fee that is based on the cost to replace the sand that would no longer go into the system due to the proposed project

In terms of impact mitigation, the Applicant proposes a replacement stairway vertical access and a replacement blufftop lateral access, as well as other public access enhancements, including a blufftop overlook, public access signs, an educational kiosk, and sitting benches. While staff agrees mitigation is required, staff's evaluation has determined that the impacts require more mitigation than that currently being proposed by the Applicant in part because much of the access and access improvements that the Applicant is proposing to replace are already legally required by prior permit actions and recorded easements. Thus, staff is recommending; (1) a 20-year approval, (2) in-lieu payment of $431,061 to mitigate for the loss of beach area (where this payment is based on the land value calculation of $1,620,011 minus a credit to the Applicant of $1,188,950 for public recreational access improvements constructed as part to the proposed project), (3) in-lieu payment for sand retention impacts for 34,493 cubic yards of sand, based on the current cost of sand. (4) removal of all unused riprap and riprap from within the excavated trench, (5) maintenance and monitoring programs, (6) modifications to public access parameters to ensure that previously required and proposed access best accommodates public use, and (7) restrictions on future development, indemnification, and other related conditions to address coastal resource impacts and issues.

As conditioned, staff recommends that the Commission approve a CDP for the proposed project. The motion to act on this recommendation is found on page 5.

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I. MOTION AND RESOLUTION

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

Motion: *I move that the Commission approve coastal development permit number 2-10-039 pursuant to the staff recommendation, and I recommend a yes vote.*

Resolution: *The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit 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 development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Revised Project Plans.** WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit two

full-size sets of Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be in substantial conformance with the plans submitted to the Coastal Commission (dated received in the Commission's North Central Coast District Office on July 30, 2012 and titled RJR Engineering As Built Plans for Lands End (dated January 5, 2012 and July 25, 2012); see **Exhibit 2: Project Plans**) except that they shall be revised and supplemented to comply with the following requirements:

a. Scale and NGVD. All plans shall include a graphic scale and all elevations shall be described in relation to National Geodetic Vertical Datum (NGVD).

b. Property Lines. All property lines for the subject property and all adjacent properties shall be clearly and accurately identified.

c. Easement Area. The revised and amended easement area (see **Special Condition 4**) shall be clearly and accurately identified.

d. Toe Protection. Details, including in site plan and elevation, showing the configuration and composition of the riprap toe protection to be placed at the base of the seawall. Such toe protection shall be the minimum necessary to provide scour protection for the base of the seawall and shall be in substantial conformance with the riprap toe protection shown on the plans submitted to the Coastal Commission (dated received in the Commission's North Central Coast District Office on November 14, 2012 and titled Updated Project Description (dated November 2, 2012); see **Exhibit 2: Project Plans**), including that all rock used for such toe protection shall be existing rock retrieved from the trench on the beach located in the area seaward of the approved seawall.

e. Rock, Concrete, and Debris Removal. Other than the minimum amount of rock riprap at the upcoast and downcoast edges of the seawall needed to conform the edges of the seawall to the coastal bluff and the rock riprap permitted to be relocated from the trench to the base of the seawall for toe protection, all other rock riprap and concrete debris (e.g., abandoned concrete drain pipe, concrete debris, etc.) in the area seaward of the approved seawall, including rock remaining in the trench **(**after rock has been moved for toe protection) located in the area seaward of the approved seawall, and/or placed in the nearby area by the Permittee, shall be removed and properly disposed of at an inland location approved by the Executive Director.

f. Trench Restoration. Following removal of all rock from the trench located in the area seaward of the approved seawall (i.e., after toe protection rock has been relocated and remaining rock has been removed), the trench shall be filled with material that matches the surrounding substrate as much as possible, including in terms of cohesion and erodability, and then covered with beach sand to match the surrounding sandy beach elevation. The fill material may take the form of sand, compacted soils, soil mix with stabilizers, lean erodable concrete, combinations of same, or other materials as appropriate. The plans shall be accompanied by information sufficient to evaluate the suitability of the fill material relative to the surrounding native material.

g. Concrete Surfacing. All concrete surfaces shall be faced with a sculpted concrete

surface that mimics natural undulating bluff landforms in the vicinity in terms of integral mottled color, texture, and undulation to the maximum extent feasible, and seamlessly blends with the natural and existing bluff face. Any protruding concrete elements (e.g., corners, edges, etc.) shall be contoured in a non-linear manner designed to evoke natural bluff undulations. The color, texture, and undulations of the seawall surface shall be maintained throughout the life of the structure. All drainage and related elements within the sculpted concrete shall be camouflaged (e.g., randomly spaced, hidden with overhanging or otherwise protruding sculpted concrete, etc.) so as to be hidden from view and/or inconspicuous as seen from the top of the bluffs and the beach.

h. Landscaping. All landscaping shall utilize native and noninvasive plant species that are tolerant of salt air and salt spray, with a preference for species capable of trailing vegetation that can colonize steeper bluff areas and also screen the top of the seawall as seen from the beach as much as possible. All invasive and non-native species in the project area, including iceplant, shall be removed and not be allowed to persist. All plants shall be kept in good growing condition and shall be replaced as necessary to maintain the approved vegetation over the life of the project, including to maintain some visual screening of the top of the seawall. Regular monitoring and provisions for remedial action (such as replanting as necessary) shall be identified to ensure landscaping success.

i. Irrigation. Irrigation shall be limited to that necessary to ensure landscaping success, and shall be sited and designed to reduce the potential for contributing to bluff erosion.

j. Drainage Pipes. All drainage pipes located in the bluff shall be trimmed back to the bluff face and otherwise camouflaged as much as possible (through painting, landscaping, etc.), and shall be trimmed back further in the future at such times when the pipes again become visible and/or protrude from the bluff face.

k. Public Access Improvements. All public access improvements and amenities identified in **Special Condition 2: Public Access Management Plan** shall be identified. Such improvements shall be constructed of materials and finishes that are sensitive to the shoreline aesthetic, including through use of natural materials (wood, decomposed granite pathways, etc.) as much as possible.

l. Schedule. The plans shall be submitted with a schedule for completing those elements shown on the plans that: (1) have not yet been constructed/completed (e.g., riprap toe protection, landscaping, irrigation, drainage measures, rock/concrete/debris removal, trench restoration, drain pipe modifications, public access improvements, etc.); and/or (2) have been constructed/completed but for which modifications are required to meet the terms and conditions of this approval. Such schedule shall be predicated on completion of construction as quickly as possible, with priority given to completion of the public access improvements. All such construction shall be completed as soon as possible following Labor Day 2013 (i.e., September 2, 2013) and in no case later than the first Saturday of the Memorial Day weekend in 2014 (i.e., by May 26, 2014).

All requirements above, and all requirements of the approved Revised Final Plans, shall be enforceable components of this CDP. The Permittee shall undertake all development in

accordance with the approved Revised Final Plans.

2. **Public Access Management Plan.** WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit two copies of a Public Access Management Plan to the Executive Director for review and approval. The Public Access Management Plan shall demonstrate that access will be implemented consistent with all special conditions of this permit, including the Amended Easement required pursuant to **Special Condition 4**. The Public Access Management Plan shall clearly describe the manner in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing public access to the public access areas of the site (including the public access paths, overlook area, stairs, and all related areas and public access amenities (i.e., bench seating, educational kiosk, etc.) described in this special condition. The Public Access Management Plan shall conform with the approved Revised Final Plans referenced in **Special Condition 1** above, and shall at a minimum include the following:

   a. **Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described in this special condition, shall be clearly identified as such on the Public Access Management Plan (including with hatching and closed polygons so that it is clear what areas are available for public access use). These areas include the paths atop the bluff, the overlook area, the path down the bluff face, and the stairway (see **Exhibit 2: Project Plans**).

   b. **Public Access Amenities.** All public access areas shall be designed and maintained to facilitate public use and enjoyment, including providing, at a minimum, sitting benches, an interpretive/educational panel, bicycle racks, and trash and recycling receptacles in the overlook area, and at least one sitting bench along the path down the bluff situated to maximize public viewing utility.

   c. **Public Access Signs/Materials.** The Public Access Management Plan shall identify all signs and any other project elements that will be used to facilitate, manage, and direct public access users, including identification of all public education/interpretation features that will be provided on the site (educational displays, interpretive signage, etc.). Informational and directional signage (that clearly identify that the public access areas are available for general public use and how connections can be made laterally and vertically) shall be placed where the path intersects Esplanade Avenue and the adjacent upcoast property, at the top and bottom of the stairs, and at the overlook area. Interpretive/educational signage shall describe Pacifica and the Pacific Ocean, the issues related to shoreline erosion and sea level rise, and the Commission's and the City's role in addressing these issues. All signs shall be sited and designed so as to provide clear information without impacting public views and site character, and sign details (showing the location, materials, design, and text of all signs) shall be provided. Signs shall include the California Coastal Trail and California Coastal Commission emblems, and recognition of the Coastal Commission's role in providing public access at this location.

   d. **No Public Access Disruption.** Development and uses within the public access areas that disrupt and/or degrade public access (including areas set aside for private uses, barriers to

public access (furniture, planters, temporary structures, private use signs, fences, barriers, ropes, etc.) shall be prohibited. The public use areas shall be maintained consistent with the approved Public Access Management Plan and in a manner that maximizes public use and enjoyment.

e. **Public Access Use Hours.** All public access areas and amenities shall be available to the general public free of charge 24 hours a day.

f. **Public Access Easement.** The revised easement area (see **Special Condition 4**) and all provisions for public access associated with the revised easement shall be clearly and accurately identified.

g. **Public Access Areas and Amenities Maintained.** All of the public access components of the project shall be constructed in a structurally sound manner and maintained in their approved state in perpetuity including through ongoing maintenance of all public access improvements, including access paths, stairs, and overlooks, to ensure that public access is always continuous from Esplanade Avenue and the adjacent upcoast property across the blufftop portion of the site and to the overlook area, the stairs, and the sandy beach, even if that means modifying, moving, and/or replacing access improvements in light of changing circumstances, including damages from storms and changes in sea levels and as is required by **Special Condition 4(c)(1),** CDP3-83-015, CDP 239-03 and the 2006 Easement. Prior to any modification, movement, and/or replacement of access improvements, the Permittee shall obtain an amendment to this coastal development permit to authorize such development. All requirements above and all requirements of the approved Public Access Management Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with the approved Public Access Management Plan and the Amended Easement required by **Special Condition 4**, which shall govern all general public access to the site pursuant to this CDP.

3. **Construction Plan.** WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:

a. **Construction Areas.** The location of all construction areas, all staging areas, and all construction access corridors shall be clearly identified (in site plan view) and described. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on public access and beach/ocean resources, including by using inland areas for staging and storing construction equipment and materials as much as possible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.

b. **Construction Methods.** All construction methods to be used, including all methods to be used to keep the construction areas separated from public recreational use areas (including using unobtrusive fencing (or equivalent measures) to delineate construction areas) shall be clearly identified and described.

c. **Property Owner Consent.** The plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to such use of their properties.

d. **Construction Requirements.** The Construction Plan shall include the following construction requirements specified by written notes on the Construction Plan:

1. All work shall take place during daylight hours and lighting of the beach/ocean area is prohibited.

2. Construction work or equipment operations shall not be conducted below the mean high tide line unless tidal waters have receded and the area is part of the authorized work area.

3. Grading of intertidal areas is prohibited, unless the area is part of the authorized work area.

4. Only rubber-tired construction vehicles are allowed on the beach, except track vehicles may be used if the Executive Director agrees that they are required to safely carry out construction. When transiting on the beach, all such vehicles shall remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.

5. All construction materials and equipment placed on the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from the beach area by sunset each day that work occurs. The only exceptions shall be for erosion and sediment controls and/or construction area boundary fencing where such controls and/or fencing are placed as close to the base of the seawall/bluff as possible, and are minimized in their extent.

6. No work shall occur during weekends and/or the summer peak months (i.e., from the Saturday of Memorial Day weekend through Labor Day, inclusive) unless, due to extenuating circumstances (such as tidal issues, extensive delays due to severe weather or other environmental concerns), the Executive Director authorizes such work.

7. Equipment washing, servicing, and refueling shall not take place on the beach, and shall only be allowed at a designated inland location (that shall be identified). Appropriate best management practices shall be used to ensure that no spills of petroleum products or other chemicals take place during these activities.

8. The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach; etc.).

9. All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday. At a minimum, silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from being deposited on the beach or into the ocean.

10. All public recreational use areas and all beach access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand impacted shall be filtered as necessary to remove all construction debris from the beach.

11. The Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office at least three working days in advance of commencement of construction or maintenance activities, and immediately upon completion of construction or maintenance activities.

e. Construction Site Documents. The plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.

f. Construction Coordinator. The plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

Minor adjustments to the above Construction Plan requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake construction in accordance with the approved Construction Plan.

4. Amended Public Access Easement. WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall cause the landowner and the City of Pacifica to execute and record an amended public access easement (Amended Easement) in a form and content reviewed and approved by the Executive Director, that amends the grant of easement between FPA/BAF Lands End

Associates, L.P. and the City of Pacifica (recorded in the San Mateo County Recorder's Office on June 12, 2006 as Instrument Number 2006-087276; see **Exhibit 5** (hereafter "2006 Easement") to incorporate the public access terms, conditions and restrictions associated with CDPs 3-83-015, 239-03, the 2006 Easement, and this CDP (2-10-039). The Amended Easement shall continue to incorporate all covenants, terms, conditions and restrictions of the 2006 Public Access Easement between FPA/BAF Lands End Associates, L.P and the City of Pacifica except as specified in this condition. The Amended Easement shall provide for vertical, lateral, blufftop viewing and shoreline access consistent with the requirements of this CDP in the area generally depicted on **Exhibit 11:Amended Easement Area**, and shall comply with the following:

a. Development Restrictions. No development, as defined in Section 30106 of the Coastal Act, shall occur within the Amended Easement Area, except for development authorized by this CDP or amendment thereto.

b. Legal and Graphic Description. The Amended Easement shall include both a formal metes and bounds legal description as well as a graphic depiction prepared by a licensed surveyor acceptable to the Executive Director clearly showing: (a) all parcels subject to this CDP; (b) all easement areas associated with the 2006 Easement; (c) the areas associated with the 2006 Easement that are being revised by this CDP (as generally depicted on **Exhibit 9: Recorded Easements**); and (d**)** the resulting vertical, blufftop lateral, blufftop viewing, and shoreline access areas (i.e., the Amended Easement Area) approved by this CDP (as generally depicted on **Exhibit 11**).

c. Easement Area Ambulatory. The legal descriptions and graphic depictions shall ensure that all of the Amended Easement Area is ambulatory and shall be maintained in perpetuity as follows:

(1) Blufftop Lateral. The blufftop lateral portion of the Amended Easement Area shall be described to include the 5-foot walkway along the length of the property and connecting to the public access path at the northern property boundary, and south to Esplanade Avenue, and shall be ambulatory so that it moves inland as the bluff erodes in order to retain continuous and connected (to up and down coast public accessways and to inland public streets) public access. If, as a result of bluff erosion, it becomes infeasible at any time to maintain any portion of the public access path atop the bluff at five feet in width or in such continuous and connected alignment, the Permittee shall be required to apply for an amendment to this Coastal Development Permit to modify the location and/or reduce the width of the blufftop lateral portion of the Easement Area to provide alternative lateral blufftop access that complies with this CDP, CDP 3-83-015, CDP 239-03 and the 2006 Easement. .

(2) Vertical. The vertical portion of the Amended Easement Area shall be described to connect from the blufftop at Esplanade Avenue down to the sandy beach area, and shall be relocated if necessary (e.g., due to further bluff erosion) to maintain such public access in perpetuity.

(3) Blufftop Viewing. The blufftop viewing portion of the Amended Easement Area shall be described to be adjacent to the vertical portion and bounded by the bluffop

lateral portion, the public road, and the downcoast property.

(4) Shoreline. The shoreline portion of the Amended Easement Area shall comprise the area between base of the seawall or the base of the bluff (should the seawall no longer be present) and the mean high tide line, such that the entire beach area is accessible to the public at all times.

d. Easement Area Maintenance. The Amended Easement shall require that the Easement Area be maintained by the landowner consistent with the requirements of the 2006 Easement and as required by the terms and conditions of this CDP, including this **Special Condition 4 : Amended Public Access Easement**.

e. Easement Recordation. The Amended Easement shall continue to incorporate all covenants, terms, conditions and restrictions of the 2006 Public Access Easement between FPA/BAF Lands End Associates, L.P and the City of Pacifica except as specified in this condition, shall be in a form and content acceptable to the Executive Director and shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction. The Amended Easement shall run with the land, binding all successors and assigns, and shall not be removed or changed without a Coastal Commission amendment to this CDP.

f. Prior To Recordation of the Amended Easement, the Permittee shall provide for Executive Director review and approval an exhibit prepared by a licensed surveyor of the amended easement areas consisting of a formal metes and bounds legal description and corresponding graphic depiction depicting and describing the easement areas subject to this CDP. This amended easement area exhibit shall be attached to and become part of the Amended Public Access Easement.

5. As-Built Plans. WITHIN 90 DAYS OF COMPLETION OF CONSTRUCTION PURSUANT TO THE APPROVED REVISED PROJECT PLANS (SPECIAL CONDITION 1), the Permittee shall submit two full-size sets of As-Built Plans to the Executive Director for review and approval. The As-Built Plans shall clearly identify all components of the constructed project, shall be in substantial conformance with the approved Revised Project Plans described in **Special Condition 1** (including providing for all of the same requirements specified in those plans), and shall account for all of the parameters of **Special Condition 7** (Monitoring and Reporting) and **Special Condition 8** (Future Maintenance). The plans shall include color photographs (in hard copy and jpg format) that clearly show all components of the as-built project, and that are accompanied by a site plan that notes the location of each photographic viewpoint and the date and time of each photograph. At a minimum, photographs shall be from representative viewpoints on the beach directly upcoast, downcoast, and seaward of the approved seawall, as well as from representative viewpoints on the public access path, overlook, and stairway, and from Esplanade Avenue.

6. Mitigation Fees.

a. Beach Recreational Access Mitigation Fee. WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall provide evidence, in a form and content acceptable to the Executive

Director, that a fee of $431,061 has been deposited into an interest bearing account designated by the Executive Director, and held by the Coastal Conservancy, or an Executive Director approved alternate entity. The purpose of the account, including all interest earned, shall be to provide, restore and enhance public recreational access in the City of Pacifica. The funds shall be used solely to implement projects or purchase lands that provide or will provide public access or recreational opportunities along the shoreline in the City of Pacifica including but not limited to, public access improvements, recreational amenities, and/or acquisition of privately-owned beach or beach-fronting property for such uses. The funds shall be released only upon approval of an appropriate project by the Executive Director, and subject to a Memorandum of Agreement (MOA) with the Coastal Conservancy, or an Executive Director-approved alternate entity, setting forth terms and conditions to assure that the funds will be expended in the manner intended by the Commission. If the MOA is terminated, the Executive Director may appoint an alternate entity to administer the funds.

b. Sand Supply Mitigation Fee. WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit to the Executive Director three valid bids for the cost of delivered beach quality sand for 34,493 cubic yards of sand. WITHIN 90 DAYS OF RECEIVING EXECUTIVE DIRECTOR APPROVAL OF THESE BIDS (or within such additional time as the Executive Director may grant for good cause), the Permittee shall provide evidence, in a form and content acceptable to the Executive Director, that a fee in an amount equal to the average of the three approved bids has been deposited into an interest bearing account designated by the Executive Director, and held by the Coastal Conservancy, or an Executive Director approved alternate entity, for the purposes of beach nourishment projects in the vicinity of the project site. If the funds and any accrued interest aren't all used for beach nourishment projects within five years of the funds being deposited into the account, then any remaining funds and accrued interest may also be used for provision, restoration and enhancement of public access and recreational opportunities along the shoreline in the City of Pacifica, including but not limited to public access improvements, recreational amenities, and/or acquisition of privately-owned beach or beach-fronting property for such uses. All of the funds and any accrued interest shall be used for the above-stated purposes, in consultation with the Executive Director, within ten years of the funds being deposited into the account. The funds shall be released only upon approval of an appropriate project by the Executive Director, and subject to a Memorandum of Agreement (MOA) with the Coastal Conservancy, or an Executive Director-approved alternate entity, setting forth terms and conditions to assure that the funds will be expended in the manner intended by the Commission. If the MOA is terminated, the Executive Director may appoint an alternate entity to administer the funds.

7. **Monitoring and Reporting.** The Permittee shall ensure that the condition and performance of the approved as-built project are regularly monitored and maintained. Such monitoring evaluation shall at a minimum address whether any significant weathering or damage has occurred that would adversely impact future performance, and identify any structural or other damage or wear and tear requiring repair to maintain in a structurally sound manner and its approved state, including at a minimum with regards to the following:

a. **Armoring.** The seawall, riprap toe protection, and associated riprap wedges (located at each end of the seawall) and the grade beam and caisson buried wall system shall be monitored by a licensed civil engineer with experience in coastal structures and processes to ensure structural and cosmetic integrity, including evaluation of concrete competence, spalling, cracks, movement, and outflanking.

b. **Public Access Improvements.** The public access improvements, including access paths, stairs, and overlooks, shall be monitored to ensure that public access is always continuous from Esplanade Avenue and the adjacent upcoast property across the blufftop portion of the site and to the overlook area, the stairs, and the sandy beach**,** even if that means modifying access improvements in light of changing circumstances, including damages from storms and changes in sea levels and as is required by this CDP, Special Condition 4(c)(1), CDP 3-83-015, CDP 239-03 and the 2006 Easement..

c. **Landscaping and Drainage.** The landscaping and drainage elements of the project shall be monitored to ensure that invasive and nonnative plants (e.g., iceplant) are kept out and that native noninvasive landscaping continues to cover the bluffs, including to maintain some visual screening of the top of the seawall, and to ensure that drainage pipes are cut back as required and drainage is not leading to erosion problems.

d. **Reporting.** Monitoring reports covering the above-described evaluations, shall be submitted to the Executive Director for review and approval at five year intervals by May 1st of each fifth year (with the first report due May 1, 2018, and subsequent reports due May 1, 2023, May 1, 2028, and so on) for as long as the approved as-built project exists at this location. The reports shall identify the existing configuration and condition of the armoring, the public access improvements, and the landscaping and drainage, and shall recommend actions necessary to maintain these project elements in their approved and/or required state, and shall include photographs taken from each of the same vantage points required in the As-Built Plans (**Special Condition 5**) with the date and time of the photographs and the location of each photographic viewpoint noted on a site plan. Actions necessary to maintain the approved as-built project in a structurally sound manner and its approved state shall be implemented within 30 days of Executive Director approval, unless a different time frame for implementation is identified by the Executive Director.

8. **Future Maintenance Authorized.** This CDP authorizes future maintenance and repair subject to the following:

a. **Maintenance.** "Maintenance," as it is understood in this special condition, means development that would otherwise require a CDP whose purpose is to maintain in the approved state the following: (1) the seawall, riprap toe protection, and riprap wedges (at the upcoast and downcoast edges of the seawall); (2) the grade beam and caisson buried wall system; (3) the public access path down the bluff and the public access stairway; (4) the blufftop lateral public access path and overlook area; and (5) the landscaping, irrigation, and drainage elements.

b. Other Agency Approvals. The Permittee acknowledges that these maintenance stipulations do not obviate the need to obtain permits from other agencies for any future maintenance and/or repair episodes.

c. Maintenance Notification. At least two weeks prior to commencing any maintenance event, the Permittee shall notify, in writing, planning staff of the Coastal Commission's North Central Coast District Office. The notification shall include: (1) a detailed description of the maintenance event proposed; (2) any plans, engineering and/or geology reports describing the event; (3) a construction plan that complies with all aspects of the approved construction plan (see **Special Condition 3**); (4) other agency authorizations; and (5) any other supporting documentation describing the maintenance event. The maintenance event shall not commence until the Permittee has been informed by planning staff of the Coastal Commission's North Central Coast District Office that the maintenance event complies with this CDP. If the Permittee has not been given a verbal response or sent a written response within 30 days of the notification being received in the North Central Coast District Office, the maintenance event shall be authorized as if planning staff affirmatively indicated that the event complies with this CDP. The notification shall clearly indicate that the maintenance event is proposed pursuant to this CDP, and that the lack of a response to the notification within 30 days constitutes approval of it as specified in the permit. In the event of an emergency requiring immediate maintenance, the notification of such emergency episode shall be made as soon as possible, and shall (in addition to the foregoing information) clearly describe the nature of the emergency.

d. Maintenance Coordination. Maintenance events shall, to the degree feasible, be coordinated with other maintenance events proposed in the immediate vicinity with the goal being to limit coastal resource impacts, including the length of time that construction occurs in and around the beach and bluff area and beach access points. As such, the Permittee shall make reasonable efforts to coordinate the Permittee's maintenance events with other adjacent events, including adjusting maintenance event scheduling as directed by planning staff of the Coastal Commission's North Central Coast District Office.

e. Restoration. The Permittee shall restore all blufftop, bluff, and beach areas and all access points impacted by construction activities to their pre-construction condition or better within three days of completion of construction. Any beach sand impacted shall be filtered as necessary to remove all construction debris from the beach. The Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office upon completion of restoration activities to allow for a site visit to verify that all beach-area restoration activities are complete. If planning staff should identify additional reasonable measures necessary to restore blufftop, bluff, beach areas, or access points, such measures shall be implemented as quickly and reasonably as possible.

f. Noncompliance Provision. If the Permittee is not in compliance with the terms and conditions of any Coastal Commission CDPs or other coastal authorizations that apply to the subject properties at the time that a maintenance event is proposed, then the maintenance event that might otherwise be allowed by the terms of this future

maintenance condition shall not be allowed by this condition until the Permittee is in full compliance with all terms and conditions.

g. Emergency. In addition to the emergency provisions set forth in subsection (c) above, nothing in this condition shall affect the emergency authority provided by Coastal Act Section 30611, Coastal Act Section 30624, and Subchapter 4 of Chapter 5 of Title 14, Division 5.5, of the California Code of Regulations (Permits for Approval of Emergency Work).

h. Duration of Covered Maintenance. Future maintenance under this CDP is allowed subject to the above terms until August 15, 2023. Maintenance may be carried out beyond August 15, 2023 if the Permittee requests an extension prior to August 15, 2023, and if the Executive Director extends the maintenance term in writing. The intent of this permit is to allow for maintenance to occur without obtaining an otherwise necessary CDPA throughout the 20-year period of development authorization (see **Special Condition 9**) unless there are changed circumstances that may affect the consistency of this maintenance authorization with the policies of Chapter 3 of the Coastal Act.

9. Twenty-Year Armoring Approval.

a. Authorization Expiration. This CDP authorizes the seawall, riprap toe protection, riprap wedges (at the upcoast and downcoast edges of the seawall), and the grade beam and caisson buried wall system for twenty years from the date of this CDP approval (i.e., until August 15, 2033) or until the time when the currently existing structures warranting armoring are no longer present and/or no longer require armoring for such protection, whichever occurs first.

b. Modifications within 20 Years. If, within the 20-year authorization period, the Permittee applies for a CDP or an amendment to this permit to enlarge the seawall, riprap toe protection, riprap wedges (at the upcoast and downcoast edges of the seawall), and/or the grade beam and caisson buried wall system, or to perform repair work affecting more than 50 percent of those approved structures, the Permittee shall provide additional mitigation for the effects of the enlarged or reconstructed seawall and/or grade beam and caisson buried wall system on public access and recreation and other coastal resources that have not already been mitigated through this permit.

c. Amendment Required to Retain Past 20 Years. If the Permittee intends to keep the seawall, riprap toe protection, riprap wedges (at the upcoast and downcoast edges of the seawall), and the grade beam and caisson buried wall system in place after August 15, 2033, the Permittee must apply for a CDP amendment prior to August 15, 2033 in order to extend the length of development authorization (including, as applicable, any potential modifications to the approved project desired by the Permittee). Such amendment application shall, at a minimum, include:

(1) Alternatives. Information concerning alternatives to shoreline armoring that can eliminate and/or reduce impacts to public views, public recreational access, and shoreline processes, and other coastal resources as applicable. Alternatives evaluated

shall include but not be limited to: relocation of all or portions of principle structures that are threatened, structural underpinning, and other remedial measures capable of protecting principal structures and providing reasonable use of the property without shoreline armoring. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion.

(2) Mitigation. Mitigation for the effects of the seawall, riprap toe protection, riprap wedges (at the upcoast and downcoast edges of the seawall), and the grade beam and caisson buried wall system, including as modified if proposed modifications are part of the amendment application, on public access and recreation and other coastal resources for the additional term proposed.

10. Caisson and Grade Beam Exposure. In the event that the grade beam and caisson buried wall system becomes exposed over time, the Permittee shall submit a CDP amendment application to the Commission identifying the measures to be taken to avoid and minimize adverse impacts, and to mitigate unavoidable impacts, associated with the grade beam and caisson buried wall system, including in terms of visual and sand supply impacts. Such measures shall be implemented in the time and manner, and subject to the terms and conditions, of the approved CDP amendment.

11. Future Development. No future development, which is not otherwise exempt from coastal development permit requirements, or redevelopment on the blufftop portion of the subject property, shall rely on the permitted seawall, riprap (at toe and at ends), or grade beam and caisson buried wall system to establish geologic stability or protection from hazards. Such future development and redevelopment on the site shall be sited and designed to be safe without reliance on shoreline armoring. As used in this condition, "redevelopment" is defined to include: (1) additions, or; (2) expansions, or; (3) demolition and / or replacement that would result in alteration to 50 percent or more of the exterior walls of an existing structure or; (4) demolition and / or replacement of less than 50 percent of the exterior walls of an existing structure where the proposed remodel or addition would result in a combined alteration of 50 percent or more of the structure from its condition as of August 15, 2013, whether the work is done at one time or as the sum of multiple projects. Shoreline armoring intended to protect ancillary improvements (i.e., patios, decks, fences, landscaping, etc.) located between the principal residential structures and the ocean shall be prohibited.

12. Assumption of Risk, Waiver of Liability, and Indemnity Agreement. By acceptance of this permit, the Permittee acknowledges and agrees on behalf of itself and all successors and assigns:

a. Coastal Hazards. That the site is subject to extreme coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunami, coastal flooding, landslides, bluff and geologic instability, and the interaction of same;

b. **Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development;

c. **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards;

d. **Indemnification.** To indemnify and hold harmless the Coastal 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; and,

e. **Property Owner Responsible.** That any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.

13. **State Lands Commission Authorization.** WITHIN 180 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit to the Executive Director for review a copy of the California State Lands Commission permit, letter of permission, authorization, or equivalent for the approved project, or evidence that no State Lands Commission authorization is necessary for the approved project. Any changes to the approved project required by the State Lands Commission shall be reported to the Executive Director. Minor changes that do not significantly alter the terms and conditions of this CDP may be approved by the Executive Director, but other changes will require a CDP amendment.

14. **Army Corps of Engineers Authorization.** WITHIN 180 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit to the Executive Director for review a copy of the U.S. Army Corps of Engineers (ACOE) permit, letter of permission, authorization, or equivalent for the approved project, or evidence that no ACOE authorization is necessary for the approved project. Any changes to the approved project required by the ACOE shall be reported to the Executive Director. Minor changes that do not alter the terms and conditions of this CDP may be approved by the Executive Director, but other changes will require a CDP amendment.

15. **Liability for Costs and Attorney Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and (2) required by a court that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

16. Deed Restriction. WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit for Executive Director review and approval documentation demonstrating that the landowners have executed and recorded against the subject property governed by this CDP a deed restriction in a form and content acceptable to the Executive Director: (1) indicating that pursuant to this CDP, 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 CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description and graphic depiction of the parcels governed by this CDP. 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 CDP shall continue to restrict the use and enjoyment of the subject property so long as either this CDP or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION

The proposed project is located in the northern end of the City of Pacifica in the City's Edgemar neighborhood. The Applicant's site is approximately 9.33 acres that is developed with the Land's End apartment complex[1] made up of eleven 2-story structures with 260 units[2] and underground parking at 100 and 101 Esplanade (APNs 009-023-070 and 009-024-010). It is bounded by Palmetto Avenue to the east, with Highway 1 further to the east, and it is split by Esplanade Avenue, with 100 Esplanade on the seaward side of the road, and 101 Esplanade on the inland side of the road The seaward portion of the Land's End property slopes down from Palmetto Avenue and Esplanade Avenue to a steep coastal bluff approximately 100 feet high. The development proposed in this application affects the area along the blufftop, the bluff, and base of the bluff seaward of the apartment buildings, the apartment building driveway, and Esplanade Avenue (see **Exhibit 1: Project Location**).

In addition to the proposed armoring project (see project description below), a downcoast revetment installed under an emergency CDP extends onto the Land's End site from the neighboring apartment complex property at 310 - 340 Esplanade.[3] Further south, much of the Pacifica coastline is also armored; Pacifica's Shoreline Protection Project[4] from the 1980s resulted in armoring for Sharp Park Golf Course (1,000 feet of riprap), the Beach Boulevard shoreline (2,500 feet of riprap and a reinforced earth seawall), the Pacific Skies RV park located at 1300 Palmetto Avenue (850 feet of riprap) and the San Francisco RV park at 700 Palmetto

[1] Previously known as Points West apartments, and originally constructed in the early 1970s.

[2] The City of Pacifica's zoning designation for this site is high density residential (27 units/acre).

[3] Installed pursuant to emergency CDP 2-03-001-G and currently the subject of pending CDP application 2-03-018.

[4] Pursuant to CDP 3-83-172 which has numerous amendments (3-83-172-A1 through 3-83-172-A6).

Avenue. The Pacifica coastline to the north of the project site is mostly unarmored, except for sections of riprap located at the base of the bluffs fronting the neighboring Pacific View Villas condominium complex (27 condos) at 200 - 224 Palmetto Avenue [5] and fronting the historic residential home just past Pacific View Villas known as "Dollar Radio"[6] at 100 Palmetto Avenue.[7] North of the City limits is a large revetment site (2,600 linear feet) fronting the City of Daly City's Mussel Rock landfill site.[8]

Refer to **Exhibit 1:** Project Location, **Exhibit 2**:Project Plans and **Exhibit 4**:Site Photographs.

B. PROJECT BACKGROUND

Site Development and Permit History

The Land's End apartments were originally permitted and built around 40 years ago, with permitting by the City in 1972 and construction through 1974.[9] The apartments were not subject to the coastal permitting requirements of Proposition 20 (The Coastal Initiative) or the Coastal Act because they were permitted and underway prior to the effective date of either (i.e., prior to February 1973). The City permit required that the property owners build and maintain a public access staircase and provide public coastal access, along with a pathway system along the bluffs,.

In 1981, the City approved a permit application for conversion of the apartment complex into a condominium. This approval included additional requirements specific to the public access stairway, predicated on additional coastal permitting by the Commission (i.e., because the City's LCP was not then certified). In 1983, the Coastal Commission approved a CDP for the condominium conversion (CDP 3-83-015). This CDP included blufftop setback and erosion control requirements, and also required three irrevocable Offers to Dedicate (OTD) public access: 1) an OTD for public shoreline access extending along the shoreline the width of the property from the base of the bluff to the mean high tide line (MHTL); 2) an OTD for public vertical access from Esplanade Avenue to the beach, including the stairway; and 3) an OTD for public lateral/blufftop access path, a minimum of 5 feet wide, to provide public access from Esplanade Avenue to the stairway, and along the blufftop to connect with the neighboring public access coastal trail at the adjacent (northern) property, Pacific View Villas (APN 099-023-030).

In July 1983, the property owner recorded a subdivision map for the condominium conversion but did not record the required OTDs. In 1988, the City approved a CDP for a "reversion to acreage" (i.e., to return the condominiums to apartment rental units by merging the parcels) at the site, and required the recordation of the three OTDs associated with CDP 3-83-015 that were

[5] CDP 3-82-228 originally authorized development of 19 condos, garages, driveways and street improvements by Danpac Investments in 1982 and armoring was augmented in 2010 with 1,000 tons of riprap (CDP waiver 2-10-012-W).

[6] The Dollar Radio site, also known as KTK/6XBB, was the location of an early radio communication site and designated as historic by the City of Pacifica Ordinance number 770 C.S. on May 13, 2010.

[7] Emergency permit application CDP 2-11-031-G is subject of pending CDP application 2-11-034 currently under review.

[8] Pursuant to CDP 2-11-024 approved in August 2012.

[9] In March 1972, the City of Pacifica conditionally approved a Use Permit (UP-157-72) and Permit for Site Development (PSD-66-72). City Grading and Building Permits were granted in October 1972, to allow construction of eleven buildings for 260 apartment units, plus underground parking and a recreational building including a gazebo, at the property, which was then known as Points West Villa. The grading was completed in February 1973 and County records show development completed in 1974.

still outstanding. The OTDs were subsequently recorded on November 17, 1988, and in 1989, the Commission approved an amendment to CDP 3-83-015 to authorize the conversion of the condominiums back to apartments (CDP amendment 3-83-015-A1).

In February 2004, the City issued a CDP (CP-239-03) to repair the stairway[10] and relocate the vertical public access area to account for changes in the bluff caused by ongoing erosion. Conditions of approval included ensuring ongoing maintenance of the public accessway, as was previously required through the City's original permit, issued pre-Coastal Act, to allow construction, and public access signage. In addition, in 2004 the City's CDP (CP-239-03) required the recorded OTDs to be re-recorded so that they would protect the new location of the vertical accessway. In May 2006, a new combined public access easement document was recorded that combined all three public access OTDs into one ambulatory easement area; recognized the public's right to access these areas in perpetuity; and required the property owner to maintain the improvements in the public access areas over that same period (see **Exhibit 5**). Because the new combined grant of easement to the City provided for blufftop, vertical, and beach public access areas as required by the Commission's CDP 3-83-015, the Commission extinguished all three of the original individual OTDs in October 2006.[11]

In 2010 and 2011, the Commission issued two emergency CDPs for armoring at the site. The first emergency CDP, 2-10-007-G (see **Exhibit 3 page 1**), was issued on February 16, 2010. At that time, the City of Pacifica had declared a state of emergency as a result of severe bluff erosion and subsidence following El Niño storm conditions (see **Exhibit 3 page 12**). This emergency CDP authorized a temporary rock riprap revetment to be installed along the length of the project site at the base of the bluff, including excavation down to about -5 feet MSL for a 35-foot wide keyway to be dug into weakly cemented marine terrace sand, and the construction of a temporary construction access road. After beginning construction of the revetment, the Applicant requested to change the project from a riprap revetment to a concrete vertical seawall. Initially, this request was denied because it was determined that the revetment already authorized under emergency procedures was adequate to abate the identified emergency, and because a separate and different emergency situation did not exist at the time. Therefore, the Applicant submitted a regular CDP application for their preferred proposed semi-vertical seawall (i.e., this CDP application, 2-10-039).

However, shortly after submitting the regular CDP application, in November 2010, there was a significant decrease in slope stability.[12] Thus, the Applicant requested a second emergency CDP to construct a more extensive semi-vertical concrete seawall to run along the entire length of the project site. Ultimately, a second emergency permit, 2-11-005-G (see **Exhibit 3 page 6),** was issued on January 25, 2011. This emergency permit authorized construction of: 1) a 670-foot long by 17.5-foot high tie-back seawall with public access stairs; 2) the placement/retention of the minimal amount of rock necessary for toe scour protection (associated with the rock placed

[10] As a result of erosion and deterioration caused by the bluff erosion and ocean storms, a portion of the stairway had become unusable.

[11] The Coastal Commission consented to extinguishment of the three irrevocable OTDs on October 13, 2006, as recorded by San Mateo County Instrument Number 2006-154688 based on the recordation of the 2006 Easement.

[12] According to the Applicant's surveyor, the slope was failing and threatening Land's End infrastructure, including exposing drainage features, due to undermining and weakening of the slope, as evidenced by cracks in the ground.

under CDP 2-10-007-G); 3) removal of any rock not needed for toe scour protection; and 4) construction of public access features (including blufftop trail, stairway and vertical trail). Thus, the temporary riprap revetment originally authorized under the first emergency CDP was never completed, but a portion of it was allowed to be used to provide toe scour protection for the vertical seawall associated with the second emergency CDP (see **Exhibit 2 page 5**).

The original revetment construction included excavating down to about -5 feet MSL to create a 20 to 25 feet wide and approximately 660-foot long ledge/trench into what the Applicant has since described as sandstone.[13] Within this trench, rock riprap was placed under the first emergency permit to a height of +12 to 13 feet MSL and then the riprap was covered with sand (see **Exhibit 2 page 5**). Emergency CDP 2-11-005-G only allowed the minimum amount of rock required for toe scour protection, and required the removal of any other rock riprap not needed, including in relation to rock on the site that had not been permitted.[14] Therefore, when the emergency project shifted to a semi-vertical wall, the Applicant reduced the 20,250 tons of rock that had been proposed to be placed in the trench, for a revetment, by almost half, placing 11,690 tons of rock in the trench, with a maximum elevation of +5 feet MSL, for toe scour protection.

In the time between stopping construction of the riprap revetment and starting construction of the vertical wall, there was additional bluff retreat, leaving a gap between the landward edge of the riprap and the seaward edge of the vertical wall (see proposed project plans sections in **Exhibit 2 pages 2 and 6**). During the emergency permit process for emergency CDP 2-11-005-G, and in accordance with conditions of approval for field review and final design approval, the Applicant worked with Commission staff, including the Commission's Senior Engineer and Geologist. Emergency permit conditions required the wall to mimic, blend and be compatible with the surrounding natural landform to the maximum extent feasible and follow the natural contours of the bluff (see **Exhibit 3**).

At a site visit, Staff observed that the stakes indicating the location of the proposed seawall were placed seaward of the natural base of the bluff and that the proposed slope of the wall was far too horizontal (about 45 degrees) to match the natural and more vertical bluff profile (see **Exhibit 4: Site Photographs**). In addition, Staff identified that the lower bluff profile was partially hidden by colluvium,[15] which is loose material from the eroding bluff that covered the base of the bluff. Staff indicated that the seawall needed to follow the natural contour of the bluff more closely, as required by the conditions of the emergency permit, including the steeper profile that was partially obscured by the materials that had fallen. In addition to beach coverage issues, staff was concerned that the low angle of a seawall that encased the deposited materials (and that didn't conform to the actual bluff behind) could serve as a wave ramp to allow waves to reach the upper, unprotected bluff face during certain wave conditions when waves would break on the seawall. In addition, it would not replicate the natural landform of the site. (See the Commission's Senior Geologist's written comments on this topic in **Exhibit 7: Geotechnical Review Memo).** Consistent with the requirements of the emergency permit, the stakes were

[13] The trench was authorized by emergency CDP, in sand materials, and not sandstone.

[14] Unpermitted rock on the site included riprap placed for drainage and at the foot of the original stairs; and riprap that had spilled over from the upcoast Pacifica View Villas property and from the downcoast apartment property at 310-340 Esplanade and onto the Land's End project site.

[15] A loose deposit of rock debris accumulated through the action of gravity at the base of a cliff or slope.

relocated approximately 10 feet farther inland, towards the base of the bluff, which also increased the slope of the wall to approximately 70 degrees. Due to both ongoing bluff erosion and relocation of the semi-vertical seawall, there is a 23 to 43 foot wide gap between the base of the wall and the riprap ledge/trench.[16]

The second emergency permit also required that the follow-up permit application address the adjustment of the current public access easement area in order to re-establish previously required public access ways and that the recordation or extinguishment of any public access easements was not authorized under the emergency permit. In addition, field review and final design approval by staff was required prior to commencement of construction of the tie-back seawall and any slope reconstruction as well as the submittal of plans for drainage, grading and BMPs (again, see **Exhibit 3: Emergency Permits**).

In addition to the Commission's emergency permits, the City issued an emergency CDP for installation of a buried pier and grade beam retaining wall system and sidewalk (City emergency CDP 328-10) on September 28, 2010. According to the local application, the nature and cause of the emergency was identified as being related to the continual erosion of the bluffs. The Applicant maintained that it was necessary to stabilize the upper bluff due to excess erosion which the Applicant proposed could threaten the stability of the buildings, driveway and utilities at Land's End

There have been several alleged violations at the project site related to armoring, emergency permit requirements, and public access. In terms of access, there have been issues over time at this site related to ensuring that the access required (blufftop, beach, and vertical) is open and available for public use. In terms of vertical access specifically, the property owner is required to keep open and maintain the public staircase and related path elements, but it has been closed several times during the 1980's and 1990's, as well as in 2003, 2008, 2009, and 2010.

In February 2004, the City approved CDP-239-03 to repair the stairway and relocate the public access. The approval was conditioned for "ongoing maintenance" of the access, similar to the way in which the Commission's 1983 CDP required ongoing maintenance.[17] However, the property owner asserted it was not responsible for the repairs and stated that if the City did not accept that responsibility then Land's End would restrict access to apartment residents only. The property owner ultimately agreed to comply with the City's requests and the stairs were rebuilt in 2004. However, they were washed away again in 2008. . The property owner's position at that time was that a revetment was necessary to stabilize the bluffs before the stairway could be repaired. Although the Applicant ultimately agreed to submit a CDP application for stairway repairs, their geotechnical evaluation in 2009 indicated that wave-related erosion had removed the lower portions of the public access trail, leaving a 10 to 15-foot vertical drop at the terminus of the trail. The stairs remained closed between 2008 through 2010, until being rebuilt pursuant to the above-described emergency CDPs.

In June 2010, the Commission's Enforcement Unit again began an investigation into alleged

[16] Again, the Commission's second emergency permit only allowed for the minimum amount of rock necessary for toe scour protection, and required other rock not providing such function to be removed.
[17] According to the CDP 3-83-015 special condition which stated "the applicant shall guarantee the stability and permanent maintenance in a safe condition of the stairwell".

Coastal Act violations because of reported non-compliance with the terms and conditions of the first emergency CDP (2-10-007-G), including with respect to the requirements for a plan to use the construction access road as an interim measure for pedestrians to access the sandy beach from the blufftop to the south (past the neighboring apartments) until such time that a permanent access alternative could be authorized. The Applicant subsequently developed a plan, it was approved, and the access was reopened July 16, 2010.

C. PROJECT DESCRIPTION

The proposed project includes components in both the Commission's and the City's CDP jurisdiction and, as described above, components that are related to previous Commission and City emergency CDPs. The City, the Applicant, and the Commission have all agreed to a consolidated CDP review for the proposed project, as allowed by Coastal Act Section 30601.3. As a result, this CDP application constitutes the required regular follow up CDP application for the City's emergency CDP as well as the Commission's two emergency CDPs. The emergency permit only authorized development on a temporary basis, and expressly stated that the emergency work was temporary and subject to removal unless and until a CDP permanently authorizing the development was approved. Therefore, this report evaluates existing emergency development as if it was not there, and thus it is described below as "proposed" even though much of it is now physically in place.

The proposed project includes the following: 1) an approximately 650-foot long, 35-foot high and 28-inch thick semi-vertical contoured, textured and colored concrete tie-back seawall, with 8,825 tons of rock for toe protection; 2) an approximately 660-foot long ledge/trench, excavated into bedrock about 23 to 43 feet seaward of the seawall and filled with rock riprap; 3) 10 to 15-foot riprap wedges at the ends of the seawall (approximately 60 tons of riprap at each end); 4) a 530-foot long buried caisson and grade beam retaining wall system (54 caissons in total, each 30 inches in diameter and extending subsurface up to 65 feet) located approximately 15 to 35 feet inland from the edge of upper bluff; 5) replace a previously required but subsequently damaged 530-foot long and 5-foot wide public access pathway atop the grade beam system connected to a public access trail originating at the property line to the north and running to the south property line, as well as being connected to the vertical access 5-foot wide switchback path leading down to a concrete stairway encased in the seawall which leads to the beach; 6) the extinguishment of existing public access easement and replacement with new alternative public access easements; and 7) site drainage, landscaping, and related development, including benches, signage and an interpretive kiosk.

The seawall is located at the base of the bluff seaward of the apartments and is designed to mimic the natural bluff face. The wall is essentially flush with the face of the bluff, is angled and similar to the natural bluff profile (at approximately 70 degrees), with tiebacks holding it into the bluff,. The seawall facing is colored and contoured to approximate natural bluffs, and includes surfacing for the stairway beach access at the downcoast end of the project site that is incorporated into the wall. The wall is approximately 35 feet high and has been designed to accommodate up to 4.5 feet (1.4 meters) of sea level rise. During summer conditions, the top 20 or so feet of the wall will be exposed (from 15 to 35 feet MSL), and the bottom 20-foot section will be below the level of the beach sand (see **Exhibit 2 page 6**).

Seaward of the seawall there is a trench excavated to -5 feet MSL and approximately 20 to 25-feet wide[18]. This excavated trench parallels the length of the seawall with a gap between the seawall and the rock riprap that ranges in width from 23 to 43 feet (see **Exhibit 2, pages 2 and 6**). The trench is filled with riprap up to an approximate height of +5 feet MSL on its inland edge and down to -3-foot MSL on its seaward edge. The top of the trench slopes down on the seaward side and there is no bedrock wall on the seaward side. Thus, while the excavation has been often identified as a trench, in profile it is more properly characterized as a ledge.

The Applicant is proposing to relocate 8,825 tons of the larger rock (3 to 4 foot diameter rocks) from the ledge/trench and to move it to the base of the newly constructed concrete seawall to serve as toe protection. For stability, this rock with be keyed into the substrate. The removal of 8,825 tons of larger rock will result in approximately 2,865 tons of smaller riprap remaining in the ledge. Of this 2,865 tons of rock, the Applicant is proposing to remove all rocks that are greater than 2 feet in diameter, and leave the remainder of the rocks in the trench. The trench would then be backfilled with compacted beach sand. in addition, the Applicant also proposes to remove an unspecified amount of unsuitable rock found throughout the project site (see **Exhibit 2 pages 2-6**).

The project also includes the relocation of a previously required public access trail system: a blufftop pathway, switchback trail and stairway down to the beach. A 5-foot wide blufftop pathway would connect with an existing access trail located on the neighboring property to the north and extend to Esplanade Avenue at the southern property boundary. In addition, a vertical access trail would extend to the west and down the bluff face along a 5-foot wide switchback trail to arrive at the beach via a concrete stairway which is encased in the seawall. The path would descend at a gradual slope (roughly 10 to 20 percent gradient) switching back multiple times before reaching the stairway. It is an earthen trail proposed to be supplemented with decomposed granite with a series of water bars for erosion and lined with a rope and pole railing system. The bluffs in this area have been reconstructed at a fairly steep slope (about 1:1) that is contoured, graded and landscaped with native plants to blend into the bluff face and be more resilient to erosion and winter storm events.

Proposed design plans show benches and outlooks to be installed up and down coast. Other amenities include, but are not limited to, public access signage, and a coastal information kiosk. Finally, the project includes a proposal to remove riprap debris that has migrated from previous projects onto the site and from neighboring properties.

There are existing easements located on and adjacent to the project site. The Applicant proposes to extinguish the easements related to the sandy beach, the vertical access (stairway) and the blufftop access and develop these areas with the proposed vertical seawall. (see **Exhibit 10 page 1**). The Applicant does not believe the extinguished easements are required to be re-established by the property owner or that the proposed vertical seawall will be located in the previously required easements but rather believes they are offering 3 newly-established fixed easements for public access which should serve as mitigation for the proposed vertical seawall.

[18] According to Applicant's submitted As-Built plans dated July 27, 2012.

The proposed coastal blufftop easement would be tied to, and coincide with, the existing concrete walkway atop the grade beam system, and is designed to be fixed as the sidewalk is located on top of the newly installed piles and grade beam. The proposed vertical access easement would incorporate the newly constructed public access path and stairway that has been graded and provides access from the top of the bluff down to the beach. The proposed easement encompasses a large area of the southern property to ensure that the path can be relocated if erosion hinders path use. In addition, the proposed area includes the location of public amenities (educational kiosk, sitting benches, signs, etc.) and a blufftop overlook. The sandy beach access easement being proposed includes the area located from the toe of the bluff to the mean high tide line and within the upcoast and downcoast limits of the project site (see **Exhibit 10 page 2**) Thus, the Applicant proposes to offer three fixed easements for mitigation, namely for blufftop, vertical, and beach access areas, to replace three recorded ambulatory easements that were required as conditions of local and Commission-issued CDPs.(see **Exhibits 5, 8, 9 and 10**).

See **Exhibit 1** for site location; **Exhibit 2** for proposed project plans; **Exhibit 4** for site photographs; **Exhibit 5** for easement documents; and **Exhibits 9, 10** and **11** for easement depictions.

D. GEOLOGIC CONDITIONS AND HAZARDS

Applicable Policies

As described above, this is a consolidated CDP application. Thus, pursuant to Coastal Act Section 30601.3, the standard of review is Chapter 3 of the Coastal Act, with the City's LCP providing non-binding guidance. As such, applicable Coastal Act policies are cited in this report, as well as certain LCP policies for guidance as relevant. Coastal Act Section 30235 addresses the use of shoreline protective devices:

> ***Section 30235 Construction altering natural shoreline.*** *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and to avoid landform altering protective measures. Section 30253 provides, in applicable part:

> ***Section 30253 Minimization of adverse impacts.*** *New development shall do all of the following:*
>
> *(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
>
> *(b) Assure stability and structural integrity, and neither create nor contribute*

significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. …

(e) Where appropriate, protect special communities and neighborhoods that because of their unique characteristics, are popular visitor destination points for recreational uses.

In addition, the following certified City of Pacifica LCP Land Use Plan (LUP) language and Implementation Plan (IP) standards, although not the standard of review, provide additional information regarding geologic hazards and shoreline protection:

(LUP Page C-24 and C-25) – West Edgemar/Pacific Manor Neighborhood – GEOLOGY. *As with bluff-top lands to the north of the "Dollar Radio Station" residence, coastal bluffs in this area are subject to a high rate of wave erosion. This average rate is exceeded during winter storm conditions when high wave run up and heavy rains are present. During these periods, sloughage of the face of bluffs occurs typically in the form of vertical slabs.*

The City's Seismic Safety and Safety Element requires the bluff setback to be adequate to accommodate a minimum 100-year event, whether caused by seismic, geotechnical, or storm conditions. The setback should be adequate to protect the structure for its design life. The appropriate setback for each site will be determined on a case-by-case basis, depending on the site specific circumstances and hazards.

A Seismic Safety and Safety Element policy prohibits the approval of projects which require seawalls as a mitigation measure. The policy also states that projects should not be approved which eventually will need seawalls for the safety of the structures and residents.

(LUP Page C-26) - COASTAL ISSUES – West Edgemar/Pacific Manor Neighborhood – *The major coastal planning issues in this neighborhood are: 1. The effect of geologic conditions on the use of undeveloped property along the bluffs…*

(LUP Pages C-29 and C-30) – SEAWALLS*…In the future, property owners may want to construct protective structures which are more resistant to wave action. Should property owners desire a more substantive seawall, the cumulative effect on beach sand replenishment should be determined. Because beaches in this area are extremely narrow and exist only during low tide, seawall structures should be designed to minimize beach scour in the area as much as possible. Preferred structures would be those which provide the minimum amount of effective protection with a minimum reduction in beach sand. The preferred structure to achieve this result will likely be rock rip-rap rather than a concrete wall. Seawalls shall not extend beyond the mean high tide line.*

(LUP Page C-68) – 3. Points West Apartments…Topography - *Natural Environment: High bluffs of unconsolidated deposits. The area between the street and the stairs is open; grass maintained by the apartment complex.*

(LUP Page C-105) SHORELINE PROTECTION AND DRAINAGE STRUCTURES. *Erosion is a primary problem along the Pacifica coast. Studies by the U. S. Army Corps of Engineers indicate that in many cases shoreline structures are not economically justified. (See LCP Background Report, Geology; General Plan Background Report, Geology). There are, however, a few areas in the City where shoreline protection may be necessary to protect major beach access or highly sensitive habitat. (See LCP Access Component Report, Local Beach Resources and Management). For these areas, and other areas where protection from hazards may be needed in the future, the following conclusions are suggested: Dumping and other un-engineered erosion protection shall be prohibited. Existing unauthorized rubble or protective devices shall be removed prior to any additional development in such areas. A qualified expert shall be engaged to analyze the impacts of proposed structures and prescribe appropriate mitigation, if necessary, prior to issuance of a permit. Impact evaluation shall include methods to minimize alteration of natural migration and deposition of sand on shorelines within the littoral cell, sufficient engineering to protect threatened area, lateral and if appropriate) vertical beach access, and structures as well as other impacts.*

IP Section 9-4.4308(d)(5): Permanent Environmental Protection. *(d) Development Standards. The following standards shall apply to new development in areas identified in Section 9-4.4404(b)… (5) Consistent with the City's Seismic Safety and Safety Element, new development shall be set back from the coastal bluffs an adequate distance to accommodate a 100-year event, whether caused by seismic, geotechnical, or storm condition, unless such a setback renders the site undevelopable. In such case, the setback may be reduced to the minimum extent necessary to permit economically viable development of the site, provided a qualified geologist determines that there would be no threat to public safety and health.*

IP Section 9-4.4405(c): Grading and Drainage*… (c) Development Standards. (1) The following standards shall apply to new development. (i) Alteration of natural topography and removal of existing trees shall be minimized to the maximum extent feasible so as to maintain the natural surface drainage system; … (iii) Cut-and Fill surfaces shall be stabilized by planting low maintenance, native ground cover and shrubs; … (viii) Removal of sands characteristic of the Pacifica shoreline shall be minimized; (2) The following standards shall apply to ensure long term grading and drainage management of the project site: (i) Grading of environmentally sensitive habitat areas shall occur only when necessary to protect, maintain enhance, or restore the habitat; (ii) Areas of soil or landform disturbance shall be identified, and shall be revegetated with low maintenance, native ground cover and shrubs to reduce erosion potential; (iii) Subgrade drainage of all wet soils shall be discharged into natural surface drainage, where feasible; (iv) Adequate drainage facilities, including grease and silt traps where necessary to minimize pollutants entering runoff water, shall be provided; (v) Potential impacts as identified in the grading and drainage plan shall be mitigated to a level of insignificance; and (vi) Mitigation measures identified in the grading and drainage plan shall be considered and made conditions of project approval.*

IP Section 9-4.4406: Shoreline Protection. *(a) Intent. The provisions of this Section shall apply to all new development requiring a coastal development permit in the CZ*

District and shall be subject to the regulations found in Article 43, Coastal Zone Combining District. The intent of these provisions is to minimize erosion and to stabilize the shoreline in areas along the coastal bluff where ocean wave and tidal action create potentially hazardous or damaging conditions. (b) Required Survey. A site stability survey, prepared by a qualified soils engineer or engineering geologist, shall be required for new development proposed on coastal bluffs. (c) Development Standards. The following standards apply to all new development along the shoreline and on coastal bluffs. (1) Alteration of the shoreline, including diking dredging, filling, and placement or erection of a shoreline protection device, shall not be permitted unless the device has been designed to eliminate or mitigate adverse impacts on local shoreline sand supply and it is necessary to protect existing development or to serve coastal-dependent uses or public beaches in danger from erosion or unless, without such measures, the property it issue will be rendered undevelopable for any economically viable use; (2) Consistent with the City's Seismic Safety and Safety Element, new development which requires seawalls as a mitigation measure or projects which would eventually require seawalls for the safety of the structures shall be prohibited, unless without such seawall the property will be rendered undevelopable for any economically viable use; (3) Required shoreline protection devices shall be designed and sited to consider and reflect: (i) Maximum expected wave height; (ii) Estimated frequency of overtopping; (iii) Normal and maximum tidal ranges; (iv) Projected erosion rates with and without a shoreline protection device; (v) Impact on adjoining properties; (vi) Design life of the device; (vii) Maintenance provisions, including methods and materials; and (viii) Alternative methods of shoreline protection, including "no project." (4) The impact on beach scouring and sand replenishment shall be minimized; (5) Water runoff from beneath existing seawalls shall be minimized; (6) Existing unauthorized rubble or protective devices shall be removed prior to the approval of additional development in such areas; and (7) A geotechnical engineer shall certify that the shoreline protection device will withstand storms comparable to the major winter storms of 1982 and 1983 along the California coast. (8) The seawall shall be designed to minimize impacts upon existing lateral and vertical access and in any case shall not result in the blocking of an access way. In cases where it is possible to engineer a wall without blocking access, then appropriate mitigation measures shall be incorporated into the design. These measures can include a stairway over the seawall to provide continuous vertical access or a platform over the seawall to provide continuous later access.

Thus, Coastal Act Sections 30235 and 30253 acknowledge that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" methods designed to forestall erosion also alter natural landforms and natural shoreline processes. Accordingly, with the exception of new coastal dependent uses, Section 30235 limits the construction of shoreline protective works to those required to protect existing structures or public beaches in danger from erosion. The Coastal Act provides these limitations because shoreline structures can have a variety of negative impacts on coastal resources including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, including ultimately resulting in the loss of beach.

In addition, the Commission has interpreted Section 30235 to apply only to existing principal structures. The Commission must always consider the specifics of each individual project, but

has found that accessory structures (such as patios, decks, gazebos, stairways, etc.) are not required to be protected under Section 30235, or can be protected from erosion by relocation or other means that do not involve shoreline armoring. The Commission has at times historically permitted at-grade structures within geologic setback areas, if such structures are expendable and capable of being removed rather than requiring a protective device that would alter natural landforms and processes along bluffs, cliffs, and beaches.

These Coastal Act policies are reflected in the City's LCP policies in similar ways, including in terms of requiring that landform alteration be minimized, and that development be setback an adequate distance as to provide stability over the project lifetime, and no less than 100 years. In terms of armoring, the LCP likewise reflects Coastal Act tests for considering armoring, including in terms of required mitigation for allowable armoring, including explicitly in terms of providing public access.

Under Coastal Act Section 30235, shoreline protective structures may be approved if: (1) there is an existing structure; (2) the existing structure is in danger from erosion; (3) shoreline altering construction is required to protect the existing threatened structure; and (4) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply. The first three questions relate to whether the proposed armoring is necessary. The fourth question applies to mitigation for the impacts of armoring.

Even where a shoreline protective device is determined to be necessary and designed in a manner protective of shoreline sand supply, the structure will often result in significant adverse impacts, to beach access and recreation. The mitigation that is required to address the impacts of the proposed armoring on public beach access and recreation are separately addressed further below in the section on Public Access and Recreation.

Existing Structures to be Protected

For the purposes of shoreline protective structures, the Coastal Act distinguishes between development that is allowed shoreline armoring, and development that is not. Under Section 30253, new development is to be designed, sited, and built to allow the natural process of erosion to occur without creating a need for a shoreline protective device. Coastal Act 30235 authorizes shoreline protection in limited circumstances (if warranted and otherwise consistent with Coastal Act policies) for "existing" structures, such as structures that were in place prior to the effective date of the Coastal Act. Coastal zone development approved and constructed prior to the Coastal Act going into effect was not subject to Section 30253 requirements. Although some local hazard policies may have been in effect prior to the Coastal Act, these pre-Coastal Act structures have not necessarily been built in such a way as to avoid the future need for shoreline protection (in contrast to those evaluated pursuant to Section 30253 and similar LCP policies since).

In this case, the existing Land's End apartment complex at the site location is an existing structure for purposes of Section 30235 of the Coastal Act because it was originally permitted in 1972 and was under construction prior to February 1973, predating the enactment of 1972's Proposition 20 (The Coastal Initiative).[19] The apartment complex was also completed prior to the enactment of the 1976 Coastal Act.

[19] Proposition 20 introduced coastal permitting requirements in February 1973.

Danger from Erosion

The Coastal Act allows shoreline armoring to protect existing structures in danger from erosion, but it does not define the term "in danger". There is a certain amount of risk involved in maintaining development along a California coastline that is actively eroding and can be directly subject to violent storms, wave attack, flooding, earthquakes, and other hazards. These risks can be exacerbated by such factors as sea level rise and localized geography that can focus storm energy at particular stretches of coastline. As a result, some would say that all development along the immediate California coastline is in a certain amount of "danger". The Commission evaluates the immediacy of any threat in order to make a determination as to whether an existing structure is "in danger". While each case is evaluated based upon its own particular set of facts, the Commission has previously interpreted "in danger" to mean that an existing structure would be unsafe to occupy within the next two or three storm season cycles (generally, the next few years) if nothing were to be done (i.e., in the "no project" alternative).

In this case, the Land's End apartment complex is located about 100 feet above the beach on the coastal blufftop. The property extends north and south along the blufftop, and slopes relatively gently inland up from the edge of the blufftop to the west. In 1972, the average annual bluff retreat rate at the project site was estimated at 2 feet per year (according to an Army Corps study conducted in this area at the time), and the City's LCP (certified in 1984) estimates an average annual bluff retreat rate of 1-3 feet per year. However, erosion does not typically occur in this area as small incremental amounts each year, but more often as several feet to tens of feet of retreat that can occur during a significant winter storm and perhaps smaller amounts of retreat during other years. Coastal bluffs in this area are subject to a high rate of erosion, particularly during winter storm conditions when high wave run up and heavy rains are present. During these periods, erosion of the bluff typically occurs in the form of vertical slabs eroding away from the bluff face. For example, in 2003, a blufftop gazebo was removed from the site after it became unsafe due to storm damage, and the stairs have washed away several times due to storm events since they were first installed in the early 1970s.

In its 1972 approval of the project, City permit conditions required that the buildings be set back 150 feet from the blufftop edge, and required that the landscaped area along the blufftop be set back 50 feet from the bluff edge.[20] Today, the nearest building's foundations are located about 30 feet from the blufftop edge.[21] Between July 2007 and May 2010, aerial photographs show that bluff erosion was significant, leading to a loss of between 50 to 90 feet of bluff during this relatively short time period. Given the relatively low degree of cohesion in the bluff materials, and as indicated by recent erosion events, it is clear that the current apartment building setbacks are insufficient to protect these structures from future erosion.

The Applicant's geotechnical report indicates that the existing apartment buildings (and the public access walkway and stairway) are in immediate danger from erosion and wave attack, and that the remaining setback area could be lost in one or two storm cycles. The Commission's

[20] The turfed area atop the bluff was a well irrigated lawn that was routinely used by the public for active and passive recreation. In recognition of the potential for irrigation to contribute to sloughing of the bluff, the City's condition disallowed turf within 50 feet of the blufftop edge. In 1983 when the Commission granted the CDP to allow conversion of the apartments to condominiums (CDP 3-83-015), the 50-foot setback for the existing bluff was reapplied, and all existing lawn within the 50-foot setback area was required to be removed as a result.

[21] According to the Applicant's geotechnical report (RJR Engineering, August 10, 2010).

Senior Engineer and Geologist, having personally observed the site on numerous occasions, concur. Therefore, the existing structures are "in danger from erosion" as that term is understood in a Coastal Act context, and thus the project meets the second test of Section 30235 of the Coastal Act.

Feasible Protection Alternatives

The third Section 30235 test that must be met is that the proposed armoring must be "required" to protect the existing threatened structures. In other words, shoreline armoring shall only be permitted if it is the only feasible alternative capable of protecting the existing endangered structures.[22] Other, less environmentally damaging alternatives typically considered include: the "no project" alternative; planned retreat, including abandonment and demolition of threatened structures; relocation of threatened structures; beach and sand replenishment programs; foundation underpinning; drainage and vegetation measures on the blufftop; and combinations of each.

Non-armoring Alternatives

Because this application includes the permanent authorization of the existing but only temporarily authorized seawall and other armoring, the "no project" alternative is in this case the "remove the seawall and grade beam buried wall system" alternative. As indicated above, there are existing structures in danger from erosion (per Coastal Act Section 30235) at this location. Therefore, the "no-project, remove the armoring" alternative would not provide any protection to the endangered apartments or the public access features at the site, and is not by itself a feasible alternative in this case.

Relocation is another alternative that is typically considered a reasonable and feasible alternative to consider, particularly where the relocation envisioned is relatively minor in relation to the structure and the site. In this case, the site is fully developed with apartment buildings (including being surrounded by amenities such as pathways, driveways, parking areas, and mature landscaping, as well as infrastructure such as drainage, sewer and water lines) (see **Exhibits 1: Project Location, 2: Project Plans and 4: Site Photographs**). It might be possible to relocate a portion of the development, such as the most seaward row of apartment buildings on the coastal parcel at 100 Esplanade (seaward of Palmetto). However, due to the unstable nature of the bluffs at this location, it is possible that tens of feet of bluff area could continue to erode during single storm seasons, so that even moving an entire row of apartment buildings could mean that other units would still be shortly affected by erosion. Thus, relocation would only serve to abate the danger for a short period of time and would not eliminate the danger to remaining units over the longer term. Therefore, in this case, based on the site constraints, the existing development present on site and the infeasibility of abating the danger for an extended period of time through relocation, the relocation alternative is not a feasible alternative for protecting the existing endangered apartments.

Improved drainage and landscaping atop the bluffs is another option that is typically considered. Appropriate drainage measures coupled with planting long-rooted native bluff species can help to stabilize some bluffs and extend the useful life of setbacks. This option can be applied as a

[22] Coastal Act Section 30108 defines feasibility as follows: "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

stand-alone alternative, but it is most often applied in tandem with other measures. In this case, the relatively unconsolidated nature of the bluff materials and the level of erosion indicate that drainage and landscaping alone is unlikely to be able to protect existing structures in danger at this site. These kinds of measures are appropriate adjuncts to other alternatives because they will help increase stability in all cases, and have and will continue to be applied here.

Another option often considered is planned or managed retreat. This option has been long debated and discussed more generally as well as in terms of specific individual sites like this. Planned retreat means the abandonment and demolition of the threatened apartment structures. This concept posits that instead of allowing continued armoring, once the existing structures have been removed then the shoreline is allowed to retreat. Beach formation in this respect is partly assisted by the sand-generating material in the bluffs as they erode, but more importantly there is space for the natural equilibrium between the shoreline and the ocean to establish itself and for beaches to form naturally. Over the longer run, a more comprehensive strategy to address shoreline erosion and the impacts of armoring may be developed (e.g. planned or managed retreat, relocation of structures inland, abandonment of structures, etc.). However, including as discussed above, such options are infeasible feasible at this location at this time. In order for planned retreat to work comprehensively in the future, the removal of a hard armoring structure at the project location would occur in conjunction with the removal of other shore-fronting development.

Thus, there do not appear to be feasible non-armoring alternatives that could be applied in this case to protect the existing structures in danger.

Armoring Alternatives

In terms of armoring alternatives, there are a variety of measures that could be used. One common option often considered is a riprap revetment, such as was originally proposed under the first emergency CDP (2-10-007-G) (see **Exhibit 3**). These structures can be relatively quickly installed and can protect the base of the bluff. However, they also require significant maintenance to ensure they continue to function in the approved state, leading to significant adverse resource impacts each time. Because their foundations are wide, revetments normally occupy a large area of beach. Migrating boulders can also lead to isolated impacts over time, expand the loss of beach area and cumulatively can lead to larger impacts. Thus, while feasible, a revetment would lead to greater and more immediate impacts than other hard armoring options and therefore is not a less environmentally damaging alternative in this case.

The proposed project includes a semi-vertical seawall at beach level and a buried pier and grade beam system on the top of the bluff. The lower wall and upper pier and grade beam function together as an erosion protection and bluff stabilization system. The seawall reduces or halts erosion at the toe of the bluff that can result from wave attack and the buried pier and grade beam provides upper bluff stability. Similar compound systems have been used for shore protection in the San Diego area, and the upper portion of the protection system takes the place of a fully armored bluff face. As such, the upper bluff retaining wall system is the least impactful armoring alternative for the upper bluffs, provided its impacts over time can be mitigated.

The seawall has been designed to reduce impacts on coastal resources by limiting the footprint; limiting height as much as possible (while still addressing expected wave/storm run-up and future sea level rise); avoiding a wave return feature at its top (which can look decidedly

unnatural); and by contouring and surfacing the face of the seawall to mimic the natural bluffs in appearance and shape, including being "laid back" or semi-vertical (70 degrees) to more closely approximate natural bluff conditions at this location. In this case, the seawall is the least impactful armoring alternative that is feasible.

In addition to the concrete tie-back seawall, the proposed project includes riprap placed at both ends of the seawall to address potential scour and undermining of the seawall itself at both ends of the wall. When seawalls are constructed in areas of harder rock, such measures are often not necessary, or can be accommodated by "wing wall" portions of the seawall, or by tying the seawall into natural indentations in the bluff in such a way as to provide end protection more naturally. In such a case, though, the nature of the bluff materials is such that there aren't any natural harder bluff indentations to utilize, and potential wing walls would be relatively fixed when the shoreline is eroding quickly, leading to a high probability that the end walls will be outflanked, requiring substantive structural modifications in even the near term. In contrast, the riprap end sections in this case can provide end protection that is flexible and that can more readily adapt to the changing erosion framework at this location better than other options. Riprap end sections present their own issues (including in terms of footprint, and maintenance over time), but here, the Commission's Senior Engineer reviewed the riprap end sections and agrees that the rip rap end sections have been limited as much as possible (up to 60 tons at each end) to ensure that the seawall appropriately connects to the adjacent natural landform at the northern and southern edges, both to avoid creating an erosion "hotspot" in the notch area where the riprap is proposed, and to ensure there is a seamless transition between the concrete seawall, riprap and the natural bluff.

The seawall has been founded into weakly cemented sandstones that make up the wave-cut shore platform. The top of the foundation is at 0 feet MSL and the Applicant has identified the need to protect the base of the wall from future scour. The wall is currently safe from scour, due to the embedment of the foundation in the sandstone. However, the concern is that during major storms when the beach level is low, waves could impact directly against the face of the seawall. Some of the wave energy will be directed down toward the sandstone and will rapidly remove any sand at the toe of the wall. Once the bedrock is exposed to wave attack, it will also wear away, eventually resulting in a scour hole in front of the seawall, then under the foundation and behind the wall. The expansion of a scour hole under and behind the wall could cause rapid loss of supporting material and possible damage to the wall. As stated by the Applicant's consultant, "It remains the professional engineering opinion of RJR Engineering that toe protection is an integral and necessary part of the overall design of the seawall to preserve its immediate and long-term integrity, as illustrated on the approved Emergency Plans" (see Appendix A: Substantive File Documents RJR Engineering Addendum #6 page 4). However, despite the inclusion of toe protection in the plans for the second emergency permit, this toe protection was not constructed as part of the emergency wall. The rock riprap that might have been used for the toe protection was left on the beach, between 23 and 43 feet seaward from the seawall.

The Applicant has provided results from direct shear tests of the sandstone and found them to have "extremely low soil strengths and corresponding high erosion rates when exposed to wave attack (RJR, op. cit, page 5). The Applicant also requested an independent review of RJR's work. This review stated, "Although we have reviewed much of RJR Engineering Group's work, and we agree with their findings, we have also found that the excellent work published by Collins et

al. leads one to the same conclusions regarding the need of protective toestone near the toe of the recently constructed seawall below the Land's End property" (see Appendix A: Substantive File Documents TerraCosta Consulting Group, February 21, 2013, Third-Party Coastal Bluff Stability Assessment, Land's End Development, 100 Esplanade Way, Pages 1 - 2). In addition to the concern for scour that is indicated by the soil tests, the review by TerraCosta Consulting Group notes, "we understand that during construction, … at least locally there was a fair amount of disturbance immediately seaward of the toe of the wall, creating much less embedment than the original as-built drawings would suggest. These locally disturbed zones seaward of the wall, coupled with the multiple caving construction-period keyway failures has tended to create an only marginally stable bedrock shore platform seaward of the seawall that will not provide any substantive degree of scour protection at the base of the wall, necessitating the protective toestone recommended by RJR")See TerraCosta, op.cit. page 19).

To protect the seawall foundation from scour, the Applicant proposes to add toestone protection to the wall. The toe protection would be keyed into the sandstone, about 8 feet deep; it would extend about 12 feet seaward of the seawall foundation and would run the full length of the approximately 650-foot seawall. The toestone is intended to help dissipate some of the wave energy and would prevent scour of the sandstone and undermining of the foundation. Although the toestone would be buried under most beach conditions, during severe storms when waves have moved the beach sand offshore, the rock will be exposed (see Exhibit 2 page 6 and Exhibit 12 page 15).

The Applicant proposes to use about 8,825 tons of 3 to 4 foot diameter rock for the toe protection and to take this volume of rock from the rock that was originally part of the revetment and never removed from the beach. The proposed toestone would be placed next to the base of the seawall, down to an elevation of -3 feet MSL, and up to an elevation of +8 feet MSL and would extend approximately 12 feet seaward of the wall, resulting in approximately 7,720 square feet of beach encroachment.

The Commission's geologist and coastal engineer have reviewed the submitted reports from RJR Engineering Group and TerraCosta Consulting Group, along with several published papers by Collins and Sitar that address bluff retreat issues along this section of the coast. These consultants concur that the sandstone is easily eroded by wave action, that scour is likely to be a concern in the future and that the seawall could be undermined. While the consultants cannot specify the exact time that scour protection would be needed, the foundation of the seawall is likely to be at-risk of being undermined within approximately the next ten years. However, a series of severe winter storms could lessen the time until the scour protection is needed. Therefore, The Commission finds that toe scour protection is necessary to support the seawall in the near future.

Due to impacts from the toestone and the potential for the rock to be exposed, especially during winter storm events, it is necessary to monitor for early detection in order to address future potential hazards. **Special Condition 7: Monitoring and Reporting** requires the monitoring of the seawall foundation and sandstone interface as well as toe scour protection for early detection of rock exposure.

In addition to the proposed placement of 8,825 tons of rock as toestone, the Applicant has proposed to remove the remaining larger rocks (more than 2 feet in diameter) from the

ledge/trench that is 23 to 43 feet seaward of the wall. As noted earlier and as shown in **Exhibit 2: Project Plans,** there is no seaward edge of the ledge/trench and any rock left on this ledge will be subject to wave attack once the beach sand is removed. The winter profile provided by the Applicant clearly identifies that this rock could be exposed to waves during a winter storm condition. At that time, the rock on the ledge provides a ready source of projectiles that the waves could throw against the seawall. The rock provides no beneficial purpose and its retention on the beach poses a hazard to coastal development and the beach going public.

Further, the trench and riprap placed within it are an access impediment within the beach area, presenting a hazard to beach users. The riprap trench, with all its attendant impacts, some of which are exacerbated by being located seaward of the seawall, is located within a sandy beach public access easement area, is no longer able to provide toe scour protection, and results in inappropriate landform alteration and other coastal resource impacts. Thus, the rip rap trench, seaward of the concrete wall, is unnecessary and therefore not authorized by Coastal Act section 30235. Thus, **Special Condition 1: Revised Project Plans 1 A (5)** requires all of the riprap to be removed, including all rocks larger than fist sized and the ledge/trench that was previously excavated into the sandstone to be filled with materials that match the surrounding materials,[23] and covered with beach sand in order to restore the beach to its natural state.

Given all the above, the proposed project which includes a semi-vertical concrete seawall with toe scour protection and riprap placed at both ends of the wall to prevent outflanking, as conditioned to remove all of the riprap from the trench and restore the trench area, to eliminate the proposed ledge/trench/keyway, and to remove other riprap and concrete debris (e.g., abandoned concrete drain pipe, concrete debris, etc.), is the least environmentally damaging alternative "required" to protect the existing endangered apartment complex and accessway, and thus meets the third test of Section 30235 of the Coastal Act.

Time Period for Authorization of the Shore Protection

Despite the Applicant's hope that the armoring will last, without additional modifications, for many decades, it has been the Commission's experience that armoring, particularly in such a significantly high-hazard area as this project, will need to be augmented, replaced, and/or substantially changed within only a few decades. In this case, the proposed seawall can be expected to be subject to heavy wave action on a fairly regular basis. Rising sea levels and its associated consequences will tend to further limit the project life. There is a growing body of evidence that there has been an increase in global temperature and that acceleration in the rate of sea level rise can be expected to accompany this increase in temperature (some shoreline experts have indicated that sea level could rise by as much as 4.5 feet to over 6 feet by the year 2100[24]).

[23] This may take the form of loose sand, well consolidated and compacted similar soils, or a very lean erodable concrete mix, or even a soil mix to which concrete stabilizers have been added. Given the weakly consolidated nature of the sandstone of the wave-cut platform, the materials will need to be tested and the best option for matching their strength and cohesion applied.

[24] In 2010, the California Climate Action Team evaluated possible sea level rise for the California coast and, based on several of the Intergovernmental Panel on Climate Change (IPCC) scenarios, projected sea level rise up to 1.4 meters (4.5 feet) by 2100. In 2011, the Ocean Protection Council adopted interim guidance on sea level rise that recommends state agencies consider similar amounts of sea level rise for deliberations on coastal projects (http://opc.ca.gov/webmaster/ftp/pdf/agenda_items/20110311/12. SLR_Resolution/SLR-Guidance-Document.pdf, last consulted April 15, 2012). A 2012 analysis by a National Research Council committee (http://www.nap.edu/catalog.php?record_id=13389) projects sea level for the central California could rise up to 5.5 feet from 2000 to 2100. A 2012 NOAA Technical Report (NOAA Tech Memo OAR CPO-1) projects, with high confidence, that global sea level will rise at least 0.6 feet (0.2 meters) and no more than 6.6 feet (2.0 meters) from 1992 to 2100.

On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore, leading to a faster loss of the beach as the beach is squeezed between the landward migrating ocean and the fixed backshore. This will expose the back bluff or seawall to more frequent wave attack, increasing the rate of erosion of unarmored bluffs.

Seawalls do not last indefinitely. The reason that the applicant has applied for this permit to authorize a new seawall is the continual erosion of the bluff and the bluff's episodic failure. (See site-specific history of emergency permits at this location in Project Background.) The episodic failure of the bluff endangers both the public and Applicant's properties. For example, if the seawall failed episodically, it could affect the nearby public beaches by resulting in debris on the beaches, creating a hazard to the public using the beaches or the offshore surfing area. A 20 year period of development authorization ensures that the unstable situation existing at this site is reassessed before the seawall becomes a danger to the Applicants and the public. It also allows the Commission and the owners to evaluate new technology and thinking in coastline development and protection, changed blufftop or shoreline conditions, and the impacts of sea level rise.

Given the uncertainty about the pace and extent of future sea level rise and how it will affect beach and bluff erosion, it is difficult to predict the long-term ongoing effects of the seawall. Conversely, as the blufftop lots redevelop and structures are potentially moved inland, this could reduce or eliminate the need for the seawall. The Commission therefore finds that in the face of this inescapable uncertainty, the appropriate course of action is to allow the seawall to remain in place for 20 years, thereby allowing for a reevaluation of the seawall. **Special condition 9** of this permit requires the Applicants to reapply if the seawall is still needed and remains in good repair. If the seawall is reauthorized, the Applicants shall provide mitigation for the effects of the additional size of the seawall or the additional effects of the existing seawall on shoreline sand supply and public recreational use for the expected life of the seawall beyond this initial 20-yeartime frame.

Special Conditions 9 and 11 also put the property owners on notice that redevelopment of the parcels should not rely on bluff or shoreline protective works for stability and such alternatives as removing the seaward portion(s) of the structure, relocation inland, and/or reduction in size should be considered to avoid the need for bluff or shoreline protective devices in this hazardous area. Such options are all feasible for new development and would stop the perpetuation of development in non-conforming locations that would eventually lead to complete armoring of the bluffs and long-term, adverse impacts to the adjacent public beach and State tidelands. **Special Conditions 9 and 11** recognize that the seawall is being approved under Section 30235 to protect the *existing* blufftop structures in danger from erosion. Any future redevelopment of the affected property will re-evaluate current conditions and new development should be sited safely, independent of any shoreline protection.

For these reasons, the Commission uses a design life of 20 years for the proposed seawall in these findings, and implements the 20-year period of development authorization through conditions (see **Special Condition 9: Twenty Year Armoring Approval**).

Designed to Eliminate or Mitigate Sand Supply Impacts
The fourth test of Section 30235 (previously cited) that must be met in order to allow Commission approval is that shoreline structures must be designed to eliminate or mitigate adverse impacts to local shoreline sand supply.

Shoreline Processes
The project site is located in Pacifica where average annualized bluff erosion rates are generally estimated at 1 to 3 foot per year.[25] This is an average annualized rate; actual erosion is more episodic. There can be periods of wave quiescence during which the bluffs will be fairly stable and retreat will be slight. These quiet periods will be interrupted by more stormy years, during which time several years of "annual average" erosion can occur during a single storm event and sections of the bluff can slough off in tens of feet at a time. This sandy beach material is carried off and redistributed through wave action along the shoreline and serves to nourish the beaches.

The project location is a coastal bluff, with sandstone bedrock overlain by marine terrace deposits. The marine terrace is an ancient beach that formed when land and sea levels differed from current conditions. Since the marine terrace was once beach, much of the material in the terrace is often beach-quality sand or cobble, and is a valuable contribution to the littoral system when it is added to the beach. While beaches can become marine terraces over geologic time, the normal exchange of material between beaches and bluffs is for bluff erosion to provide beach material.

Bluff retreat is one of several ways that beach-quality sand is added to the shoreline. Bluff retreat and erosion is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse of caves, saturation of the bluff soil from groundwater causing the bluff to slough off, and natural bluff deterioration. When the back-beach or bluff is protected by a shoreline protective device, the natural exchange of material from the bluff to the beach will be interrupted and, if the shoreline is eroding, there will be a measurable loss of material to the beach.

Some of the effects of engineered armoring structures on the beach (such as scour, end effects and modification to the beach profile) are temporary or are difficult to distinguish from all the other actions that modify the shoreline. Others are more qualitative (e.g., impacts to the character of the shoreline and visual quality). Some of the effects that a shoreline structure may have on natural shoreline processes can be quantified, however, including: (1) the loss of the beach area on which the structure is located; (2) the long-term loss of beach that will result when the back-beach location is fixed on an eroding shoreline; and (3) the amount of material that would have been supplied to the beach if the back-beach or bluff were to erode naturally.[26]

Encroachment on the Beach
Shoreline protective devices are all physical structures that occupy space. When a shoreline

[25] In the last 40 years the blufftop has retreated approximately 120 feet, resulting in an average annual bluff erosion rate of 3 feet per year over that time frame. Past studies (USACOE) in the early 1970s estimated between 1 to 2 feet of average annual bluff erosion.

[26] The sand supply impact refers to the way in which the project impacts creation and maintenance of beach sand. Although this ultimately translates into beach impacts, the discussion here is focused on the first part of the equation and the way in which the proposed project would impact sand supply processes.

protective device is placed on a beach area, the underlying beach area cannot be used as beach. This generally results in a loss of public access. The area where the structure is placed will be altered from the time the protective device is constructed until the structure is removed or moved from its initial location. The beach area located beneath a shoreline protective device, referred to as the encroachment area, is the area of the structure's footprint.

The proposed project will cover approximately 25,945 square feet of sandy beach area. This coverage includes both the area that is occupied by the base of the concrete seawall (2,925 square feet), as well as the riprap being proposed for toe scour protection at the base of the seawall (7,720 square feet), and riprap at the ends of the seawall (450 square feet), and the riprap in the trench (14,850 square feet). After the riprap trench that cannot be authorized pursuant to Section 30235 is removed, as required and discussed in the previous section of this report, the area of coverage is 11,095 square feet.[27]

The loss of a square foot of beach area can be roughly converted to the volume of sand that would be required to nourish an equivalent area of beach. There is a rough rule of thumb that it takes between 0.7 to 1.5 cubic yards of sand to establish 1 square foot of dry beach through nourishment.[28] The Commission has not been able to establish an actual conversion factor for the Pacifica vicinity. However, if a 1.0 conversion factor is used that assumes that the active range of sand transport is at the lower limit of the expected range (i.e., the low end of the spectrum of values typically assumed by coastal engineers), a conservative estimate of the amount of cubic yards needed to create beach in terms of square feet can be calculated.[29] Using the conversion factor, the sand volume equivalent for the direct loss of beach due to 11,095 square feet of encroachment by the proposed project would be 11,095 cubic yards of beach-quality sand.[30]

Fixing the back beach

On an eroding shoreline, a beach will exist between the shoreline/waterline and the bluff as long as sand is available to form a beach and space between the bluff and the ocean for the beach to form. As bluff erosion proceeds, the profile of the beach also retreats and the beach area migrates inland with the bluff. This process stops, however, when the backshore is fronted by a hard protective structure such as a revetment or a seawall. Experts generally agree that where the shoreline is eroding and armoring is installed, the armoring will eventually define the boundary between the sea and the upland. While the shoreline on either side of the armor continues to retreat, shoreline in front of the armor eventually stops at the armoring. This effect is also known as passive erosion or coastal squeeze. The beach area will narrow, being squeezed between the

[27] The removal of the riprap in the trench and the restoration of this area, and the elimination of the riprap keyway from the project reduces coverage impacts significantly, by some 22,570 square feet, or over half an acre.

[28] This conversion value is based on regional beach and nearshore profiles, and overall characteristics. When there is not regional data to better quantify this value, it is often assumed to be between 1 and 1.5, the basis being that to build a beach seaward one foot, there must be enough sand to provide a one-foot wedge of sand through the entire region of onshore-offshore transport. If the range of reversible sediment movement is from -30 feet msl to +10 feet msl, then a one-foot beach addition must be added for the full range from -30 to +10 feet, or 40 feet total. This 40-foot by 1-foot square parallelogram could be built with 1.5 cubic yards of sand (40 cubic feet divided by 27 cubic feet per cubic yard). If the range of reversible sediment transport is 27 feet, it will take 1 cubic yard of sand to rebuild one square foot of beach; if the range of reversible sediment transport is larger than 40 feet, it will take more than 1.5 cubic yards of sand to rebuild one square-foot of beach.

[29] A 1.0 conversion factor has typically been applied by the Commission in cases where site specific values have not been identified.

[30] Per the Commission's methodology, this is calculated as a one-time encroachment impact as opposed to a yearly impact.

moving shoreline and the fixed backshore and this represents the loss of a beach as a direct result of the armor.

The passive erosion impacts of the seawall, or the long-term loss of beach due to fixing the back beach, is equivalent to the footprint of the bluff area that would have become beach due to erosion and is equal to the long-term average annual erosion rate multiplied by the width of property that has been fixed by a resistant shoreline protective device.[31] In this case, the proposed seawall runs along the length of the site at the base of the bluff upon which the apartment complex sits. The proposed seawall will cover areas of sandy beach that are protected by an *ambulatory* public access easement between the MHTL and the base of the bluff so for purposes of determining the impacts from fixing the back beach, it can be assumed that new public beach area would result from landward retreat of the bluff.

The shoreline is irregular, but the area affected by passive erosion can be approximated as a 670-foot-long curvilinear bluff, including the riprap end wall protection which is proposed to be altered by shoreline armoring. The Applicant's geotechnical consultant estimated the average bluff recession for this site at 2 feet per year, which is within the regional range of 1 to 3 per year. The Applicant indicates that the proposed seawall will protect the inland development for many years. However, it has been the Commission's experience that a lifespan of shoreline armoring projects more than a few decades often needs major maintenance or modifications, or entire redevelopment of an armoring structure. As a result, as discussed above, a 20-year life of project will be used to establish the time period over which the impacts will occur. After this 20-year period, additional impact analysis will be needed. Therefore, the average impacts from fixing the back beach will be the annual loss of 1,340 square feet of beach. Over the 20-year permit horizon, this would result in a loss of 26,800 square feet of beach (more than half an acre) that would have been created and protected by the ambulatory public access easement if the back beach had not been fixed by the proposed seawall. Using the same conversion factor applied above, this translates to 26,800 cubic yards of beach sand.

Retention of Potential Beach Material

If natural erosion were allowed to continue (absent the proposed seawall),bluff sediment would be added to the beach at this location, as well as to the larger littoral cell sand supply system fronting the bluffs. The volume of total material that would have gone into the sand supply system over the lifetime of the shoreline structure would be the volume of material between (a) the likely future bluff-face location with shoreline protection; and (b) the likely future bluff-face location without shoreline protection. Since the main concern is with the sand component of this bluff material, the total material lost must be multiplied by the percentage of bluff material which is beach sand, giving the total amount of sand that would have been supplied to the littoral system for beach deposition if the proposed device were not installed.[32] The Applicant indicates

[31] The area of beach lost due to long-term erosion (Aw) is equal to the long-term average annual erosion rate (R) times the number of years that the back-beach or bluff will be fixed (L) times the width of the property that will be protected (W). This can be expressed by the following equation: Aw = R x L x W. The annual loss of beach area can be expressed as Aw' = R x W.

[32] The equation is Vb = (S x W x L) x [(R x hs) + (1/2hu x (R + (Rcu - Rcs)))]/27. Where: Vb is the volume of beach material that would have been supplied to the beach if natural erosion continued (this is equivalent to the long-term reduction in the supply of bluff material to the beach resulting from the structure); S is the fraction of beach quality material in the bluff material; W is the width of property to be armored; L is the design life of structure, if assumed a value of 1, an annual amount is calculated; R is the long term average annual erosion rate; hs is the height of the shoreline structure; hu is the height of the unprotected upper bluff; Rcu is the predicted rate of retreat of the crest of the bluff during the period that the shoreline structure

(and the Commission's Senior Coastal Engineer concurs) that this impact is roughly equal to 1,725 cubic yards of sand per year for the proposed concrete semi-vertical seawall and riprap end walls. Over the course of the identified 20-year horizon, this equates to a retention impact of about 34,493 cubic yards of beach quality sand.

The applicant concurs with these calculations, however, the Applicant contends that they have already contributed approximately 71,250 cubic yards of bluff material as part of the seawall relocation discussed earlier. They have requested that this volume of bluff sediment fulfills the project's impacts of 34,493 cubic yards of beach-quality sand that will be denied to the local sand supply as a result of armoring the bluff face.

As noted earlier, the seawall relocation was consistent with the requirements of the emergency permit, the stakes were relocated approximately 10 feet farther inland, towards the base of the bluff, and at the time, staff determined that colluvium, not excavated bluff materials, had been removed in order to place the wall adjacent to the natural bluff face. The Applicant's engineer now maintains that in order to complete the relocation of the seawall, it was necessary to excavate up to 30 feet into the bluff face. Staff's coastal geologist has provided an analysis of the bluff at the time of the site visit evidencing that there was clearly a pile of colluvium fronting the bluff and that the seawall slope established during the site visit mimics the natural bluff slopes visible along the coast near the project site (See **Exhibit 7: Geotechnical Review Memo**). Thus, the sediment that was removed from the bluff face was already destined to enter the littoral cell, due to naturally occurring erosion events already in process. The construction activities, at most, hurried the process along, but did not provide significant volumes of bluff sand, beyond what had already detached from the bluff face and had collected at the base of the bluff, ready for transport into the littoral cell during a future storm event. As a result, these materials do not provide mitigation for impacts associated with sand retention, and are not subtracted from the impact identified above. Therefore, as discussed above, over the course of the identified 20-year horizon, the proposed seawall would retain approximately 34,493 cubic yards of beach quality sand.

Mitigation of Shoreline Sand Supply Impacts

The proposed project would result in quantifiable shoreline sand supply impacts. There would be beach sand loss due to: 1) placement of a concrete vertical seawall, toe scour protection and riprap end walls onto approximately 11,095 square feet of sandy beach that otherwise would be available for public use (converted to a sand volume of 11,095 cubic yards); 2) fixing of the back beach location, resulting in the loss of 26,800 square feet of sandy beach that would have been created over the 20-year horizon (1,340 square feet of loss annually, and a total of 26,800 cubic yards over 20 years when converted to sand volume); and 3) retention of about 34,493 cubic yards of sandy material over the 20-year horizon that would have been added to the littoral cell (about 1,725 cubic yards of sand per year). When combined, those impacts sum to 72,388 cubic

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would be in place, assuming no seawall were installed (this value can be assumed to be the same as R unless the Applicant provides site-specific geotechnical information supporting a different value); Rcs is the predicted rate of retreat of the crest of the bluff, during the period that the seawall would be in place, assuming the seawall has been installed (this value will be assumed to be zero unless the Applicant provides site-specific geotechnical information supporting a different value); and divide by 27 (since the dimensions and retreat rates are given in feet and volume of sand is usually given in cubic yards, the total volume of sand must be divided by 27 to provide this volume in cubic yards, rather than cubic feet).

yards over twenty years.[33]

Thus, the project impacts are losses of 37,895 square feet of beach area (11,095 square feet of beach lost due to encroachment, 26,800 square feet of beach area that will be "lost" through passive erosion of fixing the back beach), and 34,493 cubic yards of sand that would be retained in the bluff due to the seawall.

In this case, as discussed further below, the Commission finds it is appropriate to mitigate for the project's beach access and sand supply impacts in two ways: firstly by addressing the beach area itself that would be lost due to encroachment and passive erosion through an in-lieu fee that is based on the cost of nearby land values; and secondly, by addressing the sand retention loss through the provision of an in lieu fee based on the cost to replace the retained sand. As discussed further below, the Commission calculates the beach access mitigation fee based on the land value of the area of beach that is no longer accessible to the public due to direct physical encroachment by a seawall; or area that would otherwise have been available for public access in the future had a seawall not blocked natural bluff retreat. The Commission no longer bases the mitigation fee only on the cost of the volume of sand beneath a seawall or beneath the area of beach that would have been created.

The Commission has long recognized that while beach nourishment can address some of the losses that are directly attributable to seawall projects, the one-time provision of beach through nourishment does not adequately address the long-term and persistent impacts from encroachment and fixing the back of the beach. The main coastal resource concerns for these impacts arise from the losses in recreational use and recreational value that result from the loss of available shoreline area. As discussed in the section on Public Access/Recreation below, these impacts to public access and recreational value must also be mitigated.

Since the impacts from encroachment and fixing the back beach are being covered through estimates for recreational beach losses, the In-Lieu Beach Sand Mitigation calculations applied in the analysis below only address the value of the sand that will not be contributed by the bluffs to the littoral cell due to the construction of the seawall. Mitigation for the direct loss of beach area and passive erosion are addressed further below in the Public Access and Recreation Findings.

Mitigation for shoreline sand supply impacts resulting from sand being kept out of the littoral cell often includes beach nourishment and/or in lieu fees. A formal sand replenishment strategy can introduce an equivalent amount of sandy material back into the system over time to mitigate the loss of sand that would be caused by a protective device over its lifetime. Obviously, such an introduction of sand, if properly planned, can feed into the offshore system to mitigate the impact of the project. However, as opposed to other areas with established programs (e.g., SANDAG in San Diego) there are not currently any existing beach nourishment programs directed at this beach area. Absent a comprehensive program that provides a means to coordinate and maximize the benefits of mitigation efforts in the area now and in the future, a piecemeal mitigation effort,

[33] If these impacts were to be mitigated through a beach nourishment effort, the impacts would be comparable to the deposition of 6,440 cubic yards of beach quality sand at the start of the project to offset year 1 impacts (or roughly 640 large truck loads), and about 3,065 cubic yards (or roughly 300 large truck loads) of beach-quality sand annually.

such as an Applicant-only project to drop equivalent amounts of sand over time at this location, is ineffective.[34]

With respect to using beach access improvements to offset impacts, such mitigation is typically applied by the Commission to public agencies that are in the beach management business when they have applied for armoring projects.[35] In this case, the proposed project includes beach access improvements in the form of a stairway and pathway system. However, the improvements such as the proposed stairway and pathway re-establish the public access previously required via past permit actions, and thus are insufficient and cannot be used to mitigate for a portion of the current project impacts.[36] This issue is described in more detail below in the Public Access findings. Also, the Applicant's agent has met with the City of Pacifica to discuss the potential for "in-kind" mitigation for restoring and improving coastal access south of the project site. However, the City's regulations require that any public works projects must go through their bidding process and precludes consideration of such "in-kind" proposals now.

As an alternative mitigation mechanism, the Commission oftentimes uses an in-lieu fee[37] when in-kind mitigation of impacts is not available to fully offset a project's impacts.[38] In situations where ongoing sand replenishment or other appropriate mitigation programs are not yet in place, the in-lieu mitigation fee is deposited into an account until such time as an appropriate program is developed, and the fees can then be used to offset the designated impacts. When mitigation funds are pooled in this way for multiple projects in a certain area, the cumulative impacts can also be better addressed in as much as the pooled resources can address a greater mitigation impact than a series of smaller mitigations based on individual impacts and fees.

In terms of sand retention, the Commission has mitigated for the sand retention impacts with an in-lieu fee based on the cost of providing such sand because the cost of replacing the lost sand is directly related to the impact. For example, this approach was utilized by the Commission in the Li permit in 2010 (CDP 6-07-133). The Commission approved construction in the Li case of a 57-foot long seawall fronting a single-family house in Encinitas that was estimated to result in a loss of sand due to retention of 307.8 square feet, and a loss due to total encroachment of 493.62 square feet (8.66 inches by 57 feet long) and ongoing loss of beach area of 307.8 square feet combined to become 801 square feet of beach over a 20-year period. In order to mitigate for beach sand retention, a fee of $11,350 was required. The in lieu fee for sand retention was in

[34] Again, equating to some 640 truckloads of sand the first year, and some 300 per year after that.

[35] For example, as recently required with respect to public access improvements along the shoreline south of 400 Esplanade as part of the Commission's approval of a seawall fronting the apartment complex at 360-380 Esplanade (CDP 2-08-020).

[36] All of the proposed project elements need to be implemented via the Commission's standard approach for such measures, particularly the legal documents (see the Public Access findings for more detail).

[37] The Commission's approach to mitigation for the loss of beach area has evolved over the years and has been undertaken on a case-by-case basis to address conditions specific to the project site. While in-kind mitigation would be most appropriate and provide the greatest benefit, as noted above, this is not often possible. In the mid-1990's the Commission developed an In-Lieu Beach Sand Mitigation Fee which uses the cost of beach nourishment as mitigation of lost sand beach. This approach was first applied in San Diego where the San Diego Association of Governments (SANDAG) was actively undertaking regional beach nourishment, and where the Commission and SANDAG have a Memorandum of Agreement for the use of In-Lieu Beach Sand Fees for beach nourishment. The Commission has used this approach for many shoreline protection projects and there is an In-Lie Mitigation Fee report that describes this basic approach in detail.

[38] See, for example, CDP A-3-SCO-06-006 (Willmott), CDP A-3-SLO-01-040 (Brett), CDP 3-98-102 (Panattoni) and CDP 3-97-065 (Motroni-Bardwell).

addition to a public access and recreation in lieu fee for encroachment and passive erosion.[39]

In this case, as discussed above, the proposed wall would result in the retention of about 34,493 cubic yards of sandy material over the 20-year horizon that would have been added to the littoral cell (about 1,725 cubic yards of sand per year). Based on an estimated range of costs for beach quality sand ranging from $10 to $40 per cubic yard delivered (or possibly more), an in-lieu fee to address this sand supply impact (which is a total of 34,493 cubic yards over the 20-year authorization period) would range from $344,930 to about $1.4 million or more when applied to the 34,493 cubic yards of impact associated with lost sand supply. The Applicant has identified several local sand sources with prices ranging from $5.53 to $9.50 per cubic yard delivered. At $5.53/cubic yard, the in-lieu beach sand mitigation for 34,493 cubic yards of sand would be $190,746 or $327,684 at $9.50/cu yd. for the twenty-year authorization of the project impact. In other words, there could be quite a range, depending on actual costs. In cases of uncertainty like this, the Commission typically allows the Applicant to submit three bids for the cost of delivered beach quality sand, and allows the payment to be adjusted to the average for these three bids.

The project will retain sand from the shoreline sand supply system, leading to a loss of sand supply at this location. As such, a mitigation payment that can be used to provide beach nourishment at this location based on the cost to replace the amount of sand lost will offset such impacts and is related in nature and extent to the impact. Thus, as conditioned, the project satisfies the Coastal Act Section 30235 requirements regarding mitigation for sand supply impacts, and thus also meets all Section 30235 tests for allowing such armoring.

Finally, with respect to the upper bluff retaining wall portion of the project, this also raises sand supply impact issues, because when it becomes exposed in the future, it may prevent sand from naturally eroding onto the beach and contributing to the local littoral system. However, the Applicant's engineer designed the retaining wall to be buried for approximately 45 years, and therefore, these impacts may not occur within the 20-year authorization period prescribed by **Special Condition 9: Twenty Year Armoring Approval**. Further, **Special Condition 10**: **Caisson and Grade Beam Exposure**, as described below in the Visual Resources section, requires the Applicant to return to the Commission for a CDP amendment if the retaining wall becomes exposed during the 20-year period. Thus, any impacts to sand supply from the upper bluff retaining wall would be addressed through such a future CDP amendment, or through future CDP amendments issued after the initial 20-year authorization period. Therefore, future potential sand supply impacts from the upper bluff retaining wall do not need to be addressed at this time.

In conclusion, the project's sand retention impacts translate directly into a loss of sand supply at this beach area and to the surf area offshore. The sand supply fee serves as mitigation for the

[39] Regarding the in lieu fee to purchase a comparable area of recreational land, the Commission required the Li Applicant to pay a mitigation fee based on a current per square-foot real estate appraisal of the blufftop lot (without improvements) multiplied by 801 square feet of lost beach area. This method was selected due to a lack of specific recreational empirical data necessary to determine the value of the lost public beach. While the value of the public beach is likely to be higher than the value of a blufftop parcel as a result of the public benefit derived from its use, the Commission determined that the unimproved blufftop appraisal was appropriate until a more accurate method of determining economic value of the loss to public access and recreational opportunities is feasible.

sand retention impacts in this case. As discussed below in the Public Access section of the report, the beach area itself that would be lost due to encroachment (11,095 square feet) and passive erosion (26,800 square feet) is mitigated through an in-lieu fee that is based on the cost of nearby land values. Thus, as conditioned, the project meets all Section 30235 tests for allowing such armoring.

Long-Term Stability, Maintenance, and Risk

Coastal Act Section 30253 requires the project to assure long-term stability and structural integrity, minimize future risk, and avoid additional, more substantial protective measures in the future. For the proposed project, the main Section 30253 concern is assuring long-term stability. This is particularly critical given the dynamic shoreline environment within which the proposed project would be placed. Also critical to the task of ensuring long-term stability, as required by Section 30253, is a formal long-term monitoring and maintenance program. If the seawall, including the public access path or stairway, are damaged in the future (e.g. as a result of flooding, landsliding, wave action, storms, etc.) it will lead to a degraded public access condition as has happened in the past. In addition, such damages could adversely affect nearby beaches by resulting in debris on the beaches and/or creating a hazard to the public using the beaches or the offshore surfing area.

Therefore, in order to find the proposed project consistent with Coastal Act Section 30253, the proposed project must be maintained in its approved state. Further, in order to ensure that the Applicant and the Commission know when repairs or maintenance are required, the Applicant must regularly monitor the condition of the approved project, particularly after major storm events. Such monitoring will ensure that the Applicant and the Commission are aware of any damage to or weathering of the armoring, public access features, and other project elements and can determine whether repairs or other actions are necessary to maintain the project in its approved state before such repairs or actions are undertaken. To assist in such an effort, monitoring plans should provide vertical and horizontal reference distances from armoring structures to surveyed benchmarks for use in future monitoring efforts.

To ensure that the proposed project is properly maintained to ensure its long-term structural stability, **Special Condition 7: Monitoring and Reporting**, requires monitoring and reporting plans. Such plans shall provide for evaluation of the condition and performance of the proposed project and overall bluff stability, and shall provide for necessary maintenance, repair, changes or modifications. **Special Condition 8: Future Maintenance Authorized** requires the Applicant to maintain the project in its approved state, subject to the terms and conditions identified by the special conditions. Such future monitoring and maintenance activities must be understood in relation to clear as-built plans. Therefore, **Special Condition 5: As-Built Plans** of this approval requires the submittal of revised final and as-built plans.

In terms of recognizing and assuming the hazard risks for shoreline development, the Commission's experience in evaluating proposed developments in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these

hazards while avoiding placing the economic burden for damages onto the people of the State of California, Applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see **Special Condition 12: Assumption of Risk, Waiver of Liability, and Indemnity Agreement**

To ensure that future property owners are properly informed regarding the terms and conditions of this approval, this approval is also conditioned for a deed restriction to be recorded against the properties involved in the application (see **Special Condition 16**: **Deed Restriction**). This deed restriction will record the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

Conclusion
In this case and for this site and this fact set, the proposed project, as conditioned, can be found consistent with Coastal Act Sections 30235 and 30253 because it is required to protect an existing structure and designed to eliminate or mitigate impacts on shoreline sand supply. The sand supply in lieu fee mitigates for the loss of sand to the littoral cell due to retention in this case. Further, as discussed in the Public Access Findings impacts to the beach area itself that would be lost due to encroachment (11,095 square feet) and passive erosion (26,800 square feet) are mitigated through an in-lieu fee that is based on the cost of nearby land values.

E. PUBLIC ACCESS AND RECREATION

Applicable Policies
Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road (Palmetto Avenue). Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

> ***30210.*** *In carrying out the requirement 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.*
>
> ***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.*
>
> ***30212.*** *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects*
>
> ***30213.*** *Lower cost visitor and recreational facilities shall be protected, encouraged, and,*

where feasible, provided. Developments providing public recreational opportunities are preferred. …

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.*

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

Coastal Act Section 30240(b) also protects parks and recreation areas, such as the adjacent beach area. Section 30240(b) states:

30240(b). *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

These overlapping policies clearly protect the blufftop access and pathway, the stairway, the beach (and access to and along it) and offshore waters for public access and recreation purposes, particularly free and low cost access.

In addition, the following certified LCP provisions, although not the standard of review, can provide pertinent information and guidance:

(LUP Page C-26) COASTAL ISSUES – West Edgemar/Pacific Manor Neighborhood: *The major coastal planning issues in this neighborhood are: … 4. The extent and nature of public access improvements and the City's role in developing new and maintaining existing public access and parking facilities.*

(LUP Pages C-30 and C-31) COASTAL ACCESS - *Three beach access points are existing or proposed to be developed and maintained in this area. The first is an existing wooden stairway down the face of the bluffs near the Points West Apartments. This structure is located within an* ***easement*** *for public access. However, the stairway itself is currently privately maintained. The approach to the stairs from Esplanade is connected to a private bluff-top trail behind that portion of Point West Apartments along Palmetto Avenue. Conditions of approval for the condominium conversion required dedication and maintenance of the stairway and the bluff-top path by Homeowner's Association, in addition to dedication of the beach. Documents have been recorded irrevocably offering to dedicate the* ***easements*** *to a public agency. The bluff-top trail connects to a trail located behind the adjacent condominium project…*

The City also has the opportunity to develop a system of bluff-top trails in the neighborhood extending from the Daly City boundary to the Points West stairway. The trail would begin at the view point at the north City boundary, traverse portions of the bluff tops to a point north of the "Dollar Radio Station" residence, proceed around this property along Palmetto Avenue a short distance, loop behind condominium units

adjacent and south of the residence and continue west of the Points West Apartments to Esplanade Avenue and the stairway. Except for the coastal neighborhood north of this area, easements have been offered for dedication to the City to complete the trail connections. Most of the improvements are, or will, soon be in place. This will perhaps be the only area in the City where this type of coastal bluff trail is desirable or possible. Improved trails in this neighborhood will form a promenade connected to beach access and unimproved trails within the bluff area to the north. This will provide a variety of access facilities unique in Pacifica and capable of serving diverse coastal recreation needs.

(LUP Page C-68) – 3. Points West Apartments…Existing Access: *A wooden stairway to the beach about 100 feet below is owned and maintained by the apartment complex, but available to the public. There is a problem with vandalism to the stairway.*

IP Section 9-4.4407 - Public Shoreline Access. (a) Intent. *The provisions of this Section shall apply to all new development requiring a coastal development permit in the CZ district and where public shoreline access is required in the Access Component of the LCP Land Use Plan, and shall be subject to the regulations found in Article 43, Coastal Zone Combining District. The intent of these provisions is to maximize public access to and along the shoreline, while protecting the established rights of private property owners.* ***(b) Development Standards.*** *The following development standards shall apply to all required access provisions. (1) To provide separation between shoreline access and residential uses and to protect the privacy and security of residents and homes, any required access* ***easements*** *shall comply with the following setbacks, where feasible: (i) The inland edge of lateral shoreline trails shall be at least twenty-five (25) feet from any occupied or proposed residence. However, in the event a 25' access buffer will not provide adequate lateral public access in compliance with the access provisions of the Coastal Act or with the Access Component of the LCP Land Use Plan, a narrower access buffer may be required. In no event shall the lateral access way extend any closer than 10' from the residence in question; and (ii) The edge of vertical shoreline trails shall be at least ten (10) feet from any existing or proposed residence. (2) Public shoreline access through environmentally sensitive habitat areas shall comply with the provisions established in Section 9-4.4403, Habitat Preservation and the California Coastal Act, Section 30212; (3) Public shoreline access improvements such as trails, ramps, railings, viewing areas, restrooms, and parking facilities shall be sited and designed to be accessible to people of limited mobility to the maximum extent feasible; (4) Public shoreline access improvements such as trails, stairs, ramps, railings, viewing areas, restrooms, and parking facilities shall be sited and designed to be compatible with the natural character of the shoreline; (5) Public shoreline access signage identify access location, destination areas, environmentally sensitive habitat, and hazardous conditions, and be compatible with the natural appearance and character of the shoreline by using appropriate color, size, form, and material; and (6) Any required vertical trail* ***easement*** *shall be at least ten (10') feet wide. Any required lateral access* ***easement*** *shall be at least twenty five (25') feet wide. However, in the event such an* ***easement*** *width would prohibit private use of the real property or render use or development of the site economically infeasible, a narrower access width may be required. In no event shall the lateral access width be less than ten (10') feet. (7) With respect to lateral bluff top access,*

*the **easement** shall be adjusted inland from the current bluff edge if it recedes inland, but in no event shall the trail be closer than ten (10') feet to an occupied or proposed residence. Such an inland adjustment shall not occur in the event it would prohibit private use of a site or would render use or development of the site economically infeasible.*

Analysis
The proposed project would result in quantifiable shoreline sand supply impacts. There would be beach sand loss due to: 1) placement of a concrete vertical seawall, toe scour protection and riprap end walls onto approximately 11,095 square feet of sandy beach that otherwise would be available for public use (converted to a sand volume of 11,095 cubic yards); 2) fixing of the back beach location, resulting in the loss of 26,800 square feet of sandy beach that would have been created over the 20-year horizon (1,340 square feet of loss annually, and a total of 26,800 cubic yards over 20 years when converted to sand volume); and 3) retention of about 34,493 cubic yards of sandy material over the 20-year horizon that would have been added to the littoral cell (about 1,725 cubic yards of sand per year). When combined, those impacts sum to 72,388 cubic yards over twenty years.[40]

Thus, the project impacts are losses of 37,895 square feet of beach area (11,095 square feet of beach lost due to encroachment, 26,800 square feet of beach area that will be "lost" through passive erosion of fixing the back beach), and 34,493 cubic yards of sand that would be retained in the bluff due to the seawall.

Mitigation for the latter shoreline sand supply impacts were discussed above in the previous findings regarding mitigation for impacts to shoreline sand supply. Mitigation for the first two identified impacts to the public beach is discussed below.

It has proven difficult over the years to identify appropriate mitigation for seawall impacts, especially the beach area losses. Partly this is because creating an offsetting beach area is not an easy task, and finding appropriate properties that could be set aside to become beach area over time (through natural processes, including erosion) is difficult both due to a lack of such readily available properties and the cost of such coastal real estate more broadly. As a proxy, other types of mitigation for such direct sand supply impacts include in-lieu fees and/or beach nourishment, and in some cases compensatory beach access improvements.

In this case, and as described further below, the Commission requires mitigation for the project's impacts on the beach area itself that would be lost due to encroachment and passive erosion through an in-lieu fee that is based on the cost of nearby land values. The basis for using the land value methodology is that such land, if purchased, could offset the loss of recreational use of the beach equivalent to the beach area that is lost due to the armoring in question (i.e., due to encroachment and passive erosion).

Background on Public Access and Recreation at Project Site
The beaches in the vicinity of the project area are a mix of open and moderately accessible

[40] If these impacts were to be mitigated through a beach nourishment effort, the impacts would be comparable to the deposition of 6,440 cubic yards of beach quality sand at the start of the project to offset year 1 impacts (or roughly 640 large truck loads), and about 3,065 cubic yards (or roughly 300 large truck loads) of beach-quality sand annually.

beaches, serving the dense residential development in the adjacent neighborhood, as well as visitors, including those staying at the nearby RV park.[41] The beach in the area is hampered in many areas by placement of rock revetments and other armoring, and the bluffs are high and steep in some places, and very fragile. The stairway at 100 Esplanade was originally constructed at the same time as the apartment complex to provide public access in an area in Pacifica of high density development. Other than this vertical access, the nearest formal public access to the beach is to the north at Fort Funston, which is approximately 5 miles away, and to the south near the Pacifica Pier, which is approximately 1.5 miles away. There are several informal public accessways that are closer to the site, but which are difficult to traverse, including to the south, at the 400 and 500 blocks of Esplanade, where the accessways are extremely steep and difficult to maneuver, and to the north at Mussel Rock in Daly City, where you must first cross the large landfill site, and then scramble down a riprap revetment in order to access the beach. Therefore, the accessway and beach at the project site is an important public access area because it is located within a densely populated urban area, and because many of the surrounding beaches are extremely difficult to access, making the stairway at this location critical. Staff has visited this beach on numerous occasions and has observed that the beach is well used, including by dog walkers, surfers and fisherman.

Both the City and the Commission have previously recognized the importance of maintaining access to the beach via this stairway including through the City's original conditions for a building permit, the City's LUP (Coastal Access Section), the Commission's 1983 CDP for conversion of the apartment buildings to condominiums (CDP 3-83-015), and the City's 1988 approval of the reversion of the condominiums back to apartments. The City's 1972 building permit required the public access stairway to be constructed. The LCP (see page C-30) describes the existing wooden stairway at the time the LCP was adopted (1980) and explains the need to maintain public access permanently in front of the Land's End apartments. In addition, conditions of approval for the Commission's CDP 3-83-015 required the permittee to provide vertical and lateral access to the beach adjacent to the project site. The Commission's permit required this access to be provided through the recordation of an Irrevocable Offer to Dedicate (OTD) for vertical public access to the shoreline and required that the Applicant guarantee the stability and permanent maintenance of the safe condition of the stairwell. In addition, the Commission required the recordation of two OTDs for lateral public access along the shoreline and the blufftop. These three OTD requirements were also made a condition of the City's approval of the subsequent reversion to acreage, which converted the condominiums back to apartment buildings in 1988.[42] The City found that the required public access OTDs had to be included in the reversion to acreage because they were "necessary for present or prospective public purposes as specified in the Pacifica Subdivision Ordinance."[43] After the City's approval, the Commission amended the original CDP in 1989 (3-83-015-A) to authorize the reversion to acreage project for CDP purposes.

The three required OTDs were recorded in 1988 and later combined in 2006 into one Public Access Easement (see **Exhibit 5: 2006 Grant of Easement Between Landowner and City,**) granted in fee by the Land's End property owner to the City of Pacifica. The Commission agreed

[41] The San Francisco RV Resort is located several blocks south of the project site at 700 Palmetto Avenue.

[42] Condition of approval in the City of Pacifica Resolution 3-88 (1988).

[43] Id, page 1.

to the recordation of this Public Access Easement that replaced the three required OTDs and consequently agreed to the extinguishment of the underlying OTDs, because the 2006 Public Access Easement would fulfill the conditions of 3-83-015 to provide public access at the site in perpetuity.

The 2006 Public Access Easement (**Exhibit 5**) provides for three types of access, as required by the approvals discussed above: "Sandy Beach Area", which is beach lateral access extending the width of the project site parallel to the shoreline from the base of the bluff to the mean high tide line; "Vertical Access Area", which is the portion of the Property that extends from Esplanade Avenue to the bottom of the existing staircase and then continues down to the beach; and "Bluff Top Area", which is the portion of the project site extending the width of the property providing lateral access five feet wide from Esplanade Avenue on the blufftop (see **Exhibit 8**). The easement agreement states that the easements are in perpetuity for public use and recreation and that the:

> *Owner is prohibited from interfering with public use of the Easement Area and shall not take any action inconsistent with such use, including, without limitation, construction or improving the property within the Easement Area in a manner inconsistent with the public's use and enjoyment or preventing public access to the Easement Area from the public street or from any existing public trails…*[44]

The easement agreement specifically contemplates that catastrophic failures could occur and contains a maintenance provision which requires the Applicant to be responsible for all maintenance activities necessary to keep the three easement areas and the improvements within the easement areas in a serviceable and safe condition for public use. The easement also acknowledges that the location of the vertical access trail may change in order to provide safe public access at the site and depicts a Blanket Easement located at the foot of the vertical pathway easement (see **Exhibit 5 page 31**). The beach lateral access component, or sandy beach area, of the easement is also described as ambulatory, located between the mean high tide line and the base of the bluff (see **Exhibit 5 page 25**). The base of the bluff is described by its nature and definition as being an ambulatory geographic feature and subject to change over time. In fact, the area of sandy beach subject to the easement is now much larger than it was when it was recorded as an easement in 1988 due to the changes in the base of the bluff caused by erosion. The current sandy beach area, as required by the easement, is shown in **Exhibit 9:** Depiction of Recorded Easements . Therefore, much of the proposed project, and the entire proposed seawall is currently located within the portion of the property subject to the existing 2006 Public Access Easement.

Vertical Access Portion of Existing Easement

As discussed, the Applicant has been required for some time to keep the staircase opened and maintained. The 2006 Public Access Easement includes this requirement, but also describes the area within which the access should be located. When the easement was recorded, the vertical access was configured as a staircase along the upper bluff, and a trail along the lower bluff. The easement acknowledged the changing nature of the bluff, and allowed for the trail to ambulate

[44] Public Access Easement (Lands End) page 5.

within a defined area. The property owner is required through the easement to amend the easement unless the vertical access remains within the prescribed easement area. As described above, the Applicant is proposing to replace the vertical staircase with a newly configured vertical access, consisting of a trail along the upper bluff and a staircase at the lower bluff. To the extent the vertical access is being relocated outside the Easement Area, the original Grant of Easement must be amended. Otherwise, vertical access may only be relocated within the easement area. In this project, the proposed vertical access includes a switchback pedestrian path along the upper bluff and a concrete staircase along the lower bluff that is encased and protected by the concrete seawall structure. In addition, although the proposed vertical access is located landward of the existing vertical access easement area, because the bluff collapse resulted in the bluff moving landward, this relocation landward is necessary to provide the vertical access that is required. Thus, if the 2006 Grant of Easement between the Landowner and the City is amended, the proposed vertical accessway is an acceptable replacement of the previously existing location of the vertical accessway. Further, the proposed vertical access is equivalent in time, place and manner to the previously required easement and achieves the vertical access set forth in existing permit requirements.

The Applicant asserts that because portions of the proposed vertical access configuration are outside of the original easement area and cover a larger land area than the previous easement, it should be considered as mitigation, offsetting the public access impacts of the project. However, as discussed above, the proposed vertical access merely fulfills existing requirements to provide vertical access, and therefore, may not be used as credit towards the project's overall mitigation of the impacts of the seawall and related development to beach resources, including public access.

To ensure this existing public access obligation continues to be implemented consistent with all applicable permits, **Special Condition 4: Amended Public Access Easement** requires that the property owner execute and record an amended public access easement so that the vertical access trail is maintained in perpetuity, and can be relocated within a newly defined easement area as expressly required by the 2006 Public Access Easement. In addition, **Special Condition 2: Public Access Management Plan** requires a Public Access Management Plan to implement the vertical access trail in a manner consistent with this permit and the amended access easement, including a requirement that the trail remain able to be relocated within the newly defined easement area and signs be located, at a minimum, at specified locations.

Sandy Beach Area of the Existing Easement

In addition, the Applicant asserts that the project has a beneficial effect on the beach lateral access area that should be considered as mitigation for the project's impacts. As described in the Geologic Conditions and Hazards finding, above, the Applicant believes that they excavated into the base of the bluff to place the seawall, and that as a result 'created' new beach area. However, as also discussed previously, the Applicant only moved the colluvium wedge on the beach to expose the bluff itself. Thus, this action did not create beach as the beach already was present.

In addition, and as further described above, the seawall was placed at the natural base of the bluff, and therefore, within the ambulatory easement, which extends from the base of the bluff to the mean high tide line (and is depicted as Areas A and B in the original OTD 1988 legal description). The Grant of Easement that continues to protect in perpetuity the sandy beach area

is specifically defined as "that portion of the property extending the width of the Property parallel to the shoreline from the base of the bluff to the mean tide line (MHTL)." The map depicting that area states that both the base of the bluff and the MHTL, "by their very nature [are] ambulatory geographic features and subject to change over time." The grant of easement requires the Applicant to continue to own and maintain the Easement Area and not take any action inconsistent with the Easement. It also prohibits the City from abandoning any portion of the Easement except upon amendment of all of the permits requiring the Grant of Easement. Further, the Grant of Easement states that the Grant of Easement may only be amended with the written consent of the property owner, the City and the Commission.

Therefore, the project does not benefit the public beach area. In fact, the placement of the wall, which extends approximately 28" from the base of the bluff seawards, for the entire length of the wall, has a direct adverse impact on the area of available public beach within the sandy beach easement, contrary to the terms of the easement. Thus, the proposed project creates the need for rather than provides mitigation for its public access impacts and further necessitates an amendment to the 2006 Grant of Easement between the Landowner and the City.

To ensure this existing public access obligation continues to be implemented consistent with all applicable permits, **Special Condition 4: Amended Public Access Easement** requires that the property owner execute and record an amended public access easement authorizing the seawall within the sandy beach area but otherwise maintaining the ambulatory sand beach area in perpetuity. In addition, **Special Condition 2: Public Access Management Plan** requires a Public Access Management Plan to implement the sandy beach easement area in a manner consistent with this permit and the amended Access Easement, including the requirement that the sandy beach area remain ambulatory

Blufftop Portion of Existing Easement

As described above, the existing blufftop lateral access easement is in a fixed location which is now located on the sandy beach, due to the bluff collapse. Thus, the existing blufftop easement area no longer functions for blufftop access. However, as discussed above, the Grant of Easement requires the Applicant to continue to own and maintain the Easement Area and not take any action inconsistent with the Easement. It also prohibits the City from abandoning any portion of the Easement except upon amendment of all of the permits requiring the Grant of Easement. Further, the Grant of Easement contemplated that catastrophic events could impair the Easement and required the repair and reconstruction of the Easement. For example, the City officially declared the collapse of the bluff at this location as such a catastrophic event and declared a state of emergency on February 16, 2010 pursuant to Section 4-2.05 of the Pacifica Municipal Code (**Exhibit 3:** Emergency Permits**, page 12**).

The Applicant is proposing to replace the previous blufftop lateral access with a new 5-foot wide, approximately 530 -foot long sidewalk, with public access amenities, including benches, and an informational kiosk. These proposed blufftop improvements would replace the public access sidewalk that collapsed thus bringing the site back into conformance with past permit requirements for lateral blufftop access. Such replacement was also both contemplated and required by the existing Grant of Easement. As a result, the relocated blufftop lateral access is not appropriately considered mitigation that offsets the project's adverse impacts on public access and recreation. Rather, the project's blufftop lateral access will replace the existing

blufftop lateral access so that the public's ability to access the shoreline at this location is not diminished from what is currently required. The proposed blufftop lateral access, although relocated inland, would be 5-feet wide, and is supported by an upper bluff retaining wall system, which will ensure its stability over time.

To ensure this proposed public access is carried out, **Special Condition 4: Amended Public Access Easement** requires that the Property Owner execute and record an amended public access easement so that the blufftop trail is maintained in perpetuity, and can be relocated inland, if necessary due to further bluff erosion. In addition, **Special Condition 2: Public Access Management Plan** requires a Public Access Management Plan to implement the blufftop trail in a manner consistent with this permit and the amended access easement, including a requirement to clearly indicate where signs will be located and that signs are located, at a minimum, at the entrances to the blufftop lateral trail and stairway.

Mitigation of Project's Impacts on Existing Sandy Beach Easement Area and Public Beach Access

As discussed above, the project's impacts to beach area result in the degradation of public access to and along the beach, and ultimately, the loss of public beach area. Since physical impediments are adversely impacting public access and creating a private benefit for the property owners, mitigation conditions are necessary in order for the development to be consistent with the public access policies of the Coastal Act.

The most appropriate mitigation for the subject development would be the replacement of the 37,895 square feet, or more than 4/5 acre, of beach that would be lost (due to encroachment and the effects of passive erosion) with an identical area of beach in close proximity to the eliminated beach area. There is no doubt that the loss of more than 4/5 acre of sandy beach in an urban area such as Pacifica represents a significant impact to public access and recreation, including a loss of the social-economic value of this recreational opportunity. This sandy beach area is especially significant given its proximity to the existing vertical access and the lack of any nearby vertical access in the area. However, most, if not all, of the beach areas in Pacifica are already in public ownership: private beach area is not available for purchase. And, in contrast to the AIMCO apartment site downcoast where a shoreline structure was recently authorized (CDP 2-08-020),[45] there is no "private" beach area available at this location because the beach at the project site is already subject to public dedication and has been recorded as a public easement. Therefore, an in-lieu fee to purchase replacement public access and recreational property and/or improvements is the most appropriate way to mitigate the project's impacts on sandy beach area.

The Commission has looked at several ways to value beach areas in order to determine appropriate in-lieu mitigation fees, including evaluating the recreational value of the beach in terms of the larger economy, as well as the real estate value of the land that will be taken from public use.

In terms of the recreational beach value, the Commission has recognized that in addition to the more qualitative social benefits of beaches (recreational, aesthetic, habitat values, etc.), beaches

[45] The applicant in that case proposed a 14,171 square foot public access dedication at 360 Esplanade and a $289,014.96 payment to mitigate the impacts of the development which included a 475-foot long revetment.

provide significant direct and indirect revenues to local economies, the state, and the nation. Most people recognize that the ocean and the coastline of California contribute greatly to the California economy through activities such as tourism, fishing, recreation, and other commercial activities. There is also value in just spending a day at the beach and having wildlife and clean water at that beach, the aesthetics of an ocean view, and being able to walk along a stretch of beach. Over the past few decades, economists have developed tools and methods to value many of these market and "non-market" environmental resources, to quantify their values, and to include these values in cost-benefit equations. The results of a number of studies to quantify the economic value of beaches to the state have been published in recent years.[46]

There is no doubt that recreational beach resources in Pacifica generally have a significant market and non-market social value. In this case, though, a real estate evaluation model is being used because it is most closely tied to specific land values in the vicinity of the project. Application of economic valuation methods for the long-term recreational value of the beach to the public suggests that the recommended fee is conservative (and therefore is an underestimate). In addition, application of the economic value of a recreational beach not only requires compilation of daily beach expenditures by beach-goers, it requires assumptions about the consumer surplus of a beach for beach goers. Therefore, the Commission finds using a real estate valuation method as a basis for mitigation can be best documented and is related in nature and extent to the impact. This method requires an evaluation of land that would be capable of being utilized for public access and recreation in the vicinity.

Commission staff compared the market value of a number of coastal properties throughout the Pacifica area using a sales comparison approach as the measure to compensate for the loss of shoreline area.[47] Specifically, this review was conducted by looking at the sales of property in this specific area of Pacifica in the period between April 1996 and December 2012, and then adjusting this amount for value and time to account for the market changes between 1996 and December 2012.[48] The calculated amount reflects only the land value and not the improvement value or tax assessor value. This land-only value is then divided by the property square footage to arrive at a price per square foot.

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[46] Pendleton, L. 2001. Managing Beach Amenities to Reduce Exposure to Coastal Hazards: Storm Water Pollution. Coastal Management 29:239-252; Lipton, D. January/February 2001. How Much is This Beach Worth? Calculating the Value of the Environment. NOAA Coastal Services Magazine; Houston, J.R. 2002. The Economic Value of Beaches – A 2002 Update. Shore & Beach 70-1:9-12; King, P. 1999. The Fiscal Impact of Beaches in California. San Francisco State University: Public Research Institute; Chapman, D. & W. M. Hanemann. 2001. Environmental Damages in Court: The American Trader Case. The Law and Economics of the Environment 319-367; Leeworthy, Vernon R. & Peter C. Wiley. March 1993. Recreational use value for three southern California beaches. NOAA Strategic Environmental Assessments Division, Rockville, MD. Office of Ocean Resources & Conservation; Lew, Daniel. 2002. Valuing Recreation, Time, and Water Quality Improvements Using Non-Market Valuation: An Application to San Diego Beaches. Doctoral Dissertation, University of California, Davis.

[47] Market value is defined as the most probable price which a property should bring in the competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus as defined by the economic definition agreed upon by the Federal financial institutions in the United States of America, as set forth in the Uniform Standards of Professional Appraisal Practice 2002 (page 219).

[48] The median home sales price information for Pacifica came from Zillow.com at http://www.zillow.com/local-info/CA-Pacifica-home-value/r_19811/#metric=mt%3D19%26dt%3D1%26tp%3D5%26rt%3D8%26r%3D19811%26el%3D0, and the earliest period for which Zillow provides this information is April 1996. The median sales price for each month from April 1996 to May 2013 was compared to the median sales price for June 2013; using this percentage, the sale price of each property was adjusted to its June 2013 value, and the value per square foot of the land was calculated, If the property includes an improvement, the San Mateo County Tax Collector's most recent assignment of the proportional value of the land versus the improvement was used to arrive at a land-only unimproved value.

The calculated value serves as a way to gauge the cost of providing an equivalent amount of recreational beach area to that which will be lost over the life of the project. In order to be comparable with the shoreline and steep coastal bluffs characteristic of the northern area of Pacifica, this evaluation focused on a total of 19 properties within the vicinity of Land's End, including Land's End, for which sales information was available in the period between March 1999 and December 2012. The properties used in this analysis are either located directly on the coastline or west (and seaward) of Palmetto and Highway 1 and located within an approximately one-mile area bounded by 700 Palmetto (009-074-030) to the south of the Land's End site and 4000 Palmetto (009-401-030) to the north of Land's End and west of Highway 1 (see **Exhibit 6**). Commission staff considered an approximately 1 mile area of coastal properties within Pacifica for property sales within the last 15 years. South of 700 Palmetto was not utilized because it is a parking lot for beach access to a riprap shore and south of that are commercial/industrial properties, including an auto wrecker, mechanic, vehicle storage, truck rental, and bread factory. The range of values starts at the low end for the property at 4000 Palmetto which is a 7.7 acre parcel of property with an adjusted value of $14.55 per square-foot and at the top of the range, 380 Esplanade has an adjusted value of $102.02 per square-foot. (see table in **Exhibit 6**) The average adjusted value per square foot for these 19 properties is $42.75. This value is a conservative estimate of the market value of unimproved blufftop lots nearest the subject site. Applying this value to the lost 37,895 square feet of sandy beach results in a mitigation fee of $1,620,011, based on a twenty- year period of authorization. The Commission finds that this mitigation fee is most closely tied to specific land values in the vicinity of the project, and is thus both reasonably related, and roughly proportional, to the anticipated impact of the seawall on public recreational beach land. Overall, though, this fee must be considered only partial mitigation for the impacts of the proposed project, since no measure can prevent or offset the loss of the existing recreational beach currently fronting Lands End.

Credits requested by Applicant

The proposed project includes the development of several important public access amenities. Although the blufftop walkway, vertical access and sandy beach access are required to be provided and maintained pursuant to previous permit requirements, as described above, the proposed project includes enhancements that go above and beyond the requirement to provide access by providing a public access overlook with educational kiosk and benches, as well as a more stable, aesthetically pleasing staircase and vertical accessway in this high hazard environment, where the previous vertical access had been washed out by winter storms. The Applicant requests that credit be given for the cost of the enhanced vertical access and requests that credit be given for the impacts caused by the 110-foot portion of the seawall, which the Applicant states is necessary to protect the stairway access down to the beach. The Applicant states that to restore the vertical access to its previous condition would have cost significantly less than the enhanced public access improvements which have now been constructed. Specifically, the Applicant requests that the mitigation fee be reduced by $114,291 to offset mitigation requirements for the 110-foot section of wall. The Applicant also requests that credit be given for the difference between the as-built cost of the vertical access ($1,413,550) and the approximate costs to restore the vertical access to its previous condition ($224,600) which amounts to $1,188,950.

The project's public access enhancements do go beyond the requirements of the previous permit conditions, and therefore, it is appropriate to offset the Applicant's mitigation requirement somewhat, but it is difficult to quantify the exact value of the added enhancement. With regard to the Applicant's request for a credit to offset the impacts of the 110-foot section of wall near the staircase, such a credit is not appropriate in this case, because the entire wall, including this 110-foot section, serves to protect the Lands' End development along this quickly eroding shoreline, and all of the seawall leads to beach access and sand retention impacts regardless. As such, the entire wall is needed to protect the existing development that is in danger of erosion, and its adverse public access impacts must be fully mitigated. However, the enhancements to the vertical accessway and staircase do go above and beyond what was required, and provide a significant public benefit. As previously described, this vertical access is one of the few ways to access the beach in this area of Pacifica, which is highly populated, and therefore, this access provides critical access for many members of the public. Therefore, the benefit of providing a more stable access system here, especially along such high bluffs that are eroding so quickly, is only magnified.

Nonetheless, in their calculation, the Applicant has failed to consider the costs to maintain the replacement vertical access. Because they are required, pursuant to the previous permit conditions, to maintain the public access open and available to the public, if the less stable vertical accessway were installed, the Applicant would incur additional repair and maintenance costs, above and beyond the cost of replacing it one time, over the course of the 20-year development authorization. In its previous condition, the staircase needed significant repairs numerous times due to damage from winter storms. Therefore, the cost to replace the poorer quality staircase is actually higher than estimated, because it also includes extra repair and maintenance costs, and thus the difference between the enhanced vertical access and the poorer quality vertical access is less than estimated. Nonetheless, the lack of repair and maintenance needs for the enhanced vertical access will benefit the public as well, because the staircase would be less likely to be closed for long periods of time, as it has been in the past. In addition, the Applicant has also provided the public view deck, benches and kiosk, which go above and beyond the previous permit requirements. Therefore, the Commission finds that the Applicant's request to reduce the mitigation fee by the additional amount required to build the enhanced staircase, or $1,188,950, is appropriate in this case. Thus, the required public access mitigation fee is $431,061 ($1,620,011 – $1,188,950).

Special Condition 6: Mitigation Fee requires the Applicant to deposit the in-lieu mitigation fee into an interest-bearing account to be established and managed by the State Coastal Conservancy, or another appropriate entity. The funds in the account may only be used for public beach recreational access acquisitions and/or improvements at beaches within Pacifica's city limits (including potentially acquiring beachfront property, providing blufftop access trails both up and downcoast of the site, public access improvements, etc.). The project and mitigation is based on a twenty-year period since that is the length of development authorization, and thus either a permit amendment or a new CDP and the need for a new fee (or other mitigation) would be evaluated at that time.

Thus, the Commission relies on a real estate value estimate, based on the value of land in the vicinity of the project, for the amount of beach area that would have been available for public use but that will instead be occupied over the next 20 years. The Commission's analysis is based on

evidence that the public will lose more than 4/5 of an acre of public recreational beach as a result of the shoreline protective device. The in-lieu fee has been partially offset by the public access enhancements of the project which benefit beach recreational value at the site. The remainder of the in-lieu fee will be used to purchase other shoreline recreational property and/or improvements in the vicinity thereby addressing the remaining impact on public access and recreation of the proposed development based on a site-specific determination of the impact of that development. This methodology ensures that the fee is roughly proportional to the square footage of impacts to sandy beach attributable to the proposed seawall for the length of its authorization. The methodology provides a means to quantify the sandy beach easement area that would have been available for public use but for the presence of the seawall. Thus, requiring the described in-lieu fee as mitigation is both reasonably related and roughly proportional to the anticipated impact of the seawall on the sandy beach easement area because the amount of the fee is related to the square footage of beach lost by the project's twenty years of impacts.

In conclusion, the proposed project would have significant impacts on public access and recreation. However, as proposed and conditioned, the project would mitigate those impacts consistent with Coastal Act requirements, by providing substitute vertical and lateral access areas within a defined public access easement area, by providing public access enhancements and amenities, as well as by paying in-lieu fees to mitigate sand retention impacts and loss of beach area.

Redevelopment of the Site

Special Condition 11: Future Development limits redevelopment of the site. The intent of **Special Condition 11** is to limit further encroachment within public resources and to allow for potential removal of the approved seawall when it is no longer necessary to protect the development that required the seawall. The condition also puts the property owners on notice that redevelopment of the parcels should not rely on bluff or shoreline protective works for stability and such alternatives as removing the seaward portion(s) of the structure, relocation inland, and/or reduction in size should be considered to avoid the need for bluff or shoreline protective devices in this hazardous area. Such options are all feasible for new development and would stop the perpetuation of development in non-conforming locations that would eventually lead to complete armoring of the bluffs and long-term, adverse impacts to the adjacent public beach and State tidelands. In addition, **Special Condition 11: Future Development** recognizes that the proposed seawall is being approved under Section 30235 to protect *existing* structures in danger from erosion. Any future redevelopment of the affected properties will re-evaluate current conditions and new development should be sited safely and independently of any shoreline protection.

Special Condition 11: Future Development defines redevelopment to include additions and expansions, or any demolition, renovation or replacement which would result in alteration or reconstruction of 50 percent or more of an existing structure. The condition indicates that the preferred alternative to shoreline or bluff protective devices includes such options as relocating all or portions of the structures inland. The Applicants have chosen to pursue a seawall at this time over the options that would revise the blufftop development to decrease the risks over the remaining life of these structures. However, new or redevelopment of these parcels that would rely on the approved seawall for protection is not consistent with Section 30253. The condition acknowledges future development on the site beyond repair and maintenance to the existing

structures must meet the requirements of Section 30253 and not require bluff or shoreline protective devices that alter the natural landform of the bluffs. The condition also defines redevelopment to include additions and expansions, or any demolition, renovation or replacement which would result, cumulatively, in alteration or reconstruction of 50 percent or more of an existing structure. Thus, this condition requires that if an Applicant submits an application to remodel 30% of the existing structure, then, for example, 5 years later seeks approval of an application to remodel an additional 30% of the structure, this would constitute redevelopment, triggering the requirement to ensure that the redeveloped structure is sited safely, independent of any shoreline protection.

Riprap Trench and Toe Scour Protection
As described above, the Applicant proposes to retain the riprap in the ledge/trench located seaward of the seawall that is smaller than 2 feet in diameter. As described above, the riprap must be removed and the area restored to maintain consistency with Section 30235 (see Geologic Conditions and Hazards section above). Such elements must also be removed from the project site to ensure that public recreational access on the beach area is not adversely affected by piles of rock where beach sand would otherwise be available for public use (see **Special Condition 1: Revised Project Plans 1(d) and 1(e)**).

Construction Impacts
With respect to construction impacts, this project required the movement of large equipment, workers, materials, and supplies on the adjacent undeveloped public access property, as well as in and around Esplanade and the beach area, resulting in the temporary loss of recreational beach and other public access use areas to the construction zone. These public recreational use impacts were minimized through the Applicant's proposed BMPs, which are extensive, and were further contained[49] through the special conditions of the emergency permits (**Exhibit 3: Emergency Permits**) issued by Commission staff, which included construction parameters that limit the area of construction and for work to take place in a time and manner to minimize any potential damages to resources, including intertidal species; to minimize beach disturbance and limit construction to lowest possible tides; to prohibit construction activities that result in discharge of materials, polluted runoff, or wastes to the beach and marine environment; to keep beach area, and areas used for construction staging and access, free of debris and trash; to limit the times when work can take place (to avoid both weekends and peak summer use months when recreational use is highest); to prohibit construction equipment or materials from being stored on the beach; to immediately stop work in the event of marine mammals being located on or seaward of the project site; to display copies of the signed emergency permits; to clearly fence off the minimum construction area necessary; to keep equipment out of coastal waters and require off-beach equipment and material storage during non-construction times; to minimize impacts to public access and clearly delineate and avoid to the maximum extent feasible public use areas; and to restore all affected public access areas at the conclusion of construction, as well as being responsible for removing or re-depositing any rock or other material dislodged after completion of the temporary construction authorized by emergency permit as soon as possible after such displacement occurs.

[49] By condition to implement the Applicant's BMPs and include those typically applied by the Commission in the manner the Commission typically applies them to cases like this one.

In addition, prior to commencement of any additional construction activities (including the removal of all existing riprap composed of rock greater than fist-sized from within the trench), the Applicant is required to submit for review and approval a Construction Plan with BMPs similar to those described above, that would serve to protect public access during construction (**Special Condition 3: Emergency Permits**).

Conclusion
The project would cause significant adverse impacts to public access and recreation, including through impacts to local sand supply and the loss of a significant area of sandy beach that is held in a public access easement. However, project conditions avoid and minimize these impacts, including by requiring the repair and maintenance of existing public accessways, the removal of unnecessary riprap (including the riprap from within the trench), and payment of in-lieu mitigation fee to offset unavoidable impacts to public access and recreation, As conditioned, the project is consistent with the Coastal Act access and recreation policies sited above.

F. PUBLIC VIEWS

Applicable Policies
Coastal Act Section 30251 states:

> ***Section 30251: Scenic and Visual Qualities.*** *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Coastal Act Section 30240(b), previously cited, also protects the aesthetics of beach recreation areas such as those located directly adjacent to and at the project site.

> ***Section 30240(b):*** *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

In addition, the following certified City of Pacifica LUP language and IP standards, although not the standard of review, can provide pertinent information and guidance regarding the protection of coastal zone visual resources:

> ***LUP Page C-104 – Preservation of Coastal Views, Viewsheds and Vegetation:*** *New development within the viewshed shall not destruct the views to the sea from public roads, trails, and vista points. Methods of achieving this could include: …maximizing vies of the sea in aligning new roadways, bicycle and pedestrian paths… Locations which*

offer open views of the coast shall be developed for public coastal viewing if this can be accomplished without excessive damage to the moderately sensitive vegetation. Trails and beach accesses across native coastal vegetation shall be designed to protect the vegetation from trampling and scarring.

IP section 9-4.4408 - Coastal View Corridors: *(a) Intent. The provisions of this Section shall apply to all new development subject to a coastal development permit in the CZ District and within a coastal view corridor as designated in the LCP Land Use Plan. The intent of these provisions is to: (1) Protect public views toward and along the ocean and scenic areas; (2) Provide visual compatibility with the surrounding character; and (3) Restore and enhance visual quality in visually degraded areas. (b) Development Standards. The following standards shall apply to new development within coastal view corridors. (1) Structures shall be sited in order to minimize alteration of natural topography and landforms, tree removal, and grading only to the extent necessary to construct buildings and access roads; (2) Structures shall be sited on the least visible area of the property and screened from public view using native vegetation, as feasible; (3) Structures shall incorporate natural materials and otherwise shall incorporate natural materials and otherwise shall blend into the natural setting; (4) New development shall be consolidated or clustered within the slopes of the natural topography, as feasible; (5) Landscape screening and restoration shall be required to minimize the visual impact of new development; and (6) New utility and transmission lines shall be placed underground. Development of overhead lines will be considered only if such undergrounding is determined to be infeasible and is approved by the Planning Commission.*

Analysis

Much of the bluff along the Pacifica coastline has been armored at its base, primarily by rock riprap and several soil nail walls, many of which have not been camouflaged to replicate the look of a natural bluff face. Upcoast of the project site, there are two areas with sections of riprap armoring: there is approximately 3,000 tons of unpermitted rock that has been placed at the base of the bluff at the property known as Dollar Radio[50] and approximately 1,000 tons in front of the adjacent property known as Pacific View Villas.[51] The properties to the south include 310 - 340 Esplanade with approximately 2,500 tons and 350 linear feet of unpermitted riprap; and further to the south 360 - 380 Esplanade has an authorized rock riprap revetment along the base of the bluff that is 475 feet long, and three soil nail wall segments totaling 5,006 square feet.[52]

Although the proposed subject seawall introduces new massing into the viewshed as compared to the natural bluff face, it is encapsulated in a faux bluff design that approximates the look of natural bluffs in the vicinity. Provided the camouflaging treatment appropriately works, the project should not significantly adversely affect the public view (see **Exhibit 4: Site Photographs pages 5-8** for site photographs of the finished project). The Applicant proposed to

[50] Currently, the CDP application for Dollar Radio (2-11-034) is still pending.

[51] CDP 3-82-228 authorized riprap protection at time of construction and serves to protect drainage installations. In 2010 a permit waiver (2-10-012-W) was issued for placement of an additional 1,000 tons of riprap in front of the property at the base of the bluff but was not to exceed the original footprint.

[52] Subject of CDP 2-08-020.

design and construct the wall to mimic, blend and be compatible with the surrounding natural landform to the maximum extent feasible, including in form, inclination, texture, and color to create the concrete facing of the proposed seawall to approximate natural bluffs. When done correctly, such sculpting can help to camouflage large slabs of concrete, although even then, there may be a significant change to the current natural aesthetic; when done poorly, however, it just reinforces the unnatural element present in the back beach area. This approval is conditioned to ensure that the seawall is made to mimic natural undulating bluff landforms in the vicinity in terms of integral mottled color, texture, and undulation to the maximum extent feasible (see **Special Condition 1: Revised Project Plans**). As shown by the current site photographs (see **Exhibit 4: Site Photographs, pages 5-8**), the vertical seawall construction is now complete and visually and effectively blends in with the existing natural bluff face, while the encased stairway remains mostly hidden when viewed from the beach.

The concrete tied-back seawall stands 35 feet high in total, with approximately 20 feet that is currently visible above the summer beach sand elevation (see **Exhibit 2: Project Plans, pages 3 and 6**). The remaining bluff face rising up to about 100 feet at the top remains exposed and is allowed to erode naturally to help cover and disguise the seawall. This could result in a negative public viewshed impact because the exposure at the upper bluff makes it more obvious that the seawall at the lower bluff is a concrete structure and not a natural bluff face. However, the bluff material, by being allowed to erode naturally, creates piles of talus and colluvium that will help serve to partially hide the concrete seawall at times. In addition, the seawall is faced with a sculpted concrete surface that mimics natural undulating bluff landforms in the vicinity and is visually cohesive with the other elements of the seawall. Additional design enhancements include drainage areas that have been integrally incorporated into the seawall finish. These measures help to offset the negative viewshed impacts.

The proposed project is an improvement from the original project proposed under the first emergency permit to construct a larger rock riprap revetment of 45,000 tons that would have meant a greater impact on visual resources. The amount of riprap visible at the ends of the seawall on the Applicant's property is up to 60 tons and adds about 10 feet to the length of each end of the proposed seawall. Both ends of the seawall incorporate riprap rock contoured in a non-linear manner in order to follow the natural lines of the bluff, as opposed to a straight-line that would appear to describe a box-like and unnatural shape. All extraneous riprap and concrete debris adjacent to the seawall, and to the upcoast and downcoast bluffs, is required to be removed (**Special Condition 1 A (5)**). This ensures the end walls do not cause as much of a significant impact on the viewshed. Furthermore, the downcoast riprap end wall may be removed in the near future when the neighboring property seeks approval for shoreline armoring, and potentially installs a concrete wall that could connect to this one.

Riprap Trench and Toe Scour Protection

As described above, the Applicant proposes to retain the riprap that is less than 2 feet in diameter in the ledge/trench located seaward of the seawall. As described above, the trench and riprap must be removed and the area restored, to maintain consistency with Section 30235 (see Geologic Conditions and Hazards section above). Such elements must also be removed from the project to ensure that public views are not adversely affected by piles of rock and inappropriate landform alteration of the beach area (see **Special Condition 1(d) and 1(e)**). With regard to the proposed toe scour protection, the riprap is expected to be buried under beach sand for the

majority of the year. Therefore, although the toe scour protection would increase the adverse visual impacts of the project, those impacts would most likely be limited to winter months.

Upper Bluff Retaining System
The buried upper bluff retaining wall system incorporates 54 concrete pilings (30 feet in diameter) set between 40 and 65 feet deep connected by a concrete grade beam. The upper bluff is designed to erode naturally and over time these pilings will likely become exposed. The Applicant estimates that such exposure will not occur for approximately 45 years. However, given the unstable nature of the bluffs, as described in the Geologic Conditions and Hazards section, above, it is possible that such exposure could occur much sooner. When exposed, the upper bluff retaining wall will have a significant adverse visual impact on views to the site from the public path and staircase and from the beach itself. Instead of natural bluff forms, the massive concrete pilings and grade beam system will be prominent in the view and detract from the natural setting. Therefore, in order to avoid and minimize these future visual impacts, **Special Condition 10: Caisson and Grade Beam Exposure,** requires the Applicant to apply for a CDP amendment to address such visual impacts as soon as any portion of the upper bluff retaining system becomes exposed. This future CDP amendment would be required to incorporate a plan to cover or camouflage the exposed retaining system so as to avoid and minimize adverse impacts on visual resources, and would be required to provide mitigation for coastal resource impacts otherwise.

Landscaping and Drainage
The Commission typically requires native noninvasive landscaping designed to cascade over the top of armoring projects to partially screen the top of such projects from public view and to provide a more natural edge to the top of the wall as seen from above and below. Such requirements are applied in this case to help soften the appearance of the seawall, as well as to help with bluff stability otherwise, including through removal of nonnative and invasive plant species (see **Special Condition 1 (g)**). The engineered slopes (maximum 1:1) surrounding the switchback pathway descending the bluff and connecting to the stairway incorporated into the seawall, provide large areas that can be landscaped and vegetated with native and noninvasive species. Similarly, the pathway system present on top of the bluff presents a large area available for landscaping. Provided such landscaping consists only of native noninvasive blufftop plant species that are adapted to seaside locations and salt air, and provided all such landscaping is maintained in good growing conditions in such a way as to not block views from Esplanade and the public pathway at Lands End Apartments (**see Special Condition 1 (g)**), such landscaping should help offset visual impacts and improve and soften views of the project site as seen from the beach below and from the Esplanade corridor and project site above.

As conditioned, the Commission finds the project consistent with the above-cited Coastal Act visual resource policies.

G. MARINE RESOURCES

Applicable Policies
The Coastal Act protects the marine resources and habitat offshore of this site. Coastal Act Sections 30230 and 30231 provide:

> ***Section 30230*** *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*
>
> ***Section 30231*** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

In addition, the following certified City of Pacifica IP section, although not the standard of review, can provide pertinent information and guidance:

> ***IP Section 9-4.4405(c): Grading and Drainage****… (c) Development Standards. (1) The following standards shall apply to new development. (i) Alteration of natural topography and removal of existing trees shall be minimized to the maximum extent feasible so as to maintain the natural surface drainage system; (iii) Cut-and Fill surfaces shall be stabilized by planting low maintenance, native ground cover and shrubs; (viii) Removal of sands characteristic of the Pacifica shoreline shall be minimized; (2) The following standards shall apply to ensure long term grading and drainage management of the project site: (i) Grading of environmentally sensitive habitat areas shall occur only when necessary to protect, maintain enhance, or restore the habitat; (ii) Areas of soil or landform disturbance shall be identified, and shall be revegetated with low maintenance, native ground cover and shrubs to reduce erosion potential; (iii) Subgrade drainage of all wet soils shall be discharged into natural surface drainage, where feasible; (iv) Adequate drainage facilities, including grease and silt traps where necessary to minimize pollutants entering runoff water, shall be provided; (v) Potential impacts as identified in the grading and drainage plan shall be mitigated to a level of insignificance; and (vi) Mitigation measures identified in the grading and drainage plan shall be considered and made conditions of project approval.*

In accordance with emergency permit conditions, construction took place on the beach at low tides to ensure that equipment and construction activities did not enter the ocean. The proposed project plans include construction methods typically required by the Commission to protect water quality and marine resources during armoring construction, included maintaining good construction site housekeeping controls and procedures, the use of appropriate erosion and sediment controls, a prohibition on equipment washing, refueling, or servicing on the beach, etc. Emergency permit 2-10-007-G **Special Conditions 10 to 15**, and emergency permit 2-11-005-G **Special Conditions 17 to 22**, included these construction requirements (see **Exhibit 3: Emergency Permits** for conditions and details).. In addition, prior to commencement of the remainder of construction, the Applicant is required to submit for review and approval a

Construction Plan with BMPs to avoid and minimize impacts to water quality and marine resources (see **Special Condition 3: Construction Plan**).

As conditioned, the project is consistent with Coastal Act Sections 30230 and 30231 regarding protection of marine resources and offshore habitat.

H. OTHER AGENCY APPROVALS

California State Lands Commission
The California State Lands Commission (CSLC) has not been contacted by the Applicant for a jurisdictional determination. The permit is conditioned to require written evidence either of SLC approval of the project or evidence that such approval is not required (see **Special Condition 13: State Lands Commission Authorization)**.

Army Corps of Engineers
The U.S. Army Corps of Engineers (ACOE) has regulatory authority over the proposed project under Section 10 of the Rivers and Harbors Act of 1899 (*33 U.S.C. 1344*) and Section 404 of the Clean Water Act. Section 10 of the Rivers and Harbors Act regulates the diking, filling and placement of structures in navigable waterways. Section 404 of the Clean Water Act regulates fill or discharge of materials into waters and ocean waters. Portions of the project are located within the jurisdiction of the Army Corps of Engineers and the use of equipment and machinery on the beach up to the high tide line. Accordingly, this approval is conditioned to ensure that the project (as conditioned and approved by this CDP) has received all necessary authorizations (or evidence that none are necessary) from the U.S. Army Corps of Engineers (see **Special Condition 14: Army Corps of Engineers Authorization**).

I. REIMBURSEMENT IN CASE OF CHALLENGE

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications.[53] Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 15: Liability for Costs and Attorney Fees** requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this permit.

J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in

[53] See also California Code of Regulations Title 14 Section 13055(g).

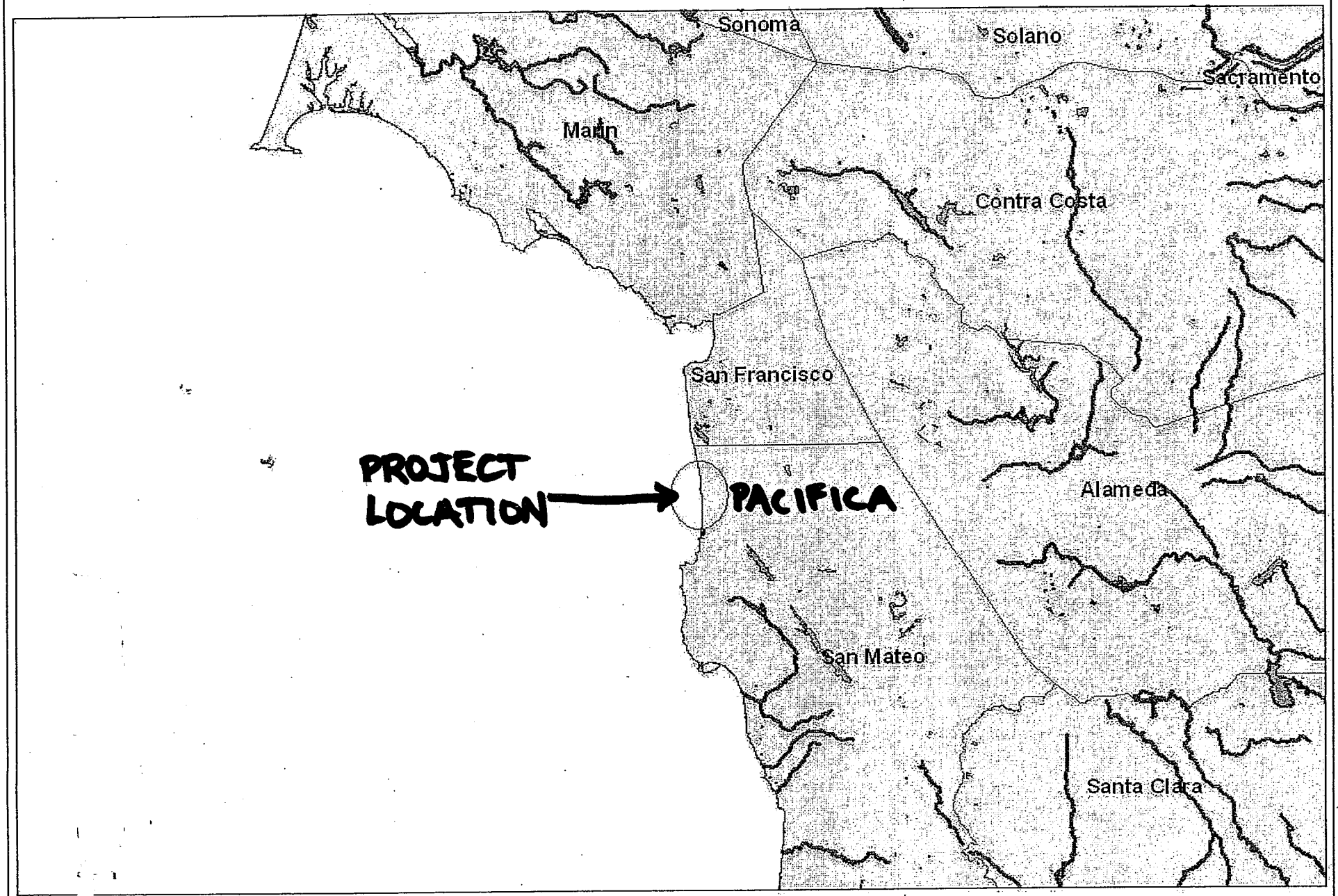
conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The preceding coastal development permit findings in this staff report have discussed the relevant coastal resource issues with the proposal, and the permit conditions identify appropriate mitigations to avoid and/or lessen any potential for adverse impacts to said resources. The Commission incorporates these findings as if set forth here in full. Further, all public comments received to date have been addressed in the findings which are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

- CDP 3-83-015
- ECDP 2-10-005 and ECDP 2-11-007
- City of Pacifica Local Coastal Program (LCP) California Coastal Commission (CCC) Consent to the Extinguishment of Irrevocable Offers to Dedicate 2006 – 154688. Recorded in Official Records, San Mateo County, 2006
- Multiple project reports submitted by RJR Engineering Group, including:
  - As Built Plans (January 5, 2012 and July 25, 2012)
  - Seawall and Bluff Stabilization Plans (April 2011)
  - Seawall and Public Access Engineering Plans – Coastal, Civil and Structural Sheets (January 5, 2011)
  - Seawall/Retaining Wall Structural Calculations and Specifications for Lands End Apartments (November 2010)
  - Geotechnical Feasibility Supplemental Letter #1, Emergency Repair Application (December 10, 2010)
  - Emergency Repair Applications for Proposed Bluff Stabilization (January 31, 2010 and August 5, 2010)
  - Response to CCC Review CDP (April 18, 2011)
  - Addendum #2 Sand Mitigation Assessments (May 24, 2011)
  - Addendum #3 Existing Rip Rap Assessment, Response to CCC (May 15, 2012)
  - Addendum #4 Mitigation Measure Proposal, Response to CCC (May 16, 2012)
  - Addendum #5 Easement Mitigation Measure Proposal, Response to CCC (May 24, 2012)
  - Addendum #6 Toe Protection, Response to CCC (February 21, 2013)
  - Updated Project Description, dated November 5, 2012
  - TerraCosta Consulting Group, February 21, 2013, Third-Party Coastal Bluff Stability Assessment, Land's End Development, 100 Esplanade Way,
- Real Estate Valuation Spreadsheet



COASTAL

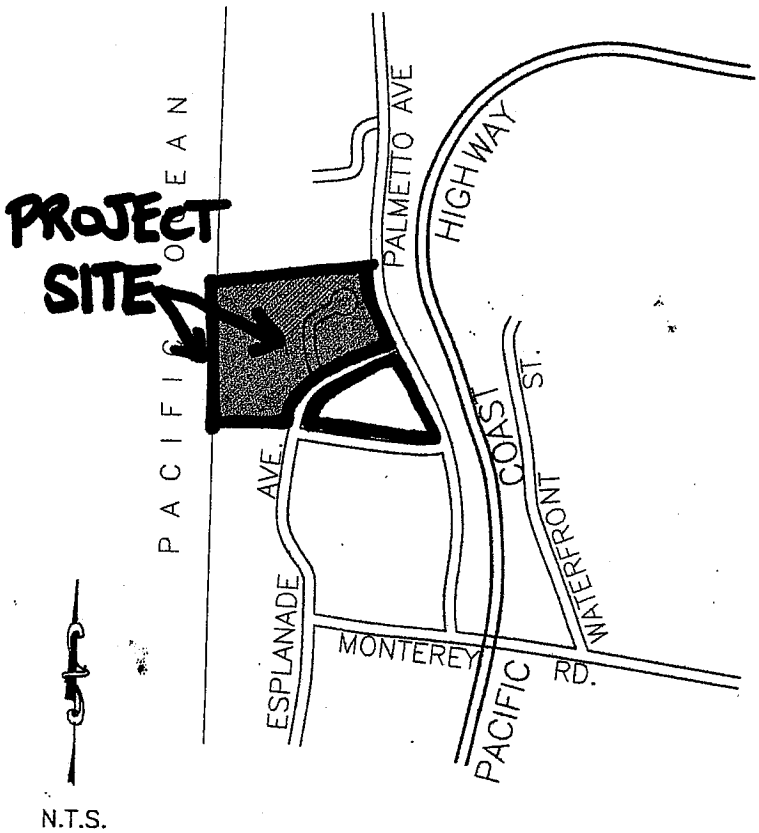
0 22,000 44,000 Feet

0 5,500 11,000 Meters

Locations approximate.
For illustrative purposes only.

22-23	PERMANENT TIE-BACK DETAILS
24	PILE STRUCTURAL DETAILS
25	PROPOSED PUBLIC ACCESS PATH
26	SITE EASEMENT PLAN

AS-BUILT C



PROJECT LOCATION

N.T.S.

RECEIVED

APR 03 2012

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

REGISTERED PROFESSIONAL ENGINEER
ROBERT W. ANDERSON
C-058383
EXP. 12-31-12
CIVIL
STATE OF CALIFORNIA

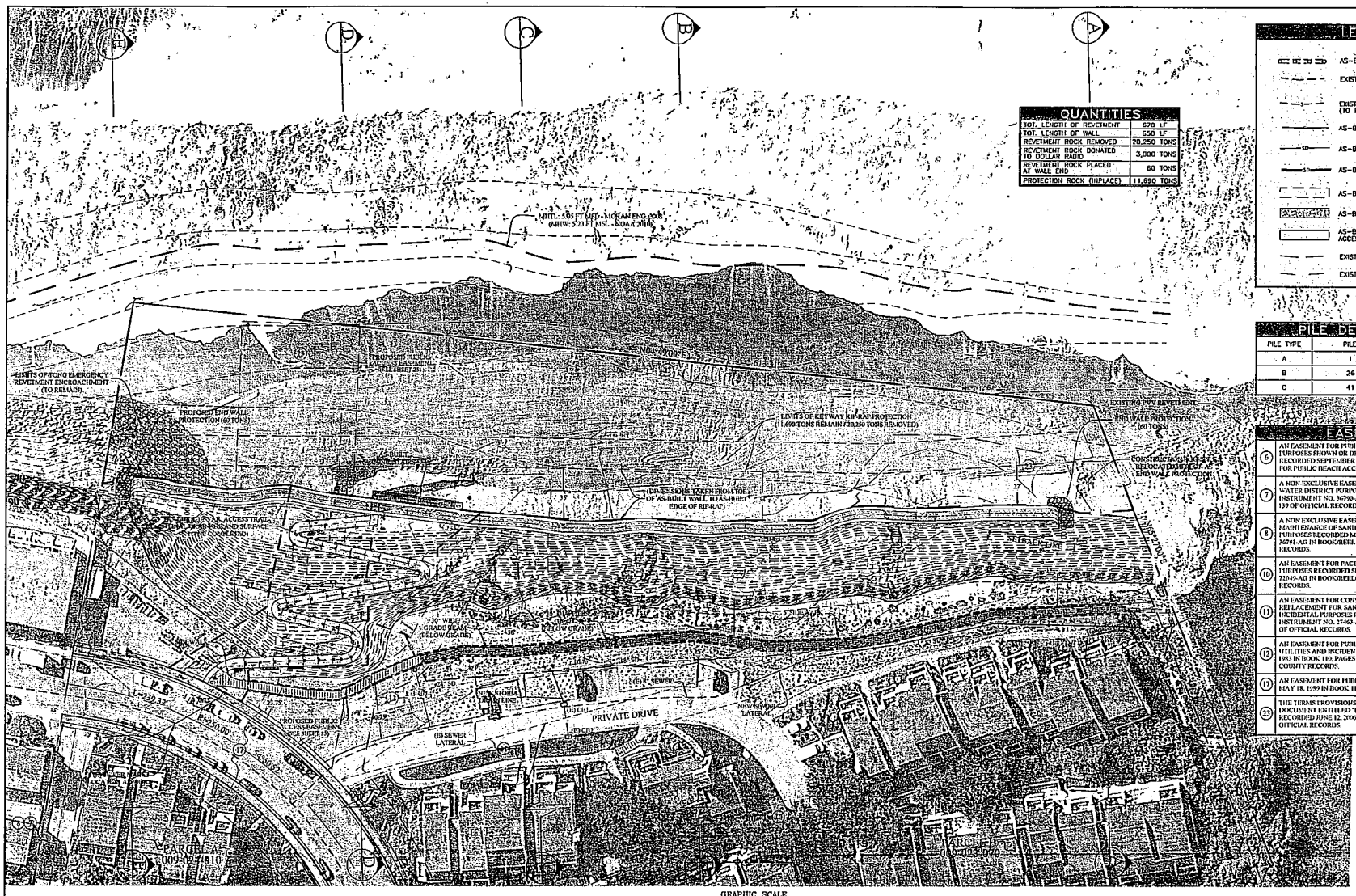
COASTAL COMMISSION PERMIT NO.: 2-11-005-G

AS-BUILT - COVER SHEET

FPA/BAF LAND'S END ASSOC., LLC
BLUFF STABILIZATION PLANS
100 ESPLANADE AVENUE
APN 009-023-070 & 009-024-010
PACIFICA, CA

SHEET 1
OF 26

DRAWING NO.



QUANTITIES	
TOT. LENGTH OF REVETMENT	670 LF
TOT. LENGTH OF WALL	650 LF
REVETMENT ROCK REMOVED	20,250 TONS
REVETMENT ROCK DONATED TO DOLLAR RADIO	3,000 TONS
REVETMENT ROCK PLACED AT WALL END	60 TONS
PROTECTION ROCK (INPLACE)	11,690 TONS

LEGEND

- AS-BUILT PILE AND GRADE BEAM
- EXISTING SEWER MAIN LINE
- EXISTING 8" SEWER LATERAL LINE (TO REMAIN)
- AS-BUILT 8" SEWER LATERAL LINE
- AS-BUILT 18" STORM DRAIN LINE
- AS-BUILT 24" STORM DRAIN LINE
- AS-BUILT KEYWAY SLOPE PROTECTION
- AS-BUILT 5' SIDEWALK
- AS-BUILT 10' BEACH ACCESS WALKWAY
- EXISTING SETBACK LINE
- EXISTING EASEMENT LINE

PILE DETAIL TABLE		
PILE TYPE	PILE NUMBERS	DEPTH
A	1 THRU 25	65'
B	26 THRU 40	50'
C	41 THRU 54	40'

EASEMENTS

6	AN EASEMENT FOR PUBLIC BEACH ACCESS AND INCIDENTAL PURPOSES SHOWN OR DEDICATED ON THE MAP FILED OR RECORDED SEPTEMBER 14, 1972 IN BOOK 17 PAGE 48 OF MAPS FOR PUBLIC BEACH ACCESS AND INCIDENTAL PURPOSES.
7	A NON-EXCLUSIVE EASEMENT FOR NORTH COAST COUNTY WATER DISTRICT PURPOSES RECORDED MAY 22, 1973 AS INSTRUMENT NO. 36798-AG IN BOOK/REEL 6394, PAGE/IMAGE 139 OF OFFICIAL RECORDS.
8	A NON EXCLUSIVE EASEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF SANITARY SEWER AND STORM DRAIN LINE PURPOSES RECORDED MAY 22, 1973 AS INSTRUMENT NO 36791-AG IN BOOK/REEL 6394, PAGE/IMAGE 141 OF OFFICIAL RECORDS.
10	AN EASEMENT FOR PACIFIC GAS AND ELECTRIC COMPANY PURPOSES RECORDED SEPTEMBER 6, 1973 AS INSTRUMENT NO. 72049-AG IN BOOK/REEL 6464, PAGE/IMAGE 554 OF OFFICIAL RECORDS.
11	AN EASEMENT FOR CONSTRUCTION MAINTENANCE AND REPLACEMENT FOR SANITARY SEWER PIPE LINE AND INCIDENTAL PURPOSES RECORDED MARCH 6, 1975 AS INSTRUMENT NO. 27463-AH IN BOOK /REEL 6975, PAGE/IMAGE 28 OF OFFICIAL RECORDS.
12	AN EASEMENT FOR PUBLIC ACCESS, OPEN SPACE, PUBLIC UTILITIES AND INCIDENTAL PURPOSES RECORDED AUGUST 18, 1983 IN BOOK 140, PAGES 41 THROUGH 53 OF SAN MATEO COUNTY RECORDS.
17	AN EASEMENT FOR PUBLIC STREET PURPOSES RECORDED, MAY 18, 1999 IN BOOK 108, PAGES 99 AND 100 OF MAPS.
23	THE TERMS PROVISIONS AND EASEMENTS CONTAINED IN THE DOCUMENT ENTITLED "PUBLIC ACCESS EASEMENT" RECORDED JUNE 12, 2006 AS INSTRUMENT NO. 2006-087276 OF OFFICIAL RECORDS.

NOTE: GOOGLE AERIAL IMAGE HAS BEEN SCALED AND STRETCHED TO APPROXIMATELY REPRESENT THE FIELD CONDITIONS BUT IS NOT TO THE SCALE OF THE LINE WORK PROVIDED. IMAGE IS FOR REFERENCE ONLY AND ONLY THE LINE WORK PROVIDED IS TO SCALE PER THE LATEST AS-BUILT FIELD SURVEY DATA.

GRAPHIC SCALE
0 1" 2" 3" 4"
0 30 60 90 120
1" = 30'

E			
D			
C			
B			
A			
△	DESCRIPTION OF REVISION	RCE	APP.	DATE

Prepared by:
RJR ENGINEERING GROUP
Planning, Civil Engineering, Land Surveying, Water Resources Engineering, Construction Management, Water Resources Engineering
3300 Center Ave. Suite 101, Oxnard, CA 93030
(805) 485-3931 (805) 482-8404 FAX
E-mail: rjr@rjreng.com

DESIGNED TTA CHECKED RWA
PROJ. ENG. Robert W. Anderson
C-058383 7-25-12
REG. NO. DATE

CITY OF PACIFICA

CALIFORNIA COASTAL COMMISSION

AS-BUILT – PROPOSED BLUFF REPAIR
BLUFF STABILIZATION PLANS
100 ESPLANADE AVENUE
PACIFICA, CA

SHEET 5 OF 25
DRAWING NO

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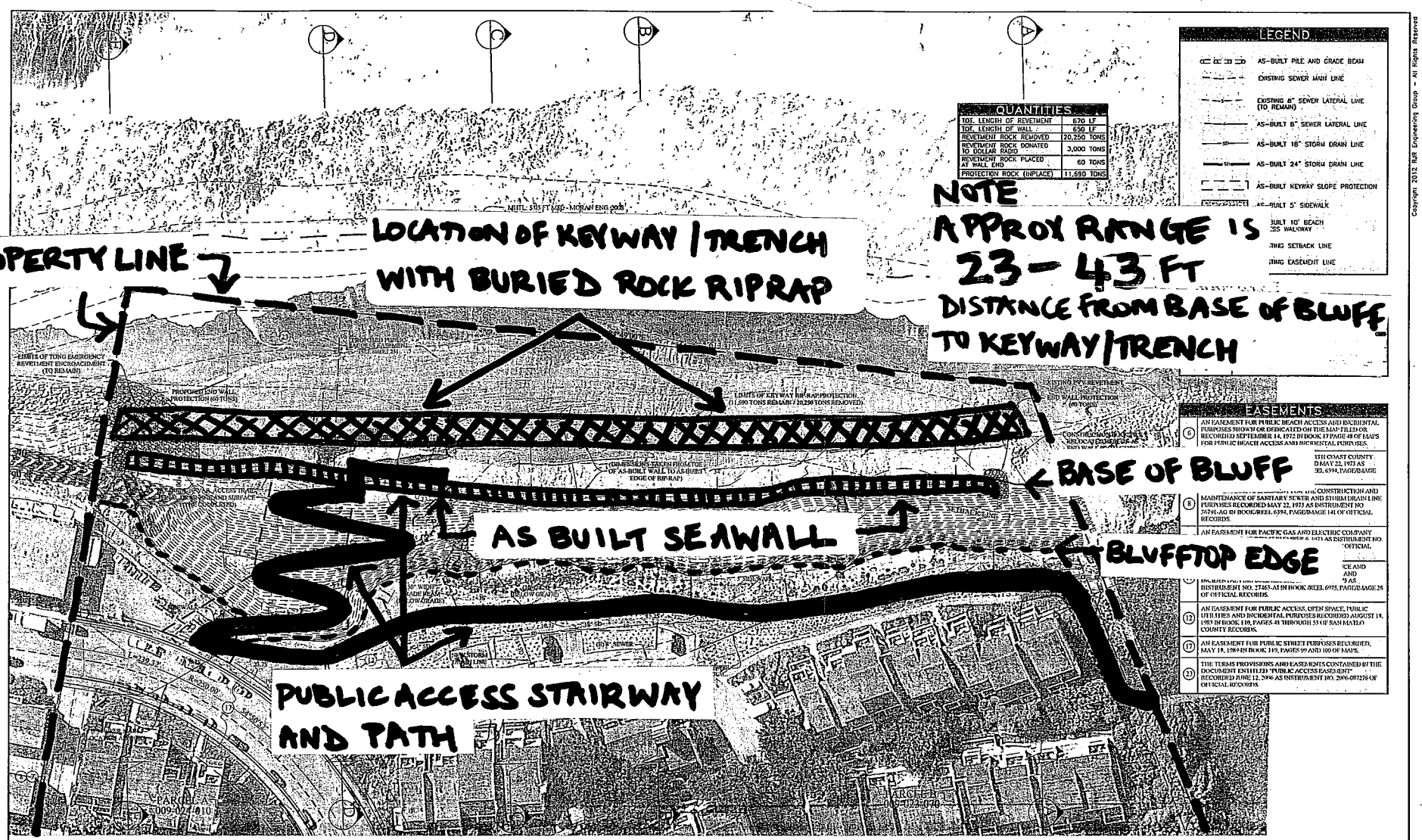

NOTE: GOOGLE AERIAL IMAGE HAS BEEN SCALED AND STRETCHED TO APPROXIMATELY REPRESENT THE FIELD CONDITIONS BUT IS NOT TO THE SCALE OF THE LINE WORK PROVIDED. IMAGE IS FOR REFERENCE ONLY AND ONLY THE LINE WORK PROVIDED IS TO SCALE FOR THE LATEST AS-BUILT FIELD SURVEY DATA.

	DESCRIPTION OF REVISION	RCE	APPR.	DATE
E				
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Prepared by: RJR ENGINEERING GROUP

DESIGNED TTA CHECKED RWA
PROJ. ENG. Robert W. Anderson
C-058383 7-25-12
REG. NO. DATE

CITY OF PACIFICA

CALIFORNIA COASTAL COMMISSION

AS-BUILT – PROPOSED BLUFF REPAIR
BLUFF STABILIZATION PLANS
100 ESPLANADE AVENUE
PACIFICA, CA

SHEET 5 OF 25

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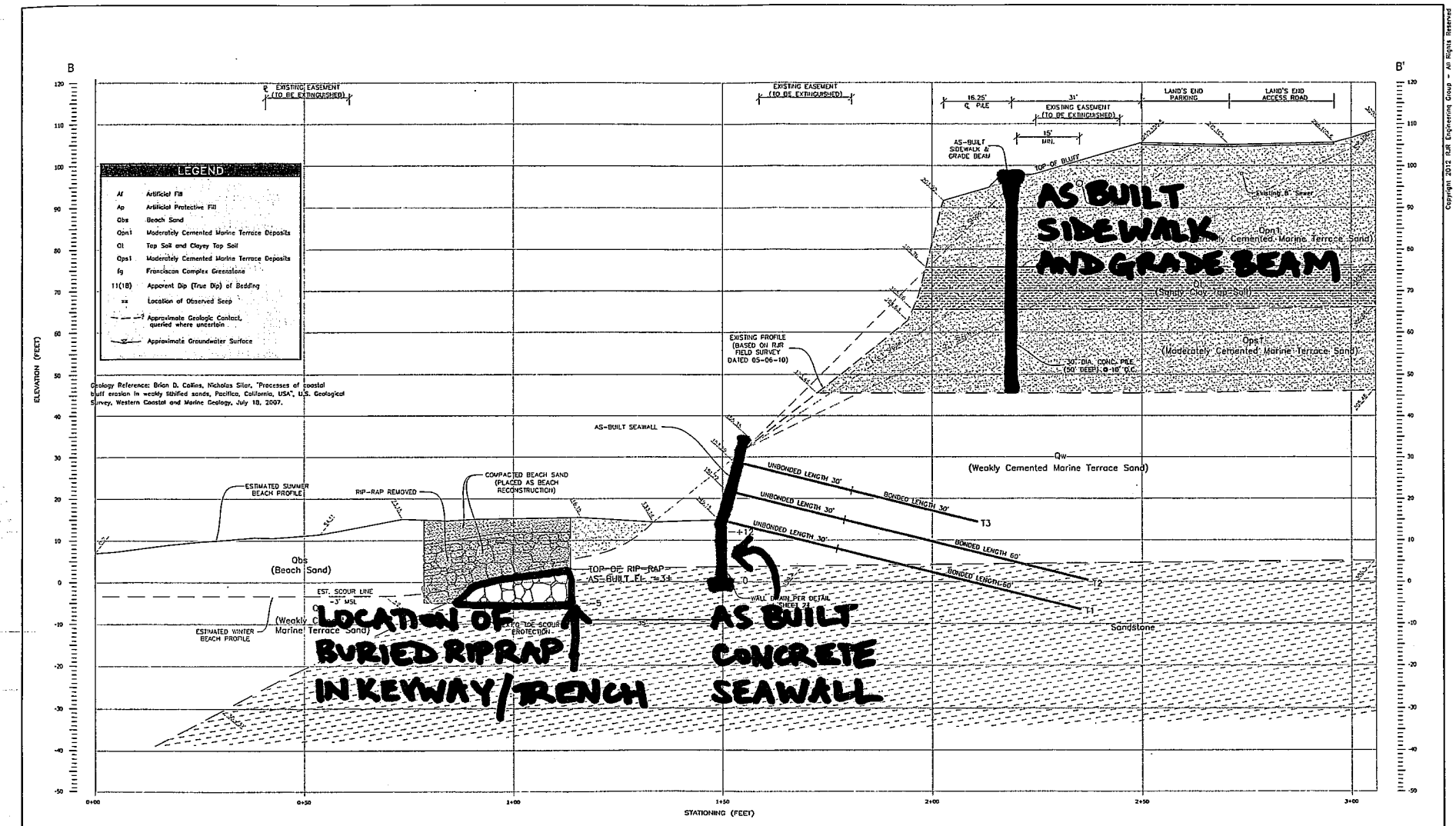


CROSS – SECTION B–B'
PROPOSED CONDITION

GRAPHIC SCALE
1" = 10'

AS–BUILT

E				
D				
C				
B				
A				
△	DESCRIPTION OF REVISION	REC	APP.	DATE

Prepared by:
RJR ENGINEERING GROUP
Planning Coastal Engineering Flood Control Hydrology
Geotechnical Engineering Geology Water Resources Environmental
2320 Central Ave. Suite 206, Oxnard, CA 93030
(805) 485-2935 (805) 485-6496 FAX
E-mail: rjr@rjrgroup.com

DESIGNED TTA | CHECKED RWA
PROJ. ENG. Robert W. Anderson
C-058383 7-25-12
REG. NO. DATE

CITY OF PACIFICA

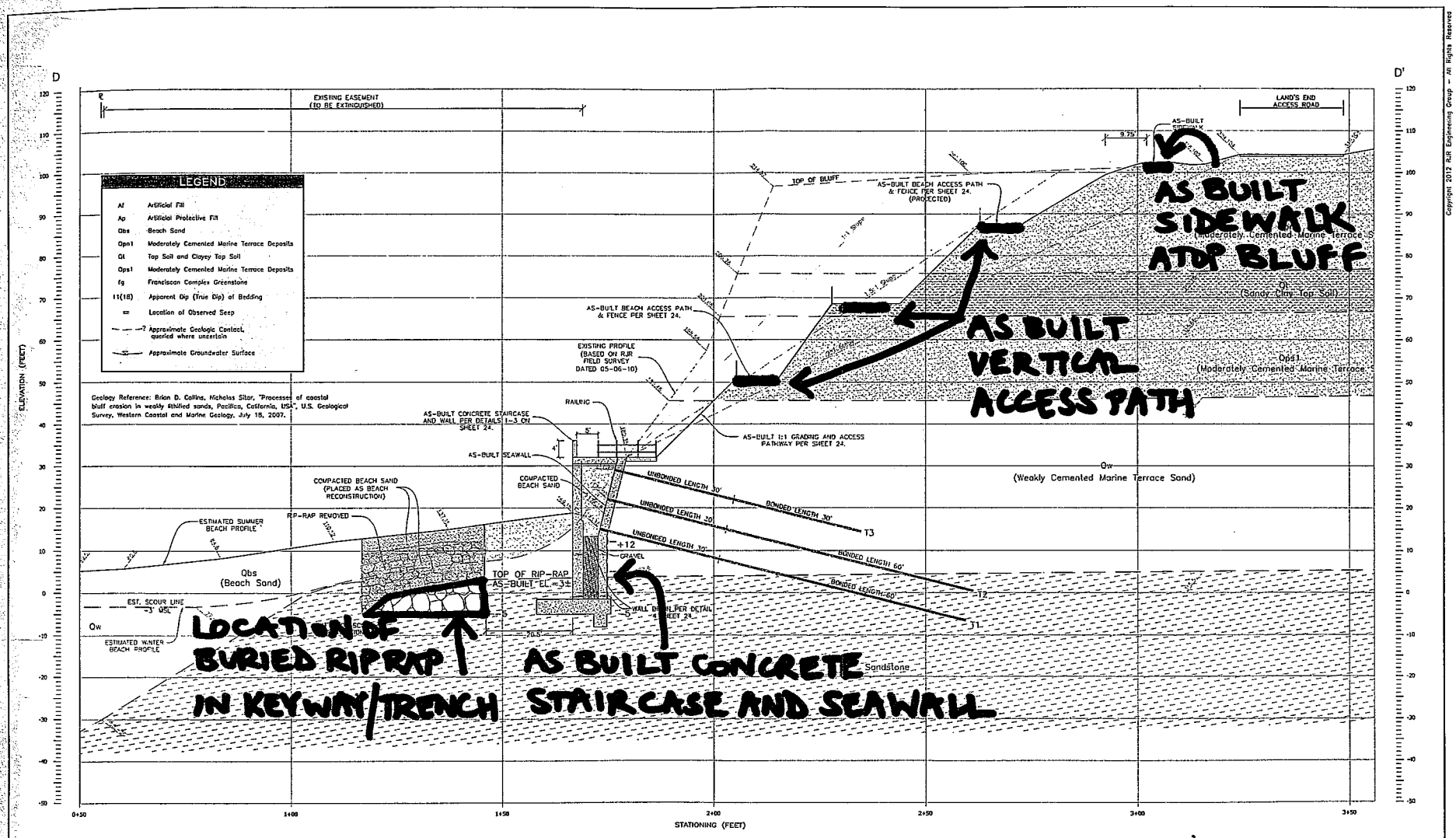
CALIFORNIA COASTAL COMMISSION

CROSS SECTION B–B' (PROPOSED)
BLUFF STABILIZATION PLANS
100 ESPLANADE AVENUE
PACIFICA, CA

SHEET 11 OF 25
DRAWING NO.

AS-BUILT "PROPOSED" CROSS SECTION

3



CROSS – SECTION D2–D2'
PROPOSED CONDITION

GRAPHIC SCALE
1" = 10'

AS–BUILT

DESCRIPTION OF REVISION	REC	APP.	DATE

Prepared by: RJR ENGINEERING GROUP

DESIGNED TTA CHECKED RWA
PROJ. ENG. Robert W. Anderson
C-056383 7-25-12
REG. NO. DATE

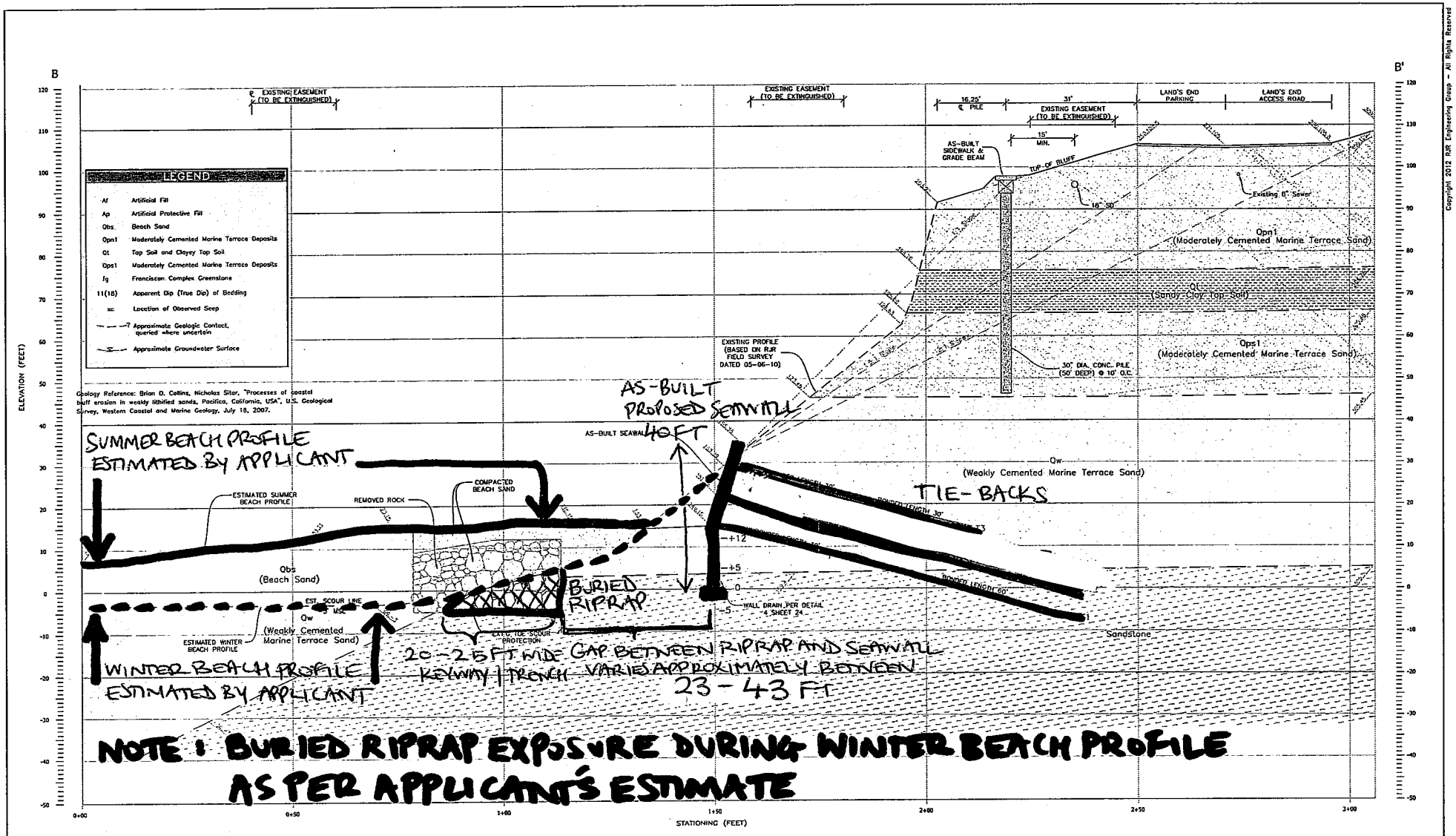
CITY OF PACIFICA

CALIFORNIA COASTAL COMMISSION

CROSS SECTION D–D' (PROPOSED)
BLUFF STABILIZATION PLANS
100 ESPLANADE AVENUE
PACIFICA, CA

SHEET 15 OF 25
DRAWING

AS-BUILT "PROPOSED" CROSS SECTION



CROSS – SECTION B–B'
PROPOSED CONDITION

AS–BUILT

E				
D				
C				
B				
A				
△	DESCRIPTION OF REVISION	REC	APP.	DATE

Prepared by: RJR ENGINEERING GROUP

DESIGNED TTA CHECKED RWA
PROJ. ENG. Robert W. Anderson
C-058383 4-24-12
REG. NO. DATE

CITY OF PACIFICA

CALIFORNIA COASTAL COMMISSION

CROSS SECTION B–B' (PROPOSED)
BLUFF STABILIZATION PLANS
100 ESPLANADE AVENUE
PACIFICA, CA

SHEET 11 OF 25
DRAWING NO.

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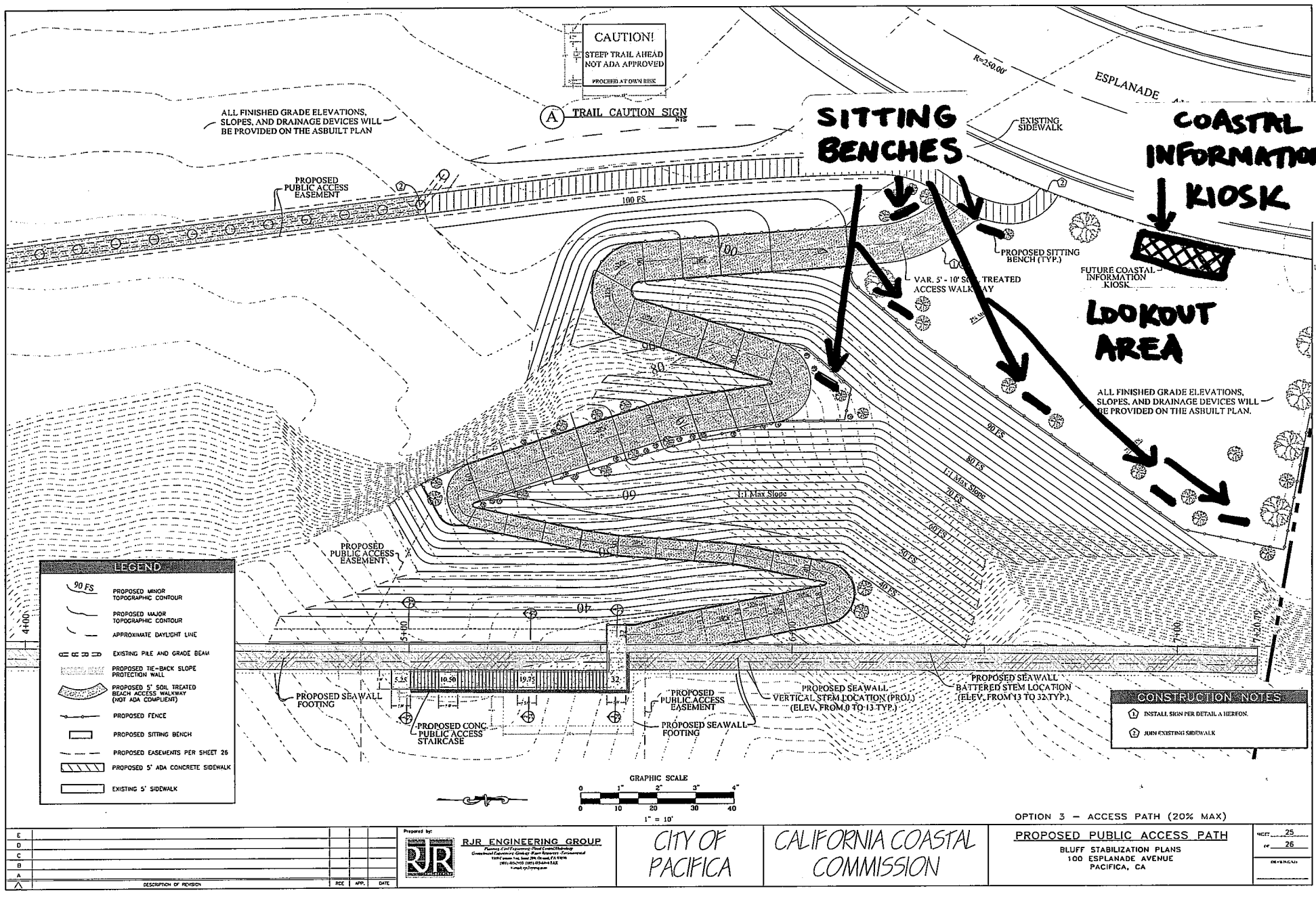
PROPOSED PUBLIC AMENITIES



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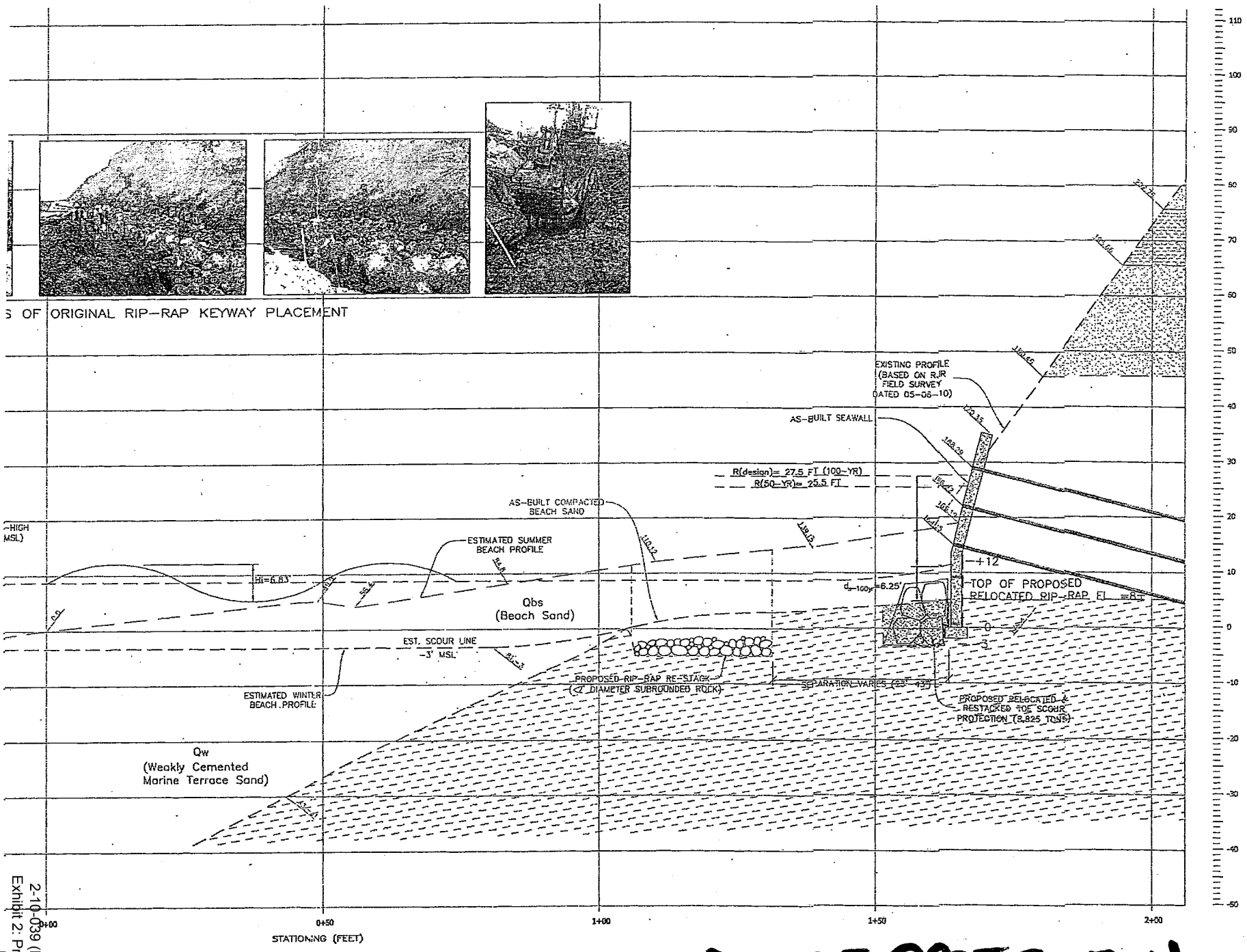


CROSS – SECTION C1–C1'

PROPOSED TOE PROTECTION

GRAPHIC SCALE

PROPOSED RIP-RAP REVETMENT MITIGATION PLAN

LANDS END APARTMENTS SEA WALL

Copyright 2012 RJR Engin

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260
FAX (415) 904- 5400

EMERGENCY PERMIT

Rob Anderson
RJR Engineering
3500 Camino Avenue, Suite 200
Oxnard, CA 93030

Date: February 16, 2010
Emergency Permit No. 2-10-007-G

FPA/BAF Land's End Associates, LLC
4665 MacArthur Court, Ste. 200
Newport Beach, CA 92660

LOCATION OF EMERGENCY
100 Esplanade Avenue (Pacifica, San Mateo County) APN 009-023-070

EMERGENCY WORK
Construction of a temporary access road and installation of a riprap revetment on the beach along the length of the property, as shown in the project plans attached as Appendix 3 to the letter from RJR Engineering to Redwood Construction, dated January 31, 2010.

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information that an unexpected occurrence in the form of accelerated bluff erosion posing a threat to the apartment complex requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services pursuant to 14 Cal. Admin. Code Section 13009. The Executive Director of the California Coastal Commission hereby finds that:

(a) An emergency exists that requires action more quickly than permitted by the procedures for administrative or ordinary coastal development permits (CDPs), and that the development can and will be completed within 30 days unless otherwise specified by the terms of this Emergency Permit; and

(b) Public comment on the proposed emergency development has been reviewed if time allows.

The emergency work is hereby approved, subject to the conditions listed on the attached pages.

Sincerely,

(for)

PETER M. DOUGLAS
Executive Director

cc: Todd Stark, Redwood Construction
City of Pacifica

CCC Exhibit C
(page 1 of 14 pages)

Enclosure: Acceptance Form

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by the property owner and returned to our office **within 15 days**.

2. Only that work specifically described in this permit and for the specific property listed above is authorized. Work shall be limited to that proposed in the emergency permit application, as shown in Appendix 3 of the letter from RJR Engineering to Redwood Construction, dated January 31, 2010. Any additional work requires separate authorization from the Executive Director.

3. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit, for review and approval by the Executive Director, a conceptual grading plan for construction of the temporary access road. Construction activities shall be carried out in general conformance with the approved grading plan. If significant changes to the approved grading plan are proposed, the applicant shall notify the North Central Coast District Office to determine if additional authorization from the Executive Director is required.

4. All work shall take place in a time and manner to minimize any potential damages to any resources, including intertidal species, and to minimize impacts to public access.

5. The work authorized by this permit must be completed **within 60 days** of the date of this permit, which shall become null and void unless extended by the Executive Director for good cause.

6. The Permittee recognizes that the emergency work is considered temporary and subject to removal unless and until a regular coastal development permit permanently authorizing the work is approved. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as offers to dedicate, easements, in-lieu fees, etc.) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves.

7. In exercising this permit, the Permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.

8. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies, including but not limited to, California Department of Fish & Game, U.S. Fish & Wildlife, U.S. Army Corps of Engineers, and the California State Lands Commission. All work conducted under this emergency permit shall comply with the conditions and requirements of all necessary authorizations and/or permits.

9. Public access to and along the shoreline in the project area shall be permitted and provided to the maximum extent feasible, consistent with public safety.

Construction Responsibilities:

10. The beach and all other areas used for construction staging and access purposes shall be kept free from any debris or trash not needed for construction. Daily debris haul shall be implemented.

11. No construction equipment or materials shall be stored on the beach.

12. If, at any time while the work authorized by this Emergency Permit is occurring, any marine mammals are located on or seaward of the subject property, work must immediately stop and the Property Owner must immediately call the Marine Mammal Center in Sausalito, CA or the National Marine Fisheries Service to report that a marine mammal is located on the beach. Work must not commence until either the animal is removed by the Marine Mammal Center or the National Marine Fisheries Service, or until the animal returns to the ocean on its own without any harassment.

13. Construction activities and equipment shall avoid Pacific Ocean waters and minimize beach disturbance to the maximum extent feasible by project design and implementation including, but not limited to, limiting construction to the lowest possible tides. No construction equipment, materials, or debris shall be placed where they may be subject to ocean waters or dispersion.

14. All construction activities that result in discharge of materials, polluted runoff, or wastes to the beach and/or the adjacent marine environment are prohibited. The Permittee shall collect, contain, and properly dispose of all construction leaks, drips, by-products, and any similar contaminants through the use of containment structures or equivalent as necessary (including through the use of collection devices and absorbent materials placed below any above-ground work where such contaminants are possible and/or expected). Equipment washing, refueling, and/or servicing shall not take place on the beach.

15. A copy of the signed Emergency Permit shall be maintained in a conspicuous location at the staging area site at all times, and such copy shall be available for public review on

request. All persons involved with the construction shall be briefed on the content and meaning of the Emergency Permit, including all of its terms and conditions, prior to commencement of construction.

16. Particular care shall be exercised to prevent foreign materials (e.g., construction scraps, outfall discharge, other chemicals, etc.) from entering Pacific Ocean waters. A floating containment boom shall be placed around all active portions of the construction site where any floatable debris could enter the water. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or clean up of foreign materials not properly contained.

17. The construction site and staging area(s) shall be maintained with good construction housekeeping measures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; and remove all construction debris from the beach.

18. All hazardous materials located on the property (e.g., paint cans, solvents, household chemicals, etc.), shall be removed from the property and deposited at an authorized disposal and/or storage site.

Post-Construction Responsibilities:

19. All beach areas and all beach access points impacted by construction activities, except for the access road, shall be restored to their pre-construction condition or better **within three days** of completion of construction.

20. Any beach sand impacted by construction shall be filtered as necessary to remove all construction debris from the beach.

21. **Within seven days** of completion of the work authorized by the Emergency Permit, the Permittee shall submit photographic evidence of compliance with the Emergency Permit.

22. **Within 14 days** of issuance of this Emergency Permit, the Permittee shall submit, for review and approval by the Executive Director, a plan to restore the access road so that pedestrians may access the sandy beach from the bluff top at the southern end of the property, as an interim measure for public access, until such time that a permanent public access alternative is authorized. The Permittee shall implement the plan within 14 days of

approval by the Executive Director or within such additional time that the Executive Director grants for good cause.

23. **Within 30 days** of completion of the construction authorized by this Emergency Permit, the Permittee shall submit as-built plans and cross sections prepared by a certified civil engineer or engineering geologist, clearly identifying the work completed under the emergency authorization and a narrative description of all emergency construction activities undertaken pursuant to this Emergency Permit. The Permittee shall also provide records of the actual cost of completing the authorized work and the actual amount of rock placed, such as receipts from construction firms.

24. **Within 60 days** of the date of this Emergency Permit, the Permittee shall apply for a regular coastal development permit to have the emergency work be considered permanent. Such application shall include a complete analysis of alternatives to protect the structures that are in danger, including, but not limited to, re-location of the structure(s) out of harms way, beach nourishment, and/or a vertical seawall. If no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of this permit unless waived by the Director.

25. The Permittee shall be responsible for removing or re-depositing any rock or other material that becomes dislodged after completion of the temporary construction authorized by this Emergency permit as soon as possible after such displacement occurs. The Permittee shall contact the Coastal Commission North Central District Office immediately to determine whether such activities require a coastal development permit.

26. Failure to comply with the conditions of this approval may result in enforcement action under the provisions of Chapter 9 of the Coastal Act.

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

EDMUND G. BROWN, JR., *GOVERNOR*

CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260
FAX (415) 904-5400

EMERGENCY PERMIT

Rob Anderson
RJR Engineering
3500 Camino Avenue, Suite 200
Oxnard, CA 93030

Date: January 25, 2011
Emergency Permit No. 2-11-005-G

RECEIVED
FEB 15 2011
CALIFORNIA
COASTAL COMMISSION

FPA/BAF Land's End Associates, LLC
4665 MacArthur Court, Ste. 200
Newport Beach, CA 92660

LOCATION OF EMERGENCY
100 Esplanade Avenue (Pacifica, San Mateo County) APN 009-023-070

EMERGENCY WORK
Construction of 1) a 690-ft x 17.5-ft tie-back sea wall with public access stairs, 2) placement / retention of the minimal amount of rock necessary for toe scour protection, 3) removal of any existing rock revetment not needed for toe protection; and 4) construction of a construction and beach public access way; all as shown in the project plans prepared and submitted by RJR Engineering Group, dated January 5, 2011.

This letter constitutes approval of the emergency work you or your representative requested to be conducted at the location listed above. I understand from your information that an unexpected occurrence in the form of accelerated bluff erosion and failure and evidence of widespread vertical and horizontal movement of the bluff top is posing a threat to the Land's End property, driveway, and utilities; and requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services pursuant to 14 Cal. Admin. Code Section 13009. The Executive Director of the California Coastal Commission hereby finds that:

(a) An emergency exists that requires action more quickly than permitted by the procedures for administrative or ordinary coastal development permits (CDPs), and that the development can and will be completed within 30 days unless otherwise specified by the terms of this Emergency Permit; and

(b) Public comment on the proposed emergency development has been reviewed if time allows.

The emergency work is hereby approved, subject to the conditions listed on the attached pages.

Sincerely,
Renee T. Ananda
for PETER M. DOUGLAS
Executive Director

cc: Todd Stark, Redwood Construction
City of Pacifica
Enclosure: Acceptance Form

CCC Exhibit C
(page 6 **of** 14 **pages)**

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by the property owner and returned to our office **within 15 days**.

2. Only that work specifically described in this permit and for the specific property listed above is authorized. Work shall be limited to that proposed in the emergency permit application, as shown on project plans prepared and submitted by RJR Engineering Group, dated January 5, 2011, and as may be further revised through subsequent review and approval by the Executive Director. Recordation or extinguishment of any public access easements is not authorized under this emergency permit and shall be addressed under the follow-up Coastal Development Permit application, as required under Condition No. 16 of this Emergency Permit. Any additional work requires separate authorization from the Executive Director.

3. The work authorized by this permit must be completed **within 6 months** of the date of this permit, which shall become null and void unless extended by the Executive Director for good cause.

4. PRIOR TO COMMENCEMENT OF CONSTRUCTION, Permittee shall submit a complete project implementation schedule that includes review and approval tasks; and interim coordination meetings for Coastal Commission staff to review.

5. PRIOR TO COMMENCEMENT OF CONSTRUCTION of the tie-back sea wall, the Permittee shall a) submit a formal sea wall simulation, for review and design approval by the Executive Director, showing the features for the face of the wall, as well as any treatments that will be used. The wall shall be designed and constructed to mimic, blend and be compatible with the surrounding natural landform to the maximum extent feasible, including in form, inclination, texture, and color; b) contact Coastal Commission staff upon completing placement of stakes and forms delineating the location of the tie-back sea wall for field review and approval; and c) prior to commencement of construction of the visual treatment, prepare a prototype/sample section for the proposed the tie-back sea wall in situ and contact Commission staff for field review and final design approval.

6. PRIOR TO COMMENCEMENT OF CONSTRUCTION of the wall and any slope reconstruction, Permittee shall a) modify project plans, dated January 5, 2011 to include geogrid reinforcement of the reconstructed slope, at the site of the former public access way, with the use of native plant species for erosion control on the slope above the tie-back sea wall; provide one or more cross-sections of the drainage plans, showing the

storm drain, BMPs, and the manner of discharge across the beach and c) submit the change for review and approval by the Executive Director.

7. PRIOR TO COMMENCEMENT OF CONSTRUCTION, Permittee shall submit, for review and approval by the Executive Director, a) a grading plan for the temporary, construction / public beach access way; and b) drainage plans with construction Best Management Practices (BMPs) that will be implemented. Construction activities shall be carried out in general conformance with the approved grading plan and drainage plan. If significant changes to the approved grading plan or drainage plan are proposed, the applicant shall notify the North Central Coast District Office to determine if additional authorization from the Executive Director is required.

8. All work shall take place in a time and manner to minimize any potential damages to any resources, including intertidal species, and to minimize impacts to public access.

9. PRIOR TO COMMENCEMENT OF CONSTRUCTION, Permittee shall submit for review and approval by the Executive Director, an access plan for providing temporary beach access for the public during construction. Public access to and along the shoreline in the project area shall be permitted and provided to the maximum extent feasible, consistent with public safety. The temporary public access plan shall include an alternative plan to be followed when construction equipment are in operation at the site, consistent with public safety.

10. **Within 14 days** of approval by the Executive Director or within such additional time that the Executive Director grants for good cause, Permittee shall provide public access to the beach consistent with condition 9. Public access to the beach shall be provided no later than the Memorial Day Weekend, 2011, unless the Executive Director determines that such provision is not feasible, consistent with public safety.

11. Equipment shall be clean and free of leaks that may deposit fluids onto the beach. Vehicles shall be checked for leaking oil, fuel, and other associated vehicle fluids, and maintained. Stationary equipment shall be positioned over drip pans.

12. The Permittee recognizes that the emergency work is considered temporary and subject to removal unless and until a regular coastal development permit permanently authorizing the work is approved by the Coastal Commission. A regular permit will be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly, including provisions to mitigate for potential impacts to public access (such as offers to dedicate, easements, in-lieu fees, etc.), mitigation for impacts to the beach area, and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred.

13. In exercising this permit, the Permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.

14. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies, including but not limited to, California Department of Fish & Game, U.S. Fish & Wildlife, U.S. Army Corps of Engineers, and the California State Lands Commission. All work conducted under this emergency permit shall comply with the conditions and requirements of all necessary authorizations and/or permits.

15. PRIOR TO COMMENCEMENT OF CONSTRUCTION of the public access elements of the work authorized by this Emergency Permit, the Permittee shall submit a proposed design plan for the reconstructed public access on site for review and approval by the Executive Director. The design for the public access shall include at a minimum the pathway on the upper and lower bluff, benches along the entire bluff area (up coast and down coast), and additional amenities including, but not limited to a coastal information kiosk.

16. **Within 60 days** of the date of this Emergency Permit, the Permittee shall complete a regular coastal development permit application to have the emergency work be considered through the regular CDP process. Such application shall include a written timeline and description of the construction history for the existing structures being protected by work authorized under this permit, including the buildings, utilities, driveway, and public access; and an analysis of alternatives to protect the structures that are in danger, including, but not limited to, re-location of the structure(s) out of harms way, beach nourishment, and / or vertical sea wall. If after staff's review of the CDP application a request for additional information is made, the applicant shall submit this additional information within 30 days of the request. If no such application is received, or if the application remains incomplete for a period of 120 days after the Executive Director issues notice that the application is incomplete, or a follow-up CDP for retention is denied, the emergency work shall be removed in its entirety within 150 days of the date of this permit unless waived by the Executive Director. Removal of the emergency work might also require a CDP. If the follow-up CDP application is withdrawn without the Executive Director's consent, the emergency work shall be removed in its entirety within 150 days. The Permittee may also be subject to penalties or other remedial actions pursuant to the Commission's Chapter Nine enforcement authorities, as noted below.

Construction Responsibilities:

17. All areas used for construction staging and access purposes shall be kept free from any debris or trash not needed for construction. Daily debris haul shall be implemented. The

construction site and staging area(s) shall be maintained with good construction housekeeping measures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; and remove all construction debris from the beach.

18. Construction activities and equipment shall avoid Pacific Ocean waters and minimize beach disturbance to the maximum extent feasible by project design and implementation including, but not limited to, limiting construction to the lowest possible tides. Particular care shall be exercised to prevent foreign materials (e.g., construction scraps etc.) from entering Pacific Ocean waters. No construction equipment or materials shall be stored on the beach. No construction equipment, materials, or debris shall be placed where they may be subject to ocean waters or dispersion.

19. All construction activities that result in discharge of materials, polluted runoff, or wastes to the beach and/or the adjacent marine environment are prohibited. The Permittee shall collect, contain, and properly dispose of all construction leaks, drips, by-products, and any similar contaminants through the use of containment structures or equivalent as necessary (including through the use of collection devices and absorbent materials placed below any above-ground work where such contaminants are possible and/or expected). Equipment washing, refueling, and/or servicing shall not take place on the beach.

20. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions, Best Management Practices, and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or clean up of foreign materials not properly contained.

21. A copy of the signed Emergency Permit shall be maintained in a conspicuous location at the staging area site at all times, and such copy shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the Emergency Permit, including all of its terms and conditions, prior to commencement of construction.

22. If, at any time while the work authorized by this Emergency Permit is occurring, any marine mammals are located on or seaward of the subject property, work must immediately stop and the Property Owner must immediately call the Marine Mammal Center in Sausalito, CA or the National Marine Fisheries Service to report that a marine mammal is located on the beach. Work must not commence until either the animal is removed by the Marine Mammal Center or the National Marine Fisheries Service, or until the animal returns to the ocean on its own without any harassment.

Post-Construction Responsibilities:

23. All beach areas and all beach access points impacted by construction activities, except for the access road, shall be restored to their pre-construction condition or better **within three days** of completion of construction.

24. Any beach sand impacted by construction shall be filtered as necessary to remove all construction debris from the beach.

25. **Within seven days** of completion of the work authorized by the Emergency Permit, the Permittee shall submit photographic evidence of compliance with the Emergency Permit.

26. **Within 30 days** of completion of the construction authorized by this Emergency Permit, the Permittee shall submit as-built plans and cross sections prepared by a certified civil engineer or engineering geologist, clearly identifying the work completed under the emergency authorization and a narrative description of all emergency construction activities undertaken pursuant to this Emergency Permit. The Permittee shall also provide records of the actual cost of completing the authorized work and the actual amount of rock placed, such as receipts from construction firms.

27. Failure to comply with the conditions of this approval may result in enforcement action under the provisions of Chapter 9 of the Coastal Act. FAILURE TO A) SUBMIT A FOLLOW-UP COASTAL DEVELOPMENT PERMIT APPLICATION THAT SATISFIES THE REQUIREMENTS OF SECTION 13053.5 OF THE CALIFORNIA CODE OF REGULATIONS BY THE DATE SPECIFIED BY THIS PERMIT, OR AS EXTENDED THROUGH CORRESPONDENCE, OR B) REMOVE THE EMERGENCY WORK. (IF REQUIRED BY THIS EMERGENCY PERMIT) BY THE DATE SPECIFIED BY THIS PERMIT, WILL CONSTITUTE A KNOWING AND INTENTIONAL VIOLATION OF THE COASTAL ACT[1] AND MAY RSULT IN FORMAL ENFORCEMENT ACTION BY THE COMMISSION.

    THIS FORMAL ACTION COULD INCLUDE A RECORDATION OF A NOTICE OF VIOLATION ON YOUR PROPERTY PURSUANT TO SECTION 30812; THE ISSUANCE OF A CEASE AND DESIST ORDER AND/OR RESTORATION ORDER; AND/OR A CIVIL LAWSUIT, WHICH MAY RESULT IN THE IMPOSITION OF MONETARY PENALTIES, INCLUDING DAILY PENALTIES OF UP TO $15,000 PER VIOLATION PER DAY UNDER SECTION 30820(B), AND OTHER APPLICABLE PENALTIES AND OTHER RELIEF PURSUANT TO CHAPTER 9 OF THE COASTAL ACT.

[1] The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and, thus to the Coastal Act, unless otherwise indicated

PROCLAMATION CONFIRMING EXISTENCE OF A LOCAL EMERGENCY

By: CITY MANAGER

WHEREAS, Section 4-2.05 of the Pacifica Municipal Code empowers the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency when said City is affected or likely to be affected by a public calamity and the City Council is not in session; subject to ratification by the City Council at the earliest possible time; and

WHEREAS, conditions of extreme peril to the safety of persons and property have arisen within said City, caused by severe cliff erosion and subsidence in the area of Pacifica adjacent to the Pacifica Ocean from a point at Manor Drive northward to the area of approximately 100 Palmetto. This condition is the result of El Nino conditions that have brought heavy wave action, strong winds and short bursts of heavy rain; and

WHEREAS, a total of 326 housing units are in peril due to the erosion. Of those, 14 are single family dwellings and the remainder are multi-family units; and

WHEREAS, due to the erosion there is an imminent threat of loss of structural support for the units and potential collapse into the ocean. To deal with this threat the City is requesting a Federal Small Business Administration (SBA) disaster declaration so as to qualify the owners for SBA assistance to shore up the properties; and

WHEREAS, said City does hereby find that the aforesaid conditions of extreme peril did warrant and necessitate the proclamation of the existence of a local emergency; and

NOW, THEREFORE, IT IS HEREBY PROCLAIMED AND ORDERED that said local emergency does exist and shall be deemed to continue to exist until its termination is proclaimed by the City Council of Pacifica, State of California.

IT IS FURTHER ORDERED that a copy of this declaration be forwarded to the Governor of California with the request that he proclaim a state of emergency for Pacifica, and further that the Governor request a Presidential Declaration and an SBA disaster declaration.

Dated: February 16, 2010

BY:

Stephen A. Rhodes

Stephen A. Rhodes, City Manager
Director of Emergency Services

CCC Exhibit C
(page 12 **of** 14 **pages)**

CITY OF PACIFICA

EMERGENCY (LOCAL) COASTAL DEVELOPMENT PERMIT

Planning & Economic Development Department
1800 Francisco Boulevard
(650) 738-7341

EMERGENCY PERMIT #: CDP - 320 - 10 **DATE OF ISSUANCE: 9/28/10**

LOCATION OF WORK: 100 Esplanade Way **APN:** 009-023-070
DESCRIPTION OF WORK Piles, Grade Beam and Sidewalk Installation for ER

NATURE AND/OR CAUSE OF EMERGENCY: Stabilize upper Bluff due to Excess erosion
CONSEQUENCE OF INACTION (DO NOTHING): If not completed by winter, will threaten Buildings, Driveway and Utilities

PERMITTEE: Name: Robert W Anderson, RSR Engineering
Address: 3500 Camino Ae, Ste 200, Oxnard, CA 93030
Phone: 805-485-3935

PROP. OWNER: Name: FPA/DAF Land's End Assoc. LLC
Address: 4665 MacArthur Ct., Ste 200, Newport Beach, CA 92660
Phone: 949-399-1500

If Permitee is not property owner, a signed statement of authorization to act as owner's agent is required. Sign back side of this sheet or attach separately signed statement.

PERMITTEE HEREBY AGREES TO THE FOLLOWING CONDITIONS OF THIS EMERGENCY PERMIT.

1. All emergency work shall proceed in accordance with approved plans, if any, on file with the City of Pacifica.
2. Permittee shall allow representatives of the City of Pacifica unlimited access to inspect all work performed under this permit.
3. Permittee shall notify the Building Official, at least every 24 hours, the status of emergency work being performed, until final inspection.
4. All emergency work shall be complete on or before Jan. 28, 2011
5. Within 30 calendar days of the date of this permit, permittee shall apply for a regular Coastal Development Permit from the City of Pacifica to have the emergency work be considered permanent. If no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of this permit unless otherwise determined in writing by the Planning Director.
6. This permit shall be valid for 60 days from date of issuance, unless extended pursuant to Sect. 9-4.4307 of City Code.
7. All work performed under this permit shall comply with the applicable requirements of the City of Pacifica including the Building Official, Planning Director, Administrative Policies, standard specifications, Municipal Code as well as state and federal laws.
8. ***SPECIAL CONDITIONS:*** See attached Special conditions.

This permit constitutes approval of temporary emergency work necessitated by a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services, based on the terms and conditions described herein, and may be revoked at any time if deemed necessary by the Planning Director. Unless prescribed as a special condition herein, issuance of this permit does NOT constitute approval of emergency work on a permanent basis until all such work has been approved by the Pacifica Planning Commission. Pursuant to Sect. 9-4.4304 of City Code, the City may determine that the emergency work shall be removed, replaced or modified. Failure to comply with provision of Sect. 9-4.4307 of City Code may result in the removal of the work undertaken pursuant to this permit in its entirety and restoration of the site to its previous condition.

The permitee by acceptance of this permit, agrees to indemnify, defend and hold harmless the City of Pacifica from and against any and all claims, demands and legal actions for inquiries or damages to persons or property resulting from processing of, approval of, construction, operations or maintenance under this permit, regardless of passive negligence of the City of Pacifica, its officers, employees, consultants and agents, and agrees to compensate the City in full for all damages to property of the City or to public property under its jurisdiction resulting from operations or maintenance under this permit.

This permit does not authorize any work within the permit jurisdiction of the California Coastal Commission, nor does it obviate any required authorizations or other permits from city, state or other agencies.

APPROVALS: **CITY OF PACIFICA**

By _____
Michael Crabtree
Planning Director

AGREEMENT: **PERMITTEE:**

By: _____
(Property Owner or Authorized Agent)

By signing above, Permittee understands all of the conditions of this emergency permit and agrees to abide by them.

Permittee also understands that the emergency work is TEMPORARY and that a regular local Coastal Development Permit is necessary to make it a permanent installation.

CCC Exhibit C
(page 13 of 14 pages)

P:Emergency CDP.doc

(Side 1 of 2)

Emergency Coastal Development Permit, CDP-328-10 Special Condition

#1. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards; (ii) to assume the risks to the applicant and the property that is the subject of this permit 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 City of Pacifica, and the Coastal Commission their officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the City of Pacifica, and the Coastal Commission, their officers, agents, and employees with respect to the City'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.

#2. Indemnity Clause

The applicant shall hereby agree to indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and /or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the applicant's project. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorneys fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, City, and /or parties initiating or bringing such Proceeding. If the applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City.

CCC Exhibit C
(page 14 **of** 14 **pages)**

2-10-039 (Landis, F
Exhibit 4- Site Photos

Copyright (C) 2002-2010 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.Californiacoastline.org
Photo 200906562 (Photo taken in 2009)

Prepared by:

RJR ENGINEERING GROUP

Planning · Civil Engineering · Flood Control/Hydrology
Geotechnical Engineering · Geology · Water Resources · Environmental
3500 Camino Ave. Suite 200, Oxnard, CA 93030
(805) 485-2935 (805) 485-6496 FAX
E-mail: rjr@rjreng.com

AERIAL PHOTO
SEPTEMBER 26, 2011

100 ESPLANADE AVENUE
PACIFICA, CA

Bluff Retreat History 1965 - 2010

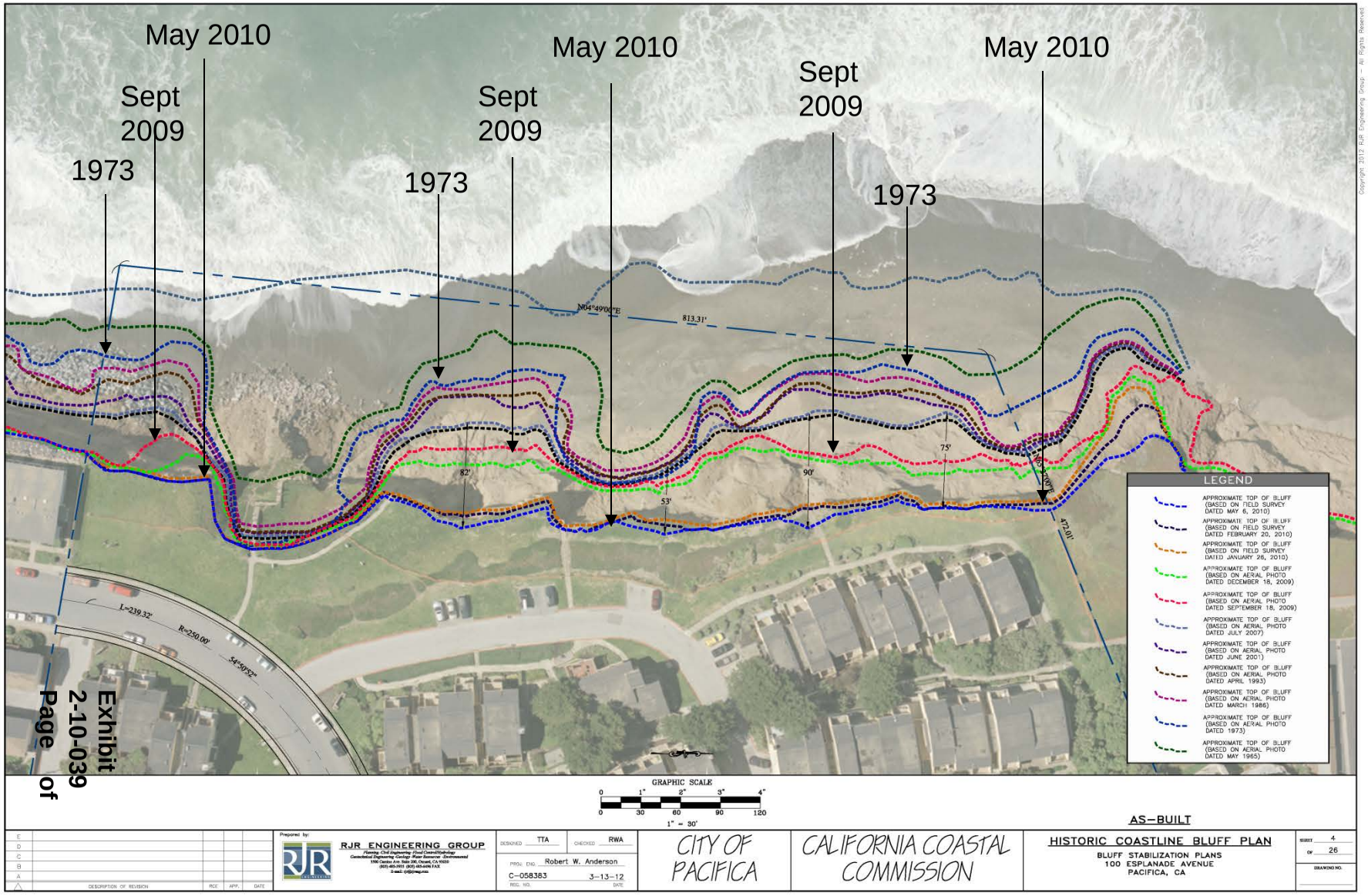
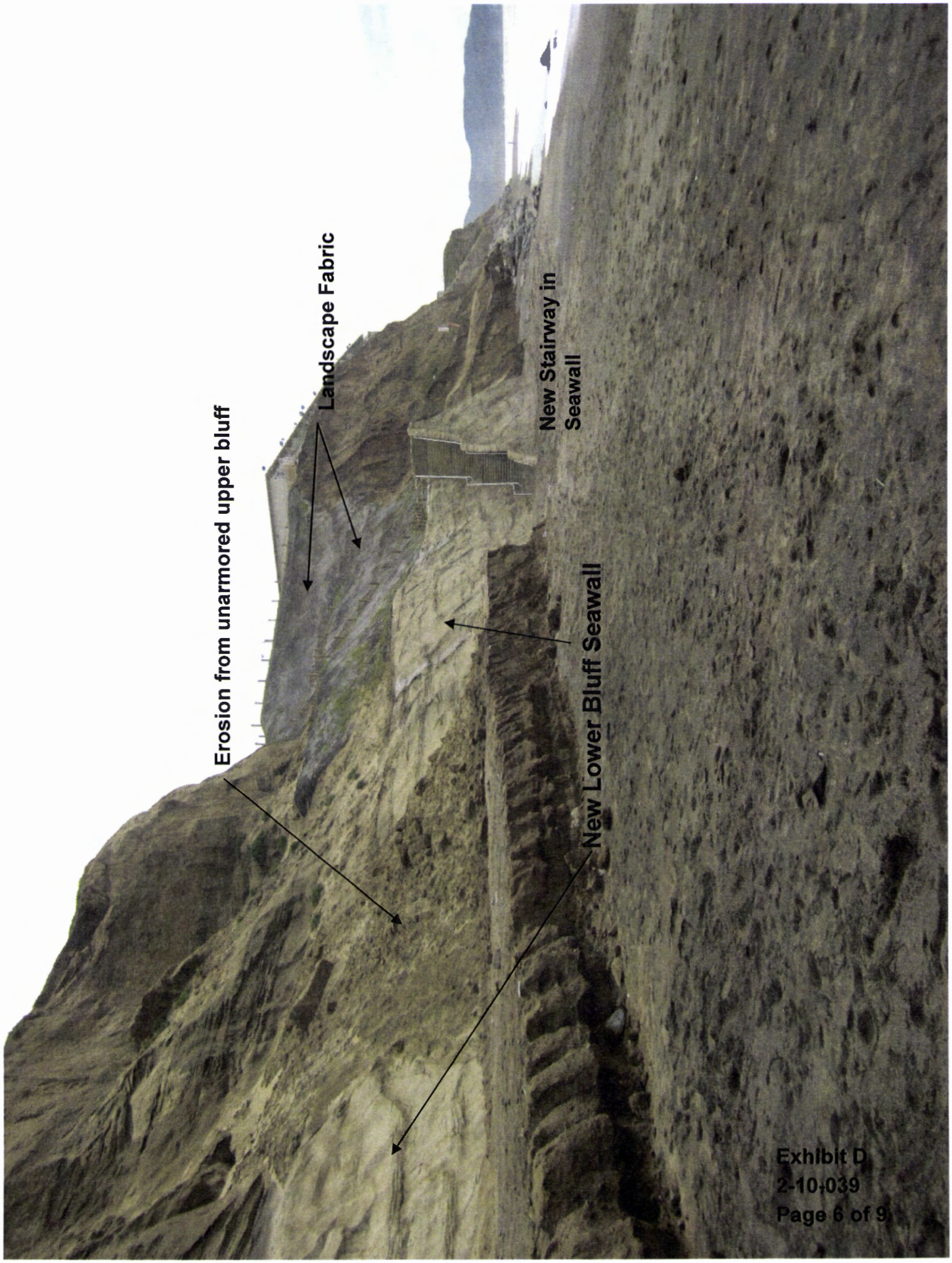
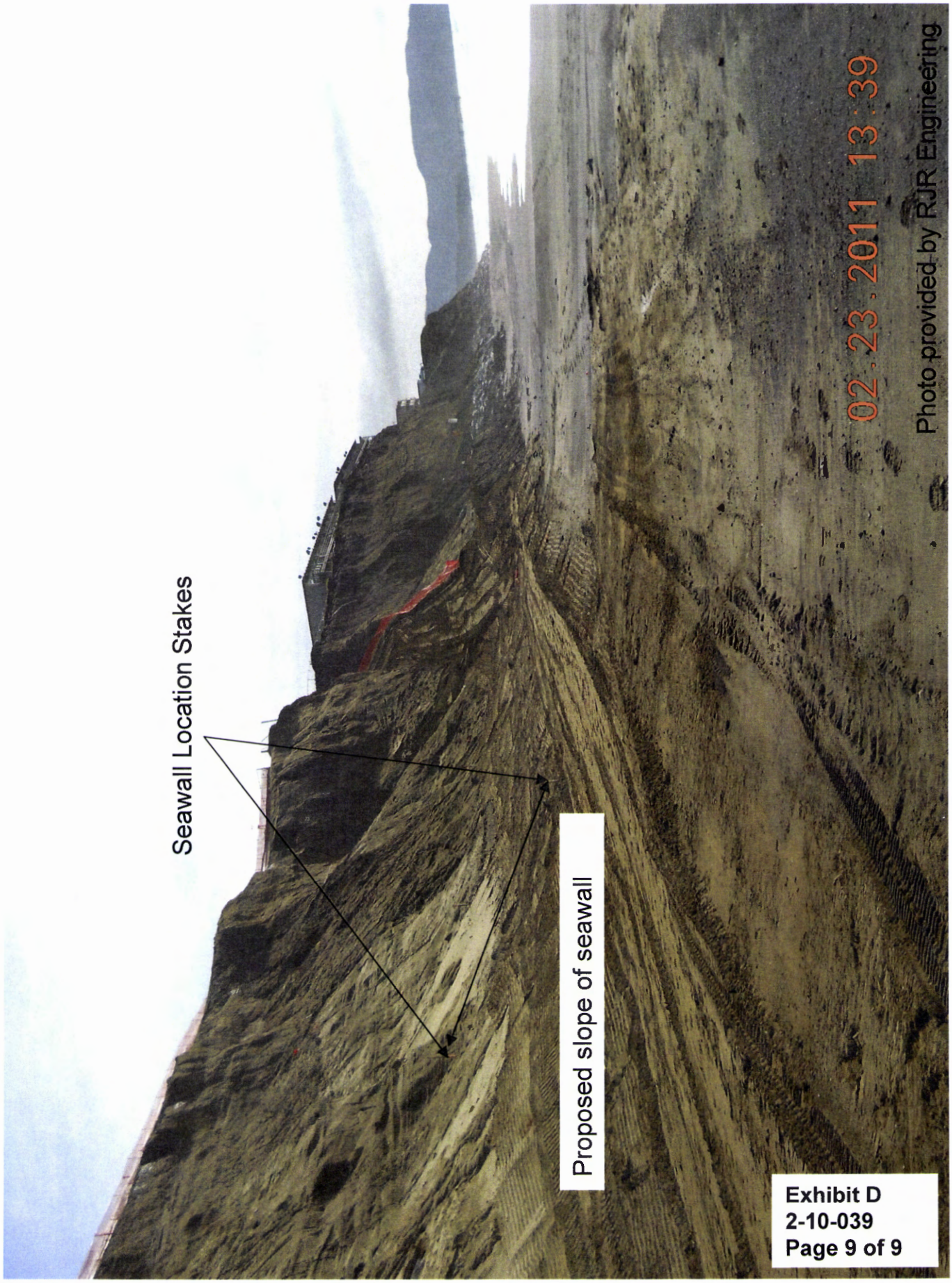


Exhibit 2-10-039 Page of

New Bluff-to-Beach
Pathway & Stairs
Exhibit D
2-10-039
Page 4 of 9

New Stairway
Exhibit D
2-10-039
Page 5 of 9


Erosion from unarmored upper bluff
Landscape Fabric
New Stairway in Seawall
New Lower Bluff Seawall
Exhibit D
2-10-039
Page 6 of 9


Seawall Location Stakes
Proposed slope of seawall
02 . 23 . 2011 13 : 39
Photo provided by RJR Engineering
Exhibit D
2-10-039
Page 9 of 9

OAT
0355002470

(2)

Recording requested by
And when recorded mail to:

City of Pacifica
Attention: City Clerk
170 Santa Maria Avenue
Pacifica, CA 94044

2006-087276
02:22pm 06/12/06 ES Fee: 97.00
Count of pages 31
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder

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RECEIVED
JUL - 6 2006
CITY ATTORNEY

PUBLIC ACCESS EASEMENT
(Lands End)

This agreement ("Agreement") is made this 9th day of May, 2006, by and between FPA/BAF Lands End Associates, L.P., a California Limited Partnership ("Owner"), and THE CITY OF PACIFICA ("City").

RECITALS

A. Owner is the fee owner of the real property located in the City of Pacifica, County of San Mateo, State of California, which is described in Exhibit A, attached hereto and incorporated by reference herein ("Property"). Owner's Property is located at 100 Esplanade Avenue, Pacifica, California.

B. All of the Property is located within the coastal zone as defined in Section 30103 of the California Public Resources Code.

C. In 1972 the City granted one of Owner's predecessors in interest (referred to herein as "Prior Owners") Use Permit 157-72 for apartment buildings and a recreation building on the Property with certain conditions. The City required, among other things, the construction of a staircase to provide public coastal access.

CCC Exhibit E
(page 1 of 23 pages)

D. One of the Prior Owners constructed the staircase in approximately 1972, and since construction of the staircase, Owner or Prior Owners have performed maintenance activities on the staircase.

E. In 1981 the City approved an application for a condominium conversion for the Property. With regard to the staircase, the City approved a Tentative Map (and subsequently, a Final Map) requiring as one of the conditions of approval public coastal access and maintenance of the vertical access to the shoreline if the Coastal Commission required such access.

F. Pursuant to the California Coastal Act of 1976 (division 20 of the Public Resources Code), Prior Owners applied to the California Coastal Commission for a permit for the condominium conversion. The California Coastal Commission considered the condominium conversion in 1983, granted coastal development permit number 3-83-15, required recordation of an Irrevocable Offer to Dedicate for open space/public access to the shoreline ("Vertical Offer to Dedicate") and required that "the applicant shall guarantee the stability and permanent maintenance in a safe condition of the stairwell." The Coastal Commission also required recordation of an Irrevocable Offer to Dedicate Public Access Easement for public access along the shoreline ("Sandy Beach Offer to Dedicate"), and an Irrevocable Offer to Dedicate Public Access Easement for public access along the bluff top (Bluff Top Offer to Dedicate"). The Vertical Offer to Dedicate, Sandy Beach Offer to Dedicate and Bluff Top Offer to Dedicate are collectively referred to herein as "the Offers to Dedicate."

G. In 1988, the City approved one of Prior Owners' applications for a reversion to acreage with numerous conditions, including requirements to record the Offers to Dedicate required by the Coastal Commission for the condominium conversion, and to repair and maintain the staircase in order to protect the public

health, safety, and welfare. The resolution approving the reversion to acreage is attached hereto as Exhibit B and incorporated herein.

H. The Vertical Offer to Dedicate was recorded on November 17, 1988 as instrument number 88157268 in the official records of San Mateo County. The Sandy Beach Offer to Dedicate was recorded on November 17, 1988 as instrument number 88157272 in the official records of San Mateo County. The Bluff Top Offer to Dedicate was recorded on November 17, 1988 as instrument number 88157271 in the official records of San Mateo County.

I. As a result of erosion and deterioration caused by the ocean, a portion of the staircase became unusable. In February 2004, the City approved Coastal Development Permit CDP-239-03 to repair the stairway and relocate the public access. The approval was conditioned on "ongoing maintenance" of the access. In addition the conditions required submittal for approval and recordation of an easement grant deed for the new access easement containing all conditions imposed pursuant to the Vertical Offer to Dedicate. A copy of the conditions of approval for CDP 239-03 is attached hereto as Exhibit C and incorporated herein.

J. The parties enter into this Agreement to define the responsibilities with respect to the public access areas on the Property, consistent with the Owner's obligations under its permits, including the reversion to acreage and CDP-239-03, but independent of any other existing obligations. The Agreement also provides the benefit of having one entity hold title to all public access easement interests affecting the Property as opposed to potential disparate ownership of these interests by different entities. Notwithstanding the foregoing, all applicable permits remain in effect and are binding on the Owner and any subsequent owners of the Property.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Agreement

1. Terms. As used in the Agreement, the following terms shall have the meaning provided in this section.

a. "Sandy Beach Area" means that portion of the Property extending the width of the Property parallel to the shoreline from the base of the bluff to the mean high tide line, as offered by the Sandy Beach Offer to Dedicate and depicted on the map attached to this Agreement as Exhibit D.

b. "Bluff Top Area" means that portion of the Property extending the width of the Property providing lateral access five feet wide from Esplanade Avenue on the bluff top, as set forth in the legal description for the Bluff Top Offer to Dedicate and attached to this Agreement as Exhibit E.

c. "Vertical Access Area" means that portion of the Property that extends from Esplanade Avenue to the bottom of the existing staircase and then continues down to the beach as a trail. Because of ongoing erosion and tidal action, the condition of the Vertical Access Area changes over time. The parties recognize the benefit of being able to change the location of the trail between the bottom of the staircase and the ocean ("Trail") so as to best provide public beach access. Therefore, the Vertical Access Area below (i.e. west of) the staircase is a rectangle within which the Trail can be relocated as necessary to best provide public access to the ocean, as determined by Owner. The Vertical Access Area is more particularly described in Exhibit F, attached hereto and incorporated herein.

d. "Easement Area" means that portion of the Property consisting of the Vertical Access Area, the Sandy Beach Area and the Bluff Top Area.

2. Easements in Perpetuity for Public Use and Recreation. Owner hereby grants to the City perpetual, non-exclusive easements in gross for the purpose of public use over the Easement Area (hereinafter referred to

CCC Exhibit E
(page 4 of 23 pages)

Easement") to ensure public access. Owner is prohibited from interfering with public use of the Easement Area and shall not take any action inconsistent with such use, including, without limitation, constructing or improving the Property within the Easement Area in a manner inconsistent with the public's use and enjoyment or preventing public access to the Easement Area from the public street or from any existing public trails on the real properties immediately adjacent to the Property.

3. Ownership and Maintenance. Owner shall continue to own the Property subject to the Easement and shall own improvements constructed within the Easement Area. Owner agrees to maintain the Easement Area. Owner shall be solely responsible for all maintenance activities necessary to keep the Easement Area and the improvements within the Easement Area in a serviceable and safe condition for public use. In the event a catastrophic event impairs public access within the Easement Area, or any portion thereof, the City shall work with the Owner to seek and secure funding and/or obtain available grant funds for purposes of repairing and/or reconstructing public access within the Easement Area. For purposes of this Agreement, a "catastrophic event" is an earthquake, landslide, tsunami, storm or other event that results in a proclamation of a local emergency by the City or County of San Mateo or a proclamation of a state of emergency by the State of California.

4. Modification of Location of Improvements. The location of the Trail required pursuant to the conditions of approval attached hereto as Exhibit C may change as necessary to provide safe public access consistent with the topography of the Easement Area as long as the Trail remains within the Easement Area.

5. Liability and Release. The City does not assume any liability or responsibility for the Easement Area. Owner does hereby release and forever

discharge the City, its council, commission members, employees, agents, attorneys, successors and assigns ("City Parties") from any and all actions, obligations, costs, expenses attorneys' fees, damages, claims, losses, demands, and liabilities which arise out of or are in any way connected with this Easement, or use of the Easement Area except where due solely to the City Parties' active negligence. The releases set forth in this Agreement shall be effective as a bar to all actions, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected which in any way arise from or are related to this Easement, or use of the Easement Area except where due solely to the City Parties' active negligence. Owner acknowledges that it has or has had the opportunity to be advised by its attorney concerning, and is familiar with, California Civil Code section 1542 which provides:

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

Owner for itself, its successors and assigns expressly waives any and all rights which each and every one of them may have under California Civil Code section 1542. Each and every party hereto acknowledges that the foregoing waiver of the provisions of section 1542 of the California Civil Code was separately bargained for.

6. Successors, Runs with the Land. The covenants, terms, conditions, and restrictions of the Easement granted herein shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal heirs, representatives, successors, and assigns and shall continue as a servitude running in perpetuity with the land. All such heirs, representatives, successors and assigns shall be bound to every provision in this Agreement, whether or not the

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(page 6 of 23 pages)

Agreement is referred to in the instrument by which such heirs, representatives, successors or assigns acquire an interest in the Property.

7. Subsequent Transfers. Owner agrees to incorporate by reference the terms of this Agreement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, but not limited to, leasehold interests. Owner further agrees to give written notice to the City of the transfer of any interest in all or any portion of the Property within thirty (30) days of the transfer. The failure of Owner to perform any act required by this paragraph shall not impair the validity of this Agreement or limit its enforceability in any way. This Agreement shall be recorded, and any transferee of title to all or any portion of the Property shall take title subject to the terms of this Agreement, whether or not the Agreement is specifically referred to in the instrument of conveyance.

8. Non-Abandonment. The City shall not abandon the Easement, or any portion thereof, except upon amendment of the coastal permits authorizing such abandonment. Any abandonment without such amendment shall be void and of no effect. For the purposes of this provision, an assignment of the Easement pursuant to paragraph 9 below shall not be considered to be an "abandonment" of the Easement.

9. Assignment. The City may assign or otherwise convey its interest in the Easement only to another public entity or nonprofit organization that has similar purposes to preserve public coastal access and which agrees to assume the responsibilities imposed by this Easement, and only upon the approval of the Executive Director of the Commission. Any assignment without such approval shall be void and of no effect. Such approval shall not be unreasonably withheld.

10. Amendment. The Easement may be amended only with the written consent of Owner, the City, and the Commission. Any amendment of this

Easement without the consent of all three shall be void and of no effect.

11. Other Liens. Owner represents that there are no conditions of title or other encumbrances that would restrict or abrogate any rights of the City under this Agreement. Owner agrees to execute or obtain such agreement or instruments in recordable form from any holders of mortgages or deeds of trust affecting the Property as may be required for the purpose of ensuring that any and all future owners of the Property will be bound by the terms of this Agreement and the Easement.

12. Recordation. Owner consents to the recording of this Agreement. Owner and City shall work together to ensure that this Agreement is recorded in a timely fashion in the official records of the San Mateo County Recorder. The instrument may be re-recorded at any time as may be required to preserve rights in this Agreement.

13. Opportunity to Review. Owner acknowledges that it has had the opportunity to review this Agreement and has been advised that it should consult with an advisor or attorney prior to entering into this Agreement and has had the benefit of that counsel.

14. Remedies. Any act, conveyance, contract, or authorization by Owner or the City whether written or oral which uses or would cause to be used or would permit use of the Easement contrary to the terms of said Easement or of this Agreement will be deemed a breach hereof. To the extent permitted by the releases and limits on liability contained elsewhere in this Agreement, the Owner, the City and the Commission may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Agreement, the Easement, and their respective interest in the Property, if any, provided, however, that the Commission may pursue legal remedies against the City only for acts in violation of paragraphs 8, 9 and 10 of this Agreement. In the event of a breach,

any forbearance on the part of any such party to enforce the terms and provisions of the Easement or this Agreement shall not be deemed a waiver of enforcement rights regarding that or any subsequent breach.

15. Cooperation, Costs of Enforcement. The parties agree to cooperate in good faith with each other in the administration of this Agreement. Any costs incurred in enforcing the terms of this Agreement including costs of suit and reasonable attorneys' fees, shall be borne by Owner.

16. Notices. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to any other party shall be in writing and may be served in any one of the following ways: personally, by certified mail, return receipt requested, or by overnight delivery, such as Federal Express, addressed as follows:

To Owner:

FPA/BAF Lands End Associates, L.P.
c/o Nancy Mauriello, Esq.
23201 Lake Center Drive, #300
Lake Forest, CA 92630

To City:

City Manger
City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044

With a copy to:

City Attorney
City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044

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17. General Provisions.

a. Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of California.

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the grant to affect the purpose of the Agreement. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Agreement is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to any person or circumstance other than those as to which it has been found to be invalid, shall not be affected thereby.

d. Entire Agreement. This Agreement contains all of the agreements of the parties hereto with respect to the Easements and no prior agreement or understanding whether written or oral pertaining to any such matter shall be effective for any purpose. Owner acknowledges that Owner voluntarily entered into this Agreement with City. No alteration or variation of this instrument shall be valid or binding unless Owner and City jointly amend the instrument.

e. Captions. The captions in this Agreement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

f. Incorporation of Recitals. The recitals contained in this Agreement are true and correct, and are hereby incorporated into this Agreement as if fully set forth herein.

g. City's Discretion. Enforcement of the terms of this Agreement shall be at the discretion of the City, and any forbearance by the City to exercise its rights under this Agreement in the event of any breach of any term

of this Agreement by Owner shall not be deemed or construed to be a waiver by the City of such term or of any subsequent breach of the same or any other term of this Agreement or of any of the City's rights under this Agreement. No delay or omission by the City in the exercise of any right or remedy upon any breach by Owner shall impair such right or remedy or be construed as a waiver. Notwithstanding any other provision of law, all waivers must be express and in writing.

h. Authority to Execute. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so, has full right and authority to enter into this Agreement and all of its obligations hereunder.

IN WITNESS WHEREOF, Owner and City have executed this Agreement effective as of the date first above written.

Owner:

FPA/BAF LANDS END ASSOCIATES, L.P.,
A CALIFORNIA LIMITED PARTNERSHIP
By its General Partner:
GF Lands End, LLC
A California Limited Liability Company

By: _____
Gregory A. Fowler, Manager

Date: 4-6-06

City:

THE CITY OF PACIFICA

By: _____
Joseph Tanner, City Manager

Date: 5-9-06

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Mateo } ss.

On May 9, 2006 (Date), before me, Kathy O'Connell, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),
personally appeared Joseph Tanner (Name(s) of Signer(s)),

☑ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kathy O'Connell
Signature of Notary Public

KATHY O'CONNELL
Comm. # 1438645
NOTARY PUBLIC - CALIFORNIA
San Mateo County
My Comm. Expires Sep. 9, 2007

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here.

© 1997 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 Prod. No. 5907 Reorder: Call Toll-Free 1-800-876-6827

Approved as to form:

Cecilia M. Quick

Cecilia Quick, City Attorney

ATTESTED:

Kathy O'Connell

City Clerk

This is to certify that the interest in real property conveyed by this Agreement dated MAY 9, 2006 from BPA/BAF LANDS END REALTY to the City of Pacifica, a political corporation, is hereby accepted pursuant to authority conferred by Resolution No. 39 of the Council of the City of Pacifica adopted on the 25th day of June, 1958, and the City of Pacifica consents to recordation thereof by its duly authorized officer.

Dated 5-9-06 By [signature]

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of ORANGE } ss.

On April 6 2006, before me, N. WICKHAM, Notary Public
Date — Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared GREGORY A. FOWLER
Name(s) of Signer(s)

☑ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

N. WICKHAM
Commission # 1366839
Notary Public - California
Marin County
My Comm. Expires Aug 14, 2006

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CCC Exhibit E
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LEGAL DESCRIPTION - BLUFF TOP AREA

All that certain real property lying within the exterior boundaries of that certain map entitled "Points West, A Condominium, Being a Subdivision of Parcels A and B of that Certain Parcel Map as Recorded in Volume 17 of Parcel Maps at page 48 Records of San Mateo County, California, City of Pacifica, San Mateo County, California", which map was filed in the Office of the County Recorder of San Mateo County, State of California on August 18, 1983 in Book 110 of Maps at Pages 41 through 52 inclusive, more particularly described as follows:

Beginning at the northwest corner of aforementioned Parcel B; thence from said point of beginning, along the northerly line of said Parcel B, N 65° 27' 00" E 83.95 feet to the true point of beginning; thence from said true point of beginning along said northerly line N 65° 27' 00" E 5.00 feet; thence S 00° 17' 12" W 42.07 feet; thence S 78° 18' 58" W 10.91 feet; thence S 44° 21' 11" W 20.60 feet; thence S 29° 31' 34" W 20.86 feet; thence S 14° 27' 20" W 32.21 feet; thence S 1° 11' 47" W 9.14 feet; thence S 17° 11' 00" E 23.24 feet; thence S 45° 32' 59" E 36.07 feet; thence N 55° 25' 32" E 4.00 feet; thence S 34° 34' 28" E 30.21 feet; thence S 12° 07' 52" E 15.23 feet; thence S 28° 33' 38" E 12.04 feet; thence S 36° 17' 28" E 21.92 feet; thence S 12° 46' 34" E 32.70 feet; thence S 10° 39' 40" E 15.70 feet; thence S 8° 22' 08" W 30.55 feet; thence S 27° 30' 17" W 29.47 feet; thence S 6° 32' 08" W 11.40 feet; thence S 27° 57' 12" E 30.62 feet; thence S 2° 21' 41" E 14.51 feet; thence S 49° 53' 49" W 13.81 feet; thence S 71° 25' 10" W 12.67 feet; thence S 15° 46' 57" E 16.49 feet; thence S 31° 29' 11" E 13.22 feet; thence S 55° 47' 29" E 31.15 feet; thence S 36° 57' 43" E 56.86 feet; thence S 24° 14' 12" E 18.02 feet; thence S 6° 56' 16" E 19.61 feet; thence S 9° 37' 23" W 14.63 feet; thence S 31° 18' 01" W 20.37 feet; thence S 23° 09' 00" W 11.35 feet; thence S 59° 51' 42" W 10.43 feet; thence S 84° 36' 59" W 18.18 feet; thence S 62° 45' 50" W 38.13 feet; thence S 53° 31' 35" W 17.86 feet; thence S 36° 25' 29" W 13.66 feet; thence S 2° 39' 23" W 21.76 feet; thence S 16° 40' 58" E 13.82 feet; thence S 44° 23' 35" E 24.80 feet; thence N 81° 35' 00" W 21.44 feet; thence N 4° 21' 23" W 56.98 feet; thence N 53° 56' 30" E 58.57 feet; thence N 89° 53' 48" E 32.36 feet; thence N 34° 10' 10" E 11.36 feet; thence N 11° 15' 17" E 40.80 feet; thence N 19° 42' 24" W 25.68 feet; thence N 58° 15' 13" W 14.56 feet; thence N 25° 07' 03" W 19.11 feet; thence N 8° 23' 30" W 14.88 feet; thence N 59° 55' 56" W 18.21 feet; thence S 64° 34' 07" W 24.29 feet; thence N 28° 09' 24" W 29.46 feet; thence N 69° 00' 26" W 36.67 feet; thence N 24° 41' 17" W 27.32 feet; thence N 1° 10' 06" E 27.46 feet; thence N 4° 27'[24" W 29.93 feet; thence N 36° 21' 35" W 10.35 feet; thence S 77° 28' 48" E 20.18 feet; thence N 75° 25' 10" E 25.70 feet; thence N 78° 34' 23" E 19.59 feet; thence N 17° 18' 09" E 29.08 feet; thence N 2° 58' 23" W 43.64 feet; thence N 8° 20' 39" E 16.08 feet; thence N 87° 25' 44" W 14.90 feet; thence N 8° 26' 46" W 19.92 feet; thence N 32° 27' 03" W 25.91 feet; thence N 00° 26' 03" W 23.73 feet; thence N 39° 02' 30" W 8.58 feet; thence N 66° 38' 30" W 16.18 feet; thence N 50° 05' 19" W 25.57 feet; thence N 4° 03' 12" W 11.21 feet; thence N 00° 31' 20" W 24.72 feet; thence N 6° 59' 22" E 27.75 feet; thence N 12° 28' 25" E 30.36 feet; thence N 9° 14' 11" E 20.57 feet; thence N 66° 22' 13" E 19.77 feet; thence N 56° 23' 54" E 21.65 feet; thence N 24° 16' 49" E 10.00 feet to the true point of beginning. This parcel contains more or less 0.381 acres and includes existing pathway and sidewalk along Cliff Bluff.

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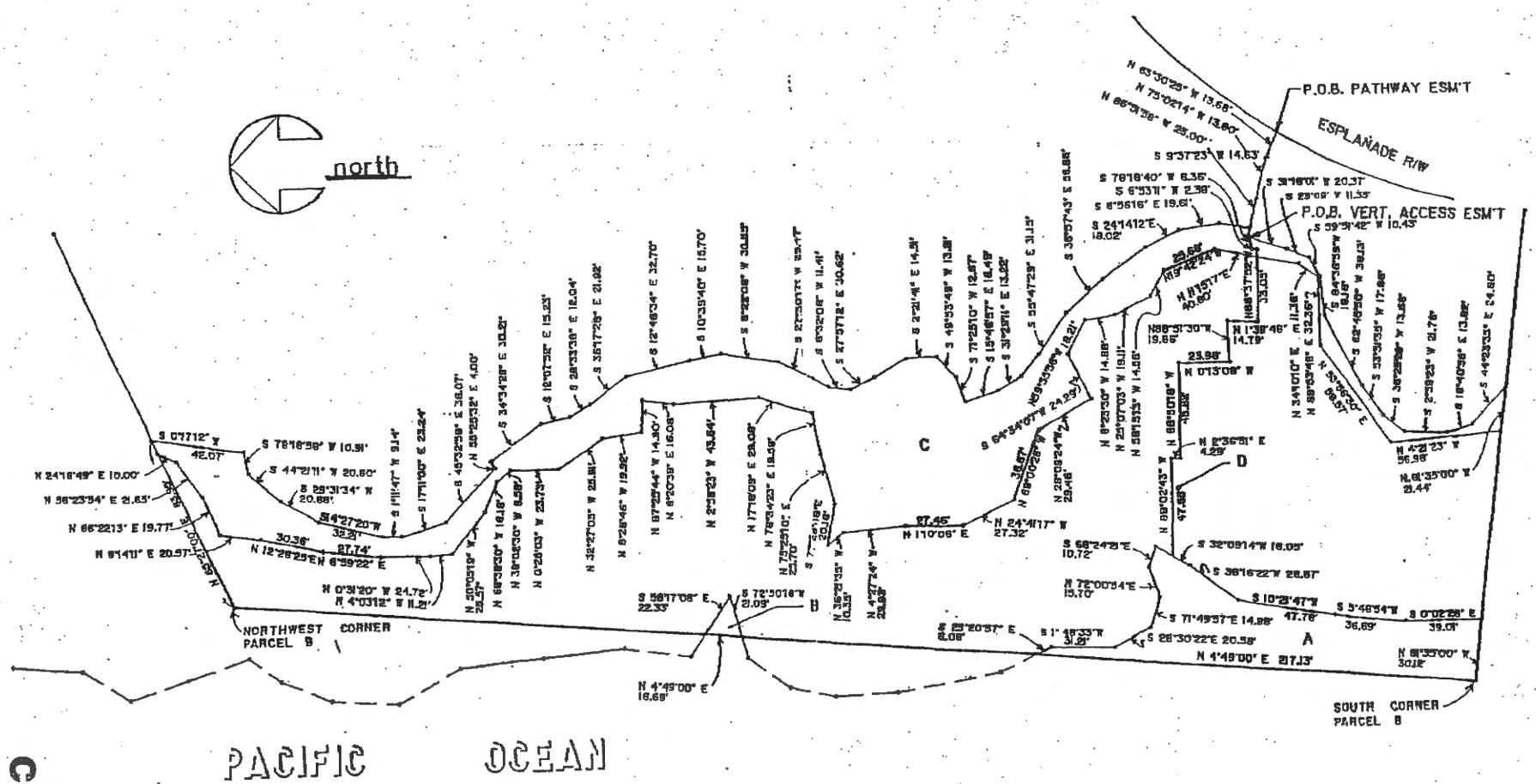

PLAT TO ACCOMPANY LEGAL DESCRIPTION

CARROLL / RESOURCES ENGINEERING & MANAGEMENT

AUGUST, 1988

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VERTICAL ACCESS AREA
LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY LYING WITHIN THE EXTERIOR BOUNDARIES OF THAT CERTAIN MAP ENTITLED "POINTS WEST, A CONDOMINIUM, BEING A SUBDIVISION OF PARCELS A AND B OF THAT CERTAIN PARCEL MAP AS RECORDED IN VOLUME 17 OF PARCEL MAPS AT PAGE 48 RECORDS OF SAN MATEO COUNTY, CALIFORNIA, CITY OF PACIFICA, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA ON AUGUST 18, 1983 IN BOOK 110 OF MAPS AT PAGES 41 THROUGH 52 INCLUSIVE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

A STRIP OF LAND TEN (10) FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

BEGINNING AT A POINT ON THE NORTHWESTERLY SIDE OF ESPLANADE AVENUE, SAID POINT BEING THE POINT OF BEGINNING IN DOCUMENT ENTITLED PATHWAY EASEMENT, INSTRUMENT NO. 88157268; THENCE FROM SAID POINT OF BEGINNING:

NORTH 63° 30' 25" WEST 13.56 FEET;
THENCE NORTH 75° 02' 14" WEST 13.80 FEET;
THENCE NORTH 86° 44' 08" WEST 31.47 FEET;
THENCE NORTH 88° 37' 52" WEST 33.05 FEET;
THENCE NORTH 01° 38' 48" EAST 14.79 FEET;
THENCE NORTH 88° 51' 30 WEST 19.66 FEET;
THENCE NORTH 00° 13' 08" WEST 23.98 FEET;

THENCE NORTH 88° 50' 18" WEST 35.00 FEET TO POINT "A" AND THE END OF SAID 10 FOOT WIDE EASEMENT ALSO THE POINT OF BEGINNING FOR A BLANKET EASEMENT ENCOMPASSING THE FOLLOWING BEARINGS AND DISTANCES:

BEGINNING AT SAID POINT "A" SOUTH 01° 09' 42' WEST 73.00 FEET; THENCE NORTH 88° 50' 18" WEST 110.48 FEET; THENCE NORTH 01° 09' 42" EAST 78.00 FEET; THENCE SOUTH 88° 50' 18" EAST 110.48 FEET; THENCE SOUTH 01° 09' 42" WEST 5.00 FEET TO SAID POINT "A" OF SAID BLANKET EASEMENT.

LICENSED LAND SURVEYOR
C.J. QUEYREL
No. 2988
Exp. 06/30/06
STATE OF CALIFORNIA

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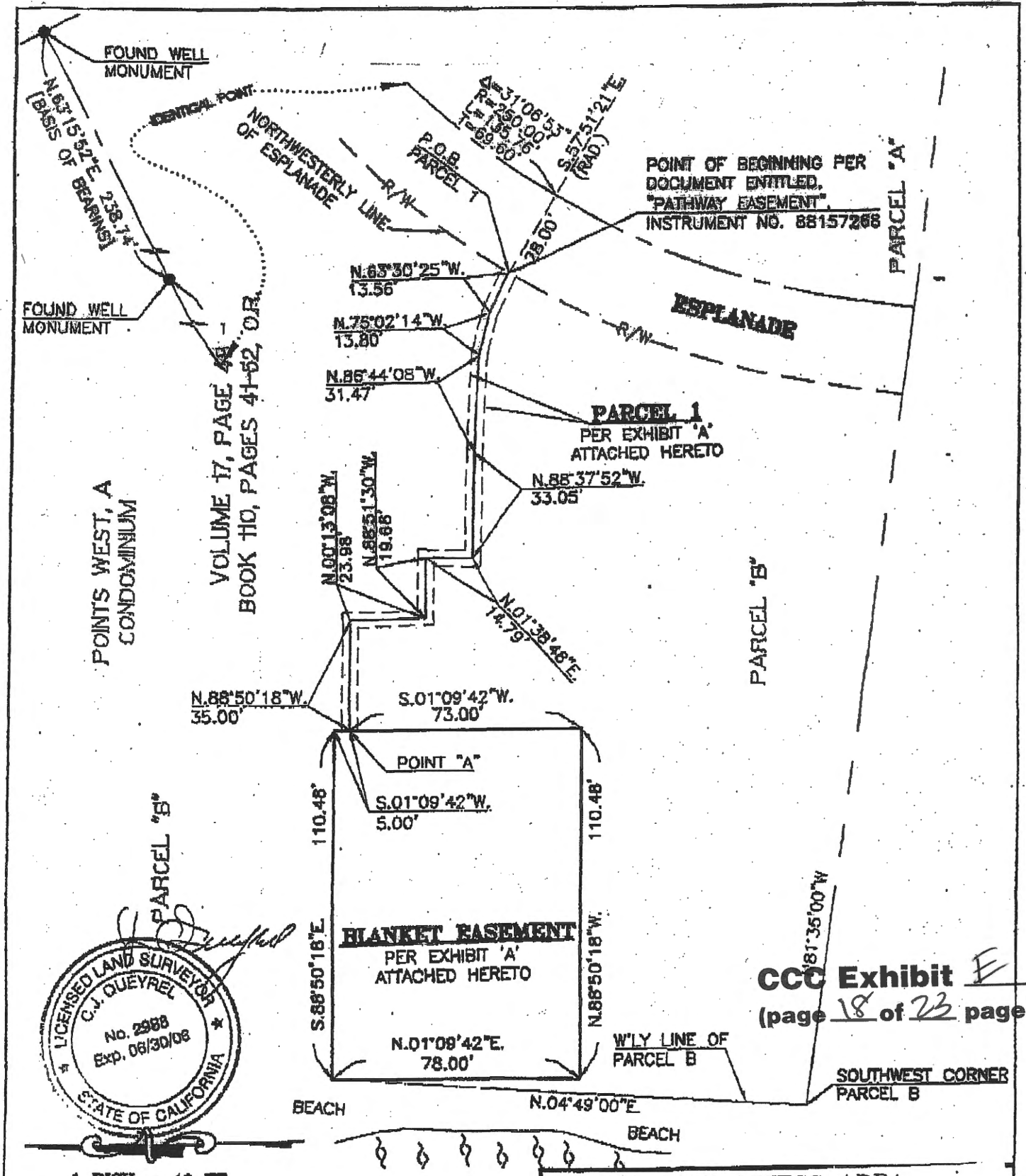
VERTICAL ACCESS AREA

SURVEYOR'S NAME & FIRM NAME: ANACAL ENGINEERING CO. CIVIL ENGINEERING & LAND SURVEYING 1900 E. LA PALMA AVE. ~ SUITE 202 ~ ANAHEIM, CALIFORNIA 92805 PHONE:	JOB NO. 04093	BY: P. D. C.	LOCATION "LANDS END APARTMENTS" 100 ESPLANADE
ANACAL ENGINEERING		DATE: 5/20/05	
		SCALE:	OWNER: SHEET NO. 1 OF 1



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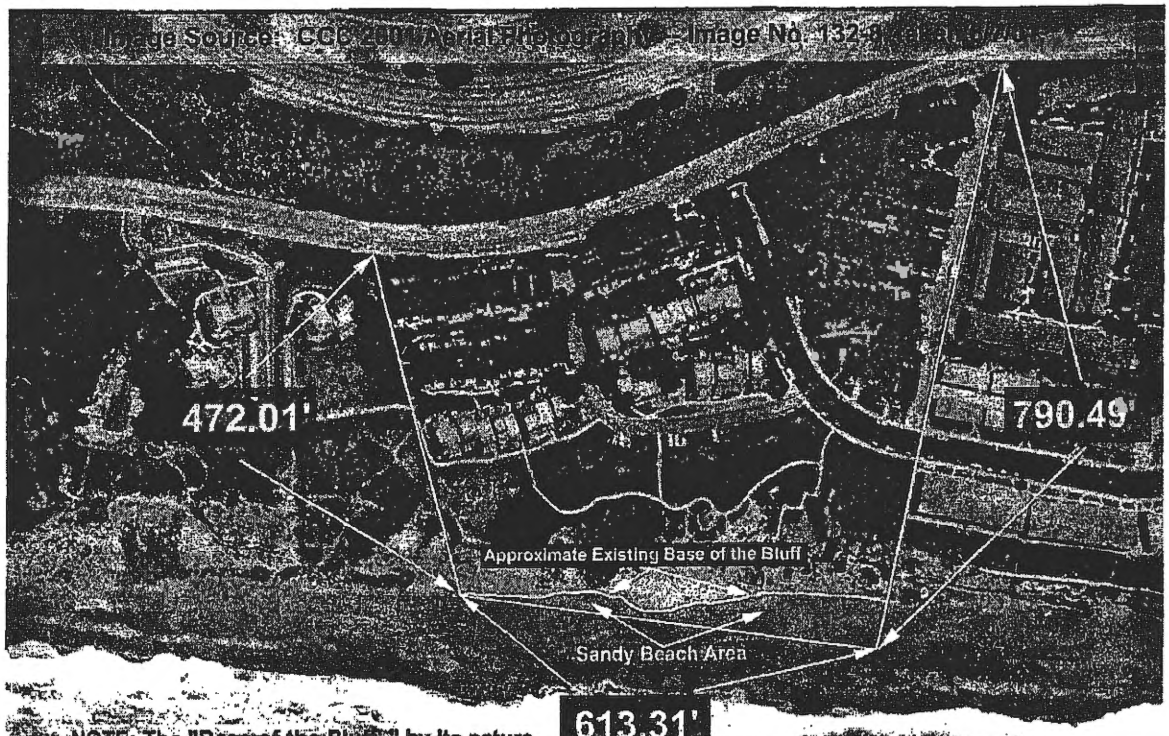

NOTE: The "Base of the Bluff," by its nature and definition is an ambulatory geographic feature and subject to change over time.

NOTE: The line on this map showing the western Property line (also the western boundary of the Sandy Beach Area) is drawn on the basis of the legal description of the Property as contained in the deed thereto, which excepts any portion of land which may lie westerly of the "line of ordinary high water mark of the Pacific Ocean." This term is synonomous with the term "mean high tide line" as such term is used in the Sandy Beach Offer to Dedicate. The western Property line as drawn on the map is a two dimensional representation and approximation of the western property line (and western boundary of the Sandy Beach Area) as legally described. Since the "line of ordinary high water mark of the Pacific Ocean" and "mean high tide line" are, by their very nature and definition, ambulatory and subject to change over time, the western Property line (and western boundary of the Sandy Beach Area) will exhibit these same characteristics.

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EXHIBIT "C"

LEGAL DESCRIPTION - CLIFF BLUFF EASEMENT

All that certain real property lying within the exterior boundaries of that certain map entitled "Points West, A Condominium, Being a Subdivision of Parcels A and B of that Certain Parcel Map as Recorded in Volume 17 of Parcel Maps at page 48 Records of San Mateo County, California, City of Pacifica, San Mateo County, California", which map was filed in the Office of the County Recorder of San Mateo County, State of California on August 18, 1983 in Book 110 of Maps at Pages 41 through 52 inclusive, more particularly described as follows:

Beginning at the northwest corner of aforementioned Parcel B; thence from said point of beginning, along the northerly line of said Parcel B, N 65° 27' 00" E 83.95 feet to the true point of beginning; thence from said true point of beginning along said northerly line N 65° 27' 00" E 5.00 feet; thence S 00° 17' 12" W 42.07 feet; thence S 78° 18' 58" W 10.91 feet; thence S 44° 21' 11" W 20.60 feet; thence S 29° 31' 34" W 20.86 feet; thence S 14° 27' 20" W 32.21 feet; thence S 1° 11' 47" W 9.14 feet; thence S 17° 11' 00" E 23.24 feet; thence S 45° 32' 59" E 36.07 feet; thence N 55° 25' 32" E 4.00 feet; thence S 34° 34' 28" E 30.21 feet; thence S 12° 07' 52" E 15.23 feet; thence S 28° 33' 38" E 12.04 feet; thence S 36° 17' 28" E 21.92 feet; thence S 12° 46' 34" E 32.70 feet; thence S 10° 39' 40" E 15.70 feet; thence S 8° 22' 08" W 30.55 feet; thence S 27° 30' 17" W 29.47 feet; thence S 6° 32' 08" W 11.40 feet; thence S 27° 57' 12" E 30.62 feet; thence S 2° 21' 41" E 14.51 feet; thence S 49° 53' 49" W 13.81 feet; thence S 71° 25' 10" W 12.67 feet; thence S 15° 46' 57" E 16.49 feet; thence S 31° 29' 11" E 13.22 feet; thence S 55° 47' 29" E 31.15 feet; thence S 36° 57' 43" E 56.86 feet; thence S 24° 14' 12" E 18.02 feet; thence S 6° 56' 16" E 19.61 feet; thence S 9° 37' 23" W 14.63 feet; thence S 31° 18' 01" W 20.37 feet; thence S 23° 09' 00" W 11.35 feet; thence S 59° 51' 42" W 10.43 feet; thence S 84° 36' 59" W 18.18 feet; thence S 62° 45' 50" W 38.13 feet; thence S 53° 31' 35" W 17.86 feet; thence S 36° 25' 29" W 13.66 feet; thence S 2° 39' 23" W 21.76 feet; thence S 16° 40' 58" E 13.82 feet; thence S 44° 23' 35" E 24.80 feet; thence N 81° 35' 00" W 21.44 feet; thence N 4° 21' 23" W 56.98 feet; thence N 53° 56' 30" E 58.57 feet; thence N 89° 53' 48" E 32.36 feet; thence N 34° 10' 10" E 11.36 feet; thence N 11° 15' 17" E 40.80 feet; thence N 19° 42' 24" W 25.68 feet; thence N 58° 15' 13" W 14.56 feet; thence N 25° 07' 03" W 19.11 feet; thence N 8° 23' 30" W 14.88 feet; thence N 59° 55' 56" W 18.21 feet; thence S 64° 34' 07" W 24.29 feet; thence N 28° 09' 24" W 29.46 feet; thence N 69° 00' 26" W 36.67 feet; thence N 24° 41' 17" W 27.32 feet; thence N 1° 10' 06" E 27.46 feet; thence N 4° 27'[24" W 29.93 feet; thence N 36° 21' 35" W 10.35 feet; thence S 77° 28' 48" E 20.18 feet; thence N 75° 25' 10" E 25.70 feet; thence N 78° 34' 23" E 19.59 feet; thence N 17° 18' 09" E 29.08 feet; thence N 2° 58' 23" W 43.64 feet; thence N 8° 20' 39" E 16.08 feet; thence N 87° 25' 44" W 14.90 feet; thence N 8° 26' 46" W 19.92 feet; thence N 32° 27' 03" W 25.91 feet; thence N 00° 26' 03" W 23.73 feet; thence N 39° 02' 30" W 8.58 feet; thence N 66° 38' 30" W 16.18 feet; thence N 50° 05' 19" W 25.57 feet; thence N 4° 03' 12" W 11.21 feet; thence N 00° 31' 20" W 24.72 feet; thence N 6° 59' 22" E 27.75 feet; thence N 12° 28' 25" E 30.36 feet; thence N 9° 14' 11" E 20.57 feet; thence N 66° 22' 13" E 19.77 feet; thence N 56° 23' 54" E 21.65 feet; thence N 24° 16' 49" E 10.00 feet to the true point of beginning. This parcel contains more or less 0.381 acres and includes existing pathway and sidewalk along Cliff Bluff.

88157272

CCC Exhibit E
(page 20 of 23 pages)

EXHIBIT "C"

LEGAL DESCRIPTION - SHORELINE ACCESS EASEMENT "A"

All that certain real property lying within the exterior boundaries of that certain map entitled "Points West, A Condominium, Being a Subdivision of Parcels A and B of that Certain Parcel Map as Recorded in Volume 17 or Parcel Maps at page 48 Records of San Mateo County, California, City of Pacifica, San Mateo County, California", which map was filed in the Office of the County Recorder of San Mateo County, State of California on August 18, 1983 in Book 110 of Maps at Pages 41 through 52 inclusive.

Beginning at the southeast corner of Parcel B as shown on that Certain Map filed for Record in Book 110 of Maps at Pages 41 through 52 inclusive, San Mateo County;

Thence from said point of beginning along the westerly line of aforementioned Parcel B, N 04° 49' 00" E 217.13 feet, thence S 25° 20' 57" E 8.08 feet; thence S 1° 48' 33" W 31.21 feet; thence S 28° 30' 22" E 20.58 feet; thence S 71° 49' 57" E 14.88 feet; thence N 72° 00' 54" E 15.70 feet; thence S 68° 24' 21" E 10.72 feet; thence S 32° 09' 14" W 18.05 feet; thence S 38° 16' 22" W 28.,87 feet; thence S 10° 21' 47" W 47.78 feet; thence S 5° 48' 54" W 36.69 feet; thence S 00° 02' 28" E 39.01 feet; thence N 81° 35' 00" W 30.12 feet to the true point of beginning, and containing 0.130 acres, more or less.

88157271

CCC Exhibit E
(page 21 of 23 pages)

EXHIBIT "C-1"

LEGAL DESCRIPTION - SHORELINE ACCESS EASEMENT "B"

All that certain real property lying within the exterior boundaries of that certain map entitled "Points West, A Condominium, Being a Subdivision of Parcels A and B of that Certain Parcel Map as Recorded in Volume 17 of Parcel Maps at page 48 Records of San Mateo County, California, City of Pacifica, San Mateo County, California", which map was filed in the Office of the County Recorder of San Mateo County, State of California on August 18, 1983 in Book 110 of Maps at Pages 41 through 52 inclusive.

Beginning at the southeast corner of Parcel B as shown on that Certain Map filed for Record in Book 110 of Maps at Pages 41 through 52 inclusive, San Mateo County; thence from said point of beginning along the westerly line of aforementioned Parcel B, N 04° 49' 00" E 362.93 feet to the true point of beginning; thence from said true point of beginning, along the westerly line of said Parcel B, N 04° 49' 00" E 18.69 feet; thence S 56° 17' 06" E 22.34 feet; thence S 72° 50' 18" W 21.09 feet to the true point of beginning and containing 0.004 acres, more or less.

88157271

88157271

RF	
CO	
LN	
MF	
AF	
HB	

RECORDED AT REQUEST OF

FIRST AMERICAN TITLE INSURANCE CO.
SAN MATEO COUNTY TITLE DIVISION

Nov 17 11 34 AM '88

WARREN SLOCUM RECORDER
SAN MATEO COUNTY
OFFICIAL RECORDS

27

CCC Exhibit E
(page 22 of 23 pages)

CCC Exhibit E
(page 24 of 23 pages)

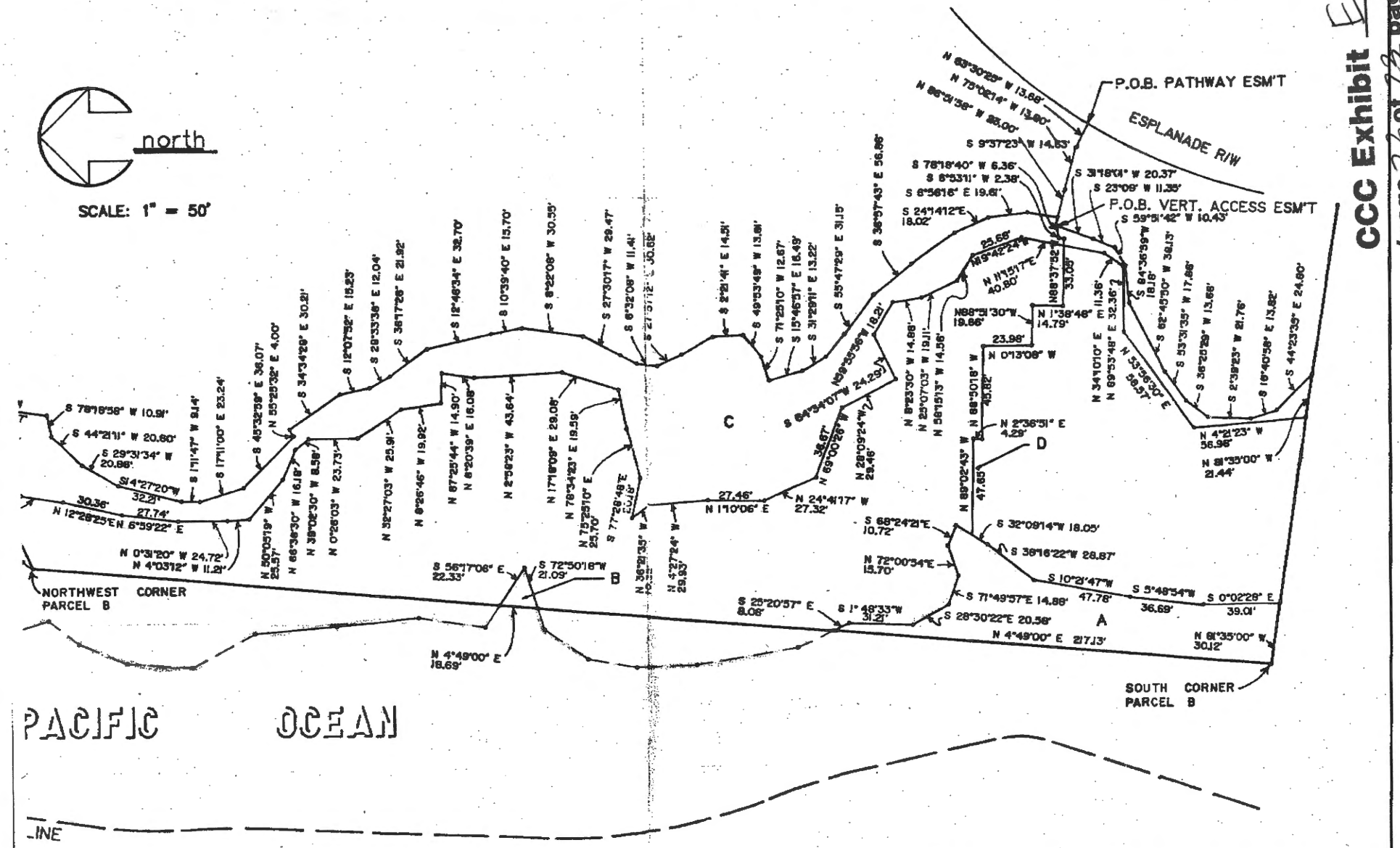


EXHIBIT "A"
ACCOMPANY LEGAL DESCRIPTION

Base of Bluff

88157271

CARROLL / RESOURCES ENGINEERING & MANAGEMENT

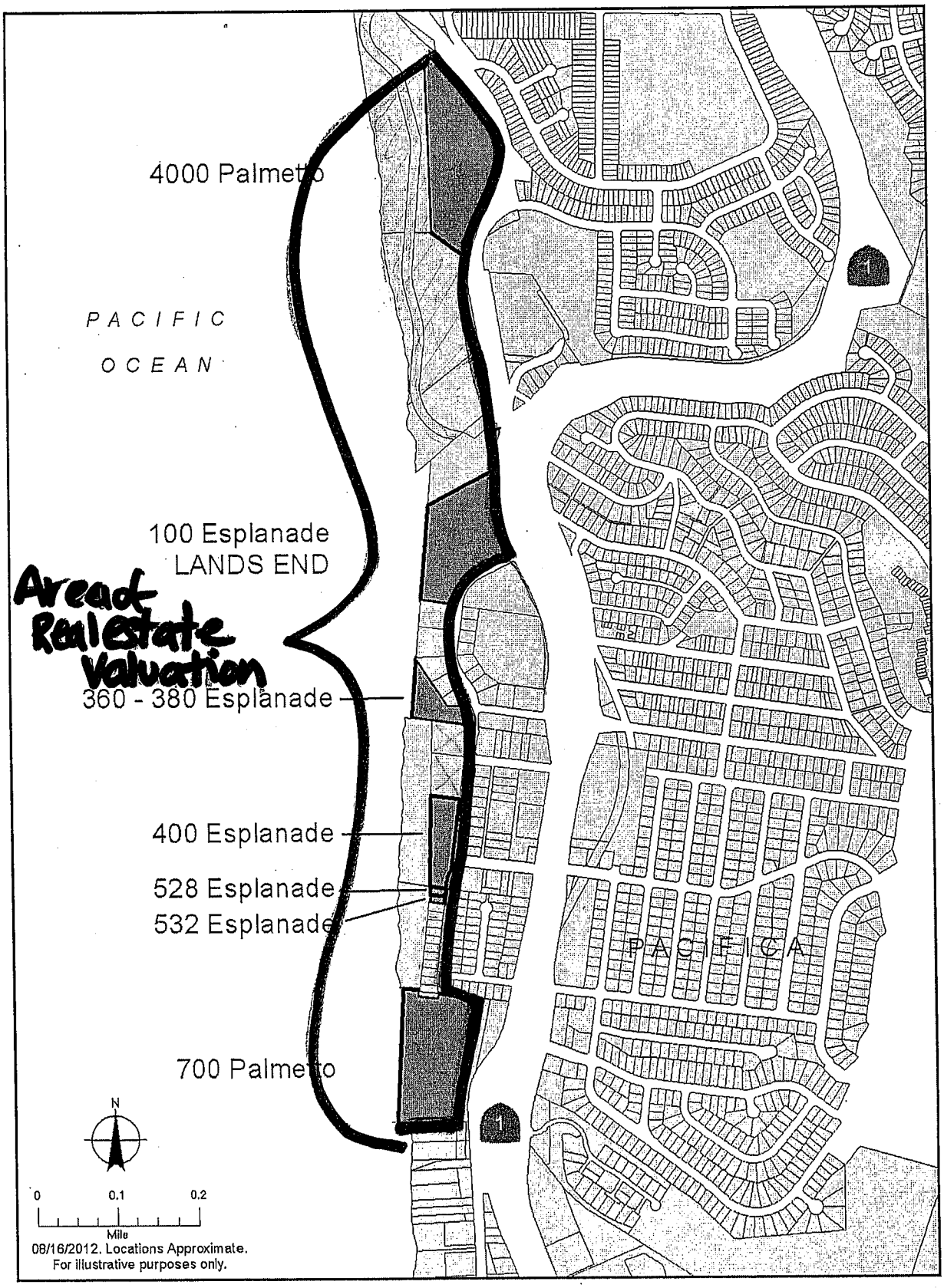
88157271

EXHIBIT "C-2"
AUGUST, 1988

3145-0103

Selected Lands End Nearby Properties

City of Pacifica, San Mateo County



Lands End 2-10-039

Property Location & APN	Square Feet	Sales Price & Month, Year	Sales Price Adjusted to June 2013 with Assessor improvement discount	Adjusted Cost per Sq. Ft of Unimproved Land	
540 Esplanade 009-161-040	5200	$150,150 March 1999	$338,992.70	$65.19	Condemnation by City of Pacifica.[1]
544 Esplanade 009-161-050	5200	$80,115 March 1999	$180,875.13	$34.78	Condemnation by City of Pacifica.
548 Esplanade 009-161-060	5200	$150,150 March 1999	$338,992.70	$65.19	Condemnation by City of Pacifica.
552 Esplanade 009-161-070	5200	$113,400 March 1999	$256,022.46	$49.24	Condemnation by City of Pacifica.
556 Esplanade 009-161-080	5200	$98,700 March 1999	$222,834.37	$42.85	Condemnation by City of Pacifica.
560 Esplanade 009-161-090	5200	$107,100 March 1999	$241,798.99	$46.50	Condemnation by City of Pacifica.
009-161-130 & 009-161-140	8470	$173,460 April 1999	$366,713.63	$43.30	Condemnation by City of Pacifica.
009-161-120	5720	$75,000 May 1999	$151,867.86	$26.55	Condemnation by City of Pacifica.
536 Esplanade 009-161-030	5200	$155,400 July 1999	$310,629.66	$59.74	Condemnation by City of Pacifica.
4000 Palmetto 009-401-030	335412	$3.1 million May 2000	$4,881.754.26	$14.55	
564 Esplanade 009-161-100	5200	$95,550 December 2000	$141,891.08	$27.29	Condemnation by City of Pacifica.
568 Esplanade 009-161-110	5460	$95,550 December 2000	$141,891.08	$25.99	Condemnation by City of Pacifica.

[1] **For all condemnations, the Agreement of Purchase and Sale date is used.**

Property Location & APN	Square Feet	Sales Price & Month, Year	Sales Price Adjusted to June 2013 with Assessor improvement discount	Adjusted Cost per Sq. Ft of Unimproved Land	
700 Palmetto 009-074-030	360859	$5,875,000 July 2001	$7,936,806.18	$21.99	
400 Esplanade 009-131-030	94525	Appraised $2.9 million June 2005	$2,528,586.07	$26.75	
360 Esplanade 009-413-060	95614	$5,150,00 September 2006	$3,395,648.24	$35.51	
380 Esplanade 009-131-060	46200	$6,950,000 September 2006	$4,713,404.66	$102.02	
528 Esplanade 009-161-010	5200	$375,000 January 2009	$205,058.04	$39.43	
532 Esplanade 009-161-020	5200	$270,000.00 March 2009	$162,573.11	$31.26	
Land's End apartments 009-023-070 & 009-024-010	404150	$44.8 million June 2005	$21,874,885.25	$54.13	
AVERAGE PRICE PER SQUARE FOOT				$42.75	

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

10 September 2012

GEOTECHNICAL REVIEW MEMORANDUM

To: Karen Geisler, Coastal Program Analyst
From: Mark Johnsson, Staff Geologist
Re: Land's End CDP (2-10-039)

In connection with the above-referenced application, I have reviewed the geologic cross sections depicting the base of the bluff, submitted with the as-built plans by the applicant. In addition, I have visited the site numerous times. On 21 March 2011 Coastal Commission Staff Engineer Lesley Ewing and I visited the site, and provided guidance to the project engineer, Robert Anderson, on staff's desired placement of the top and bottom of the seawall then under construction through an Emergency Permit. I understand that it is the applicant's contention that because of this guidance, placement of the seawall required cutting into the lower portion of the bluff, effectively moving the base of the bluff landward. In support of this contention, several geologic cross sections were provided depicting the pre-project condition. A representative example is that reproduced here as figure 1.

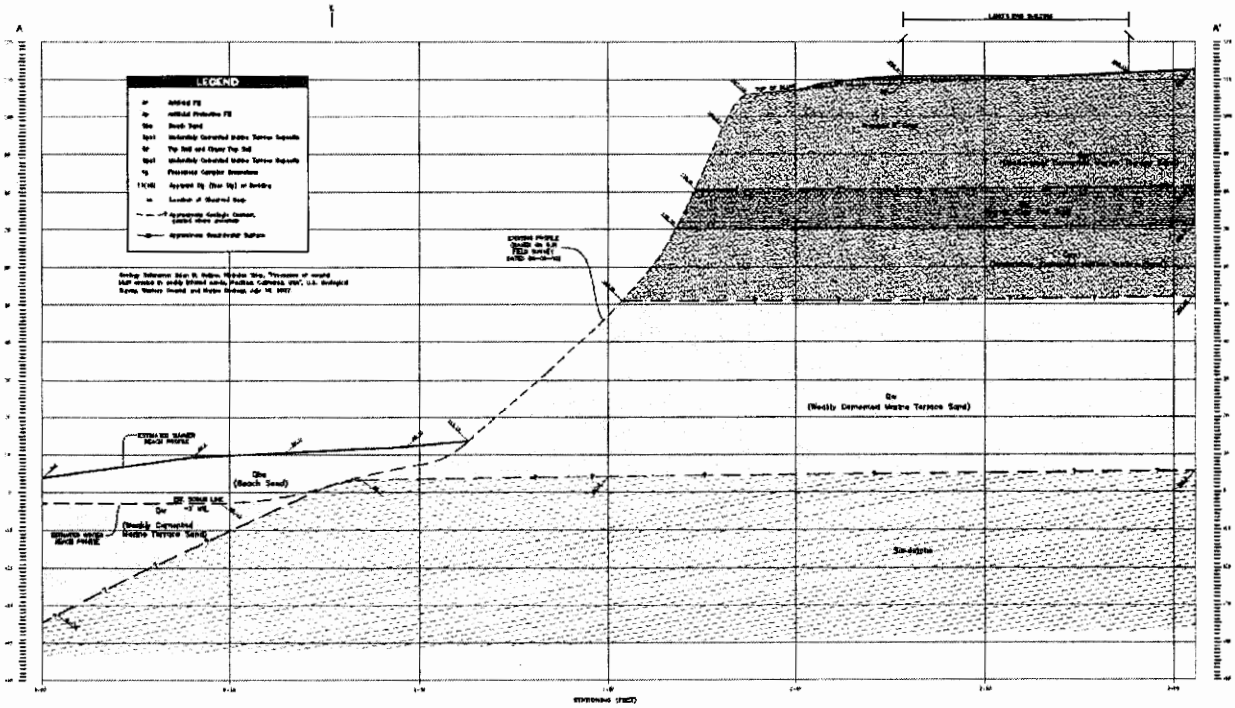


Figure 1. Geologic cross section submitted with as-built plans (for pre-project condition)

These cross sections are quite different than those submitted with the applicant's original 2009 geotechnical report for an access stairway at this location, one of which is reproduced as figure 2. In these cross sections, the lower portion of the bluff is shown to be buried beneath a wedge of colluvium, labeled as "Af (Disturbed sand)."

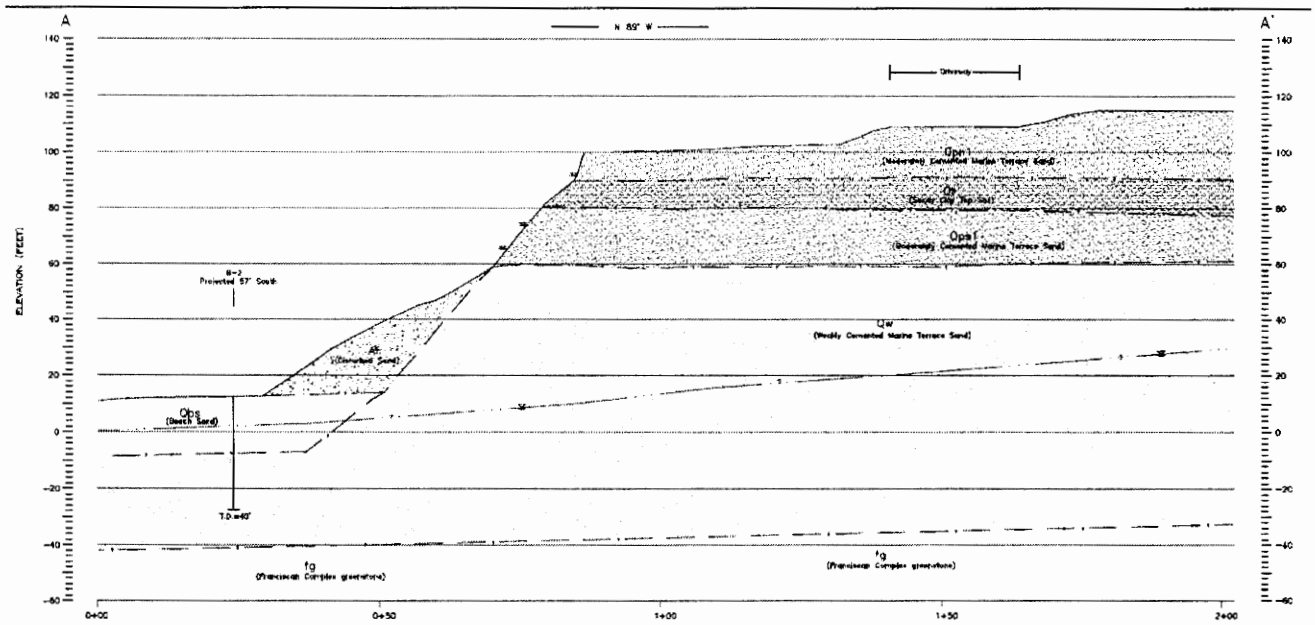


Figure 2. Geologic cross section from 2009 RJR geotechnical report.

In fact, I am very familiar with these bluffs, having reviewed numerous geologic reports for shoreline protection projects along this section of the coast and having visited the site numerous times. In fact, a PhD dissertation and several scientific papers exploring failure mechanisms of these bluffs have been prepared by Brian Collins, now with the U.S. Geological Survey.

It is clear to me that these bluffs are generally quite steep, and tend to fail along bluff-parallel fractures. When not mantled by a colluvial wedge, the steep gradient either continues to the beach, or the bluff may actually steepen in its lower portion due to increased marine erosion due to wave attack. Figure 3 shows an example of this condition, taken at the project site in 2010.

More commonly, however, a wedge of colluvium accumulates at the base of the bluff, covering it (Figure 4). This colluvial wedge is the result both of sudden upper bluff failure, and of more gradual downwash of material from the upper bluff. Typically, these colluvial wedges coalesce, and much of the lower bluff is covered by colluvium. This colluvium is transient in nature, and may be entirely removed by wave action during winter storms, only to be replaced by continued downwash or upper bluff slumping.

Figure 3. Typical lower bluff, steepend by marine erosion.

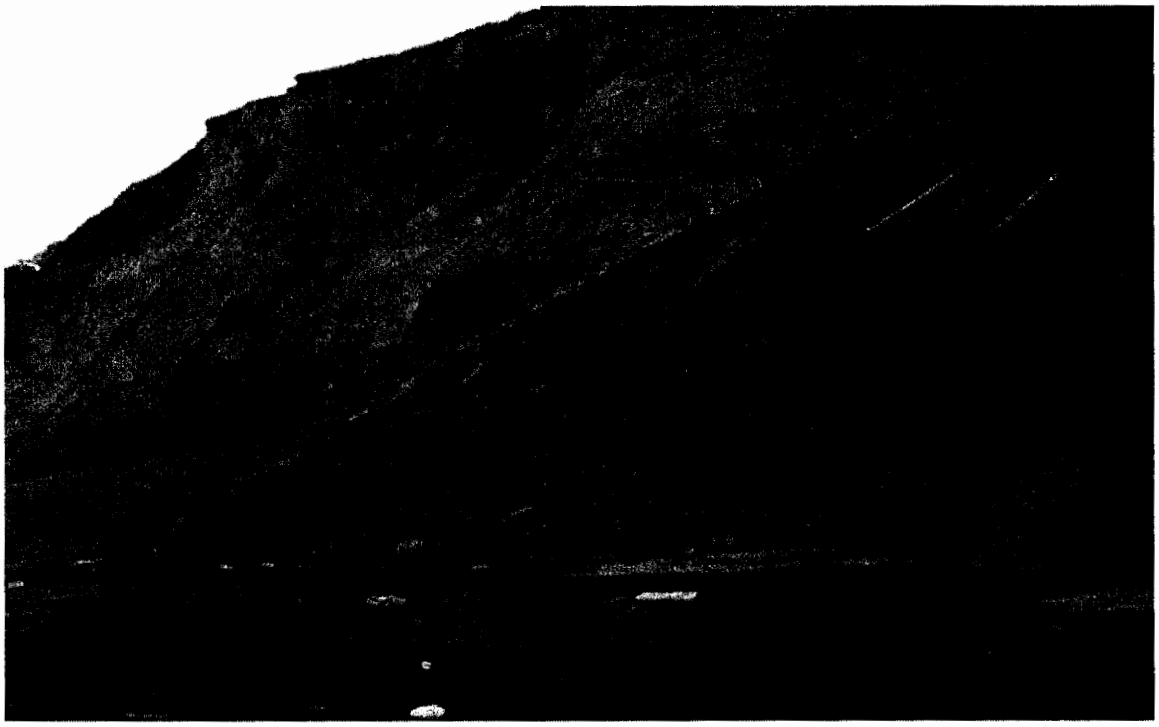


Figure 4. Colluvial wedge covering the base of the bluff, resulting from a single upper-bluff failure.

The conditions of the bluff at the time of staff's direction regarding the locations of the top and bottom of the proposed seawall (21 March 2011) can be seen in figure 5. The contractor had already assembled steel cages to reinforce the seawall, placing them on top of the colluvial wedge, but had not removed the colluvial wedge or excavated into the bluff. In the foreground of the photo, the colluvial wedge has been partially excavated, and it is clear that the bluff itself is still buried beneath colluvium.

Figure 5. Photo taken on 21 March 2011 prior to installation of seawall. Note colluvial wedge mantling the base of bluff, partially excavated in foreground.

When staff directed the project engineer to place the top and the base of the seawall further landward than the contractor had originally planned, it was with the intent that the colluvial wedge be removed, added to the beach, and that the seawall would, as much as was possible, be covering only bluff material, with little if any excavation into the bluff.

Although I was not present during subsequent excavations and the installation of the seawall, it is my opinion that the location of the base of the bluff was not altered appreciably by the excavations that were carried out. Rather, these excavations were principally confined to removal of the colluvial wedge, and did not alter the position of the base of the bluff.

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

Sincerely,

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

References:

Collins, B.D., 2004, Failure mechanics of weakly lithified sand coastal bluff deposits [Ph.D. thesis]: Berkeley, California, University of California, Berkeley.

Collins, B.D., Kayen, R., and Sitar, N., 2007, Process-based empirical prediction of landslides in weakly lithified coastal cliffs, San Francisco, California, USA, *in* McInnes, R., Jakeways, J., Fairbank, H., and Mathie, E., eds., Landslides and climate change: Proceedings of the International Conference on Landslides and Climate Change, Isle of Wright, UK, Taylor and Francis, p. 175-184.

Collins, B.D., and Sitar, N., 2007 (in press), Processes of coastal bluff erosion in weakly lithified coastal cliffs, Pacifica, California, USA: Geomorphology.

Collins, B.D., and Sitar, N, 2009, Geotechnical Properties of Cemented Sands in Steep Slopes: Journal of Geotechnical and Geoenvironmental Engineering, v. 135, p. 1359-1366.

Collins, B.D., and Sitar, N, 2011, Stability of Steep Slopes in Cemented Sands: Journal of Geotechnical and Geoenvironmental Engineering, v. 137, p. 43-51.

Connelly, Steven F., 2003, "Engineering geologic investigation, Tong Properties, Esplanade Avenue, Pacifica, California", 13 p. engineering geology report dated 31 December 2003 and signed by S. F. Connelly (CEG 1607).

Cotton, Shire and Associates, 2001, "Supplemental reply to Coastal Commission questions, Esplanade revetment, Appeal #A-2-PAC-00-010", 9 p. dated 18 September 2001 and signed by T. Sayre (CEG 1795) and P. O. Shires (GE 770).

Cotton, Shires and Associates, Inc., 2002, "Supplemental reponse to the California Coastal Commission regarding the Esplanade revetment, Pacifica, California", 10 p. geotechnical letter report dated 26 February 2002 and signed by T. Sayre (CEG 1795) and P. O. Shires (GE 770).

RJR Engineering, 2009, "Geotechnical feasibility and anlaysis, proposed stairway access and bluff protection, 100 Esplanade Avenue, City of Pacifica, California", 55 p. geotechnical report dated 9 November 2009 and signed by R. W. Anderson (PE C058383) and M. Hoshiyama.

RJR Engineering, 2010, "Geotechnical engineering supplemental letter #1, Emergency repair application, Lower bluff and public access stabilization, Lands End Multi-Family Development, Proposed bluff stabilization, 100 Esplanade Way (APN 009-023-070), City of Pacifica, California", p. set of engineering calculations dated 10 November 2010 and signed by R. W. Anderson (PE C058383).

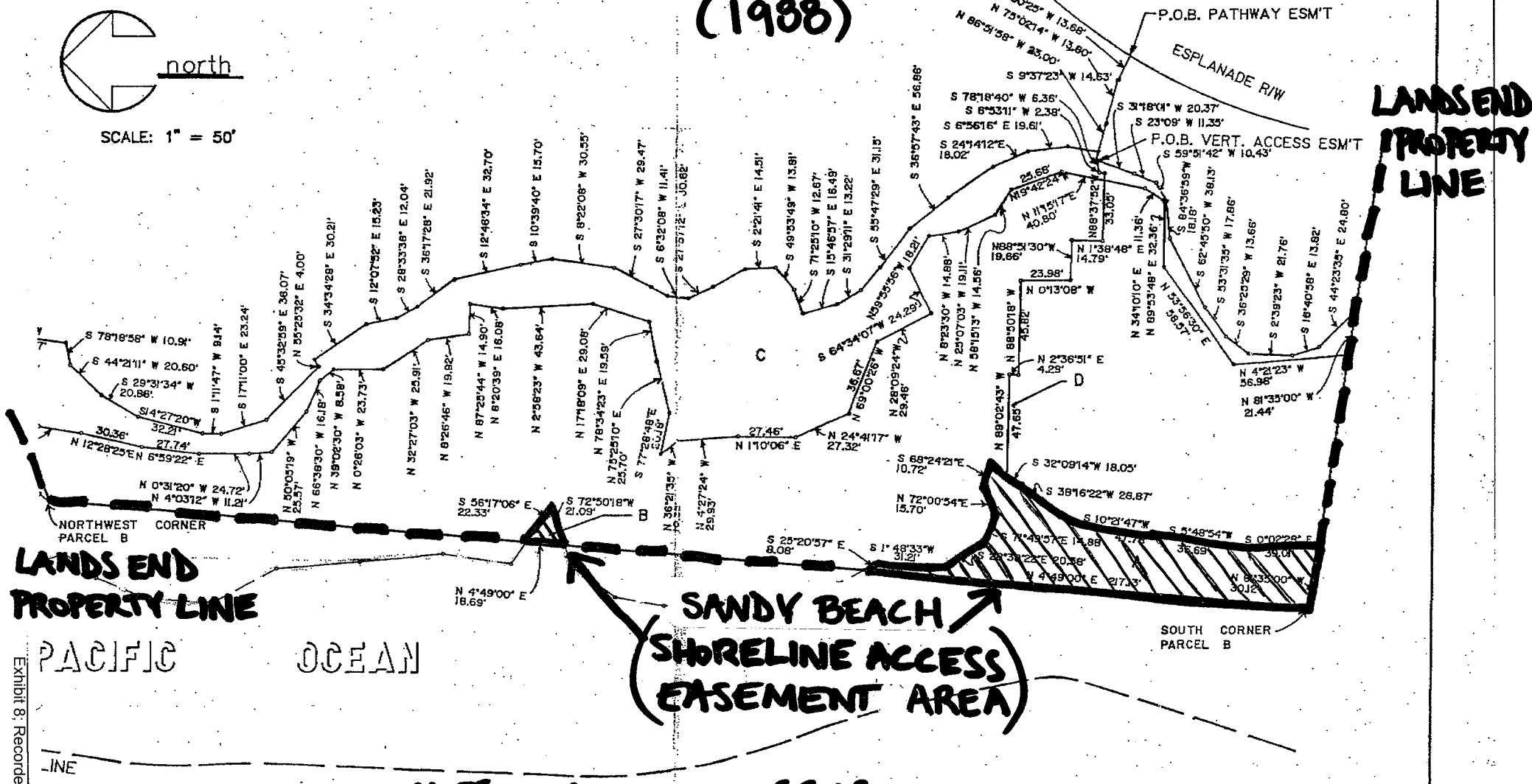
RJR Engineering, 2011, "Response to California Coastal Commission review, Coastal Development Permit application, bluff stabilization and public access stabilization, Land's End Multi-family development, proposed bluff stabilization, 100 Esplanade Way, (APN 009-023-070) City of Pacifica, California", 15 p. report dated 18 April 2011 and signed by A. T. Aguilar and R. W. Anderson (PE C058383).

Skelly Engineering, 2001, "Esplanade revetment, Partial response to California Coastal Commission letter dates October 11, 2001 (A-2-PAC-00_010 and CDP 2-00-009)", 7 p. letter report dated 28 November 2001 and signed by D. W. Skelly (RCE 47857).

SANDY BEACH AREA REPRESENTS

SHORELINE ACCESS EASEMENT

(1988)



NOTE: BASE OF BLUFF IS AMBULATORY AND SUBJECT TO CHANGE OVER TIME.

EXHIBIT "A"
ACCOMPANY LEGAL DESCRIPTION

Base of Bluff

88157271

CARROLL / RESOURCES ENGINEERING & MANAGEMENT

88157271

EXHIBIT "C-2"
AUGUST, 1988

OFFERS TO DEDICATE (1988)

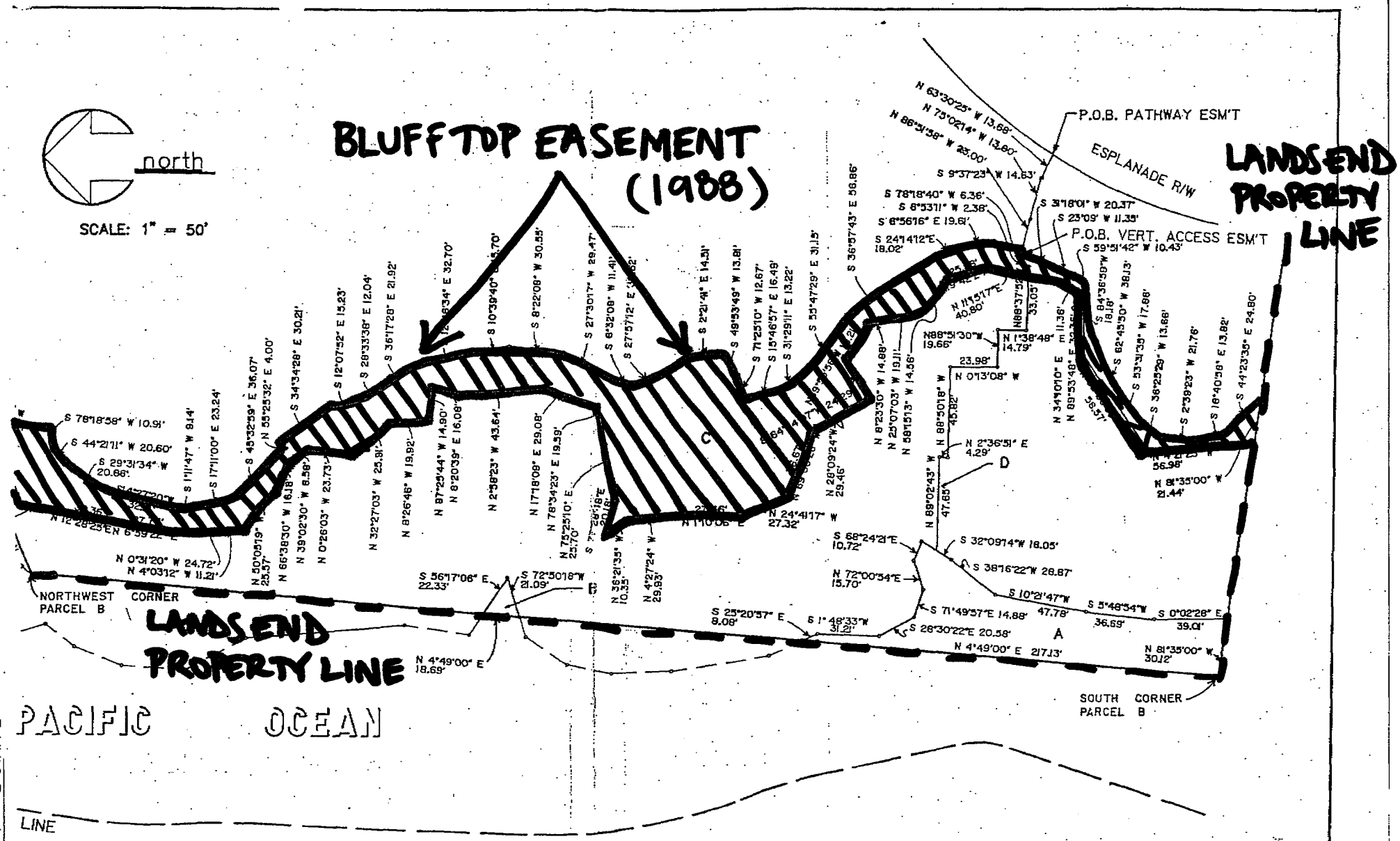


EXHIBIT "A"
ACCOMPANY LEGAL DESCRIPTION

88157272

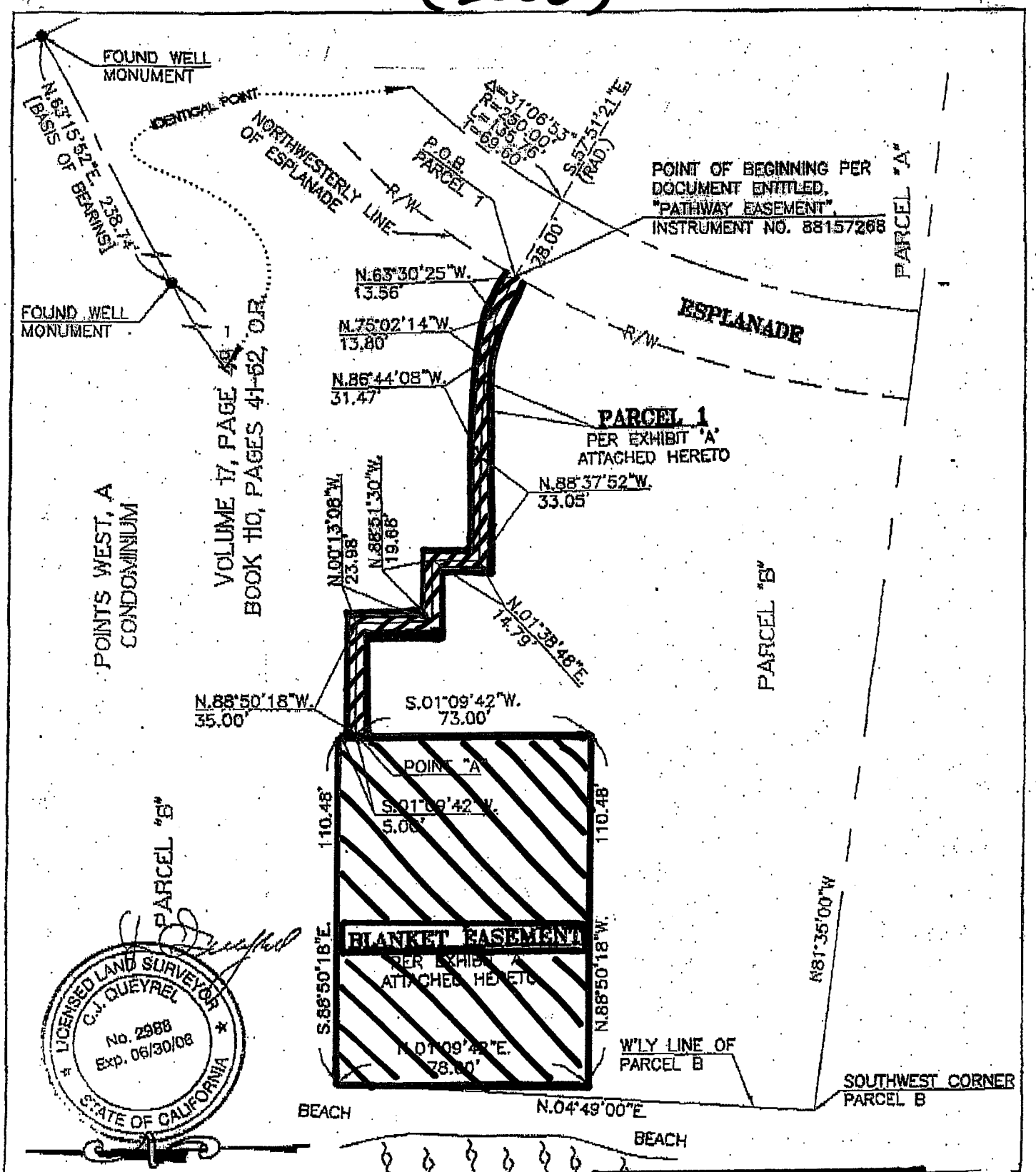
CARROLL / RESOURCES ENGINEERING & MANAGEMENT

88157272

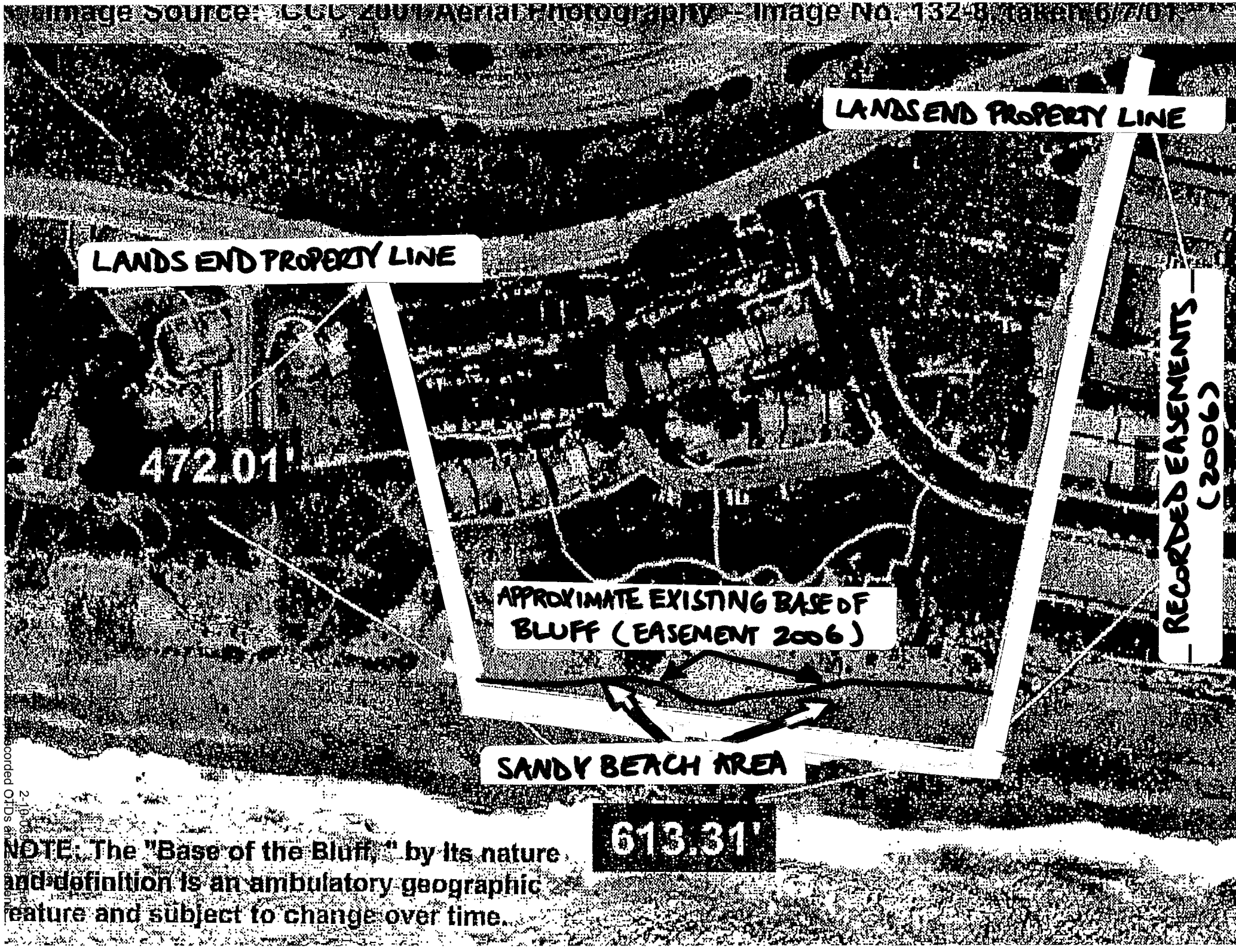
EXHIBIT "C-1"
AUGUST, 1988

3145-0103

EXISTING VERTICAL ACCESS EASEMENT (2006)



RECORDED EASEMENTS (2006)

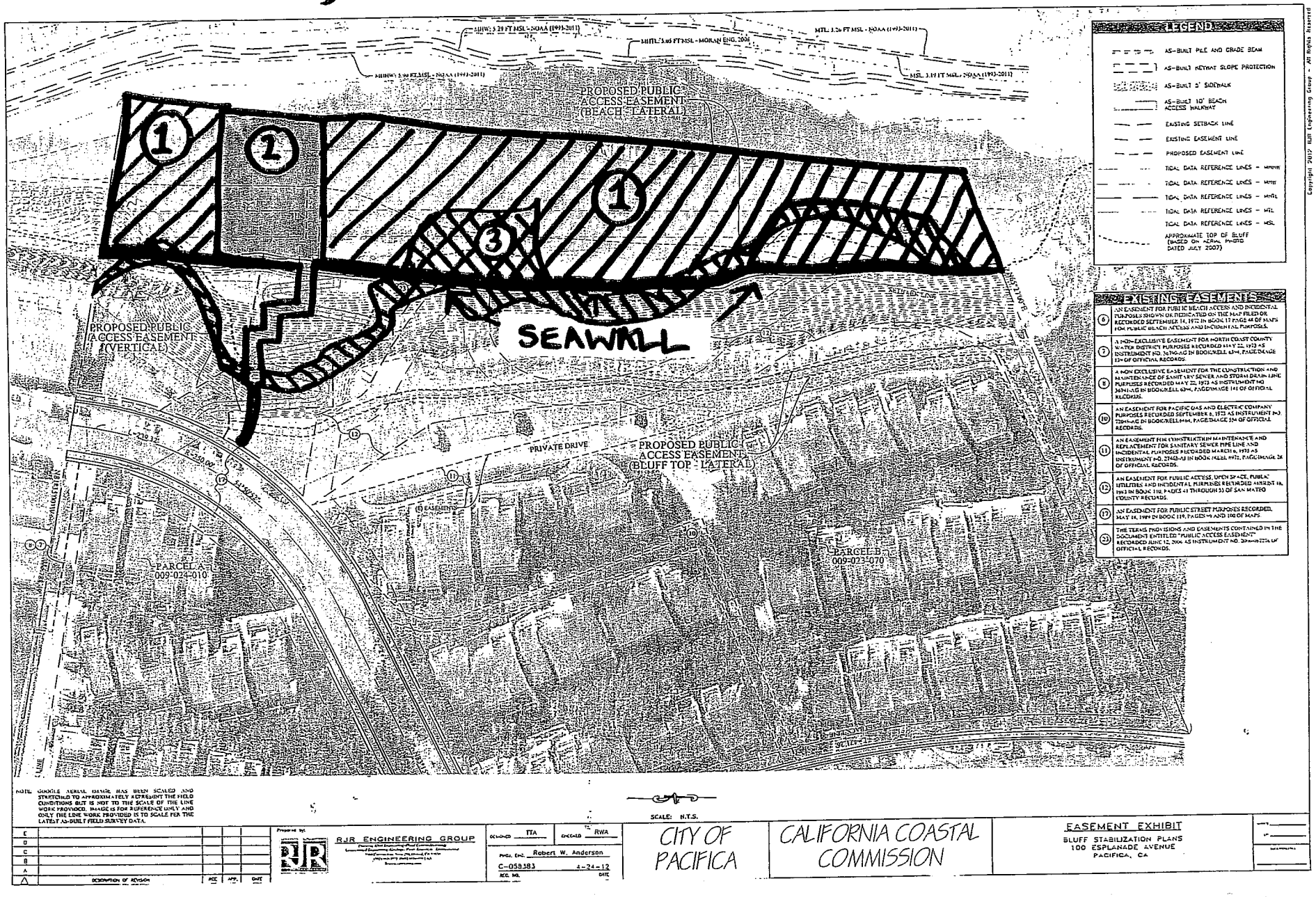


NOTE: The "Base of the Bluff," by its nature and definition is an ambulatory geographic feature and subject to change over time.

① SANDY BEACH (SHORELINE ACCESS)

② VERTICAL ACCESS

③ BLUFFTOP ACCESS



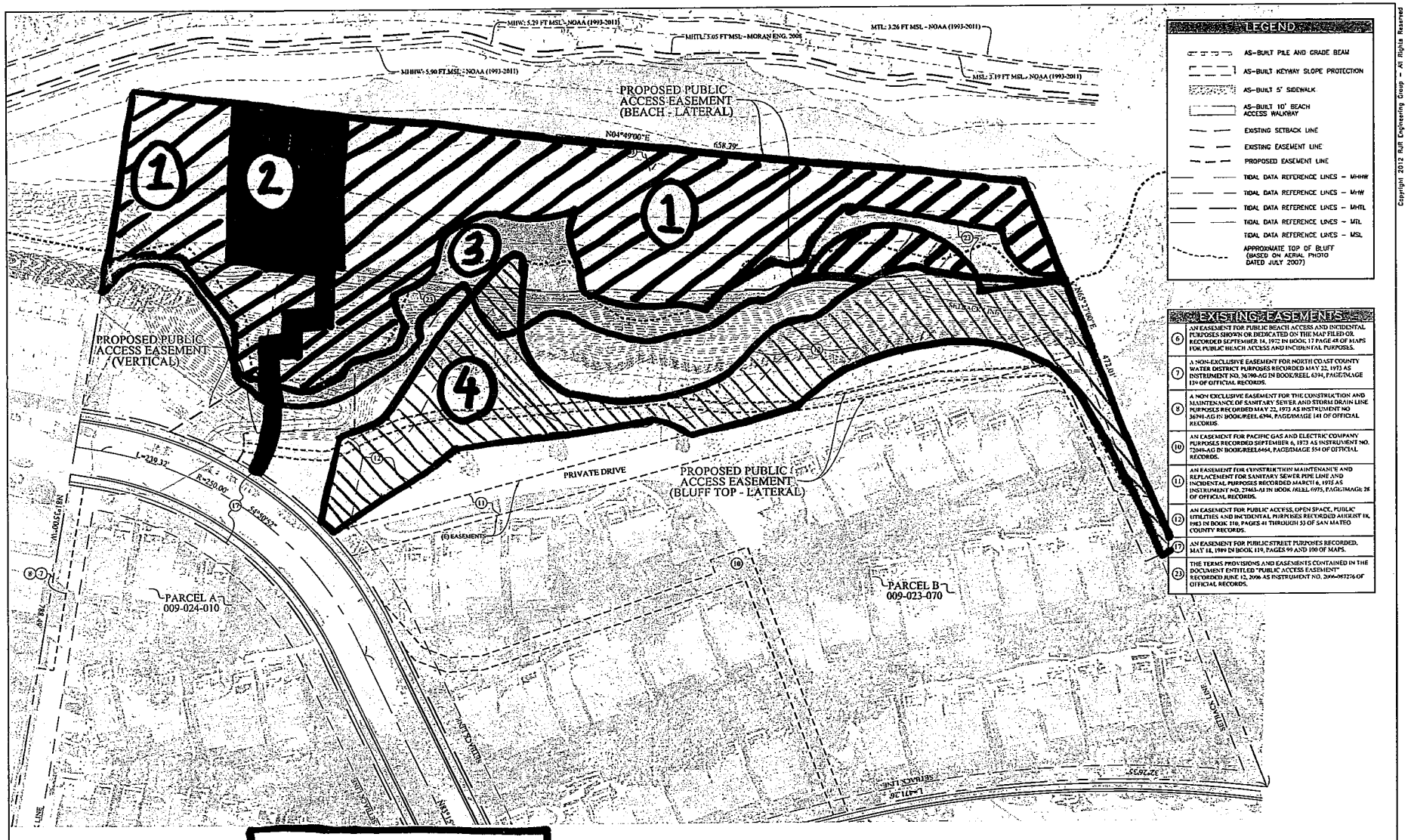
DEPICTION OF RECORDED EASEMENTS AREA (as currently mapped)

① SANDY BEACH (SHORELINE ACCESS)

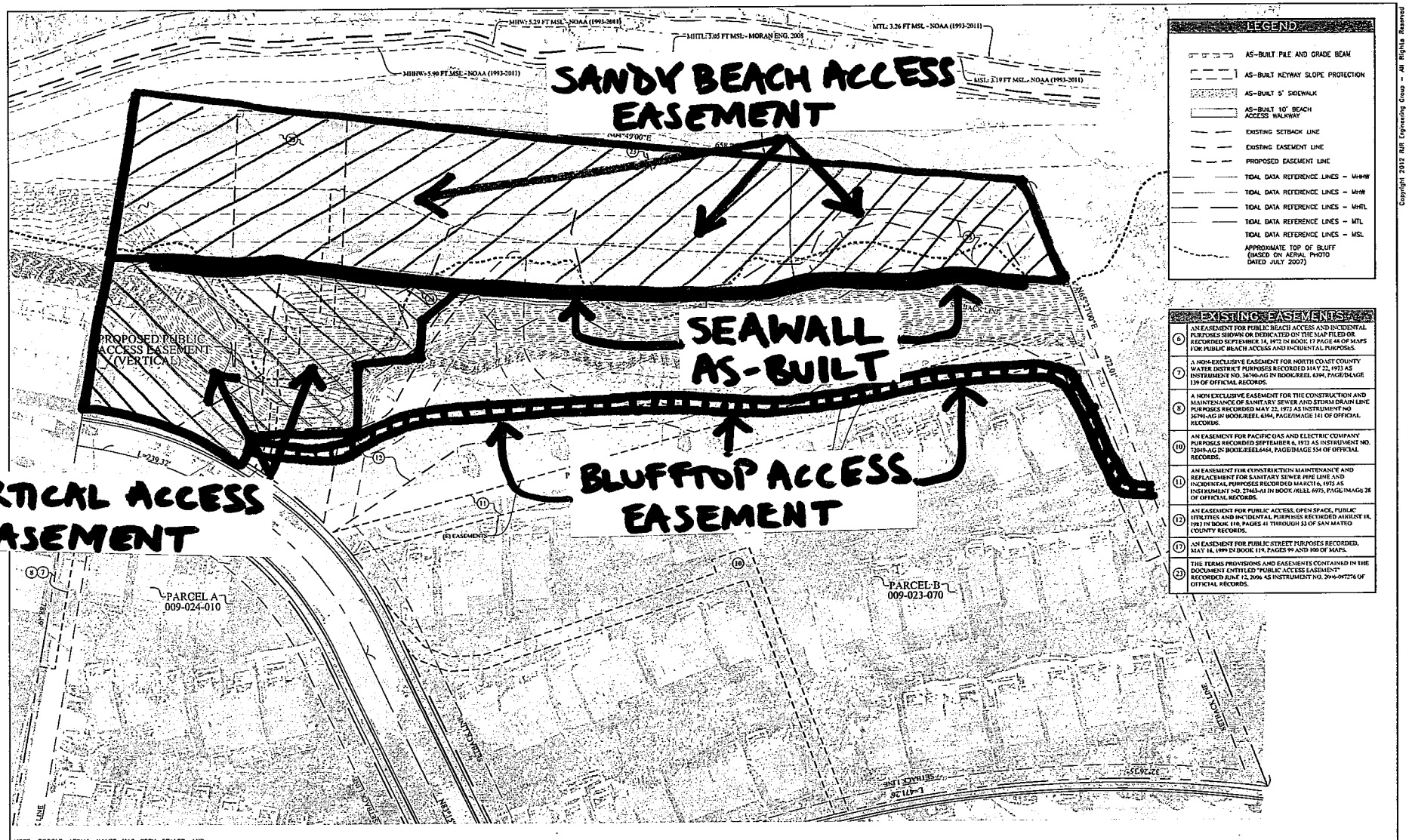
② VERTICAL ACCESS

③ BLUFFTOP ACCESS

④ PUBLIC ACCESS/ OPENSPACE

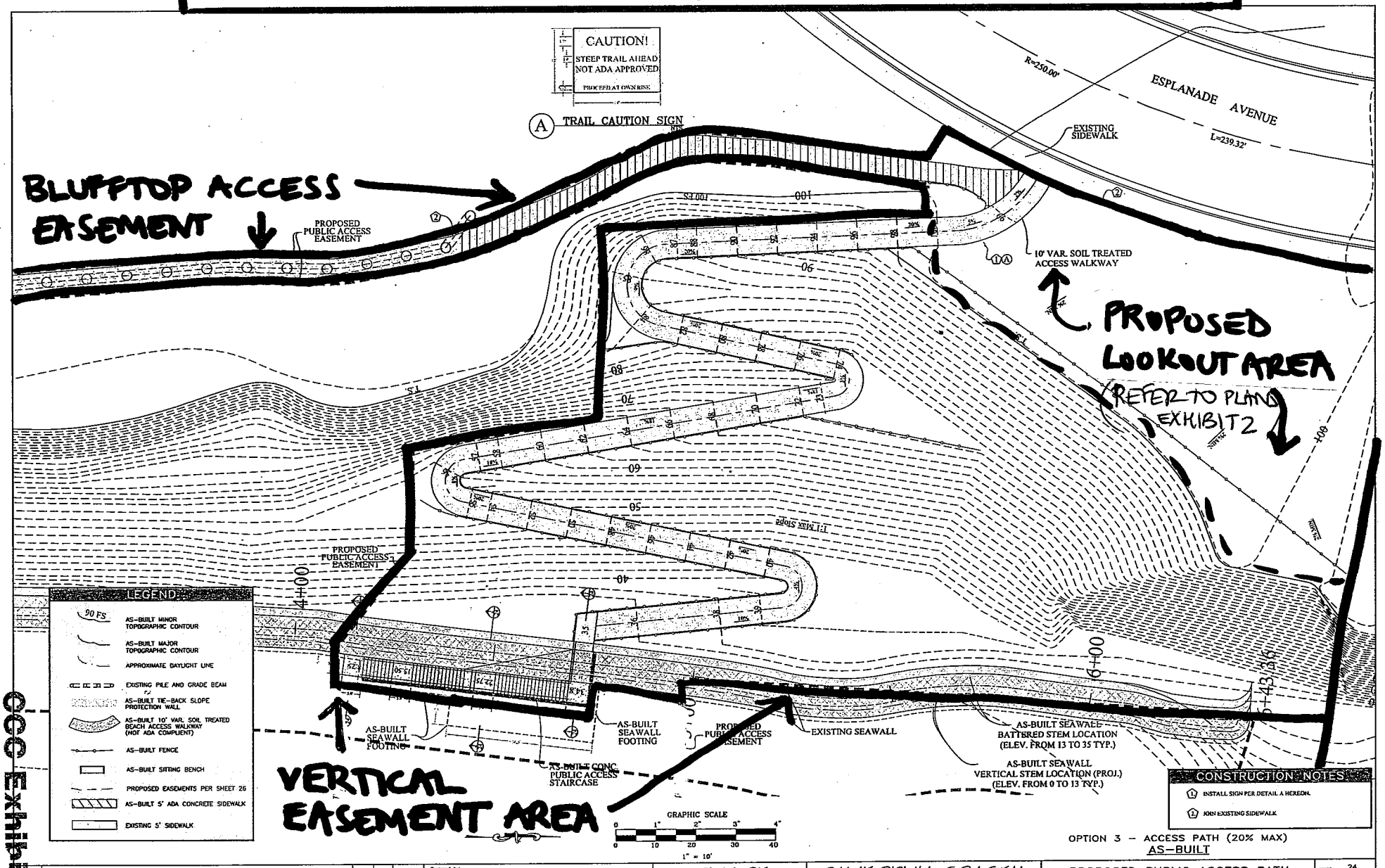


AREAS PROPOSED TO BE EXTINGUISHED BY APPLICANT



APPLICANT'S PROPOSED EASEMENTS

PROPOSED PUBLIC ACCESS PATH AND EASEMENT

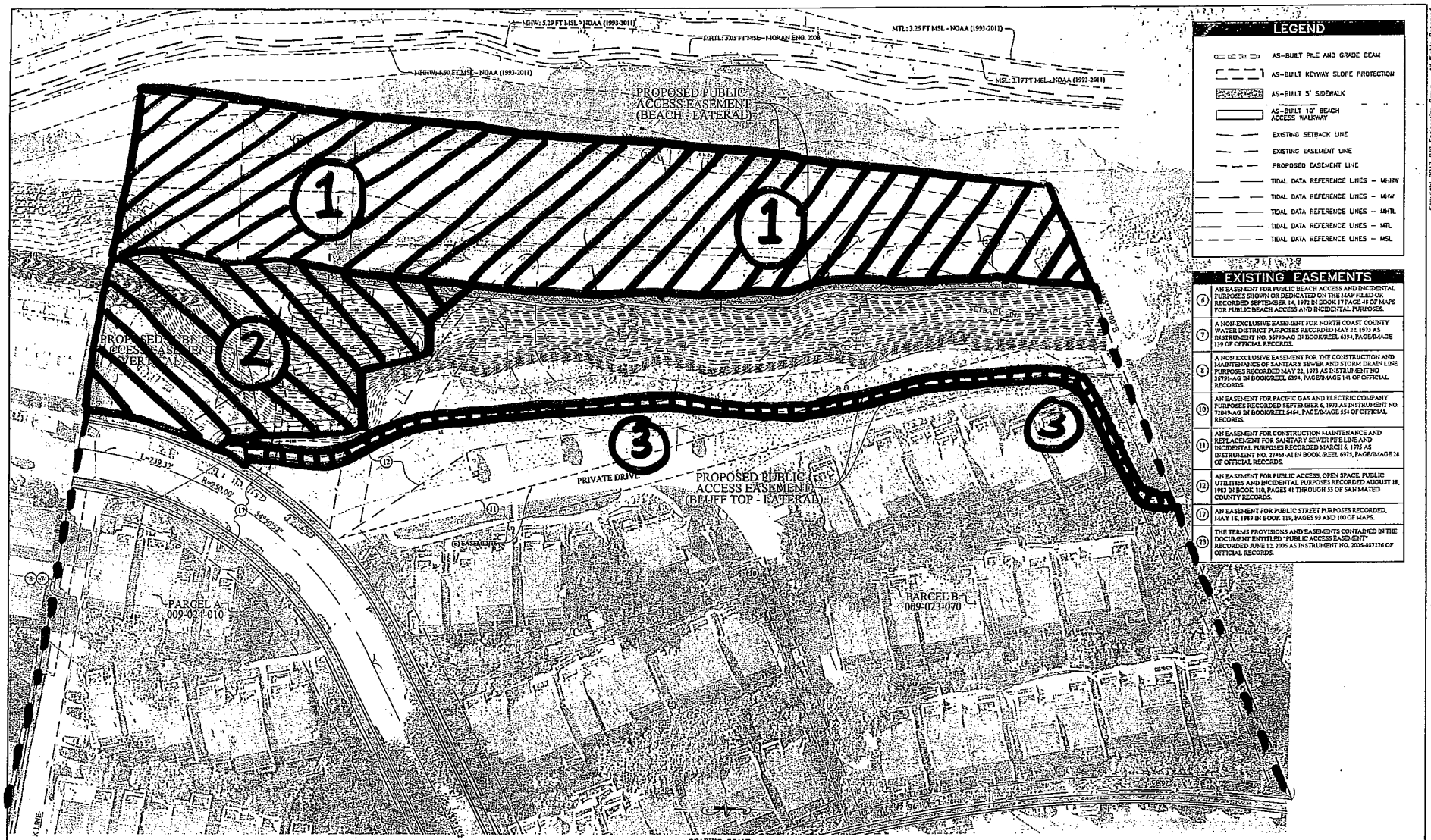


NOTE: AREA PROPOSED BY APPLICANT TO INCLUDE PUBLIC AMENITIES TO BE LOCATED IN BLUFFTOP LOOKOUT AREA

① SANDY BEACH (SHORELINE ACCESS)

② VERTICAL ACCESS

③ BLUFFTOP ACCESS + VIEWING AREA



CDP APPROVED MODIFICATIONS TO RECORDED 2006 EASEMENT AREAS (CDP2-10-039)

May 2, 2012

RECEIVE

RECEIVED

MAY 0 3 2012

CALIFORNIA
COASTAL COMMISSION

MAY 0 4 2012

CALIFORNIA
COASTAL COMMISSIO
CENTRAL COAST ARE

California Coastal Commission
North Central Coast District Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: **Permit:** 2-10-039
Applicant: Land's End Assoc., LLC
Project: Permit authorization for development completed under emergency permits 2-10-007-G and 2-11-005-G for 670 ft. long concrete faux bluff seawall, public access walkway, stairway and related development.

SUBMISSION OF VOTE: **IN FAVOR**

I would like to submit my vote **IN FAVOR** of the development of the seawall and public access walkway and stairway and related development at Land's End Apartments.

Land's End has done a wonderful job of designing the area to maintain the integrity of the cliffs and public walkway while enhancing the natural beauty of the coastal land. The Coastal Commission and County of San Mateo are lucky to receive this development for the residents of Pacifica as well as the residents at Land's End.

Land's End should be permitted to design and complete the public access walkway to the beach. It is currently just a dirt path and is being eroded by nature as well as foot traffic. Paving this walkway will secure the land and path and provide a beautiful and safe passage way to the beach area.

The landscaping of the area in front of Land's End is well planned and beautiful.

Land's End is an asset to Pacifica and offers a great and generous partnership with the California Coastal Commission for many years to come!

I am a new resident to Land's End and chose this complex because of the beauty and safety of the location.

Thank you,

Anita Ledbetter

CCC Exhibit ____
(page ___ of ___ pages)

BART WILLOUGHBY

June 11, 2012

First Class Mail and Facsimile to (415) 904.5400

Charles Lester
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RECEIVED
JUN 13 2012
CALIFORNIA
COASTAL COMMISSION
NORTH CENTRAL COAST

Re: Lands End 2-10-039 Report F20a

Dear Executive Director Charles Lester:

When the Coastal Commission ("Coastal") authorized the emergency permit to build the seawall at Lands End, I took a sabbatical from my regular job and spent the entire summer of 2011 and into the fall observing the construction of the seawall. Charles, I cannot remember a period (even during media coverage of Esplanade 2009-2010) when I observed Coastal staff at the Lands End site on a regular basis. Clearly, Coastal had their fingers on this project and provided substantial oversight during the construction phase of the project.

To Lands End credit, they are clearly a "community player" here in Pacifica. The reports generated by Lands End engineering staff (RJR Engineering) have supplemented the Collins and Sitar reports and have benefited all of Esplanade Beach properties (Dollaradio, Pacifica View Villas, Tong, Samsami, Thomas and Aimco) with analysis to assist in future mitigation plans.

Two properties have benefited directly from Lands End community attitude in that Dollaradio (a Pacifica Historical Landmark) received 3000 tons of excess rock riprap to help support the lower bluff at Dollar. Without the generous gift of riprap from Lands End, Dollaradio would have to be abandon and torn down. Dollar now a non-profit would like to eventually open up and become a coastal day use area.

Pacific View Villas ("PVV")[1] has benefited directly from Lands End community attitude. Lands End provided additional rock to help shore up (to the required height) the revetment built under a waiver permit after the collapse of 2010. What staff at Coastal fails to realize or understand is that the revetment at PVV is holding back a former landfill area and keeping hazardous materials from entering the Esplanade Beach. Given the complete lack of over-sight by the Commission on this hazardous issue to the Esplanade Beach is extremely perplexing.

The **F20a** staff report for the Lands End project is disproportional to several projects approved by Coastal here in Pacifica (Beach Blvd and Shoreview Drive). The comparison of the Aimco staff report to the current Lands End report is revealing just how arbitrary these staff report have become, in treating one applicant against another, when it comes to sand mitigation fees or fees in lieu of. The bizarre difference, between the two reports is reflected in the fact Aimco has a horribly built revetment in front of their wall. Lands End does not have a revetment built at all and has buried rock at the base of the wall to help protect the wall from accelerating waves that may scour the lower portion of the wall. However, when that time comes I will probably be some spirit that roams the Esplanade Beach.

What I get from the comparison of the Aimco and Land End report is a complete pass by Coastal to Aimco and the reverse for Lands End. The Lands End report lacks the requisite alternative analysis for the findings by staff and this letter would be at least ten pages if I were to pick apart all the arbitrary findings that I could quote in the 119 pages that comprise **F20a.** Separately, I will provide your office with the numerous errors, unfounded assumptions and the erroneous analysis located in the **F20a** Lands End staff report.

Since 2007, the North Central Coast has employed six different analyst (Zhang, Jesperson, Madeline, Tauber, Anada & Geisler) that equates to one analyst changing and leaving their respective position between 2007-2012. Hardly enough time to become a seasoned analyst and become familiar with any given project, especially the complexity of the Lands End project. The soil nail wall at 330 was an example of Coastal staff not understanding the complexity of the project and missed several details. As a result, the soil nail wall collapsed and is now in litigation.

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[1] PVV original revetment was built under an amendment to the CDP and authorized 33K tons across the property. The main reason for the revetment was to help stabilize the bluff that was filled-in the early 1970's and where the Pacifica LUP references the property was a landfill area. There was a complete lack of oversight by the Commission on this property in how the revetment was built and no "as built" plans submitted after the project was completed and no 33K tons placed there. The Commission erroneous believed the revetment at PVV was never authorized and issued Coastal Act Violation to PVV.

Lands End and I have had our differences as amply demonstrated in the report **Th10A** September 14, 2006. Lands End is not compensating me and I am not employed by Lands End in any fashion, as it relates to my writing to you regarding my concerns over staff reports for Esplanade Beach. However, I believe that Coastal has an obligation to treat Lands End as equally as Coastal treated Aimco, Beach Blvd and Shoreview here in Pacifica. Moreover, Coastal should recognize and take into consideration the community effort Lands End has given both directly and indirectly to the Esplanade Beach that includes the fabulous beach access.

Very truly yours,

Bart Willoughby

CC: Assemblyman Jerry Hill, Assembly Pro Tem Fiona Ma, Mark Matthews KGO Channel 7 Political Reporter, Steve Rhodes City Manager Pacifica, Kathryn Farbstein Asst. Planner, Pacifica.

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March 1, 2013

RECEIVED
MAR 04 2013
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Karen Geisler
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, California 95060

Re: Land's End Seawall (2-10-039) at 100 and 101 Esplanade Avenue, Pacifica – Comments on Draft Conditions

Dear Ms. Geisler:

On behalf of the Applicant, Land's End Associates, LLC ("Land's End"), we appreciated the opportunity to meet with you and Dan Carl on November 27, 2012 to discuss the above-referenced coastal development permit application to authorize a seawall and related shoreline protection built under emergency permitting, as well as the opportunity to review Coastal Commission Staff's draft conditions of approval ("Draft Conditions"). Land's End generally supports the Draft Conditions, subject to certain requested modifications and clarifications attached at Exhibit A. Land's End believes these requested revisions, which are explained below, are well supported by the unique facts and circumstances surrounding the seawall at this location and are consistent with the City of Pacifica Local Coastal Program.

1. **Toe Protection (Special Condition 1.d, Special Condition 1.f, Special Condition 7.a and Special Condition 8.a)**

We understand from our discussions that, while the Commission's technical staff may concur that toe protection at the base of the seawall might be necessary in the future, they have requested additional data and analysis to assess whether a more immediate need exists today. To assist Staff with its assessment, we are attaching at Exhibit B two reports containing the data requested by Staff, as well as additional analysis in support of the need for toe protection. The first report, prepared by RJR Engineering Group, dated February 21, 2013, provides the direct shear tests and other site-specific information requested by Staff and other information in support

of toe protection at the base of the seawall and requests consideration of relocating the three to four foot diameter stones from the existing trench to the seawall to provide this toe protection.[1]

The other report is a Third-Party Coastal Bluff Stability Assessment, dated February 21, 2013, prepared by TerraCosta Consulting Group, Inc. ("Third Party Assessment"), which provides a third-party review of the RJR report and independent analysis of the need for toe protection at the seawall. As stated in the Third Party Assessment, "the Land's End area is somewhat unique when compared to the California coastline in that the entire bluff, down to and extending some distance below sea level, is comprised of relatively weak, highly erodible, and geologically young deposits that contribute to the accelerated erosion noted in this area."[2] Due to these and other factors, the Third Party Assessment concludes there is a need for "not only the recently constructed seawall to protect the coastal bluffs from further landward retreat, but as importantly, a rock revetment toestone to mitigate the otherwise rapid downwearing that within the next 5 to 10 years would undoubtedly undermine the recently constructed wall, causing it to fail."[3]

These reports provide comprehensive and well-supported analysis demonstrating the need for toe protection at the seawall. Land's End would place the relocated stones at a sufficiently deep elevation at the toe of the seawall to minimize potential visual impacts. To assist in Staff's review of this request, we have included at Exhibit A proposed revisions to Draft Special Conditions 1.d, 1.f and 8.a addressing the requested toe protection.

2. Twenty-year Term (Special Condition 9)

Draft Special Condition 9 would impose a twenty-year term on the CDP.[4] Land's End understands this has become a commonly imposed term by the Commission in CDPs for shoreline armoring. Land's End, however, is requesting that Staff take into account the unique circumstances here, where much of the seawall also is necessary to provide immediate and long-

[1] Addendum #6 – Toe Protection Response to California Coastal Commission Coastal Development Permit Application Bluff and Public Access Stabilization, Land's End Multi-Family Development, 100 Esplanade Way (APN 009-023-070), dated February 21, 2013.

[2] Third Party Assessment, at page 2.

[3] Id.

[4] Land's End has submitted technical documentation, including a wave uprush study demonstrating that the seawall can withstand the 100-year water surface elevation (wave uprush with future sea level rise), supporting that the as-built armoring has been designed to last at least 25 years longer than the twenty-year term.

term structural support for the vertical access path and staircase and long-term structural support for the blufftop trail, which provide highly valued vertical and lateral access across the site. [5]

The previous Staff Report for the application, dated June 1, 2012 ("June 2012 Staff Report") acknowledges that only the seawall alternative would provide the necessary protection for the stairs to the beach and the blufftop trail, stating:

> The 'no-project, remove the seawall' alternative would not provide any protection to the endangered apartments **or the blufftop walkway and stairway that provides public access to the beach**, and cannot alone suffice as the approvable alternative in this case . . . Outright removal would serve to abate the danger for a short period of time, but would not eliminate the need for shoreline protection. **Also, removal of the stairway would preclude access to the beach at this site**. Therefore, in this case, based on the site constraints and the existing development present on site and infeasibility to abate the danger for an extended period of time through removal or relocation, an abandonment or relocation option is not a feasible alternative for protecting the existing endangered apartments.

(Emphasis added.)[6] The June 2012 Staff Report further states that the "stairway at this location is critical" because "many of the surrounding beaches are extremely difficult to access" and because the nearest formal public access to the beach is either 5 miles to the north or 1.5 miles to the south.[7]

The staircase to the beach has been washed away several times since it was first built in the early 1970s, including most recently in 2008. During the emergency permitting process for the property in 2010, Commission Staff and Land's End agreed that a seawall was necessary to provide long-term structural support and protection of the bluff to ensure preservation of vertical

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[5] The property is subject to longstanding requirements to maintain these public access improvements, which currently are memorialized in a Public Access Easement with the City of Pacifica, dated May 9, 2006. See also City of Pacifica Land Use Plan at p. 30 ("Conditions of approval for the condominium conversion required dedication and maintenance of the stairway and the bluff-top path by the Homeowner's Association, in addition to dedication of the beach.").

[6] (June 2012 Staff Report at p. 17.)

[7] (Id. at p. 33).

access across the property. We understand this determination was based on several factors supporting the conclusion that, unless the bluff was armored, it would eventually become infeasible to maintain vertical access from the bluff to the beach. Of primary importance among these factors was that the combination of continued erosion and the height of the bluff (at approximately 100 feet) would force the trail to become steeper and steeper – eventually to unsafe and unusable grades – and that due to the close proximity of the adjacent apartment complex to the south (310 Esplanade) and Esplanade Avenue to the east, relocating the switch back trail over time either further to the south or to the north to escape the erosion were not feasible options.

When accounting for the width of the switchback trail on the upper bluff and the concrete stairs descending from the lower bluff down to the beach, the minimum lineal feet of seawall determined necessary to protect this access from further erosion was approximately 110 feet. However, to prevent outflanking on either side of this portion of the seawall, we understand that Commission Staff concurred that the wall should be extended approximately 100 feet to the southern property line and approximately 60 feet to the north, resulting in an approximately 270-foot seawall. The balance of the seawall includes a 263-foot portion to protect the existing apartments, driveway and utility lines and a 110-foot portion that was deemed necessary to connect the 270-foot seawall on the northern end with the 263-foot seawall on the southern end to prevent near-term outflanking at the seawall ends.

In addition to providing protection for vertical access, the seawall and grade beam and caisson buried wall system provide additional protection to the blufftop lateral access path. As stated in the June 2012 Staff Report, "[t]he proposed blufftop lateral access, although relocated inland, would be 5-feet wide, **and is supported by an upper bluff retaining wall system, which will ensure its stability over time**." (Emphasis added.)[8]

Land's End therefore is requesting that Draft Special Condition 9 be modified to exclude from the twenty-year term those elements of the armoring, which are necessary to provide geologic stability for the vertical and blufftop lateral accessways. These access improvements – by virtue of their location along the blufftop and from the bluff to the beach; their inherent vulnerability to the ongoing, persistent erosion of the bluff; and other existing site constraints – cannot be designed, sited and built to allow the natural process of erosion to occur without creating a need for shoreline protection. As Land's End would continue to be required to maintain these public access improvements in perpetuity under the Amended Public Access Easement required under Draft Special Condition 4 and the geologic need for the armoring to

[8] (June 2012 Staff Report at p. 36.)

support this public access has been established, a future permitting process should not be required for these portions of the armoring at the end of the twenty-year term.[9]

3. **Mitigation Fee (Special Condition 6)**

Draft Special Condition 6 would impose a fee of $696,137 to mitigate sand supply impacts and loss of beach area resulting from the seawall.[10] While we understand from Staff that this amount reflects some degree of credit for public access improvements provided by Land's End in connection with the seawall, and Land's End appreciates Staff's consideration of this credit, we believe the unique circumstances here support a lower fee and additional credits than that recommended by Staff, as set forth in the Requested Mitigation Fee Credit Summary at Exhibit C.

As discussed in Section 2 of this letter, the seawall is necessary to prevent erosion of the bluff that supports the blufftop trail and at least approximately 110 feet of the seawall is necessary to provide geologic support and protect the vertical access path and stairway down to the beach. As a result, the traditional nexus analysis that the Commission applies to impose seawall mitigation fees, based on the Coastal Act's public access policies, does not apply squarely in this case. Indeed, it is because of much of this armoring that Land's End is able to continue to maintain these important public accessways. Mitigation therefore should not be required for public access impacts that arise from meeting existing obligations to maintain other valued public access improvements.

Even if it were appropriate to impose a mitigation fee in this case, other factors merit a reduction from the fee now recommended by Staff. First, because at least 110 feet of the seawall is necessary to protect the vertical access trail and stairs down to the beach, Land's End does not

[9] Draft Special Condition 2.g would require the public access improvements constructed pursuant to the CDP (including the access paths, stairs and overlooks) be maintained in perpetuity. However, as these public access improvements rely upon the seawall for their geologic stability, they cannot be maintained without this shoreline armoring. Accordingly, if Draft Special Condition 9 is not modified to remove the twenty-year term for those elements of the shoreline armoring necessary to provide these public access amenities, Land's End requests that Draft Special Condition 2.g. be modified to replace the requirement that such improvements be maintained in perpetuity with a requirement that such improvements be maintained for the duration of the CDP or an extension thereof, as set forth in Exhibit A.

[10] Staff's recommended fee is based on an assumed real estate valuation estimate for the beach area that would be occupied over the twenty-year term of the CDP, based on the footprint of the seawall. We understand that Staff's calculations are based on a seawall of 670 lineal feet, a footprint of the seawall and rip rap at edges (3,375 square feet), a per square foot real estate value of $23.07 and an assumed average bluff recession of 2 feet per year.

believe a mitigation fee should be assessed for this portion.[11] Indeed, this same rationale supports excluding 270 feet of the seawall from the mitigation fee calculation, which includes the portions of the wall that were built to prevent outflanking on either side of the vertical access path and staircase.

In addition, although Staff has not provided Land's End with calculations demonstrating how it has determined its mitigation fee credit, we understand from our discussions that the credit represents a waiver of a separate sand loss mitigation fee, based on the value of the public access improvements installed by Land's End. As we discussed at our November 27, 2012 meeting, Land's End believes the value of these improvements is substantially higher than Staff may have assumed in its credit calculations. Land's End's credit valuation is based on the substantial enhancements it has made to the pathway and stairs down to the beach and the lateral blufftop trail compared to the quality of those accessways prior to the stairs being washed away in 2008 and the bluff failure in 2010. These enhancements include, among others, use of concrete (instead of wood) stairs, construction of a seawall to provide geologic stability for the stairs and the access path from the bluff, an outer wall for the stairs to protect them against future erosion, installation of a switchback vertical access trail to create a safer and more accessible path, and connection of the blufftop trail to the grade beam to provide increased structural stability. It must be noted that Land's End decision to replace the previously existing public access improvements with more enhanced improvements was made in response to input from Coastal Commission staff.

We have attached at Exhibit C supporting documentation that demonstrates that the approximate cost of providing enhanced public access at the site compared to the previous condition is $1,188,950 This estimate is based on subtracting the estimated cost to restore the vertical and lateral blufftop access to their previous condition prior to the recent erosion events from the actual as-built cost provided by Land's End's contractor for the access improvements that were installed.

Based on this methodology, the cost to provide enhanced access compared to the prior condition is approximately $861,266 to $998,204 more than the sand mitigation fee that Staff has stated it waived, based on the per cubic yard delivered costs identified by Land's End, which Staff cited in the June 2012 Staff Report.[12] We therefore request that if a mitigation fee is imposed, the fee currently recommended by Staff be reduced by approximately $114,291, which would account for not imposing a fee for the 110 feet of seawall necessary for the stairway, and

[11] Based on Staff's mitigation fee methodology, reducing the seawall by 110 feet would result in an approximate fee reduction of $114,291.

[12] (June 2012 Staff Report, at p. 28.)

that the credit provided more accurately reflect the above-referenced costs incurred to provide enhanced public access. With these adjustments, the cost of the public access enhancements provided by Land's End at the site would more than cover Staff's recommended mitigation fee for recreational and sand supply impacts and constitute full and complete credit against that fee, as set forth in Exhibit C.

4. Future Development (Special Condition 11).

Draft Special Condition 11 would require that any future development or "redevelopment" on the property not rely on the permitted shoreline protective devices "to establish geologic stability or protection from hazards". Land's End understands the purpose of Draft Special Condition 11 is to ensure consistency with Coastal Act Section 30235 that the authorized shoreline protection only protect existing structures on the property and that, as stated in the June 2012 Staff Report, "future development on the site beyond repair and maintenance to the existing structures must meet the requirements of Section 30253 and not require bluff or shoreline protective devices that alter the natural landform of the bluffs."

It is our understanding that any future improvements to the existing structures, which do not constitute "development" under the Coastal Act or the City of Pacifica certified Local Coastal Program and do not constitute "redevelopment," as defined by Draft Special Condition 11, would not be subject to the condition. However, as we have discussed and based on our review of Coastal Commission precedent, the Commission has not uniformly applied the same definition of "redevelopment" in coastal development permits for shoreline protection. Some of this variation has resulted from the Commission tailoring the definition to ensure consistency with a local coastal program. We appreciate Staff's offer that Land's End submit proposed modifications to Draft Special Condition 11, which would both maintain consistency with Coastal Act Section 30235 and the City of Pacifica LCP.

We have attached at Exhibit A Land's End's requested modifications to Draft Special Condition 11. The modifications include a clarification to the definition of "redevelopment" to limit its application to alteration of exterior walls, so that it would not apply to modifications to interior walls, other interior elements of a structure or other exempt repair and maintenance activities, such as replacement of siding and windows. This clarification is necessary to ensure consistency with City of Pacifica Local Implementation Plan ("LIP") Sections 9-4.4303(h)(6)(viii) and (ix), which exempt from coastal development permitting **"[i]nterior remodeling" and "[r]epair and maintenance necessary for on-going operations of an existing facility which does not expand the footprint, floor area, height, or bulk of an existing facility".** This clarification also would be consistent with LIP Section 9-4.3002(c)(2)(ii), which does not require coastal development or other discretionary permits for

modifications to nonconforming structures involving only "remodeling which does not increase the nonconformity" of the structure.[13]

The modifications at Exhibit A also include a request that the definition of "redevelopment" be based on the "combined alteration of 50% or more of the structure within any consecutive five-year period, whether the work is done at one time or as the sum of multiple projects," rather than measured from the condition of the structures at the date of CDP approval, as proposed by Staff. While Staff's intent is to prevent the wholesale replacement of existing structures, its recommended language is unduly restrictive and could prevent good faith, incremental repair and maintenance of existing structures over a twenty-year term, which would otherwise be permitted by the City's LIP.[14] As stated, under LIP Section 9-4.3002(c)(2)(ii), nonconforming structures in the City of Pacifica are not required to obtain a coastal development permit for remodeling, which does not increase the nonconformity of the structure.

In addition, Staff's recommended definition of "redevelopment" does not contain a carve-out for repairs necessitated by disasters. Accordingly, the requested modifications include a clarification that future development does not include development exempted from permitting under Coastal Act Section 30610(g), which permits the replacement of a structure destroyed by a disaster that is sited in the same location on the property as the destroyed structure. This clarification also would ensure consistency with LIP Section 9-4.4303(h)(4)(v), which provides an exception to the 50% limitation where the object of the repair was destroyed by natural disaster.

Land's End's proposed revisions are therefore intended to strike a more reasonable balance between ensuring consistency with Coastal Act Section 30235 and the repair and maintenance provisions of the Coastal Act and the City's LIP.[15]

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[13] Making this clarification to ensure consistency with the City's LIP is supported by Commission precedent, including the Ocean Harbor House Coastal Development Permit (3-02-024). That CDP also applied a future development test based on demolition and/or replacement of more than 50% of a structure's exterior walls, based on the policies of the Del Monte Beach LUP. (See Special Condition 1, Revised Findings (1/13/05), at p. 6.)

[14] While LIP Section 9-4.4303(h)(4) excludes from the repair and maintenance exemption the replacement of 50% or more of a structure, it does not impose this 50% limitation over the life of the structure.

[15] LIP Section 9-4.4406(c)(1), which authorizes shoreline protection to protect existing development, also allows shoreline protection where "without such measures, the property at issue will be rendered undevelopable for any economically viable use." Staff's recommended definition of "redevelopment" creates potential conflict with this provision, since its restrictions on maintaining the existing structures in good repair eventually could render the property as economically unviable as it would be without shoreline protection.

5. **Location of Blufftop Lateral and Shoreline Portions of Easement Area (Special Condition 4.c.(1) and Special Condition 4.c.(4))**

Draft Special Condition 4.c.(1) would require that the Blufftop Lateral portion of the Easement Area be ambulatory and move inland as the bluff erodes to retain a continuous and connected 5-foot walkway along the length of the property. While Land's End fully supports its existing obligation under the Public Access Easement to provide this lateral access, it is requesting that this condition be modified to ensure consistency with the lateral bluff top access buffer requirements of the City's LIP and to avoid conflicts with existing improvements on the property. City of Pacifica LIP Section 9-4.4407(b)(7) provides:

> With respect to lateral bluff top access, the easement shall be adjusted inland from the current bluff edge if it recedes inland, **but in no event shall the trail be closer than ten (10′) feet to an occupied or proposed residence. Such an inland adjustment shall not occur in the event it would prohibit private use of a site or would render use or development of the site economically infeasible**.

(Emphasis added.) Land's End therefore is requesting revisions to Draft Special Condition 4.c.(1), as set forth in Exhibit A, which would incorporate the buffer and feasibility requirements of LIP Section 9-4.4407(b)(7) and a separate smaller buffer from other existing improvements, as well as provide for flexibility to amend the CDP in the future to relocate the blufftop lateral portion of the Easement Area, if necessary, to maintain these buffers.[16]

In addition, we are requesting a minor technical change to Draft Special Condition 4.c.4 to clarify that the seaward extent of the shoreline portion of the Easement area would be the mean high tide line.

6. **Term and Extent of Maintenance Authorization (Special Condition 8.h)**

While the Draft Conditions would authorize the seawall and grade beam and caisson buried wall system for twenty years, Draft Special Condition 8.h would authorize maintenance of this shoreline armoring only for five years, subject to the issuance of additional five-year extensions. For the reasons discussed below, Land's End is requesting that Draft Special Condition 8.h be deleted.

The five-year maintenance authorization is a strict and onerous departure from Commission precedent, which generally has allowed a permittee to maintain shoreline armoring

[16] Exhibit A also includes a conforming requested revision to Draft Special Condition 7.b.

for the duration of the CDP. Draft Special Condition 8.h. also is inconsistent with other conditions in the Draft Conditions that require maintenance of the public access improvements in perpetuity, since those improvements are reliant upon the shoreline armoring to be maintained. Under Draft Special Condition 8.h, authorization for the ongoing maintenance necessary to provide public access could be terminated after five years.

In addition, the mitigation fee assessed under Draft Special Condition 6 is premised on a twenty-year approval. Draft Special Condition 8.h., however, leaves open the possibility that Land's End would not be permitted to maintain the permitted armoring for the entire twenty-year term and yet would have paid a mitigation fee for that entire term. Draft Special Condition 8.h therefore creates the possibility that the mitigation fee would be in excess of that which is roughly proportional to the asserted impacts of the project and, as a result, unenforceable.

7. **Additional Mitigation for Future Repairs (Special Condition 9.b and Special Condition 10)**

Draft Special Condition 9.b would require Land's End to provide additional mitigation if, during the CDP term, it applied for a CDP amendment to "enlarge the seawall or the grade beam and caisson buried wall system, or to perform repair work affecting more than 50 percent of those approved structures." Land's End is requesting that the condition be modified to remove the requirement to provide additional mitigation if such CDP amendment relates only to repair work.

Draft Special Condition 9 would authorize the seawall and grade beam and caisson buried wall system for a twenty-year term and Draft Special Condition 6 would require payment of a mitigation fee, which is calculated based on this armoring being in place for twenty years. Any required repair that would allow the armoring to continue through this permitted term and for which complete mitigation already has been paid should not be subject to additional mitigation. Moreover, even if the repairs were to extend the useful life of the armoring beyond the twenty-year term, Draft Special Condition 9 would nonetheless require a CDP amendment to extend that term, at which time the Commission could assess whether additional mitigation was warranted for any extended term. Land's End therefore does not believe there is any nexus to require additional mitigation for repair and maintenance of the armoring and requests this condition be modified as set forth in Exhibit A.

Draft Special Condition 10 would require a CDP amendment should the grade beam and caisson buried wall system become exposed over time. Land's End questions the need for this condition and requests that it be deleted, since Draft Special Condition 8 would authorize maintenance and repair of these specific improvements "in the approved state" under the CDP.

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We appreciate Staff's consideration of these requested modifications and clarifications and look forward to setting a time to discuss them with you. Please contact me at (310) 254-9027 should you have any questions in the interim.

Sincerely,

David A. Goldberg

Enclosures

cc: Dan Carl, California Coastal Commission
Douglas Rush, American Realty Advisors
Todd Stark, Redwood Construction
Susan McCabe
Anne Blemker

Exhibit A

Requested Revisions to Staff's Draft Conditions

Exhibit A
Requested Revisions to Staff's Draft Conditions

DRAFT CONDITIONS: FOR DISCUSSION AND INTERNAL USE ONLY

LANDS END (2-10-039) MEETING 27TH NOVEMBER 2012

I. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

II. SPECIAL CONDITIONS

1. **Revised Project Plans.** WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit two full-size sets of Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be in substantial conformance with the plans submitted to the Coastal Commission (dated received in the Commission's North Central Coast District Office on xxx and titled RJR Engineering Plans for Lands End (dated January 5, 2011); see Exhibit xxx) except that they shall be revised and supplemented to comply with the following requirements:

   a. **Scale and NGVD.** All plans shall include a graphic scale and all elevations shall be described in relation to National Geodetic Vertical Datum (NGVD).

   b. **Property Lines.** All property lines for the subject property and all adjacent properties shall be clearly and accurately identified.

   c. **Easement Area.** The revised and amended easement area (see **Special Condition 4**) shall be clearly and accurately identified.

d. **Rock, Concrete, and Debris Removal.** Other than the minimum amount of rock riprap at the upcoast and downcoast edges of the seawall needed to conform the edges of the seawall to the coastal bluff and the rock riprap permitted to be relocated from the trench to the base of the seawall for toe protection, all other rock riprap and concrete debris placed by Permittee (e.g., abandoned concrete drain pipe, concrete debris, etc.) ~~located~~ in the area seaward of the approved seawall, including in the trench located in the area seaward of the approved seawall, and/or placed in the nearby area by the Permittee, shall be removed and properly disposed of at an inland location approved by the Executive Director.

e. **Trench Restoration.** The trench located in the area seaward of the approved seawall (from which rock riprap is to be removed) shall be filled with material that matches the surrounding substrate as much as possible, including in terms of cohesion and erodability, and then covered with beach sand to match the surrounding sandy beach elevation. The fill material may take the form of sand, compacted soils, soil mix with stabilizers, lean erodable concrete, combinations of same, or other materials as appropriate. The plans shall be accompanied by information sufficient to evaluate the suitability of the fill material relative to the surrounding native material.

~~e.~~f. **Rock Toe Protection at Seawall.** Rock toe protection shall be allowed at the base of the seawall to prevent undermining as generally described in the February 21, 2013, TerraCosta report. The extent of the rock toe stone shall be the minimum necessary to protect the wall with the required toe stone, as depicted in the cross section shown on the Revised Project Plans. Regular monitoring and provisions for remedial action to address potential rock migration shall be identified and implemented pursuant to Special Condition 7.

~~f.~~g. **Concrete Surfacing.** All concrete surfaces shall be faced with a sculpted concrete surface that mimics natural undulating bluff landforms in the vicinity in terms of integral mottled color, texture, and undulation to the maximum extent feasible, and seamlessly blends with the natural and existing bluff face. Any protruding concrete elements (e.g., corners, edges, etc.) shall be contoured in a non-linear manner designed to evoke natural bluff undulations. The color, texture, and undulations of the seawall surface shall be maintained throughout the life of the structure. All drainage and related elements within the sculpted concrete shall be camouflaged (e.g., randomly spaced, hidden with overhanging or otherwise protruding sculpted concrete, etc.) so as to be hidden from view and/or inconspicuous as seen from the top of the bluffs and the beach.

~~g.~~h. **Landscaping.** All landscaping shall utilize native and noninvasive plant species that are tolerant of salt air and salt spray, with a preference for species capable of trailing vegetation that can colonize steeper bluff areas and also screen the top of the seawall as seen from the beach as much as possible. All invasive and non-native species in the project area, including iceplant, shall be removed and not be allowed to persist. All plants shall be kept in good growing condition and shall be replaced as necessary to maintain the approved vegetation over the life of the project, including to maintain some visual screening of the top of the seawall. Regular monitoring and provisions for remedial

action (such as replanting as necessary) shall be identified to ensure landscaping success.

~~h.~~i. **Irrigation.** Irrigation shall be limited to that necessary to ensure landscaping success, and shall be sited and designed to reduce the potential for contributing to bluff erosion.

~~i.~~j. **Drainage Pipes.** All drainage pipes located in the bluff shall be trimmed back to the bluff face and otherwise camouflaged as much as possible (through painting, landscaping, etc.), and shall be trimmed back further in the future at such times when the pipes again become visible and/or protrude from the bluff face.

~~j.~~k. **Public Access Improvements.** All public access improvements and amenities identified in **Special Condition 2** shall be identified. Such improvements shall be constructed of materials and finishes that are sensitive to the shoreline aesthetic, including through use of natural materials (wood, decomposed granite pathways, etc.) as much as possible.

~~k.~~l. **Schedule.** The plans shall be submitted with a schedule for completing those elements shown on the plans that: (1) have not yet been constructed/completed (e.g., landscaping, irrigation, drainage measures, rock/concrete/debris removal, trench restoration, drain pipe modifications, public access improvements, etc.); and/or (2) have been constructed/completed but for which modifications are required to meet the terms and conditions of this approval. Such schedule shall be predicated on completion of construction as quickly as possible, with priority given to completion of the public access improvements. All such construction shall be completed as soon as possible and in no case later than the first Saturday of the Memorial Day weekend in 2013 (i.e., by May 25, 2013).

All requirements above, and all requirements of the approved Revised Final Plans, shall be enforceable components of this CDP. The Permittee shall undertake all development in accordance with the approved Revised Final Plans.

2. **Public Access Management Plan.** WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit two copies of a Public Access Management Plan to the Executive Director for review and approval. The Public Access Management Plan shall clearly describe the manner in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing public access to the public access areas of the site (including the public access paths, overlook area, stairs, and all related areas and public access amenities (i.e., bench seating, educational kiosk, etc.) described in this special condition. The Public Access Management Plan shall be substantially in conformance with the plans submitted to the Coastal Commission (and referenced in **Special Condition 1** (Revised Final Plans) above), and shall at a minimum include the following:

   a. **Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described in this special condition, shall be clearly identified as such on the Public Access Management Plan (including with hatching and closed polygons so that it is clear what areas are available for public access use). These areas include the paths atop the bluff, the overlook area, the path down the

bluff face, and the stairway (see Exhibit xxx).

b. **Public Access Amenities.** All public access areas shall be designed and maintained to facilitate public use and enjoyment, including providing, at a minimum, sitting benches, an interpretive/educational panel, bicycle racks, and trash and recycling receptacles in the overlook area, and at least one sitting bench within the path down the bluff.

c. **Public Access Signs/Materials.** The Public Access Management Plan shall identify all signs and any other project elements that will be used to facilitate, manage, and direct public access users, including identification of all public education/interpretation features that will be provided on the site (educational displays, interpretive signage, etc.). Informational and directional signage (that clearly identify that the public access areas are available for general public use and how connections can be made laterally and vertically) shall be placed where the path intersects Esplanade Avenue and the adjacent upcoast property, at the top and bottom of the stairs, and at the overlook area. Interpretive/educational signage shall describe Pacifica and the Pacific Ocean, the issues related to shoreline erosion and sea level rise, and the Commission's and the City's role in addressing these issues. All signs shall be sited and designed so as to provide clear information without impacting public views and site character, and sign details (showing the location, materials, design, and text of all signs) shall be provided. Signs shall include the California Coastal Trail and California Coastal Commission emblems.

d. **No Public Access Disruption.** Development and uses within the public access areas that disrupt and/or degrade public access (including areas set aside for private uses, barriers to public access (furniture, planters, temporary structures, private use signs, fences, barriers, ropes, etc.) shall be prohibited. The public use areas shall be maintained consistent with the approved Public Access Management Plan and in a manner that maximizes public use and enjoyment.

e. **Public Access Use Hours.** All public access areas and amenities shall be available to the general public free of charge 24 hours a day.

f. **Public Access Easement.** The revised easement area (see Special Condition xxx) and all provisions for public access associated with the revised easement shall be clearly and accurately identified.

g. **Public Access Areas and Amenities Maintained.** All of the public access components of the project shall be constructed in a structurally sound manner and maintained in their approved state ~~in perpetuity~~for the term of this CDP or any extension thereof, unless otherwise authorized for modification or removal pursuant to a coastal development permit amendment, including through ongoing maintenance of all public access improvements, including access paths, stairs, and overlooks, to ensure that public access is always continuous from Esplanade Avenue and the adjacent upcoast property across the blufftop portion of the site and to the overlook area, the stairs, and the sandy beach, even if that means modifying access improvements in light of changing circumstances, including damages from storms and changes in sea levels and as may be required under

Special Condition 4(c)(1).

All requirements above and all requirements of the approved Public Access Management Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with the approved Public Access Management Plan, which shall govern all general public access to the site pursuant to this CDP.

3. **Construction Plan.** WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:

   a. **Construction Areas.** The location of all construction areas, all staging areas, and all construction access corridors shall be clearly identified (in site plan view) and described. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on public access and beach/ocean resources, including by using inland areas for staging and storing construction equipment and materials as much as possible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.

   b. **Construction Methods.** All construction methods to be used, including all methods to be used to keep the construction areas separated from public recreational use areas (including using unobtrusive fencing (or equivalent measures) to delineate construction areas) shall be clearly identified and described.

   c. **Property Owner Consent.** The plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to such use of their properties.

   d. **Construction Requirements.** The Construction Plan shall include the following construction requirements specified by written notes on the Construction Plan:

      1. All work shall take place during daylight hours and lighting of the beach/ocean area is prohibited.

      2. Construction work or equipment operations shall not be conducted below the mean high tide line unless tidal waters have receded and the area is part of the authorized work area.

      3. Grading of intertidal areas is prohibited, unless the area is part of the authorized work area.

      4. Only rubber-tired construction vehicles are allowed on the beach, except track vehicles may be used if the Executive Director agrees that they are required to safely carry out construction. When transiting on the beach, all such vehicles shall remain as high on the upper beach as possible and avoid contact with ocean waters and

intertidal areas.

5. All construction materials and equipment placed on the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from the beach area by sunset each day that work occurs. The only exceptions shall be for erosion and sediment controls and/or construction area boundary fencing where such controls and/or fencing are placed as close to the base of the seawall/bluff as possible, and are minimized in their extent.

6. No work shall occur during weekends and/or the summer peak months (i.e., from the Saturday of Memorial Day weekend through Labor Day, inclusive) unless, due to extenuating circumstances (such as tidal issues, extensive delays due to severe weather or other environmental concerns), the Executive Director authorizes such work.

7. Equipment washing, servicing, and refueling shall not take place on the beach, and shall only be allowed at a designated inland location (that shall be identified). Appropriate best management practices shall be used to ensure that no spills of petroleum products or other chemicals take place during these activities.

8. The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach; etc.).

9. All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday. At a minimum, silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from being deposited on the beach or into the ocean.

10. All public recreational use areas and all beach access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand impacted shall be filtered as necessary to remove all construction debris from the beach.

11. The Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office at least three working days in advance of commencement of construction or maintenance activities, and immediately upon completion of construction or maintenance activities.

e. **Construction Site Documents.** The plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on

request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.

f. **Construction Coordinator.** The plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

Minor adjustments to the above Construction Plan requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake construction in accordance with the approved Construction Plan.

4. **Amended Public Access Easement.** WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall cause the landowner and the City of Pacifica to execute and record an amended public access easement (Amended Easement) in a form and content reviewed and approved by the Executive Director, that amends the grant of easement between FPA/BAF Lands End Associates, L.P. and the City of Pacifica (recorded in the San Mateo County Recorder's Office on June 12, 2006 as Instrument Number 2006-087276; see Exhibit xxx) (hereafter "2006 Easement") to incorporate the public access terms, conditions and restrictions associated with CDPs 3-83-015, 239-03, the 2006 Easement, and this CDP (2-10-039). The Amended Easement shall provide for vertical, lateral, blufftop viewing and shoreline access consistent with the requirements of this CDP in the area generally depicted on Exhibit xxx (Easement Area), and shall comply with the following:

   a. **Development Restrictions.** No development, as defined in Section 30106 of the Coastal Act, shall occur within the Easement Area, except for development authorized by this CDP.

   b. **Legal and Graphic Description.** The Amended Easement shall include both a formal metes and bounds legal description as well as a graphic depiction prepared by a licensed surveyor acceptable to the Executive Director clearly showing: (a) all parcels subject to this CDP; (b) all easement areas associated with the 2006 Easement; (c) the areas associated with the 2006 Easement that are being revised by this CDP (as generally depicted on Exhibit xxx); and (d) the resulting vertical, blufftop lateral, blufftop viewing,

and shoreline access areas (i.e., the Easement Area) approved by this CDP (as generally depicted on Exhibit xxx).

c. **Easement Area Ambulatory.** The legal descriptions and graphic depictions shall ensure that all of the Easement Area is ambulatory and shall be maintained in perpetuity as follows:

(1) **Blufftop Lateral.** The blufftop lateral portion of the Easement Area shall be described to include the 5-foot walkway along the length of the property and connecting to the public access path at the northern property boundary, and south to Esplanade Avenue, and shall be ambulatory so that it moves inland as the bluff erodes in order to retain continuous and connected (to up and down coast public accessways and to inland public streets) public access; provided, however, that the inland extent of the blufftop lateral portion of the Easement Area shall be a minimum of ten feet from any existing occupied residential structure and a minimum of eighteen inches from the footprint of any other existing improvement on the property. Moreover, any such inland adjustment shall not occur in the event it would prohibit private use of the property or would render use of the property economically infeasible. If, as a result of bluff erosion, the location of existing improvements and these buffer requirements, it becomes infeasible at any time to maintain any portion of the walkway at five feet in width or in a continuous and connected alignment, the Permittee shall be required to apply for an amendment to this Coastal Development Permit to modify the location and/or reduce the width of the blufftop lateral portion of the Easement Area to provide, to the extent feasible, alternative lateral blufftop access that substantially complies with the intent of this condition. If, in considering such an amendment request, the Commission finds that alternative lateral blufftop access cannot feasibly be provided either because of buffer requirements or without prohibiting private use of the property or rendering use of the property economically infeasible, the blufftop lateral portion of the Easement Area may be terminated.

(2) **Vertical.** The vertical portion of the Easement Area shall be described to connect from the blufftop at Esplanade Avenue down to the sandy beach area, and shall be relocated if necessary (e.g., due to further bluff erosion) to maintain such public access continuity.

(3) **Blufftop Viewing.** The blufftop viewing portion of the Easement Area shall be described to be adjacent to the vertical portion and bounded by the bluffop lateral portion, the public road, and the downcoast property.

(4) **Shoreline.** The shoreline portion of the Easement Area shall comprise the area between base of the seawall or the base of the bluff (should the seawall no longer be present) and the mean high tide line~~Pacific Ocean~~, such that the entire beach area is accessible to the public at all times.

d. **Easement Area Maintenance.** The Amended Easement shall require that the Easement Area be maintained by the landowner consistent with the requirements of the 2006 Easement as revised by the terms and conditions of this CDP, including this Special

Condition xxx (Amended Public Access Easement) and **Special Condition 4** (Public Access Management Plan).

e. **Easement Recordation.** The Amended Easement shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction. The Amended Easement shall run with the land, binding all successors and assigns, and shall not be removed or changed without a Coastal Commission amendment to this CDP.

5. **As-Built Plans.** WITHIN 90 DAYS OF COMPLETION OF CONSTRUCTION PURSUANT TO THE APPROVED REVISED PROJECT PLANS (SPECIAL CONDITION 1), the Permittee shall submit two full-size sets of As-Built Plans to the Executive Director for review and approval. The As-Built Plans shall clearly identify all components of the constructed project, shall be in substantial conformance with the approved Revised Project Plans described in Special Condition 1 (including providing for all of the same requirements specified in those plans), and shall account for all of the parameters of **Special Condition 7** (Monitoring and Reporting) and **Special Condition 8** (Future Maintenance). The plans shall include color photographs (in hard copy and jpg format) that clearly show all components of the as-built project, and that are accompanied by a site plan that notes the location of each photographic viewpoint and the date and time of each photograph. At a minimum, photographs shall be from representative viewpoints on the beach directly upcoast, downcoast, and seaward of the approved seawall, as well as from representative viewpoints on the public access path, overlook, and stairway, and from Esplanade Avenue.

6. **Mitigation Fee.** WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of $696,137 has been deposited into an interest bearing account designated by the Executive Director. The purpose of the account, including all interest earned, shall be to provide, restore and enhance public recreational access in the Pacifica area near the subject property. The funds shall be utilized to aid the Coastal Conservancy, or an Executive Director-approved alternate entity, in the provision, restoration and enhancement of public access and recreational opportunities along the shoreline in the City of Pacifica, including but not limited to, public access improvements, recreational amenities, and/or acquisition of privately-owned beach or beach-fronting property for such uses. The funds shall be used solely to implement projects or purchase lands that provide or could provide public access or recreational opportunities along the shoreline, and not to fund operations, maintenance or planning studies. The funds shall be released only upon approval of an appropriate project by the Executive Director, and subject to a Memorandum of Agreement (MOA) with the Coastal Conservancy, or an Executive Director-approved alternate entity, setting forth terms and conditions to assure that the funds will be expended in the manner intended by the Commission. If the MOA is terminated, the Executive Director may appoint an alternate entity to administer the funds.

7. **Monitoring and Reporting.** The Permittee shall ensure that the condition and performance of the approved as-built project are regularly monitored and maintained. Such monitoring evaluation shall at a minimum address whether any significant weathering or damage has

occurred that would adversely impact future performance, and identify any structural or other damage or wear and tear requiring repair to maintain in a structurally sound manner and its approved state, including at a minimum with regards to the following:

a. **Armoring.** The seawall and associated riprap wedges (located at each end of the seawall), toe protection and the grade beam and caisson buried wall system shall be monitored by a licensed civil engineer with experience in coastal structures and processes to ensure structural and cosmetic integrity, including evaluation of concrete competence, spalling, cracks, movement, and outflanking.

b. **Public Access Improvements.** The public access improvements, including access paths, stairs, and overlooks, shall be monitored to ensure that public access is always continuous from Esplanade Avenue and the adjacent upcoast property across the blufftop portion of the site and to the overlook area, the stairs, and the sandy beach, even if that means modifying access improvements in light of changing circumstances, including damages from storms and changes in sea levels and as may be required under Special Condition 4(c)(1).

c. **Landscaping and Drainage.** The landscaping and drainage elements of the project shall be monitored to ensure that invasive and nonnative plants (e.g., iceplant) are kept out and that native noninvasive landscaping continues to cover the bluffs, including to maintain some visual screening of the top of the seawall, and to ensure that drainage pipes are cut back as required and drainage is not leading to erosion problems.

d. **Reporting.** Monitoring reports covering the above-described evaluations, shall be submitted to the Executive Director for review and approval at five year intervals by May 1st of each fifth year (with the first report due May 1, 2018, and subsequent reports due May 1, 2023, May 1, 2028, and so on) for as long as the approved as-built project exists at this location. The reports shall identify the existing configuration and condition of the armoring, the public access improvements, and the landscaping and drainage, and shall recommend actions necessary to maintain these project elements in their approved and/or required state, and shall include photographs taken from each of the same vantage points required in the As-Built Plans (**Special Condition 5**) with the date and time of the photographs and the location of each photographic viewpoint noted on a site plan. Actions necessary to maintain the approved as-built project in a structurally sound manner and its approved state shall be implemented within 30 days of Executive Director approval, unless a different time frame for implementation is identified by the Executive Director.

8. **Future Maintenance Authorized.** This CDP authorizes future maintenance and repair subject to the following:

a. **Maintenance.** "Maintenance," as it is understood in this special condition, means development that would otherwise require a CDP whose purpose is to maintain in the approved state the following: (1) the seawall, toe protection and riprap wedges (at the upcoast and downcoast edges of the seawall); (2) the grade beam and caisson buried wall

system; (3) the public access path down the bluff and the public access stairway; (4) the blufftop lateral public access path and overlook area; and (5) the landscaping, irrigation, and drainage elements.

b. **Other Agency Approvals.** The Permittee acknowledges that these maintenance stipulations do not obviate the need to obtain permits from other agencies for any future maintenance and/or repair episodes.

c. **Maintenance Notification.** At least two weeks prior to commencing any maintenance event, the Permittee shall notify, in writing, planning staff of the Coastal Commission's North Central Coast District Office. The notification shall include: (1) a detailed description of the maintenance event proposed; (2) any plans, engineering and/or geology reports describing the event; (3) a construction plan that complies with all aspects of the approved construction plan (see **Special Condition 3**); (4) other agency authorizations; and (5) any other supporting documentation describing the maintenance event. The maintenance event shall not commence until the Permittee has been informed by planning staff of the Coastal Commission's North Central Coast District Office that the maintenance event complies with this CDP. If the Permittee has not been given a verbal response or sent a written response within 30 days of the notification being received in the North Central Coast District Office, the maintenance event shall be authorized as if planning staff affirmatively indicated that the event complies with this CDP. The notification shall clearly indicate that the maintenance event is proposed pursuant to this CDP, and that the lack of a response to the notification within 30 days constitutes approval of it as specified in the permit. In the event of an emergency requiring immediate maintenance, the notification of such emergency episode shall be made as soon as possible, and shall (in addition to the foregoing information) clearly describe the nature of the emergency.

d. **Maintenance Coordination.** Maintenance events shall, to the degree feasible, be coordinated with other maintenance events proposed in the immediate vicinity with the goal being to limit coastal resource impacts, including the length of time that construction occurs in and around the beach and bluff area and beach access points. As such, the Permittee shall make reasonable efforts to coordinate the Permittee's maintenance events with other adjacent events, including adjusting maintenance event scheduling as directed by planning staff of the Coastal Commission's North Central Coast District Office.

e. **Restoration.** The Permittee shall restore all blufftop, bluff, and beach areas and all access points impacted by construction activities to their pre-construction condition or better within three days of completion of construction. Any beach sand impacted shall be filtered as necessary to remove all construction debris from the beach. The Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office upon completion of restoration activities to allow for a site visit to verify that all beach-area restoration activities are complete. If planning staff should identify additional reasonable measures necessary to restore blufftop, bluff, beach areas, or access points, such measures shall be implemented as quickly and reasonably as possible.

f. **Noncompliance Provision.** If the Permittee is not in compliance with the terms and conditions of any Coastal Commission CDPs or other coastal authorizations that apply to the subject properties at the time that a maintenance event is proposed, then the maintenance event that might otherwise be allowed by the terms of this future maintenance condition shall not be allowed by this condition until the Permittee is in full compliance with all terms and conditions.

g. **Emergency.** In addition to the emergency provisions set forth in subsection (c) above, nothing in this condition shall affect the emergency authority provided by Coastal Act Section 30611, Coastal Act Section 30624, and Subchapter 4 of Chapter 5 of Title 14, Division 5.5, of the California Code of Regulations (Permits for Approval of Emergency Work).

~~h. **Duration of Covered Maintenance.** Future maintenance under this CDP is allowed subject to the above terms until December 13, 2017. Maintenance may be carried out beyond December 13, 2017 if the Permittee requests an extension prior to December 13, 2017, and if the Executive Director extends the maintenance term in writing. The intent of this permit is to regularly allow for 5-year extensions of the maintenance term up to the 20-year expiration of the permit (see **Special Condition 9**) unless there are changed circumstances that may affect the consistency of this maintenance authorization with the policies of Chapter 3 of the Coastal Act and thus warrant a re-review of this permit.~~

9. **Twenty-Year Armoring Approval.**

a. **Authorization Expiration.** This CDP authorizes the seawall and the grade beam and caisson buried wall system for twenty years from the date of this CDP approval (i.e., until ~~December 13~~_____, 2033~~2~~) or until the time when the currently existing structures warranting armoring are no longer present and/or no longer require armoring for such protection, whichever occurs first; provided, however, that the elements of the armoring necessary to provide geologic stability for the Easement Areas and public access improvements required under Special Condition 2 and Special Condition 4 shall not be subject to this twenty-year limitation and shall be permitted to remain as long as the property remains subject to the Amended Easement required under Special Condition 4.

b. **Modifications within 20 Years.** If, within the 20-year authorization period, the Permittee applies for a CDP or an amendment to this permit to enlarge the seawall or the grade beam and caisson buried wall system, ~~or to perform repair work affecting more than 50 percent of those approved structures,~~ the Permittee shall provide additional mitigation for the effects of the enlarged or reconstructed seawall and/or grade beam and caisson buried wall system on public access and recreation and other coastal resources.

~~b.~~

c. **Amendment Required to Retain Past 20 Years.** If the Permittee intends to keep the seawall and the grade beam and caisson buried wall system in place after ~~December 13~~_____, 2033~~2~~, the Permittee must apply for a CDP amendment prior to ~~December 13~~_____, 2032~~1~~ in order to extend the length of development

authorization (including, as applicable, any potential modifications to the approved project desired by the Permittee) for those elements of such armoring that are not required to maintain compliance with the Amended Easement. Such amendment application shall, at a minimum, include:

(1) **Alternatives.** Information concerning alternatives to shoreline armoring that can eliminate and/or reduce impacts to public views, public recreational access, and shoreline processes, and other coastal resources as applicable. Alternatives evaluated shall include but not be limited to: relocation of all or portions of principle structures that are threatened, structural underpinning, and other remedial measures capable of protecting principal structures and providing reasonable use of the property without shoreline armoring. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion.

(2) **Mitigation.** Mitigation for the effects of the seawall and the grade beam and caisson buried wall system, including as modified if proposed modifications are part of the amendment application, on public access and recreation and other coastal resources for the additional term proposed.

d. **Removal.** Absent an approved CDP amendment to extend the term of this permit, those elements of the seawall and the grade beam and caisson buried wall system, which are not required to maintain compliance with the Amended Easement, shall be removed. Prior to removal, the Permittee shall submit two copies of a Removal Plan to the Executive Director for review and approval. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources, including the bluffs, beach, and ocean.

10. ~~**Caisson and Grade Beam Exposure.** In the event that the grade beam and caisson buried wall system becomes exposed over time, the Permittee shall submit a CDP amendment application for Commission approval designed to avoid and minimize adverse impacts, and to mitigate unavoidable impacts, associated with the grade beam and caisson buried wall system, including in terms of visual and sand supply impacts. Such measures shall be implemented in the time and manner, and subject to the terms and conditions, of the approved CDP amendment.~~

11. **Future Development.** Any future development, which is not otherwise exempt from coastal development permit requirements including but not limited to development authorized under Section 30610(g) of the Coastal Act, or redevelopment on the blufftop portion of the subject property shall not rely on the permitted seawall, riprap (at ends), or grade beam and caisson buried wall system to establish geologic stability or protection from hazards. Development and redevelopment on the site shall be sited and designed to be safe without reliance on shoreline armoring. As used in this condition, "redevelopment" is defined to include: (1) additions, or; (2) expansions, or; (3) demolition~~, renovation~~ and / or replacement that would result in alteration to 50 percent or more of the exterior walls of an existing structure~~,~~

~~including but not limited to, alteration of 50 percent or more of interior walls, exterior walls or a combination of both types of walls,~~ or; (4) demolition~~, renovation~~ and / or replacement of less than 50 percent of the exterior walls of an existing structure where the proposed remodel or addition would result in a combined alteration of 50 percent or more of the structure within any consecutive five-year period, whether the work is done at one time or as the sum of multiple projects~~from its condition as of December 13, 2012~~. Shoreline armoring intended to protect ancillary improvements (i.e., patios, decks, fences, landscaping, etc.) located between the principal residential structures and the ocean shall be prohibited.

12. **Assumption of Risk, Waiver of Liability, and Indemnity Agreement.** By acceptance of this permit, the Permittee acknowledges and agrees on behalf of itself and all successors and assigns:

    a. **Coastal Hazards.** That the site is subject to extreme coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunami, coastal flooding, landslides, bluff and geologic instability, and the interaction of same;

    b. **Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development;

    c. **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards;

    d. **Indemnification.** To indemnify and hold harmless the Coastal 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; and,

    e. **Property Owner Responsible.** That any adverse effects to property caused by the permitted project shall be fully the responsibility of the Permittee.

13. **State Lands Commission Authorization.** WITHIN 180 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit to the Executive Director for review a copy of the California State Lands Commission permit, letter of permission, authorization, or equivalent for the approved project, or evidence that no State Lands Commission authorization is necessary for the approved project. Any changes to the approved project required by the State Lands Commission shall be reported to the Executive Director. Minor changes that do not significantly alter the terms and conditions of this CDP may be approved by the Executive Director, but other changes will require a CDP amendment.

14. **Army Corps of Engineers Authorization.** WITHIN 180 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit to the Executive Director for review a copy of the U.S. Army Corps of

Engineers (ACOE) permit, letter of permission, authorization, or equivalent for the approved project, or evidence that no ACOE authorization is necessary for the approved project. Any changes to the approved project required by the ACOE shall be reported to the Executive Director. Minor changes that do not significantly alter the terms and conditions of this CDP may be approved by the Executive Director, but other changes will require a CDP amendment.

15. **Liability for Costs and Attorney Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and (2) required by a court that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

16. **Deed Restriction.** WITHIN 90 DAYS OF CDP APPROVAL (or within such additional time as the Executive Director may grant for good cause), the Permittee shall submit for Executive Director review and approval documentation demonstrating that the landowners have executed and recorded against the subject property governed by this CDP a deed restriction in a form and content acceptable to the Executive Director: (1) indicating that pursuant to this CDP, 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 CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description and graphic depiction of the parcels governed by this CDP. 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 CDP shall continue to restrict the use and enjoyment of the subject property so long as either this CDP or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

Exhibit B

Toe Protection Reports

Civil Engineering
Land Planning
Hydrology/ Flood Control
Geotechnical Engineering
Public Works Services
Storm Water Management

February 21, 2013
P.N. 1502.60

REDWOOD CONSTRUCTION
4665 MacArthur Court, Suite 200
Newport Beach, California 92660

Attention: Mr. Todd Stark, President

Subject: **ADDENDUM #6 – TOE PROTECTION**
RESPONSE TO CALIFORNIA COASTAL COMMISSION
COASTAL DEVELOPMENT PERMIT APPLICATION
BLUFF AND PUBLIC ACCESS STABILIZATION
LAND'S END MULTI-FAMILY DEVELOPMENT
100 ESPLANADE WAY (APN 009-023-070)
CITY OF PACIFICA, CALIFORNIA

References:

1. "Third-Party Coastal Bluff Stability Assessment, Land's End Development, 100 Esplanade Way, Pacifica, California," prepared by TerraCosta Consulting Group, dated February 21, 2013.

2. "Addendum #5 – Easement Mitigation Measure Proposal, Response to California Coastal Commission Review, Coastal Development Permit Application, Proposed Bluff Stabilization, Lands End Multi-Family Development, 100 Esplanade Way (APN 009-023-070), City Of Pacifica, California"; prepared by RJR Engineering Group; Revised May 24, 2012

3. "Addendum #4 – Mitigation Measures Proposal, Response to California Coastal Commission Review, Coastal Development Permit Application, Proposed Bluff Stabilization, Lands End Multi-Family Development, 100 Esplanade Way (APN 009-023-070), City Of Pacifica, California"; prepared by RJR Engineering Group; Revised May 16, 2012

4. "Addendum #3 – Existing Rip Rap Assessment, Response to California Coastal Commission Review, Coastal Development Permit Application, Proposed Bluff Stabilization, Lands End Multi-Family Development, 100 Esplanade Way (APN 009-023-070), City Of Pacifica, California"; prepared by RJR Engineering Group; Revised May 15, 2012.

5. "Addendum #2 – Sand Mitigation Assessment, Response to California Coastal Commission Review, Coastal Development Permit Application, Proposed Bluff Stabilization, Lands End Multi-Family

Development, 100 Esplanade Way (APN 009-023-070), City Of Pacifica, California"; prepared by RJR Engineering Group; Revised May 4, 2012.

6. "Response to California Coastal Commission Review, Coastal Development Permit Application, Proposed Bluff Stabilization, Lands End Multi-Family Development, 100 Esplanade Way (APN 009-023-070), City Of Pacifica, California"; prepared by RJR Engineering Group; Dated April 8, 2011.

7. Sea Wall and Bluff Stabilization Plans; Prepared by RJR Engineering Group, updated April, 2011

8. California Coastal Commission, Emergency Permit, Permit 2-10-007-G, dated February 16, 2010

9. "Emergency Repair Application, Proposed Bluff Stabilization, Lands End Multi-Family Development, 100 Esplanade Way (APN 009-023-070), City Of Pacifica, California"; prepared by RJR Engineering Group; Dated January 5, 2011.

10. "Seawall and Public Access Engineering Plans, Coastal, Civil and Structural Sheets", Prepared by RJR Engineering Group, updated January 5, 2011

11. California Coastal Commission, Review of CDP Application 2-10-039, dated December 14, 2010

12. "*Geotechnical Feasibility Supplemental Letter #1, Emergency Repair Application, Lower Bluff and Public Access Stabilization, Land's End Multi-Family Development, 100 Esplanade Way, Pacifica, California*"; Prepared by RJR Engineering Group; Dated December 10, 2010.

13. "Emergency Repair Application, Lower Bluff Stabilization, Lands End Multi-Family Development, 100 Esplanade Way (APN 009-023-070), City Of Pacifica, California"; prepared by RJR Engineering Group; Dated November 20, 2010.

14. "Coastal Development Permit Application, Sea Wall and Public Access, Lands End Multi-Family Development, 100 Esplanade Way (APN 009-023-070), City Of Pacifica, California"; prepared by RJR Engineering Group; Dated November 10, 2010.

15. "Emergency Repair Application, Upper Bluff Stabilization, Lands End Multi-Family Development, 100 Esplanade Way (APN 009-023-070), City Of Pacifica, California"; prepared by RJR Engineering Group; Dated August 4, 2010.

16. "Emergency Permit 2-10-007-G, Public Access Emergency Repair CDP, Lands End Multi-Family Development, 100 Esplanade Way (APN 009-023-070), City Of Pacifica, California"; prepared by RJR Engineering Group; Dated June 23, 2010.

17. "Emergency Repair Application, Sewer and Stormdrain Pipe Relocation Plan, Lands End Multi-Family Development, Proposed Bluff Stabilization, 100 Esplanade Way, (APN 009-023-070, City of Pacifica, California"; prepared by RJR Engineering Group; Dated June 10, 2010.

18. "Emergency Repair Application, Public Access Emergency Repair CDP, Lands End Multi-Family Development, Proposed Bluff Stabilization, 100 Esplanade Way, (APN 009-023-070, City of Pacifica, California"; prepared by RJR Engineering Group; Dated May 10, 2010.

19. "Emergency Permit 2-10-007-G, Public Access Emergency Repair CDP – Time Extension, Lands End Multi-Family Development, 100 Esplanade Way (APN 009-023-070), City Of Pacifica, California"; prepared by RJR Engineering Group; Dated April 5, 2010.

20. "Emergency Repair Application, Sewer and Stormdrain Pipe Relocation Plan, Lands End Multi-Family Development, Proposed Bluff Stabilization, 100 Esplanade Way, (APN 009-023-070, City of Pacifica, California"; prepared by RJR Engineering Group; Dated January 31, 2010.

21. "*Analysis of Public Access, Lands End Multi-Family Development, Proposed Bluff Stabilization, 100 Esplanade Way, City Of Pacifica, California*"; Prepared by RJR Engineering Group; Dated January 31, 2010.

22. "*Emergency Repair CDP Application, Lands End Multi-Family Development, Proposed Bluff Stabilization, 100 Esplanade Way, City Of Pacifica, California*"; Prepared by RJR Engineering Group; Dated January 31, 2010.

23. "*Geotechnical Feasibility Study and Analysis, Proposed Bluff Stabilization For Public Assess, Lands End Multi-Family Development, 100 Esplanade Way, Pacifica, California*"; Prepared by RJR Engineering Group; Dated October 26, 2009.

24. "*Proposed Bluff Stabilization for Public Assess, Alternative Engineering Analysis for Bluff Stabilization, Lands End Multi-Family Development, 100 Esplanade Way, Pacifica, California*"; Prepared by RJR Engineering Group; Dated October 26, 2009.

25. "*Geotechnical Engineering Analysis, Bluff Stabilization – Staircase, Lands End Multi-Family Development, 100 Esplanade Way, Pacifica, California*"; Prepared by RJR Engineering Group; Dated March 24, 2009

Dear Todd:

RJR Engineering Group (RJR) has prepared this letter in response to discussions and a recent in-person meeting with California Coastal Commission (CCC) staff in regards to providing additional information and reasoning for the necessity of toe protection for the new sea wall at Land's End as part of the Sea Wall CDP Application (2-10-039). RJR has recently collaborated with TerraCosta Consulting Group (TerraCosta), a third-party geotechnical and coastal engineering consultant retained by Land's End to independently address the need for the protective toe stone designed by RJR. This letter should be considered as a companion letter to the February 21, 2013, TerraCosta third-party review letter.

Status of Existing On-Site Rip Rap

Rip rap placed as part of the Emergency Revetment (Emergency Permit 2-10-07-G) was intended to serve as toe protection for the seawall. The design of the toe protection was reviewed and approved by CCC staff as part of the permitting process for Emergency Permit (2-11-005-G). During construction, approximately 20,250 tons of rip rap was removed from the site. Approximately 11,690 tons of rock remains buried in place approximately 10 to 15 feet below the summer sand profile. During construction staking approval, CCC staff requested that the sea wall be located farther back into the bluff to increase the slope of the wall, which resulted in a lesser beach encroachment and a substantial increase in beach width. As a result, instead of

the rip rap being located at the toe of the seawall, per the approved design, a variable width gap exists.

At this time, RJR requests permission to excavate the remaining rock revetment and relocate the large stones (three to four foot diameter stones) by placing them at the base of the sea wall for long-term toe protection, which was the original intent during the emergency repair design and approval. The toe protection consists of the relocation of 8,825 tons of rock.

At the December 4, 2012 meeting, CCC staff concurred that, while toe protection may be needed in the future, additional information and analysis was necessary to assess whether a more immediate need existed.

It remains the professional engineering opinion of RJR that toe protection is an integral and necessary part of the overall design of the seawall to preserve its immediate and long-term integrity, as illustrated on the approved Emergency Plans. This letter presents additional supporting technical reasons for this opinion. TerraCosta's February 21, 2013, third-party review letter also strongly recommends the required toe protection and provides additional bases for this recommendation.

Foundation Material Strength

During bluff retreat, a weakly cemented sand unit was encountered at the site at approximately Elevation +4, descending steeply to the west, based on trenching that was performed during wall construction. This surface has been postulated as the head of a steeply dipping wave cut bench. The unit is classified by Collins et. al. (2008, 2009) as a weakly cemented marine terrace material. RJR had initially considered this unit to be a weakly lithified sandstone. However, upon further evaluation and review, and independent assessments by other professionals, the unit is more appropriately classified as a weakly cemented marine terrace sand (Qw), consistent with the Collins findings.

RJR has performed (December 2012) six (6) additional direct shear tests (2 samples that remained from June 2010 collected during the wall construction and 4 additional tests from samples collected in December 2012). The results of these analyses indicate the following:

Sample	Elevation	Phi (degrees)	Cohesion (psf)
HS 1	+2	29	190
HS 2	-1	28	170
HS 3	+4	30	205
HS 4	+4	38	145
HS 5	+4	36	150
HS 6	+4	38	100

The results indicate that the foundation soils are relatively weak, and are similar to the materials classified by Collins (2008, 2009) as weakly cemented marine terrace deposits (Qw). Based on

the characterization by Collins and the testing by RJR, these materials exhibit extremely low soil strengths and corresponding high erosion rates when exposed to wave attack.

The low shear strengths, weakly cemented marine terrace deposits, extensive groundwater seepage, and coastal conditions, all discussed in prior RJR reports and supporting studies by local researchers, including the February 21, 2013, third-party review by TerraCosta, provide undeniable and ample evidence for the necessity of toe protection to prevent relatively rapid undermining of the seawall.

Conclusion

The results of the prior direct shear tests verify the previous findings and conclusions that the foundation materials will be prone to high rates of erosion as the material is increasingly subject to wave action.

If the toe protection were to be omitted, the breach of the wall would occur during the winter months, when the beach is scoured down to a winter profile at a time when access for repairs would be essentially impossible.

The Coastal Commission has historically recognized toe protection as an integral element of a sea wall. For example, the staff report for after-the-fact authorization of shoreline protection installed at the Aimco site pursuant to emergency permitting (CDP 2-08-020, October 15, 2011) notes at page 29:

> *"The applicant explored the idea of a retaining tied back vertical seawall and a contoured sloping wall that matches the slope of the bluff face. The latter design has been undertaken upcoast of the subject properties at 100 Esplanade. However, the applicant's consultants and the Commission's staff engineer have agreed that a vertical seawall in this location would require 10-15 feet of toe protection . . . Essentially, the placement of a vertical seawall would require a similar amount, and in certain locations an identical amount, of rock to protect the wall from damaging wave action and scour ..."*

The beach and subsurface conditions are essentially identical between the Aimco and Land's End sites. The only difference is that Land's End has embedded the foundation to reduce the amount of time that rip rap toe protection would be exposed.

The recommended toe protection is an essential element for the sea wall for the given site conditions discussed above and in TerraCosta's February 21, 2013 letter. The placement of the rip rap stones can be at a deeper elevation to reduce the potential for visual impacts. At the same time, any visual impacts would be short term.

If you have any questions, please do not hesitate to call at 805.485.3935.

RJR ENGINEERING GROUP

Robert W. Anderson, NSPE, RCE, JD
Principal Civil Engineer RCE 58383, Exp 12-31-14

Arizona: RCE 51923 *Washington PE 47559* *North Dakota PE 8252*
Colorado PE 44734 *Hawaii RCE 14230* *Oregon RCE 84690*

Certified CPESC #6840
Certified QSP/QSD # 21902
Certified CPSWPPP/CCIS #3367
Certified CISEC #1137
Certified Stormwater Professional (CSMP) #02-3908
Certified CESSWI #3270

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23. State of California, The Resources Agency, Department of Navigation and Ocean Development, July 1977, A

Exhibit C

Requested Mitigation Fee Credit Summary

Exhibit C

Requested Mitigation Fee Credit Summary

Table A

Staff's Recommended Mitigation Fee + Mitigation Fee Waived	Amount
Mitigation Fee (per November 27, 2012 Draft Conditions) covering both public recreation fee and sand loss mitigation fee (per June 2012 Staff Report)	$696,137
Separate sand loss mitigation fee (per June 2012 Staff Report), which Staff has indicated it is recommending waiving, based on estimated value of public access enhancements	$190,746 to $327,684
Total	**$886,833 to $1,023,821**

Table B

Land's End Requested Waiver / Credit	Amount
Amount of public recreation fee requested not be imposed, based on 110' of seawall necessary to support stairs to the beach	$114,291
Net additional cost of providing enhanced public access at the site compared to restoring site to the previous condition • Approximate costs of constructing enhanced public access at the site ($1,413,550) minus approximate costs to restore stairs to previous condition ($224,600) ○ See attached memoranda from JC Baldwin Construction Co.	$1,188,950
Total	**$1,303,241**

Table C

Amount Requested Waiver/Credit Exceeds Staff's Recommended Mitigation Fee + Mitigation Fee Waived (Table A – Table B)	Amount
Table A Total	$886,833 to $1,023,821
Table B Total	$1,303,241
Total	**-$416,408 to -$279,420**

JC BALDWIN
CONSTRUCTION COMPANY

February 7, 2013

FPA/BAF Land's End Associates, LLC
4665 MacArthur Court Ste 200
Newport Beach, CA 92660

ATTN: Todd Stark

RE: Land's End 100 and 101 Esplanade Ave., Pacifica (Emergency Coastal Development Permit Work) Completed Costs for Constructing Enhanced Public Access Improvements and Shoreline Protection Improvements necessary to protect public access.

AS BUILT COST:

As per your request, J. C. Baldwin Construction Co., has provided below the completed cost for the following items of work related to constructing enhanced public access improvements at the Land's End property and providing shoreline or structural protection for such improvements.

Items of Work Completed as of December 2012:

1)	All labor, materials and equipment necessary for the Installation of 110' of tieback shotcrete seawall with native carved and colored Boulderscape Type Finish.	$780,400.00
2)	All labor, materials and equipment necessary to attach 5' - 7' wide concrete stairs with outside wall and all required handrails.	$312,680.00
3)	All labor, materials and equipment necessary to Grade the natural beach access path way and depositing bluff soil on beach including all SWPPP, slope erosion control and the post and rope path railing.	$284,700.00
5)	All labor, materials and equipment necessary to install the steel reinforcing for the sidewalk to the grade beam.*	$ 1,770.00
6)	All labor, materials and equipment necessary to install the post and rope railing along the upper bluff walkway. *	$ 34,000.00
	Total:	$1,413,550.00

* Upper bluff repair as-built costs exclude $68,930 to rebuild 6" thick reinforced concrete sidewalk.

2469 Impala Drive ~ Carlsbad, CA 92010 ~ 760.438.9275 Fax ~ 760.438.4963 ~ jcbinc@jbaldwin.com ~ License #A623091

JC BALDWIN
CONSTRUCTION COMPANY

February 7, 2013

FPA/BAF Land's End Associates, LLC
4665 MacArthur Court Ste 200
Newport Beach, CA 92660

ATTN: Todd Stark

RE: Cost Estimate for Reconstructing Stairs at Land's End, 100 and 101 Esplanade Ave., Pacifica, To Pre-2008 Condition.

You have asked that J.C. Baldwin Construction Co. provide an estimate of the costs that would have been involved in reconstructing the stairs down to the beach that were in place on the Land's End property prior to being washed away in 2008. JCB has reviewed the site and has prepared the following estimate.

Scope of Work: Provide all labor, materials and equipment necessary to install drilled pier foundations and attach 5 wood landings and 5 sets of new 6" X 12" pressure treated stair stringers with 3" X 12" wood steps with 2" X 2" wood picket type handrails and 1-1/2" galvanized pipe grasping rail. Starting at the approximate elevation of 85 and following the bluff couture down to approximate elevation 15.

All rebar on this project to be epoxy coated and all nuts, bolts and hardware to be hot dipped galvanized.

TOTAL: $224,600.00

Exclusions: Permits, Plan, Survey, Inspections, Bonds, City Fees, and Relocation of Utilities.

2469 Impala Drive ~ Carlsbad, CA 92010 ~ 760.438.9275 Fax ~ 760.438.4963 ~ jcbinc@pacbell.net ~ License #A623091

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AND NORTH CENTRAL COAST DISTRICT OFFICES
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Memorandum August 14, 2013

To: Commissioners and Interested Parties

FROM: Dan Carl, North Central Coast District Deputy Director
North Central Coast District

Re: ***Additional Information for Commission Meeting***
Thursday, August 15, 2013

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		Ex Parte Communication, Carole Groom	**23**
Th17b	2-12-004 Sonoma County Water Agency	**Email, Dian Hardy**	**24-26**
		Email, Norma Jellison	**27-30**
		Email, Dana Zimmerman	**31-34**
		Correspondence, Darrell B. Sukovitzen	**35-36**
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Th17a

ARMBRUSTER GOLDSMITH & DELVAC LLP
LAND USE ENTITLEMENTS □ LITIGATION □ MUNICIPAL ADVOCACY

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August 9, 2013

VIA EMAIL AND FEDERAL EXPRESS

Chair Shallenberger and Honorable Commissioners
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Agenda Item Th17a

Re: No. 2-10-039 (Land's End Associates, LLC, 100-101 Esplanade Avenue, Pacifica)

Dear Chair Shallenberger and Honorable Commissioners:

We are writing on behalf of the Applicant, Land's End Associates, LLC ("Land's End"), in response to the Staff Report for the above-referenced coastal development permit application to authorize a seawall, grade beam and caisson buried wall system and public access improvements built under emergency permitting at the Land's End apartment complex at 100-101 Esplanade Avenue in the City of Pacifica. We appreciate the hard work of the Staff in analyzing the issues involved in the application. Land's End supports the Staff Report recommendation to grant the CDP, subject to one significant modification,a nd certain other minor clarifications, which are summarized below and discussed in further detail in Exhibit A.

Background

The 260-unit Land's End apartment complex was built in the early 1970's, set back from a 100-foot high coastal bluff. The property provides highly valued public access in perpetuity through a switch-back trail and stairway down the bluff to the beach, lateral shoreline access and a lateral blufftop trail, pursuant to an easement with the City. As with much of the Pacifica shoreline, the bluff has been subject to ongoing erosion and failure over the years. The stairway to the beach has been washed away several times since it was first built in the early 1970s. The Applicant purchased the property in 2005, the stairway collapsed in 2008, and in 2010 the bluff experienced severe erosion due to El Niño storm conditions that caused the City to issue a state of emergency. Land's End then began an emergency permit process with the Commission, which authorized the construction of the subject seawall and related armoring. Through close coordination with Commission Staff, the armoring system that was constructed represents the vanguard in shoreline protection by preserving more sandy beach than neighboring rock revetments, closely resembling the surrounding bluff landform, and allowing natural erosion of the upper bluff over time. Moreover, as part of the emergency permitting, Land's End has substantially improved public access to the beach and along the bluff, through safer and more accessible trails. Benches, outlooks, signage and a coastal information kiosk also will be provided.

Special Condition 9 Imposing a 20-year Term Should Not Be Adopted.

Land's End respectfully requests that the Commission not adopt Special Condition 9, which limits the CDP authorization for the shoreline protection to only twenty years and requires the removal of the armoring after that time unless a permit amendment is issued extending the term. A San Diego

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Superior Court judge recently overturned the same twenty-year seawall permit expiration in another CDP, on the basis that the Commission lacked the authority to impose the term and that it constituted a regulatory taking. The Court ruled, and Land's End likewise believes, that the twenty-year term meets neither the constitutionally-required nexus nor proportionality requirements because it does not mitigate for any impacts not already addressed through other conditions of approval or which could not be addressed through a future reevaluation of the adequacy of mitigation. Special Condition 9 also should not be imposed due to the unique circumstances here, where the armoring is necessary to provide structural support for the highly valued public access improvements to the beach and blufftop trail across the site, which are already required to be provided in perpetuity.

Instead, Land's End requests that the term in Special Condition 9 be removed and replaced with a reevaluation of the mitigation fee and other mitigation imposed under the CDP after twenty years.

Special Condition 4.c.(1) Should Be Revised to Incorporate the Blufftop Easement Buffer Requirements of the City's Local Implementation Plan.

Special Condition 4.c.(1) requires that the blufftop lateral easement, which has been relocated across the property due to erosion, be ambulatory and move inland as the bluff continues to erode. Land's End requests a minor clarification to this condition to incorporate the Local Implementation Plan requirement that the inland extent of any adjustment not encroach within a 10-foot buffer of any existing occupied residential structure, thereby assuring that the conditions of this permit be consistent with the City of Pacifica's certified LCP.

Land's End respectfully requests that the Commission approve the CDP, subject to its requested modifications, and looks forward to presenting the project to the Coastal Commission on August 15, 2013. Please feel free to contact me at (310) 254-9027 if you have any questions regarding this matter.

Sincerely,

David A. Goldberg

Enclosures

cc: Dan Carl, California Coastal Commission
Karen Geisler, California Coastal Commission
Douglas Rush, American Realty Advisors
Todd Stark, Redwood Construction
Susan McCabe, McCabe & Company
Anne Blemker, McCabe & Company

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Exhibit A

EXHIBIT A
RESPONSE TO STAFF REPORT

I. SPECIAL CONDITION 9, WHICH IMPOSES A TWENTY-YEAR TERM ON THE CDP, SHOULD NOT BE ADOPTED.

The Staff Report recommends that the seawall and grade beam and caisson buried wall system be authorized for only twenty years and then be removed after that time unless a permit amendment is issued extending the term. While this recently has become a commonly imposed condition in CDPs for shoreline armoring, on April 24, 2013, a San Diego Superior Court judge overturned the same twenty-year seawall permit expiration in another CDP, on the basis that the Commission lacked the authority to impose the term and that the requirement was an arbitrary and capricious regulatory taking. In its judgment, the Court stated that the petitioners were "entitled to a CDP without an expiration date", that the Commission "had a duty to grant the CDP for the seawall and was not authorized to impose an arbitrary expiration date," and that the twenty-year term met neither the nexus nor proportionality requirements and therefore constituted a regulatory taking. (See Judgment and Minute Order at Exhibit C.)

Moreover, even if the twenty-year term were enforceable, which we believe it is not, it should not be imposed, given the unique circumstances here, where so much of the seawall is necessary to provide structural support for the highly valued vertical access path and staircase and the blufftop trail across the site, which are required to be provided in perpetuity.[1]

Therefore, Land's End requests that the Commission revise Special Condition 9 to remove the twenty-year term, as set forth in further detail below.

A. The Coastal Act does not authorize imposition of the twenty-year term.

Under Coastal Act Section 30235, an applicant is entitled to a CDP for a shoreline protection device where the Coastal Commission finds, as it has here, that shoreline protection is required to protect existing structures and its impacts have been mitigated. Coastal Act Section 30235 provides, in part, that shoreline protection devices "**shall be permitted** when required to serve coastal-dependent uses or **to protect existing structures** or public beaches in danger from erosion and **when designed to eliminate or mitigate adverse impacts on local shoreline sand supply**." (Emphasis added.) Under Coastal Act Section 30235, the Commission may only impose conditions that eliminate or mitigate significant seawall impacts. (*Ocean Harbor House HOA vs. California Coastal Commission* (2008) 163 Cal.App.4th 215, 242.) The Staff Report identifies the potential impacts from the Land's End seawall and upper bluff system as those impacts related to shoreline sand supply, public access and recreation and public views.

[1] The property is subject to longstanding requirements to maintain these public access improvements, which are referenced in the City of Pacific Land Use Plan (at p. 30) and currently are memorialized in a Public Access Easement with the City of Pacifica, dated May 9, 2006.

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EXHIBIT A
RESPONSE TO STAFF REPORT

1. Special Conditions of Approval related to shoreline sand supply, public access and recreation and public views mitigate for all of the impacts of the shoreline protection.

The Staff Report identifies the potential impacts of shoreline protection on natural shoreline processes as "(1) the loss of the beach area on which the structure is located; (2) the long-term loss of beach that will result when the back-beach location is fixed on an eroding shoreline; and (3) the amount of material that would have been supplied to the beach if the back-beach or bluff were to erode naturally."[2] To mitigate for these impacts, the Staff Report recommends the imposition of a mitigation fee, based on the cost of delivering 34,493 cubic yards of beach quality sand – the estimated amount of sand that would have been deposited onto the beach were it not for the seawall. This mitigation payment is to be used "to provide beach nourishment at this location based on the cost to replace the amount of sand lost," which "will offset such impacts."[3] The Staff Report concludes that, with the imposition of the mitigation fee, "**the project satisfies the Coastal Act Section 30235 requirements regarding mitigation for sand supply impacts, and thus also meets all Section 30235 tests for allowing such armoring**." (Emphasis added.)[4]

The Staff Report also analyzed the impacts of the shoreline protection on public access and recreation. To mitigate for these impacts, the Staff Report recommends the imposition of a $431,061 mitigation fee (originally a $1,620,111 fee before granting credit for the value of public access improvements provided by Land's End) to mitigate for the replacement of beach area lost due to the seawall from encroachment and passive erosion. The mitigation fee is to be used solely for "public beach recreational access acquisitions and/or improvements at beaches within Pacifica's city limits (including potentially acquiring beachfront property, providing blufftop access trails both up and downcoast of the site, public access improvements, etc.)."[5] The Staff Report concludes that with payment of the mitigation fee to mitigate sand supply impacts and the loss of beach area and by providing continued and enhanced vertical and lateral access within defined easements areas, the Project would mitigate impacts to public access and recreation consistent with Coastal Act requirements.[6]

In addition, the Staff Report analyzed the impacts of the shoreline protection on public views and recommends Special Conditions 10 and 1(g) to mitigate these impacts. Special Condition 10 requires a future CDP amendment should the grade beam and caisson buried wall system ever become visually exposed over time to address those visual impacts. Special Condition 1(g) requires native, non-invasive landscaping along the switchback and blufftop trails to offset visual impacts from the beach below and from the street. The Staff Report concludes

[2] Staff Report at p. 39.

[3] Staff Report at p. 45.

[4] Staff Report at p. 45.

[5] Staff Report at p. 58.

[6] Staff Report at p. 59.

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that, with the imposition of these conditions, the Project is consistent with the Coastal Act's visual resources policies.[7]

2. The Staff Report does not cite to any impacts that a twenty-year term would address, which are not already mitigated through other conditions of approval.

The Staff Report does not identify any impacts to coastal resources that would not be mitigated through the mitigation fee, access requirements and viewshed conditions of approval, but which would be mitigated through the twenty-year term. The Staff Report cites a variety of reasons why it has imposed a twenty-year term, none of which could not be accomplished through a condition of approval requiring the evaluation of the need for additional mitigation in the future, without putting into question the authorization to maintain the armoring in place.

The Staff Report asserts that a twenty-year term is appropriate because, in its experience, shoreline armoring requires replacement or modification within "only a few decades".[8] This conclusion is merely an anecdotal observation – which may or may not be correct – and is not based on any specific facts, scientific evidence or calculations regarding the anticipated design life of the Land's End seawall. In fact, Land's End designed the shoreline armoring with a design life of at least 100 years at the request of Commission Staff, at an expense of several million dollars more than seawalls designed with a twenty-year design life.[9] The Staff Report also asserts the twenty-year term would give the Commission an opportunity to respond to potential changed circumstances from climate change and sea level rise, including exposing the seawall to more frequent wave attack. However, the seawall design already takes into account sea level rise at the approximate level identified by the Staff Report.[10]

The Staff Report further asserts that a twenty-year term is necessary because, since the natural bluff is subject to ongoing erosion and episodic failures, the seawall might too fail episodically, requiring a reassessment after twenty years of any public hazards created by resulting seawall debris.[11] First, the purpose of the seawall is to protect the bluff from ongoing erosion and such episodic failures. Second, Special Condition 7 and Special Condition 8 adequately mitigate for these potential impacts. Special Condition 7 imposes a comprehensive monitoring and reporting requirement, which requires the permittee to retain a licensed civil engineer with experience in coastal structures and processes to regularly monitor and provide

[7] Staff Report at p. 64.

[8] Staff Report at p. 37.

[9] The structural engineer-certified design calculations for the Project's shoreline armoring, which Land's End has submitted into the record, demonstrates that the seawall has been designed with a design life of at least 100 years. ("The proposed seawall is anticipated to have a life expectancy in excess of 100 years assuming proposed maintenance and drainage is maintained.") RJR Engineering letter report regarding "Response to California Coastal Commission Review", dated April 18, 2011, at p. 12.

[10] Id at p. 6.

[11] Staff Report at p. 38.

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ongoing reports to the Commission regarding whether any significant weathering or damage has occurred to the armoring that would impact future performance and to identify any structural or other damage or wear and tear requiring repair to maintain the armoring in a structurally sound manner. Special Condition 8 authorizes the permittee to undertake required maintenance to the armoring, subject to stringent notification and coordination requirements with Commission Staff.

None of the reasons cited in the Staff Report for the twenty-year term are based on the premise that shoreline armoring might not be geologically necessary in twenty-years for the existing structures and public access improvements, but rather how the Commission might then choose to mitigate for new or different impacts of the armoring in the future. We believe, and a San Diego Superior Court judge now has determined, that to the extent the purpose of the twenty-year term is to allow the Commission the ability to deny authorization for the shoreline armoring upon that term's expiration, Condition 9 violates Section 30235. To the extent the purpose of the condition is to preserve the Commission's authority to evaluate whether additional or different mitigation might be necessary in the future, that same end can be accomplished simply by revaluating mitigation in the future, without placing a term on Land's End's right to maintain the shoreline armoring, the need for which has already been established.

B. The twenty-year term would cause a regulatory taking.

In addition to being an impermissible condition of approval under Coastal Act Section 30235, imposition of the twenty-year term would constitute an "unconstitutional condition" that would result in a regulatory taking. The Staff Report does not establish how requiring the removal of the shoreline armoring after twenty years unless it is reapproved has any nexus to identified impacts or is proportional in nature and scope to any impacts, thus failing the constitutional requirements established under *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard.* (See also *Koontz v. St. Johns River Water Management District,* 500 U.S. __ (2013).)

As discussed above, the Staff Report does not identify any impacts to coastal resources that would not be mitigated through the mitigation fee, public access requirements or viewshed conditions of approval, but which would be mitigated through the twenty-year term. The Staff Report also provides no evidence to support its underlying rationale that perhaps the shoreline armoring might not be necessary in twenty years to protect the existing structures. To the contrary, expert reports prepared by RJR Engineering and Terra Costa Consulting Group, which have been submitted into the record, demonstrate why this portion of the California coast is particularly susceptible to erosion requiring the need for shoreline protection. Moreover, as discussed further below, armoring is necessary to provide geologic and structural support for vertical and lateral access across the property, which are required to be provided in perpetuity.

Special Condition 9 would place a significant cloud on the marketability and valuation of the property by creating uncertainty as to whether Land's End or a future owner will be permitted to keep the shoreline protection necessary to maintain the existing 260-unit apartment complex in a safe, structurally sound and habitable condition or be subject to substantial future costs to remove the armoring and be left with an unprotected property. Adoption of the twenty-year term therefore would impose an impermissible use restriction, which would substantially diminish the value of Land's End property and infringe upon its constitutional right to protect its

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property and maintain safety through necessary shoreline armoring.

C. Shoreline protection is necessary to preserve highly valued vertical and lateral access, which are required to be provided in perpetuity.

The Commission also should not impose the twenty-year term because the seawall and upper bluff retaining wall system are necessary to preserve highly valued public access improvements, which are required to be provided perpetuity. An earlier version of the Staff Report released for public review on June 1, 2012 acknowledged that only the seawall alternative would provide the necessary protection for the stairs to the beach and the blufftop trail:

> The 'no-project, remove the seawall' alternative would not provide any protection to the endangered apartments **or the blufftop walkway and stairway that provides public access to the beach**, and cannot alone suffice as the approvable alternative in this case . . . Outright removal would serve to abate the danger for a short period of time, but would not eliminate the need for shoreline protection. **Also, removal of the stairway would preclude access to the beach at this site**. Therefore, in this case, based on the site constraints and the existing development present on site and infeasibility to abate the danger for an extended period of time through removal or relocation, an abandonment or relocation option is not a feasible alternative for protecting the existing endangered apartments.

(Emphasis added.)[12] The Staff Report further states that the "stairway at this location is critical" because "many of the surrounding beaches are extremely difficult to access" and because the nearest formal public access to the beach is either 5 miles to the north or 1.5 miles to the south.[13]

In addition to providing protection for vertical access, the seawall and grade beam and caisson buried wall system provide additional protection to the blufftop lateral access path. As stated in the Staff Report, "[t]he proposed blufftop lateral access, although relocated inland, would be 5-feet wide, **and is supported by an upper bluff retaining wall system, which will ensure its stability over time**." (Emphasis added.)[14]

The staircase to the beach has been washed away several times since it was first built in the early 1970s, including most recently in 2008. During the emergency permitting process for the property in 2010, Commission Staff and Land's End agreed that much of the seawall would be necessary to provide long-term structural support and protection of the bluff to ensure preservation of vertical access across the property.[15] As Land's End would continue to be

[12] June 2012 Staff Report at p. 17.

[13] Staff Report at p. 51.

[14] Staff Report at p. 55.

[15] We understand this determination was based on several factors supporting the conclusion that, unless the bluff was armored, it would eventually become infeasible to maintain vertical access from the bluff to the beach. Of

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required to maintain these public access improvements in perpetuity under the Amended Public Access Easement required under Special Condition 4 and the geologic need for the armoring to support this public access has been established, authorization for the seawall should not be term limited.

D. Land's End requests that Special Condition 9 be revised to replace the twenty-year term with a requirement to reevaluate mitigation in the future.

Based on the foregoing, Land's End requests that Special Condition 9 be revised to replace the twenty-year term on the CDP with a requirement for the reevaluation of the mitigation fee and other mitigation imposed under the CDP after twenty years. This requested modification, which is set forth in Exhibit B, would preserve the Commission's ability to ensure that impacts of the armoring over time are adequately mitigated.

II. SPECIAL CONDITION 4.C.(1) SHOULD BE REVISED TO INCORPORATE THE BLUFFTOP EASEMENT BUFFER REQUIREMENTS OF THE CITY'S LOCAL IMPLEMENTATION PLAN.

Special Condition 4.c.(1) requires that the blufftop lateral easement across the property be ambulatory and move inland as the bluff erodes to retain a continuous and connected lateral accessway along the length of the property. While Land's End fully supports its existing easement obligation to provide this lateral access, it requests that this condition be modified to incorporate the lateral blufftop easement buffer requirements of the City's Local Implementation Plan to avoid potential future conflicts with the existing occupied residential buildings on the property and to ensure consistency with the City's certified LCP. City of Pacifica LIP Section 9-4.4407(b)(7) provides:

> With respect to lateral bluff top access, the easement shall be adjusted inland from the current bluff edge if it recedes inland, **but in no event shall the trail be closer than ten (10') feet to an occupied or proposed residence**. Such an inland adjustment shall not occur in the event it would prohibit private use of a site or would render use or development of the site economically infeasible.

(Emphasis added.) Land's End therefore requests that Special Condition 4.c.(1) be revised to incorporate the LIP's 10-foot buffer requirement, as set forth in Exhibit B.

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primary importance among these factors was that the combination of continued erosion and the height of the bluff (at approximately 100 feet) would force the trail to become steeper and steeper – eventually to unsafe and unusable grades – and that due to the close proximity of the adjacent apartment complex to the south (310 Esplanade) and Esplanade Avenue to the east, relocating the switch back trail over time either further to the south or to the north to escape the erosion were not feasible options.

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III. REQUESTED CLARIFICATION TO SPECIAL CONDITION 1(E).

As drafted, Special Condition 1(e) could be read to require the Permittee to remove concrete and other debris placed or allowed to migrate onto the beach by others, much of which was deposited by the railroad companies in the early 1900s and/or is seaward of the mean high tide line. During construction of the armoring system in 2011, Land's End became aware of previously deposited rock and construction remnants that are unrelated to Land's End activities.

Land's End is committed to restoring the beach to the condition that existed prior to the work undertaken to construct the seawall and public access improvements, and requests that Special Condition 1(e) be clarified accordingly, as set forth in Exhibit B.

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Exhibit B

EXHIBIT B
REQUESTED MODIFICATIONS TO STAFF REPORT'S RECOMMENDED SPECIAL CONDITIONS

Land's End requests that the Coastal Commission incorporate the below modifications to the Staff Report's recommended Special Conditions.

Special Condition 1.e.

Modify Special Condition 1.e. to clarify the concrete and other debris required to be removed by the Permittee, as shown below in **underline** and ~~strikeout~~:

> **Rock, Concrete, and Debris Removal.** Other than the minimum amount of rock riprap at the upcoast and downcoast edges of the seawall needed to conform the edges of the seawall to the coastal bluff and the rock riprap permitted to be relocated from the trench to the base of the seawall for toe protection, all other rock riprap and concrete debris (~~e.g.,~~ **except the** abandoned concrete drain pipe**, debris not placed by Permittee that is seaward of the mean high tide line and debris that pre-dates the enactment of the 1976 Coastal Act**~~,c onerete debris, etc.~~) in the area seaward of the approved seawall, including rock remaining in the trench (after rock has been moved for toe protection) located in the area seaward of the approved seawall, and/or placed in the nearby area by the Permittee, shall be removed and properly disposed of at an inland location approved by the Executive Director.

Special Condition 4.c.(1).

Modify Special Condition 4.c.(1) to incorporate the requirement from Section 9-4.4407(b)(7) of the City's Local Implementation Plan that inland adjustments to blufftop lateral easements resulting from bluff erosion respect a ten foot minimum buffer from occupied residential structures,a s shown below in **underline**:

> **Blufftop Lateral.** The blufftop lateral portion of the Amended Easement Area shall be described to include the 5-foot walkway along the length of the property and connecting to the public access path at the northern property boundary,a nd south to Esplanade Avenue, and shall be ambulatory so that it moves inland as the bluff erodes in order to retain continuous and connected (to up and down coast public accessways and to inland public streets) public access. If, as a result of bluff erosion, it becomes infeasible at any time to maintain any portion of the public access path atop the bluff at five feet in width or in such continuous and connected alignment**, while maintaining a 10-foot buffer from any existing occupied residential structure**, the Permittee shall be required to apply for an amendment to this Coastal Development Permit to modify the location and/or reduce the width of the blufftop lateral portion of the Easement Area to provide alternative lateral blufftop access that complies with this CDP, CDP 3-83-015, CDP 239-03 and the 2006 Easement.

Special Conditions 9 and 8(h).

1. Modify Special Condition 9 to replace the twenty-year term with a requirement to apply for a CDP amendment after 20 years for a review of mitigation that may be required at that time for the continued impacts of the shoreline armoring after 20 years, as shown below in **underline** and ~~**strikeout**~~:

> **9.** ~~**Twenty-Year Armoring Approval.**~~ **Mitigation Review.**
>
> **a.** ~~**Authorization Expiration.**~~ **Mitigation Period.** This CDP ~~authorizes~~ **mitigates for the impacts of** the seawall, riprap toe protection, riprap wedges (at the upcoast

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and downcoast edges of the seawall), and the grade beam and caisson buried wall system for twenty years from the date of this CDP approval (i.e., until August 15, 2033) orunti l the time when the currently existing structures warranting armoring are no longer present and/or no longer require armoring for such protection, whichever occurs first.

b. Modifications ~~within 20 Years~~. If~~, within the 20-year authorization **mitigation** period,~~ the Permittee applies for a CDP or an amendment to this permit to enlarge the seawall, riprap toe protection, riprap wedges (at the upcoast and downcoast edges of the seawall), and/or the grade beam and caisson buried wall system, or to perform repair work affecting more than 50 percent of those approved structures, the Permittee shall provide additional mitigation for the effects of the enlarged or reconstructed seawall and/or grade beam and caisson buried wall system on public access and recreation and other coastal resources that have not already been mitigated through this permit.

c. ~~Amendment Required to Retain~~ Mitigation After ~~Past~~ 20 Years. If the Permittee intends to keep the seawall, riprap toe protection, riprap wedges (at the upcoast and downcoast edges of the seawall), and the grade beam and caisson buried wall system in place after August 15, 2033, the Permittee must apply for a CDP amendment prior to August 15, 2033 **for a review of only whether additional mitigation is required to maintain the armoring beyond that date** ~~in order to extend the length of development authorization~~ (including, as applicable, any potential modifications to the approved project desired by the Permittee). Such amendment application shall~~,a t a minimum,~~ include:

~~**(1) Alternatives.** Information concerning alternatives to shoreline armoring that an eliminate and/or reduce impacts to public views, public recreational access, and shoreline processes, and other coastal resources as applicable. Alternatives evaluated shall include but not be limited to: relocation of all or portions of principle structures that are threatened, structural underpinning, and other remedial measures capable of protecting principal structures and providing reasonable use of the property without shoreline armoring. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion.~~

~~**(2) Mitigation.**~~ **m**~~M~~itigation for the effects of the seawall, riprap toe protection, riprap wedges (at the upcoast and downcoast edges of the seawall), and the grade beam and caisson buried wall system, including as modified if proposed modifications are part of the amendment application, on public access and recreation and other coastal resources for the additional term proposed.

2. In addition, delete the following phrase from Special Condition 8(h):

"throughout the 20-year period of development authorization (see Special Condition 9)"

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Exhibit C

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
NORTH COUNTY

MINUTE ORDER [X] Amended on 03/07/2013

DATE: 03/07/2013 TIME: 01:30:00 PM DEPT: N-28

JUDICIAL OFFICER PRESIDING: Earl H. Maas, III
CLERK: Noreen McKinley
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2011-00058666-CU-WM-NC** CASE INIT.DATE: 10/07/2011
CASE TITLE: **Lynch vs. California Coastal Commission**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

The Court, having taken the above-entitled matter under submission on 03/07/13 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Petitioners' motion for judgment is granted. A writ of mandate shall issue directing Respondent California Coastal Commission to remove from the Coastal Development Permit Amendment conditions 1(a), 2 and 3 for removal of the lower private access stairway and the 20-year expiration date.

This case involves a petition for writ of mandate/complaint filed 10/7/11 arising out of a dispute over conditions imposed by the California Coastal Commission on a Coastal Development Permit ("CDP") on Petitioners' seawall and staircase that was destroyed by heavy rains. The Commission approved Petitioners' permit to allow for repairs with several conditions, including (1) a 20 year limit on the seawall permit and (2) removal of the staircase.

Petitioners Barbara Lynch and Thomas Frick own adjacent residential properties. The easterly and westerly property lines for Petitioners' homes are Neptune Avenue and the mean high tide line of the Pacific Ocean in Encinitas. Petitioners' stairway was built more than 40 years ago, prior to the enactment of the Coastal Act of 1976. In 1973, the stairway partially collapsed and was reconstructed under a permit issued by the County following certification by the Commission's predecessor agency that its reconstruction was exempt from state permit requirements.

The staircase has been regularly maintained and is the only direct access to the beach portion of Petitioners' property. In 1986, Petitioners constructed a beach level seawall and mid-bluff bluff retention structure. In 1989, the Commission determined that these structures, and the beach stairway, were consistent with the Coastal Act and issued a CDP authorizing them to remain in perpetuity.

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In 2002, Petitioners applied to the Commission for a CDP to rebuild and reinforce its sea wall and to reconstruct the staircase. In December 2010, while the application was pending, the area was hit by heavy rains. To protect their homes and regain access to the beach portion of their properties, Petitioners immediately submitted an application to the City for permission to re-build the seawall and repair the lower half of the staircase without enlargement or expansion. The City approved both the seawall and the staircase repair. The approval contained the standard condition that Petitioners also obtain a parallel approval by the Commission before the City would issue a building permit. Petitioners applied for the CDP.

The first cause of action alleges that under the Coastal Act, the Commission was required to grant the permit without an expiration date. Pursuant to Public Resources Code § 30235, the Commission is required to permit seawalls when required to protect existing structures as long as the seawall is required to protect an existing structure. When a seawall is required to protect an existing structure, the Commission does not have the power to deny the permit and may only impose those conditions that are statutorily enumerated.

The second cause of action alleges that the Commission's denial of the staircase repair was improper because, pursuant to Public Resources Code § 30610, certain activities do not require a CDP and may proceed without Commission approval. One such activity is "repair and maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities..." Public Resources Code § 30610(d). Another such activity is the "replacement of any structure...destroyed by a disaster". Public Resources Code § 30610(g). "Disaster" is defined in Public Resources Code § 30610(g) (2) as "any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner".

1. Private access stairway:

Condition 1(a) provides: "Reconstruction of the private access stairway below the existing landing that remains shall be deleted from the plans. AR 1786.

As set forth in the July 2011 staff report and as approved by the Commission on 8/10/11, in requiring the removal of the stairway, it was determined that "the City's certified LCP [Local Coastal Program] includes provisions that not only prohibit the construction of private stairways on the bluff but also provide for the phase-out of existing private access stairs", citing to Policy 1.6 of the Public Safety Element of the City's Land Use Plan and Circulation Policy 6.7. AR 1716-1717.

Specifically, the report states that the subject stairway constituted a "structural nonconformity" within the meaning of Encinitas Municipal Code ("EMC") § 30.76.020 and there was no authority that allowed for the replacement of a "structural nonconformity". The Commission staff cited to EMC § 30.76.50 allowing for the replacement of a "nonconforming use" with the same use but only allowing the repair and maintenance of a "structural nonconformity". The Commission staff then concluded that to the extent Petitioners were relying on the provisions of EMC § 30.76.050(B) to replace their stairway, this provision only applied to a nonconforming use. AR 1718.

The report further stated that Petitioners could not rely on the provisions of EMC § 30.80.050 which exempts certain types of development from the requirement of a Coastal Development Permit ("CDP"). Pursuant to this provision, the replacement of any structure other than a public works facility destroyed by a disaster is exempt from the requirement for a CDP "when in conformance with all other provisions

of the Municipal Code". EMC § 30.80.050(E).

In finding that subsection (E) did not apply, the Commission relied on an internet dictionary definition of "disaster". AR 1719. The report further stated:

"Even assuming the collapse did not constitute a natural disaster consistent with the relevant LCP provision, which it is not, the stairs cannot be replaced consistent with applicable zoning requirements. The City's regulations do not allow for structural non-conformities to be removed and replaced. Structures replaced after a disaster must still comply with zoning requirements, which must be consistent with the land use policies of the LCP. These policies cited above clearly prohibit new private accessways. The Commission did permit after-the-fact construction of the stairway pursuant to CDP 6-88-464, when it was documented that it could not be removed without compromising the existing shoreline protective structures, and before the City's LCP had been certified. However, today, the stairway cannot be reconstructed because the LCP does not allow private access stairs on the bluff face, the non-conforming regulations do not allow for structural non-conformities to be removed and replaced and, if it is not a disaster replacement because it was not destroyed by a natural disaster and because it cannot be reconstructed consistent with the existing zoning code." AR 1719-1720.

Petitioners are correct and the Commission failed to proceed in the manner required by law in applying an erroneous definition of "disaster" for purposes of subsection (E).

Although the Commission improperly cited to the internet dictionary definition of disaster, Petitioners must also address the additional requirement that "the replacement structure shall conform to applicable zoning and development requirements of the City". As noted above, the Commission determined that the stairs cannot be replaced consistent with applicable zoning requirements, citing the City's regulations which do not allow for structural non-conformities to be removed and replaced and land use policies which prohibit new private accessways.

It would appear that Petitioners are not "replacing" the stairway structure but are, instead, "repairing" it. The third staff report describes the project as follows:

"The upper portions and landing of the existing private access stairway that serve both lots remains and will be retained. The lower portion of the destroyed/removed private access stairway is proposed to be reconstructed in its same location and design, and tied into the new seawall." AR 1677.

Further, although the term "replace" is not defined in § 30.076.050, for purposes of Public Resources Code § 30610(d), "replace" as opposed to "repair and maintenance" is defined elsewhere as "the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure". Cal. Code Regs. tit. 14, § 13252.

The court's inquiry does not end here. Even assuming that the proposed stairway meets City regulations regarding structural non-conformities, the court must determine whether the stairway can be repaired consistent with the City's land use policies, specifically, Policy 1.6 of the Public Safety Land Use Element and Circulation Policy 6.7.

Policy 1.6 of the Public Safety Element of the City's Land Use Plan provides:

"The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by: (a) Only permitting public access stairways and no private stairways , and otherwise

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discouraging climbing upon and defacement of the bluff face...(f) Requiring new structures and improvements to be set back...40 feet from coastal blufftop edge with exception to allow a minimum coastal blufftop edge of no less than 25 feet...No structures, including walkways, patios...and similar structures shall be allowed within five feet from the bluff top edge.

Circulation Policy 6.7 provides: "Discourage and phase out private access to the beach over the bluffs. New private accessways shall be prohibited."

Both policies refer to "new" structures and private accessways. Such is not the case here. If Petitioners were attempting to install a new stairway or completely replace a stairway, such policies would bar their application. However, here, Petitioners simply seek to repair a portion of a stairway. Further, Policy 1.6 refers back to the Zoning Code which does not ban the repair of the stairway. The Commission's finding that the stairway is not exempt from the CDP requirement pursuant to EMC § 30.80.050(E) is not supported by substantial evidence.

2. Twenty year expiration date

Condition 2 provides in part: "This coastal development permit authorizes the proposed seawall for twenty years from the date of approval (i.e., until August 10, 2031). No modification or expansion of approved seawall, or additional bluff or shoreline protective structures shall be constructed, without approval of an amendment to this coastal development permit by the Coastal Commission..." AR 1787.

Condition 3 provides in part:

"Prior to the expiration of the twenty year authorization period for the permitted seawall, the property owners shall submit to the Commission an application for a coastal development permit amendment to either remove the seawall in its entirety, change or reduce its size or configuration, or extend the length of time the seawall is authorized...: AR 1787.

The findings in support of the Commission's decision to impose a twenty year expiration date on the CDP are not supported by substantial evidence. AR 1709-1710.

Further, Petitioner's arguments that the power to impose a condition presumes the power to deny the request, is at least partially persuasive. The Coastal Commission did not have the power, under the facts presented here, to deny a permit for the protective wall. During an earlier argument, the Coastal Commission argued that the 20 year limit was simply a way to make sure the seawall was still safe as further sand erosion and bluff changes might undercut the support system. Respondent returned to that argument, and included the possibility that future "coast wide" work, such as an artificial reef or barrier, might make the continued existence of a seawall unnecessary.

Neither argument is persuasive. First, the government always has the power to force repair or change should the seawall become unsafe. It may proceed by code enforcement, inverse condemnation, or many other legal practices to protect against a dangerous condition. Second, even counsel for Respondent concedes that the probability of a "coast wide" barrier being designed, approved, processed through and litigated in the next 20 years is remote. Instead, Petitioner's expectation that the 20 year limit is simply a power grab designed to obtain further concessions in 20 years, or force the removal of seawalls at a later time is persuasive.

Judge Earl H. Maas, III

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EXHIBIT C

FILED
Clerk of the Superior Court
APR 24 2013
BY Noreen McKinley, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

BARBARA LYNCH and THOMAS FRICK Petitioners and Plaintiffs, v. CALIFORNIA COASTAL COMMISSION, an agency of the State of California, and DOES 1 through 20, inclusive, Respondents and Defendants.	CASE NO. 37-2011-00058666 CU-WM-NC **~~[PROPOSED]~~ JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE** Dept: N-28 Judge: The Honorable Earl H. Maas, III

Petitioners' Motion for Judgment came on regularly for hearing before this Court on March 7, 2013, in Department N-28, the Honorable Earl H. Maas, III presiding, pursuant to the Petition for Writ of Mandate filed and served by Petitioners Barbara Lynch and Thomas Frick on Respondent California Coastal Commission in the manner required by law. Petitioners and Respondent have submitted memoranda of points and authorities in support of their respective contentions. Jon Corn and Vincent Axelson, Axelson & Corn, P.C., appeared as attorneys for Petitioners and Hayley Peterson, Deputy Attorney General, appeared for the Respondent. Arguments were presented and the cause was submitted for decision.

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EXHIBIT C

This case concerns a petition for a writ of mandate arising out of a dispute over three special conditions imposed by Respondent on Petitioners' Coastal Development Permit No. 6-88-464-A2 ("CDP"). Special Condition 1.a. required Petitioners to remove from their building plans the reconstruction of their permitted beach stairway that was partially destroyed in a December 2010 bluff collapse. Special Conditions 2 and 3 imposed a 20-year expiration date on Petitioners' CDP and a requirement to apply for a new CDP prior to the expiration date, respectively. All 3 conditions are invalid and the motion was granted.

Petitioners are entitled to reconstruct their beach stairway pursuant to Encinitas Municipal Code and the state Coastal Act. Special Condition 1(a) impermissibly required Petitioners to delete the stairway reconstruction from their building plans before Respondent would issue a CDP for the construction of a seawall. This condition was invalid as the Encinitas Municipal Code and Local Coastal Program allow Petitioners to reconstruct their stairway which was destroyed by a "disaster" as that term in defined in Public Resources Code §30610(g). In imposing Special Condition 1(a), Respondent did not proceed in the manner required by law and its decision was not supported by substantial evidence.

Petitioners are also entitled to a CDP without an expiration date, and the re-application requirement, imposed through Special Conditions 2 and 3. Respondent had a duty to grant the CDP for the seawall and was not authorized to impose an arbitrary expiration date. Public Resources Code §30235 requires Respondent to grant a CDP to protect existing structures in danger from erosion. In discharging this affirmative duty, Respondent may not impose arbitrary and unreasonable conditions; only conditions that have a nexus (i.e., logical link) to a specified adverse impact, and then only when such conditions are proportional to the impact, may be lawfully and constitutionally imposed. Special Conditions 2 and 3 do not meet these criteria and are regulatory takings. By imposing Conditions 2 and 3, Respondent failed to proceed in the manner required by law and its findings were not supported by substantial evidence.

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EXHIBIT C

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. A peremptory writ of mandate shall issue under seal of this Court commanding Respondent to remove from Petitioners' Coastal Development Permit, Permit No. 6-88-464-A2, Special Conditions 1(a), 2 and 3.
2. Petitioners shall receive their costs in this action in the amount of $_____ from Respondent.
3. Petitioners shall receive their attorneys fees in this action in the amount of $_____ from Respondent.

APR 24 2013

Earl H. Maas III

Judge Earl H. Maas, III
Superior Court of California,
County of San Diego

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Th17a

From: Anne Blemker [mailto:ablemker@mccabeandcompany.net]
Sent: Friday, August 09, 2013 3:17 PM
To: Geisler, Karen@Coastal; Cavalieri, Madeline@Coastal; Carl, Dan@Coastal
Cc: David Goldberg; Todd Stark
Subject: Response to Staff Report (Lands End,Th17a)

Good Afternoon,

Attached please find our written response to the staff report addressing the few outstanding issues that we discussed with you this morning. We'll be providing this to Commissioners via e-mail with hard copies going to your office in Santa Cruz. How many copies would you like?

Please let us know if you have any questions or need additional information.

Thanks,
Anne

Anne Blemker
McCabe & Company
Phone: 310-463-9888
10520 Oakbend Drive
San Diego, CA 92131

Th17a

DISCLOSURE OF EX PARTE COMMUNICATIONS

August 7, 2013
1:00 pm
Telephone

Todd Stark
David Goldberg
Anne Blemker
Susan McCabe

Application No. 2-10-039 (Lands' End Associates, LLC, Pacifica)
Copy of power point presentation Land's End Associates. 100 & 101 Esplanade Avenue, Pacifica

Previously existing stairway to beach washed away in 2008.
Proposal includes emergency work to stabilize bluff/protect existing apartments and public access. Work includes tie back sea wall, buried caisson and grade beam retaining wall system, updated and enhanced vertical and lateral access easements and drainage, landscaping and public access improvements.

Applicants would like condition 9 removed and condition 4 add a 1-ft buffer for bluftop.

Carole Groom