

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



W6a

Filed:	7/1/2014
180th Day:	12/28/2014
Staff:	Z. Rehm-LB
Staff Report:	7/24/2014
Hearing Date:	8/13/2014

STAFF REPORT: CONSENT CALENDAR

Application Number:	5-14-0629
Applicant:	City of Avalon
Agent:	Fernando Avila
Project Location:	Pebbly Beach Road (approximately 3,000-foot long segment between Abalone Point and Pebbly Beach Village Road), City of Avalon, Los Angeles County
Project Description:	Installation of six-foot high chain link fence atop movable approximately three-foot high k-rail barriers along the inland side of the road in order to decrease safety hazard from falling rocks and improve public access for pedestrians, bicyclists, and vehicles.
Staff Recommendation:	Approval with Conditions

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

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 and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. 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

This permit is granted subject to the following 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

This permit is granted subject to the following special conditions:

1. **Permit Compliance – Future Development Restriction.**
 - A. This permit is only for the development described in Coastal Development Permit 5-14-0629. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required.
 - B. Except as provided in Public Resources Code Section (PRC) 30610 and applicable regulations, any future development as defined in PRC Section 30106, including, but not limited to, a change in the density or intensity of use of land, shall require an amendment to Coastal Development Permit 5-14-0629 from the California Coastal Commission or an additional coastal development permit from the California Coastal Commission or from the applicable certified local government. Any future restriction of public access over and across any part of Pebbly Beach Road including, but not limited to, public pedestrian, public bicycle, or public vehicle access constitutes development pursuant to PRC Section 30106 and shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government, with the exception of temporary restrictions on access put into place by the City's public safety officer to protect life and public property from imminent danger consistent with Coastal Act Section 30611.
2. **Public Parking Supply.** This coastal development permit does not authorize any changes to the existing public parking supply or regulation along Pebbly Beach Road. No public parking spaces shall be removed or displaced by this development.
3. **Resource Agencies.** The applicant shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and the marine environment. Any change to the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.
4. **Assumption of Risk.** By acceptance of this permit, the applicant, on behalf of 1) itself; 2) its successors and assigns and 3) any other holder of the possessory interest in the

development authorized by this permit, acknowledges and agrees: (i) that the site may be subject to natural hazards including rockslides, waves, and flooding; (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 Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) to agree to include a provision in any subsequent sublease or assignment of the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all foregoing restrictions identified in (i) through (v).

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION:

The proposed project is installation of a six-foot high chain link fence atop movable approximately three-foot high k-rail barriers (**Exhibit 1**) on the landward side of an approximately 3,000-foot long segment of Pebbly Beach Road in the City of Avalon, on Santa Catalina Island in Los Angeles County (**Exhibit 2**). The purpose of the proposed project is to increase public safety by preventing rocks from tumbling off of the steep hillsides onto the roadway, so that the shoreline road can remain open for use by the general public (**Exhibit 3**).

The consulting geologists (Zeiser Kling Consultants, Inc.) state that the rockfall conditions that exist along Pebbly Beach Road are generally caused by natural fractures and weathering processes within the rock as well as the steep gradient (60 to 80 percent grade) and heights of the slopes. Their report states that rockfall is a condition that progressively worsens over time. The consulting geologists and a peer review team from TerraCosta Consulting Group identified several mitigative options, including road closure, rock nets, rock fences, soldier piles and lagging walls, and grading of hillsides. The project currently proposed by the applicants would allow the road to be opened to the public, while at the same time minimizing adverse impacts to the environment. The applicant proposes regular monitoring and maintenance of the proposed fencing and k-rails, with rock debris to be removed prior to each winter season. The useful life of the development is 15 to 25 years and its effectiveness as a debris barrier will be reevaluated every few years.

This coastal development permit application proposes only the development along a segment of the roadway within an uncertified area which the City of Avalon annexed from the County of Los Angeles after the 1981 certification of the City's local coastal program (LCP). The project plans and the City indicate that an additional approximately 2,000-foot long segment of Pebbly

Beach Road and an approximately 600-foot long segment of Casino Way, both within the City of Avalon's LCP jurisdiction, will be developed with the same fencing atop k-rails (**Exhibit 4**).

The Santa Catalina Island Company owns the segment of Pebbly Beach Road where the development within this application is proposed. The Santa Catalina Island Company has granted the City an easement for public access and utilities over its segment of the roadway (**Exhibit 5**). All proposed development is within the City's easement.

Because of the risks to public safety caused by the eroding hillsides, the City has periodically restricted the use of Pebbly Beach Road to persons in vehicles with hard tops. Pedestrians, bicyclists, and golf carts have periodically been denied access along the segment of the road east of Cabrillo Mole. The City has stated that the road is currently open to all users and that it is the City's intention to maintain the access for all users. **Special Condition 1** requires that any future restriction of public access over the road shall require a coastal development permit. **Special Condition 2** requires that no public parking spaces be removed as part of the project. **Special Condition 3** requires the applicant to comply with all requirements, requests and mitigation measures from the resource agencies and **Special Condition 4** requires the applicant to assume the risks of hazards in the area of the proposed development. The Commission finds that as conditioned, the proposed project is consistent with the Chapter 3 policies of the Coastal Act and previous Commission actions.

B. PUBLIC ACCESS AND RECREATION

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. The proposed development, as conditioned, protects coastal areas suited for recreational activities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

C. HABITAT

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms with Section 30240(b) of the Coastal Act.

D. VISUAL RESOURCES

The design of the proposed structures is low scale and located on the landward section of the scenic coastal road. Therefore, the proposed project will not block any existing public views or result in any significant change to visual resources, and is consistent with Section 30251 of the Coastal Act.

E. DEVELOPMENT – HAZARDOUS AREAS

Development adjacent to the ocean and the edges of coastal bluffs and hillsides is inherently hazardous. Development which may require a bluff, hillside, or shoreline protective device in the

future cannot be allowed due to the adverse impacts such devices have upon public access, visual resources, and shoreline processes. To minimize risks to life and property and to minimize the adverse effects of development on coastal bluffs, hillsides, and shoreline processes the development has been conditioned to require one or more of the following: adherence to the geotechnical recommendations, an appropriate set-back from the edge of a bluff or hillside, to prohibit the construction of protective devices (such as a retaining wall or shoreline protective device) in the future, for a drainage and runoff plan to minimize the percolation of water into the hillside or bluff, and to require that the landowner or any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

F. LOCAL COASTAL PROGRAM

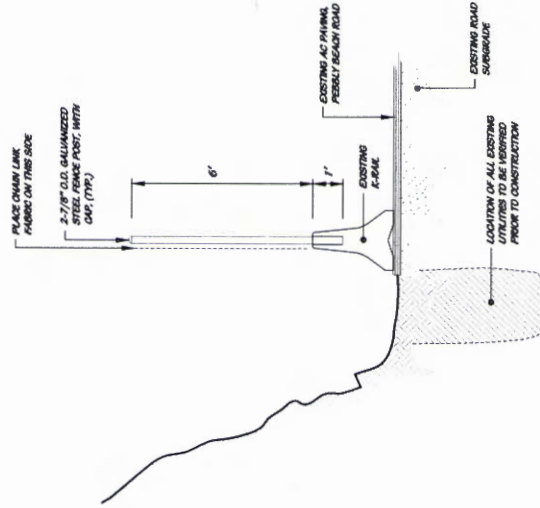
Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program (LCP) which conforms with Chapter 3 policies of the Coastal Act. A coastal development permit is required from the Commission for the proposed development because it is located in an uncertified area which the City annexed from the County of Los Angeles after the 1981 certification of the City's LCP . The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Avalon certified LCP is advisory in nature and may provide guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City to prepare a local coastal program within the uncertified area that is in conformity with the provisions of Chapter 3 of the Coastal Act.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

EXHIBITS

- Exhibit 1 – Elevation and Section of Proposed Fence and K-rail Debris Barrier
- Exhibit 2 – Vicinity Map
- Exhibit 3 – Photograph of Pebbly Beach Road
- Exhibit 4 – Overall Project Site Plan
- Exhibit 5 – Easement Agreement



INTERIM K-RAIL DEBRIS BARRIER SECTION
NOT TO SCALE

COASTAL COMMISSION

EXHIBIT # 1
PAGE OF



DIAL TOLL FREE
1-800-422-4133
AT LEAST TWO DAYS
BEFORE YOU DIG

UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA

THE RECORD DRAWINGS AND TOPOGRAPHIC INFORMATION INCORPORATED HEREIN SHALL BE THE PROPERTY OF THE ENGINEER. THE INFORMATION IS FURNISHED BY OTHERS FOR THE DESIGN PROFESSIONAL'S USE. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF THESE RECORD DRAWINGS, NOR ANY OTHER INFORMATION, OR OMISSIONS WHICH MAY BE INCORPORATED INTO IT AS A RESULT. THOSE INCORPORATING THIS INFORMATION INTO THEIR OWN DRAWINGS SHALL BE RESPONSIBLE FOR VERIFICATION OF ITS ACCURACY BEFORE APPLYING IT TO ANY PURPOSE. IN ADDITION, ANY DISCOVERY OF ANY DISCREPANCIES SHALL BE REPORTED WITHIN 24 HOURS OF DISCOVERY (BEFORE OR AFTER CONTRACT AWARD) TO THE GOVERNING AGENCY AND TO THE ENGINEER. FAILURE TO REPORT SUCH DISCREPANCIES MAY BE CAUSE FOR ACTION BEFORE PROCEEDING WITH CONSTRUCTION. FAILURE TO DO SO WILL VOID APPLICATION FOR CHANGE ORDERS.



CITY OF AVALON, CALIFORNIA
 DIRECTOR OF PUBLIC WORKS CATALINA ISLAND

TERRACOSTA CONSULTING GROUP
ENGINEERS AND GEOLOGISTS
3890 MURPHY CANYON ROAD, SUITE 200
SAN DIEGO, CA 92123 (658) 573-6900

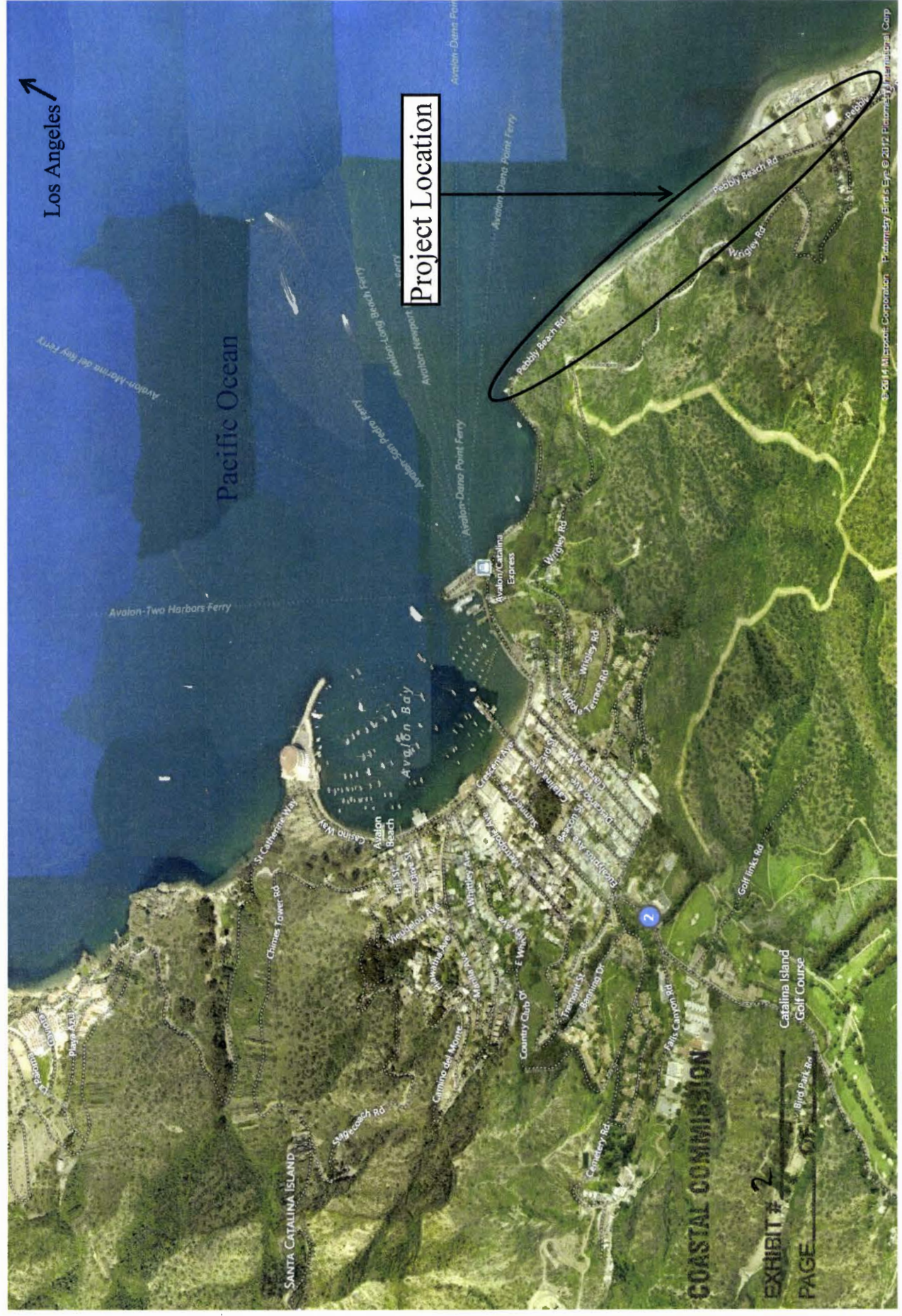
REVISION	DATE	FULL SIZE 3/8"	HALF SIZE 1/4"	DATE: 8-3-93
				MODEL: 1000, 1000-1000
				SCALE: 1/4" = 1' 0"
				SMALLER: 1/4" = 1' 0"

INTERIM K-RAIL DEBRIS BARRIER - CATALINA ISLAND

TYPICAL INTERIM K-RAIL DEBRIS BARRIER LAYOUT

SHEET NO: 6 OF 9

Vicinity Map – City of Avalon





COASTAL COMMISSION

EXHIBIT # 3
PAGE OF



TERRACOSTA CONSULTING GROUP
3890 Murphy Canyon Road, Suite 200
San Diego, California 92123 (858) 573-6900

PEBBLY BEACH ROAD, CATALINA ISLAND

PROJECT NO.:
2786A

PHOTO NO.:
8

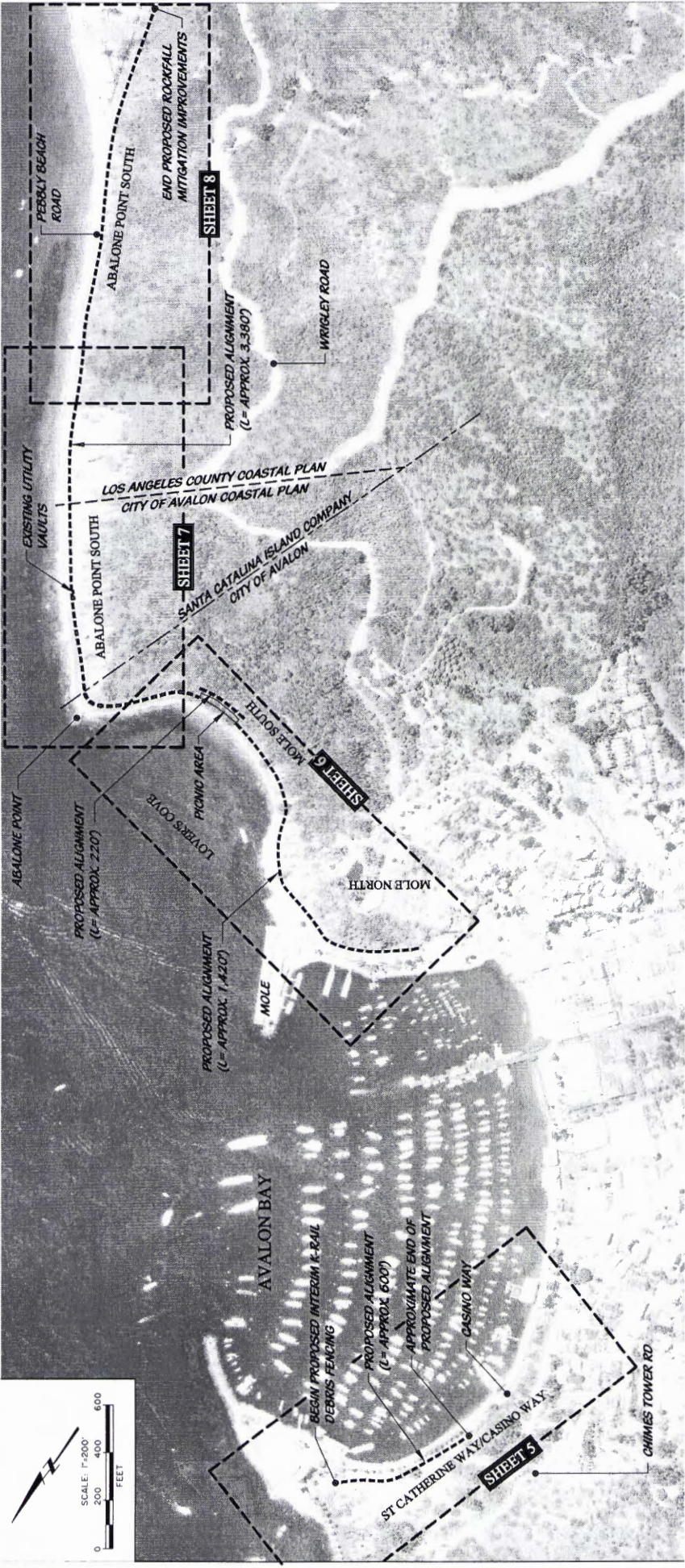


IMAGE REPRODUCED FROM GOOGLE EARTH PRO (ORIGINAL GLOBE - DATED 5-26-2010)

OVERALL SITE PLAN

NOTE:
FINAL LOCATION OF IMPROVEMENTS SHALL BE
FIELD VERIFIED PRIOR TO ORDERING/PURCHASING
ANY MATERIALS

LEGEND

----- APPROXIMATE EXTENT OF PROPOSED
INTERIM K-RAIL BARRIER
(APPROXIMATE LENGTH = 5,620 LF)



DIAL TOLL FREE
1-800-422-4133
AT ANY TIME
BEFORE YOU DIG

THE RECORD DRAWINGS AND TOPOGRAPHIC INFORMATION INCORPORATED HEREIN HAVE BEEN PREPARED, IN PART, BASED UPON INFORMATION FURNISHED BY OTHERS. THE DESIGN PROFESSIONAL CANNOT ASSURE ITS ACCURACY AND, THEREFORE, IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS WHICH MAY HAVE BEEN INCORPORATED INTO IT AS A RESULT. THOSE WHOSE WORK IS INCORPORATED INTO THESE RECORD DRAWINGS ARE ADVISED THAT THE DESIGN PROFESSIONAL HAS CONDUCTED VISUAL VERIFICATION OF THE INFORMATION AND HAS FOUND IT TO BE REASONABLY ACCURATE. THE DESIGN PROFESSIONAL HAS CONDUCTED VISUAL VERIFICATION OF THE INFORMATION AND HAS FOUND IT TO BE REASONABLY ACCURATE. THE DESIGN PROFESSIONAL HAS CONDUCTED VISUAL VERIFICATION OF THE INFORMATION AND HAS FOUND IT TO BE REASONABLY ACCURATE.



COASTAL COMMISSION

DIRECTOR OF PUBLIC WORKS CATALINA ISLAND

APPROVED BY: _____ DATE: _____

EXHIBIT # **4**

TERRACOSTA CONSULTING GROUP
PO BOX 100, CATALINA ISLAND
3880 MURPHY CANYON ROAD, SUITE 200
SAN DIEGO, CA 92123 (658) 573-8800



REVISION	DATE	FALL SIZE	HALF SIZE	DATE
		1/8" x 11"	1/8" x 11"	8-2-13

INTERIM K-RAIL DEBRIS BARRIER - CATALINA ISLAND

OVERALL SITE PLAN & SHEET INDEX

SHEET NO. **4** OF **9**

PAGE _____ OF _____

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

John M. Anglin, Esq.
AFRTC, LLP
199 So. Los Robles Ave., #600
Pasadena, CA 91101
Telephone: 626-535-1900

5-140629

RECEIVED
South Coast Region

APR 7 2014

CALIFORNIA
COASTAL COMMISSION

ORIGINAL
3 copy

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$0.00

This is a conveyance of an easement and the consideration is less than \$100.00, R & T 11911.

EASEMENT AGREEMENT

(Pebbly Beach Road)

This Easement Agreement ("Agreement") is made as of the 14th day of December, 2012 by and between the Santa Catalina Island Company, a Delaware corporation ("SCICo"), and the City of Avalon, a municipal corporation ("City"). SCICo and City are collectively referred to as the "Parties" and individually as a "Party".

RECITALS:

A. SCICo is the owner of real property located in the County of Los Angeles, State of California generally described as a portion of Pebbly Beach Road, as shown on Exhibit A attached hereto and incorporated herein by reference, including the paved roadway, the seaward and upland unpaved shoulders of Pebbly Beach Road, the road bed and riprap (the paved roadway, unpaved shoulders, road bed and riprap of said portion of Pebbly Beach Road (herein collectively called the "Road")).

B. By the terms of that certain Amended and Restated Improvement and Dedication Agreement executed by City and SCICo dated December 14, 2012 ("Dedication Agreement"), SCICo has offered to dedicate, and City has accepted the dedication of, easements on, over and across the Easement Property as set forth herein.

C. This Agreement is entered into pursuant to the Dedication Agreement, the provisions of which are incorporated herein by this reference.

NOW, THEREFORE, in consideration of the Recitals and other good and valuable consideration, it is agreed as follows:

1. Grant of Easements. SCICo hereby grants to City:

COASTAL COMMISSION

- (a) an easement for public street and highway purposes over and across the Road ("Road Easement"); and
- (b) an easement over, under and across the Road for the installation, maintenance, repair and replacement of public utility lines, pipes and other facilities and appurtenances (collectively "facilities"), including sewer, water, electricity, natural gas, telephone and data transmission facilities ("Utility Easement"). All facilities shall be underground. City shall not interfere with other existing easements in connection with its use of the Utility Easement. SCICo may require that the Utility Easement be restricted to a portion of the Road designated by SCICo to avoid such interference.

The Road Easement and Utility Easement are sometimes collectively called the "Easements" below.

2. Nature of Easements. The Easements are in gross and are non-exclusive. Nothing herein is intended as a grant or dedication of the fee interest in the Easement Property.

3. Use Restrictions. City shall have the right to restrict use of the Road by members of the public pursuant to Section 4-4.1408 of the Municipal Code. Such restrictions may include, without limitation, prohibition of the use of the Road by open vehicles, bicyclists or pedestrians, and closure of the Road because of inclement weather or other conditions. The foregoing notwithstanding, restrictions adopted by City shall not affect use under Section 4 below. City shall give SCICo written notice of the imposition of any restrictions or closure at least 48 hours in advance thereof except in cases of emergency in which case City shall give SCICo such notice as is reasonable under the circumstances.

4. Rights of Others. SCICo reserves the right to use, and to grant to third parties the right to use, the Easement Property for uses and purposes which will not materially interfere with the Easements. Absent an express written grant by SCICo of use rights to third parties, all use by members of the public shall be deemed to be use under the Easements to which Section 5 shall be applicable.

5. Indemnity.

- (a) Subject to Section 5(b) and up to the levels of insurance required by Section 6, City indemnifies and agrees to hold SCICo, its affiliated companies, and the officers, directors, stockholders, members, agents and employees of SCICo and its affiliated companies (collectively the "SCICo Parties") harmless from, all judgments, damages, liabilities, and costs of defense, including reasonable attorneys' fees ("Liabilities") arising from or in connection with City's or the public's use of the Road Easement or City's use of Utility Easement, including without limitation Liabilities for wrongful death, personal injuries, and property damage suffered by City's employees or members of the public. The term "affiliated companies" means a

COASTAL COMMISSION

entities controlling, controlled by or under common control with SCICo.

- (b) If and to the extent the limits of liability insurance (including private sector commercial insurance and joint powers risk pool coverage) are exhausted:

(i) SCICo indemnifies and agrees to hold City, its officers, officials, employees and agents harmless from all Liabilities arising from or in connection with (i) City's or the public's use of the Road Easement, (ii) the City's use of the Utility Easement, or (iii) the use of the Easement Property by the SCICo Parties other than as members of the public or by others using the Easement Property under an express written grant from SCICo under Section 4 above, including without limitation Liabilities for wrongful death, personal injuries, and property damage, to the extent such Liabilities are attributable to the negligence or willful misconduct of SCICo or anyone for whose acts or omissions SCICo is vicariously responsible; and

(ii) City indemnifies and agrees to hold the SCICo Parties harmless from all Liabilities arising from or in connection with the City's or the public's use of the Road Easement or the City's use of the Utility Easement, including without limitation Liabilities for wrongful death, personal injury, and property damage, to the extent such Liabilities are attributable to the negligence or willful misconduct of City or anyone for whose acts or omissions City is vicariously responsible.

- (c) The foregoing indemnities shall survive termination of this Agreement and the Easements with respect to all occurrences prior to termination.

6. Insurance. City shall at its sole cost and expense procure and maintain in effect, without interruption, and whether or not available at a commercially reasonable cost, broad form commercial general liability insurance with limits of not less than \$20 million per occurrence and \$20 million aggregate, against liabilities arising from or in any manner related to the Road Easement or the Utility Easement, and from the public's use of the Road Easement, until the applicable Easement shall have terminated. Separation of insured language shall not be modified. Contractual liability coverage shall be provided. Such insurance shall name SCICo, and its subsidiaries ("Affiliates") as additional insureds by endorsement on form CG2026 containing language stating that the coverage provided is primary and non-contributing with any insurance maintained by SCICo. Such endorsement shall be provided to SCICo within sixty (60) days after the date heretof. Such insurance shall have a deductible or self-insured retention amount not exceeding \$25,000. Such insurance policy or policies shall provide that not less than thirty (30) days' notice of cancellation or of any material change in such policy or policies shall be given to SCICo. City shall also maintain such worker's compensation and employer's liability insurance as is required by applicable law with respect to its use of the Easement Property. The Parties mutually waive the subrogation rights of their respective worker's compensation and employer's liability

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insurers. If such waiver requires the insurers' consent, the Parties shall provide such consent by endorsement or other satisfactory means. City shall provide to SCICo concurrently with the execution of this Agreement, and thereafter at least twenty (20) days prior to the expiration of any policy term, a certificate of insurance or duplicate originals of the policies, if requested by SCICo, and the required additional insured endorsement, evidencing the uninterrupted maintenance of the required coverages. If there is a lapse in the required liability coverage by cancellation, expiration or otherwise, or City fails to provide the necessary evidence of uninterrupted coverage, SCICo shall have the right, in addition to all other rights and remedies, upon not less than twenty-four (24) hours written notice to City, to procure the required insurance and City shall reimburse SCICo promptly upon demand for the cost thereof ("SCICo insurance procurement right"). The required limits of the commercial general liability insurance can be satisfied by any combination of underlying, excess or umbrella coverage which follow form or provide coverage not more restrictive than the underlying coverage. The required commercial general liability insurance can be provided through private sector commercial insurance or through Public Agency Risk Sharing Authority of California (PARSAC) or other California joint powers risk pools, or a combination thereof, provided that PARSAC shall use all reasonable efforts to maintain a confidence level of eighty-five percent (85%) or better and that other joint powers risk pools providing insurance use all reasonable efforts to maintain a confidence level of eighty percent (80%) or better, or by private sector insurers who maintain a Best's Insurance Guide rating of "A" or better and a Best's financial size category of "VIII" or larger. If PARSAC or other joint powers risk pool is providing commercial general liability insurance under this Agreement and fails to maintain a confidence level of seventy percent (70%) or better at any time or a confidence level of eighty-five percent (80%) or better for three (3) or more consecutive coverage periods, SCICo may, by written notice to City ("replacement notice"), require that City replace its joint powers insurance which has failed to meet the forgoing confidence level requirements with either private sector commercial general liability insurance meeting the requirements of this Section 6 or with other joint powers risk pool liability insurance having a current confidence level of eighty percent (80%) or better and meeting the requirements of this Section 6, such replacement insurance to be in force and evidence thereof to be delivered to SCICo, within one hundred twenty (120) days after the end of the final coverage period of City's then existing insurance, taking into consideration the notice of cancellation provisions of such insurance which are not shortened by this Agreement. City shall give cancellation or non-renewal notice to the issuer of its insurance promptly upon receipt of the replacement notice but shall not be required to incur any monetary penalty to cancel insurance during the then existing coverage period unless SCICo agrees to reimburse City therefor. If the above insurance replacement requirements are violated by City, SCICo, in addition to all other rights and remedies, shall have the SCICo insurance procurement right set forth above. The City represents that as of the date of the Agreement, PARSAC maintains a confidence level of greater than eighty-five (85%) percent. Coverage can be provided under blanket policies. If any aggregate limit is reduced because of losses paid to below seventy-five percent (75%) of the limits required by the Agreement, within ten (10) days of such occurrence City shall notify SCICo and provide additional insurance reasonably satisfactory to SCICo to restore the required limits to one hundred percent (100%) of the required minimum limits. In order to satisfy the commercial general liability insurance requirements set forth above, the liability memorandum of coverage issued by PARSAC or other joint powers risk pool shall provide coverage which in all material respects is at least equivalent to the coverage provided by the Liability Memorandum of Coverage for PARSAC dated April 14, 2011 which SCICo approves and of which SCICo

acknowledges receipt. Thereafter, if PARSAC or other joint powers risk pool is providing coverage, the evidence of insurance required by the foregoing provisions shall be in the form of the then applicable form of memorandum of coverage and shall include a written attachment naming SCICo and its Affiliates as additional covered parties and shall expressly state that the coverage provided is primary and not contributing with any insurance of SCICo.

7. Effective Date and Termination.

- (a) This Agreement and the Easements shall take effect upon the execution of this Agreement and shall remain in full force and effect until 5:00 p.m. on December 14, 2022 whereupon this Agreement and the Easements shall terminate automatically, subject to subsections (b) and (c) unless renewed.
- (b) The Easements are subject to termination by SCICo by written notice to City in the event City is in default of any of its obligations under this Agreement and City fails to cure such default within thirty (30) days after receipt of written notice of default from SCICo, provided, however, that if the cure of such default reasonably requires more than thirty (30) days, SCICo shall not have the right to terminate the Easements so long as City commences curing the default within said thirty (30) day period and thereafter diligently completes such cure.
- (c) If SCICo's liability insurance with respect to the Easement Property is cancelled or the insurer refuses to renew such coverage, and if SCICo is unable to obtain replacement coverage on terms reasonably satisfactory to SCICo at a commercially reasonable cost, SCICo shall have the right to terminate the Road Easement and to close the Road to the public.
- (d) City shall have the right to relinquish and thereby terminate both of the Easements upon not less than sixty (60) days prior written notice to SCICo.
- (e) Upon termination, the City shall promptly execute and deliver to SCICo a duly acknowledged termination of easement, in form reasonably satisfactory to SCICo, to evidence the termination of the Easement(s).

8. Use; Signage.

- (a) The use of the Road Easement shall be in accordance with City ordinances and other applicable laws, but no such City ordinance shall expand the City's rights or limit the City's obligations under this Agreement.
- (b) SCICo and City shall have the right to maintain on, and at entrances to, the Easement Property such warning signs as they deem appropriate and shall cooperate reasonably with one another regarding the placement and content of such signage.

9. Maintenance; Alterations.

- (a) City shall provide, at least as frequently as weekly, street sweeping services for the Road Easement at City's expense.
- (b) SCICo shall provide at its expense, through a licensed contractor selected by SCICo who satisfies the insurance requirements set forth below, the first \$37,250 of maintenance and repair work on the Road per calendar year, prorated for the partial calendar years at the beginning and end of the term of the Road Easement, provided that City shall pay all Road maintenance and repair expense occasioned by the use of the Utility Easement. Such contractor shall have commercial general liability insurance, with products/completed operations coverage, having limits of not less than \$2 million per occurrence and aggregate, shall cause City and SCICo to be named as additional insureds (by endorsement if requested by City or SCICo), and shall provide to City and SCICo upon request evidence that such insurance is in force.
- (c) SCICo and City shall share equally the cost of inspections and maintenance of the hillsides abutting the Easement Property in regards to conditions which could affect the Easement Property and other hillside property owned by SCICo abutting streets or roads owned by City in regards to conditions that could affect such streets or roads, up to a maximum of \$20,000 each per calendar year. Any work done pursuant to this section shall be performed by a licensed contractor and such contractor shall have commercial general liability insurance, with products/completed operations coverage, having limits of not less than \$2 million per occurrence and aggregate, shall cause City and SCICo to be named as additional insureds (by endorsement if requested by City or SCICo), and shall provide to City and SCICo upon request evidence that such insurance is in force.
- (d) Except as provided in subparagraphs (a)-(c), inclusive, above, neither City nor SCICo shall have obligations to maintain or repair the Easement Property or hillside properties; provided that if repair of the Easement Property or SCICo's hillside property abutting the Easement Property is required by any law, ordinance, regulation, judgment, or governmental order ("Applicable Laws"), SCICo and City shall each bear one-half of the repair costs in excess of the amounts required to be paid under subsection (b) or (c) unless the parties agree to share the excess cost in a different proportion; provided further that if a party's one-half share of the reasonably estimated excess costs required by Applicable Laws exceeds \$150,000 but repair work would not be required if the Road were closed to the public, then either party shall have the right to elect to close the Road to the public (in which case the Road Easement shall terminate) unless the other party agrees to pay both its own one-half share of the excess costs and that portion of the other party's one-half

share of the excess costs over \$150,000. Closure of the Road and termination of the Road Easement pursuant to this Section 9(d) shall not relieve City or SCICo of its obligation to pay the cost of any work required by Applicable Laws which is not avoided by closure of the Road.

- (e) No alterations shall be made by SCICo to the Easement Property which would adversely affect the Easements without City's prior written consent not to be withheld unreasonably. No alterations shall be made by City to the Easement Property without SCICo's prior written consent not to be withheld unreasonably. City indemnifies and agrees to hold harmless SCICo and the Easement Property for work performed by City on the Easement Property. City shall cause any such recorded lien to be discharged by payment, bonding or otherwise within thirty (30) days after recording.
- (f) SCICo and the City agree to cooperate in the development of a monitoring and reporting system to document any rockfall incidents or occurrences on the Easement Property, such reporting to be performed by City.
- (f) If there is a change in conditions which cannot be mitigated within the dollar limitation of Section 9(c), SCICo and the City agree to consider the development of rockfall mitigation plans to further mitigate any rockfall incidents or occurrences on the Easement Property, including the funding of such mutually approved and beneficial mitigation measures. Nothing in this paragraph obligates SCICo to financially participate in the additional work. No additional work shall be performed by the City without the advance written consent of SCICo, which consent shall not be unreasonably withheld, conditioned or delayed.

10. No Assignments. Without SCICo's prior written consent, neither this Agreement nor the Easements can be assigned or otherwise transferred by the City, in whole or in part, directly or indirectly, by operation of law or otherwise, and any such purported assignment or transfer shall be void.

11. Covenants Running With the Land. This Agreement shall bind and, subject to Section 10, inure to the benefit of the parties hereto and their respective successors and assigns, and the covenants herein shall be deemed covenants running with the land.

12. Force Majeure. The parties shall be relieved of their obligations hereunder for so long as, and to the extent that, performance is prevented by fire, flood, earthquake, other act of God, war, act of terrorism, civil disturbance, labor strike or unrest, unavailability of materials or labor at a commercially reasonable cost, unavailability of governmental permits, or other event beyond a party's reasonable control; provided that the foregoing shall not relieve a party of its financial obligations under this Agreement or relieve City of its obligation to provide the insurance required by Section 6.

13. Notices. Any notice which is required or permitted to be given under this Agreement shall be in writing and shall be delivered in person (including delivery by commercial delivery service such as FedEx), to the addresses below or sent by registered or certified mail, postage prepaid, and addressed as set forth below.

If to SCICo:

Santa Catalina Island Company
Post Office Box 737
150 Metropole Avenue
Avalon, California 90704
Attention: Chief Executive Officer

If to City:

City of Avalon
Post Office Box 707
410 Avalon Canyon Road
Avalon, California 90704
Attention: City Manager

14. Miscellaneous. This Agreement and the Dedication Agreement contain the entire agreement of the Parties hereto on the subjects addressed herein, all prior or contemporaneous agreements, letters of intent, understandings or representations, warranties, promises or understandings being merged herein. This Agreement can be amended only by a writing executed by both parties hereto, their successors and assigns. The parties agree to execute and deliver such other instruments and take such other actions as shall be reasonably necessary to carry out the provisions of this Agreement. Both Parties participated in the negotiation and drafting of this Agreement, and in the event of any ambiguity herein, such ambiguity shall be resolved in a reasonable fashion and without reference to any principle of construction requiring that ambiguities be construed strictly against the party who may have caused same to exist. If any action is brought to construe or enforce this Agreement or the Dedication Agreement, the prevailing Party shall be entitled to recover its costs of suit including reasonable attorneys' fees. In the event a court of competent jurisdiction determines that any provision of this Agreement is unenforceable as illegal or contrary to public policy, it shall be automatically amended to the extent necessary to render it enforceable provided that can be done without frustrating the intent of the parties as expressed herein, but otherwise shall be severed from the remaining provisions which shall remain in effect. Termination of this Agreement shall not relieve either Party of any obligation or liability incurred or accrued prior to termination. There are no third party beneficiaries of this Agreement.

[SIGNATURE ON NEXT PAGE]

COASTAL COMMISSION

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Santa Catalina Island Company

by: Randall Clifford Jr.
title: CEO

by: Jim Long
title: Corporate Secretary

City of Avalon

by: [Signature]
Robert Kennedy, Mayor

Attest:

by: Denise A Radde
Denise A Radde, City Clerk

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

On December 20, 2012, before me, Nancy J. Delehant, Notary Public, personally appeared Randall L. Herrel, SR. Gina Long, and Robert Kennedy who 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.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Nancy J. Delehant
Notary Public

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

On _____, before me, _____, Notary Public, personally appeared _____, who 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.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

Exhibit A

Pebbly Beach Road and Utility Easement

