

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT  
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# F12c

**Prepared November 2, 2020 for November 6, 2020 Hearing**

**To:** Commissioners and Interested Persons

**From:** Susan Craig, Central Coast District Manager  
Ryan Moroney, Central Coast District Supervisor

**Subject: Additional hearing materials for F12c CDP Application Number 3-18-0650  
(Harbaugh, Carmel Highlands, Monterey Co.)**

This package includes additional materials related to the above-referenced hearing item as follows:

Correspondence received since the staff report was distributed.



**ATTORNEYS AT LAW**

18101 Von Karman Avenue  
Suite 1800  
Irvine, CA 92612  
T 949.833.7800  
F 949.833.7878

John P. Erskine  
D 949.477.7633  
jerskine@nossaman.com

Refer To File # 503516-0001

**VIA ELECTRONIC MAIL**

October 30, 2020

Chair Steve Padilla and Commissioners  
California Coastal Commission  
455 Market Street, Suite 300  
San Francisco, CA 94105

**F12c**

**Re: *Harbaugh v. California Coastal Commission –  
Monterey Superior Court Case No. 19CV002295  
Remanded CDP Action Regarding Special Condition No. 12  
Pursuant to Court-Directed Mandatory Settlement Conference;  
Court Order of October 21, 2020***

Dear Chair Padilla and Commissioners:

On behalf of our client, Darla Harbaugh, we are writing to supplement the brief “Staff Note” on pages 1 and 2 of the Staff Report for the Remanded CDP Action for Application No. 3-18-0650 (Darla Harbaugh) for redevelopment of an existing single family dwelling at 172 Spindrift Road in Carmel Highlands, set for hearing on Friday, November 6, 2020.

We are supportive of the staff recommendation, including revised Special Condition No. 12 Offer to Dedicate (OTD), the new wording of which is set forth on pages 16 through 18 of the Remand Staff Report, and new Special Condition No. 13 providing for the normal two year CDP expiration date running from the CDP Remand hearing and approval.

**Monterey Superior Court MSC and Remand**

Staff has provided a very brief summary of how we got here. However, the applicant, Darla Harbaugh, her legal team, and the Commission’s counsel spent several months at the beginning of 2020 in informal settlement discussions, and another four months over the summer/fall of this year in Court-directed Mandatory Settlement Conferences with the aid of Judge Thomas Wills, and this matter has been remanded by the Court solely to consider Special Condition No. 12 as revised and a new CDP termination date. The process of reaching this settlement was as follows:

July 28

Monterey Superior Court Judge Lydia Villarreal orders parties to a Mandatory Settlement Conference (MSC) before neutral Superior Court Judge Thomas Wills.

September 2	Initial MSC. The parties made significant progress, but several issues over the OTD “triggering” event, and related concerns of Plaintiff, remained.
September 11	Second MSC. Parties made further progress, but were unsuccessful in resolving all the remaining OTD language issues, duration of acceptance period, etc., and Court scheduled a further MSC for September 15, 2020.
September 15	Third MSC. Parties reached a tentative agreement and Judge Wills scheduled two follow-up MSCs to ensure that the parties memorialized the agreement in a Memorandum of Understanding (MOU) that would be provided to the Commission in Closed Session, and to Mrs. Harbaugh.
September 25	Fourth MSC. Parties report their formal agreement in a Draft MOU. Parties agree to a Stipulation and Remand Order that would return the matter to the Court, upon the Commission’s Closed Session review of the Stipulation and Order at its October 7 hearing.
October 16	Final MSC. Both the Commission’s counsel and Commission staff report approval of the Final Stipulation and Order (attached) regarding settlement based on the Parties’ concurrence with Revised Special Condition No. 12.
October 20, 21	The parties file the Stipulation and Order; Judge Wills entered the Order for Remand (10/21/20).

**Additional Critical Information Including Letters in the Administrative Record from Carmel Highlands Community and Mal Paso Creek Association and Related Documents**

The following documents, copies of which are attached, are being submitted for the record for your November 6, 2020 hearing:

	<b>Document Description</b>	<b>Administrative Record Cite</b>
1	6/10/2019 Letter from Glenn Berry to Coastal Commission	AR000699
2	6/10/2019 Letter from Michael Emmett (Mal Paso Creek Property Association) to Coastal Commission, with Exhibits A-J	AR000701
3	6/11/2019 Kemp Email string to Ryan Moroney	AR000734
4	6/11/2019 Letter from Dasha and Dan Keig to Coastal Commission	AR000735
5	6/12/2019 Letter from Mary Adams (Monterey County Board of Supervisors) to Coastal Commission	AR000737

6	6/7/2019 and 6/12/2019 email string between Christine Kemp and Coastal Commission staff	AR000738
7	1979 Attorney General Letter regarding public access investigation for Yankee Point Beach	AR000271
8	1979 Investigation Documents for Preliminary Investigation into Public Access at Yankee Point Beach	AR000273
9	[Corrected] Joint Stipulation to Entry of Remand Order; [Proposed] Order Remanding the Case	

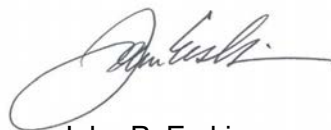
**Additional Comments on Staff Report.**

We also wish to reiterate that there are no code violations on Ms. Harbaugh's property, nor are the fencing or gates, referenced in the Staff Report, on her property.

Additionally, as set forth in Special Condition 12, public access is to be established or confirmed by a Court of law before being made available for public access.

The parties have worked hard, with the aid of the Court, to achieve the agreed upon language of Special Condition 12, and we urge the Commission to follow Staff's recommendation and vote "yes" on the proposed motion for approval of the modifications to Special Condition 12, the addition of Special Condition 13, and related modified findings, as set forth in the Remand Staff Report.

Sincerely,



John P. Erskine  
Nossaman LLP

JPE:dlf  
Attachments

cc: Shari Posner, Esq., California Department of Justice ([shari.posner@doj.ca.gov](mailto:shari.posner@doj.ca.gov))  
Alex Helperin, Esq., California Coastal Commission ([alex.helperin@coastal.ca.gov](mailto:alex.helperin@coastal.ca.gov))  
John Ainsworth, California Coastal Commission ([john.ainsworth@coastal.ca.gov](mailto:john.ainsworth@coastal.ca.gov))  
Dan Carl, California Coastal Commission ([Dan.Carl@coastal.ca.gov](mailto:Dan.Carl@coastal.ca.gov))  
Christine Kemp, Esq., Noland, Hamerly, Etienne & Hoss  
Stephanie N. Clark, Esq., Nossaman LLP



# Document 1

## **Moroney, Ryan@Coastal**

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**From:** Glenn Berry <yankeepoint@sbcglobal.net>  
**Sent:** Monday, June 10, 2019 11:00 AM  
**To:** CentralCoast@Coastal  
**Subject:** Public Comment on June 2019 Agenda Item Thursday 16a - Application No. 3-18-0650 (Harbaugh, Carmel Highlands, Monterey Co.)

June 10, 2019

California Coastal Commissioners,

Dear Sirs,

As a Carmel Highlands Association Homeowner who house borders the Yankee Beach footpath, within 300 feet of the Harbaugh property, who never received legal notice of the permit proceedings before the Coastal Commission(CC), I am objecting to Ms. Harbaugh giving a public entity an Offer to Dedicate for the easement to YankeeBeach as a condition to receive her Coastal permit or any other reason. The documents in your possession make clear the easement granted in 1921 is exclusive, the conduct of the parties over decades has legally codified this relationship, consequently Ms Harbaugh has no right to grant the existing easement for YankeeBeach to any other entity or person, public or not.

As I read the publicly available documents relevant to this proceedings, it is clear:

The CC is attempting to take a private asset from Homeowners without giving any proper notice, offer to compensate or avail the numerous homeowners the opportunity to respond.

The CC staff has entered into the record statements that are factually incorrect with respect to the easement and from the available transcript it appear to have influenced the commissioners to date.

The Coastal Act in section 30212 provides exceptions for the need to provide public access in new development, the Yankee Beach easements meet everyone of them. Even though the infrastructure for YankeeBeach easements was built well before the Coastal Act I believe this section is germane.

1. To the uninitiated the Yankee Beach pathways and the Beach is dangerous.
2. Yankee Beach has environmentally sensitive tide pool Habitat, given the Beaches relatively infrequent use, these have been well protected to date.
3. The easement paths are very close to homes that are zoned for Low density, in my case the path is 15 feet from my master bedroom.
4. In our immediate area the public's access to the coast is extraordinary. From the southern tip of Garrapata State Park to Moss Landing more than 90 % of the Coast line is either public or provides easy

public access, with respect sandy beaches that figures is close to 99%. Within a several mile radius, Garrapata State Park, Mal Paseo Beach, Point Lobos State reserve, Monastery Beach, Carmel River Beach provides miles of publicly accessible shoreline, large portions of which are Sandy Beaches that are relatively empty. Keep in mind Yankee Beach is very small and on average has at most has 1500 "square" feet of sandy coast line, enough to accommodate a family or two.

By the clear wording of the Coastal Act there was never an intent to make sections of coast line like YankeeBeach open to the public and certainly it is clear there is no justification for the state to conscript the YankeeBeach easements.

I respectfully ask for your consideration of my remarks,

Glenn Berry MD

13 Yankee Beach Way

Carmel Highlands, California

Glenn W. Berry III, M.D.  
Sent from my iPad

## Document 2



Mal Paso Creek Property Association  
73 Fern Canyon Road, Carmel CA 93923

Th 16a

June 10, 2019

Chair Bochco and Members of the California Coastal Commission  
c/o Ryan Moroney  
Central Coast Area Office  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

Sent Via email to: [CentralCoast@coastal.ca.gov](mailto:CentralCoast@coastal.ca.gov)

**Re: Issues raised and factual errors conveyed by California Coastal Commission staff regarding restrictive easements within the Carmel Highlands Community in regards to the CDP Application No. 3-18-0650.**

Dear Chair Bocho and Commission Members,

It has only been in the last week the Mal Paso Creek Property Association (MPCPA) learned that the California Coastal Commission has raised issues regarding the restrictive private easements governing access to Yankee Beach in connection with the Coastal Development Permit (CDP) application of Mrs. Darla Harbaugh at 172 Spindrift Rd. (CDP Application No. 3-18-0650 - June 2019 Agenda - Item Thu 16a). The MPCPA is a voluntary property association and 501(c)(3) non-profit corporation established in 1968 representing approximately 225 properties in the southern portion of the Carmel Highlands area extending from Yankee Point southwards to Granite Creek. Our stated mission is to: *"to protect, conserve and defend the single-family residential character of the Mal Paso Creek area, County of Monterey, State of California."*

As such, the MPCPA Board of Directors believes that the Commission's actions in this permit application directly affect the legal property rights of our membership and would have adverse implications to the proper execution of our Local Coastal Program including key provisions governing the protection of sensitive marine and coastal habitat.

In reading the staff report and pending revised findings requested by the Coastal Commission, the MPCPA Board of Directors would like to bring to the attention of the Commission Chair and Commissioners, that there are significant errors of fact and misrepresentations of the nature, history and constraints with regards to these restrictive easements referenced in the staff reports. Furthermore, the applicant, Mrs. Harbaugh, does not have any legal ability to implement an Offer To Dedicate (OTD) for those portions of these restrictive easements deeded, as dominant tenant(s), to the Mal Paso Creek Property Association or our neighboring community organization the Carmel Highlands Association (CHA).

We, therefore, request that any CDP provisions, requirements, covenants or OTDs associated with any of these said easements be removed from Mrs. Harbaugh's permit application. We further request that Coastal Commission correct the official record of the Harbaugh proceeding that contains misrepresentations of the legal status, history and the official policies and recommendations of the Carmel Area Land Use Plan (aka: Coastal Plan) provisions regarding these restrictive easements.

Because MPCPA was never notified directly of the California Coastal Commission's intention to address these issues involving our recorded assets and the imminent deadline posed for comments on this matter, we are unable to supply all of the substantial legal documentation and testimony that would support our contention and requests; we are, nevertheless, able to supply the Coastal Commissioners with sufficient evidence to show that Coastal Commission's characterization of the restrictive easements and claims of potential public prescriptive rights to these easements are, in fact, misleading and contain factual errors. We believe that we can also show that staff, with minimal effort, could have determined that these questionable findings and statements within the staff report(s) and permit application to be inaccurate by referencing the existing Carmel Area Land Use Plan which discusses these easements, recognizes their history and makes policies and recommendations to continue the current restricted access and to prohibit any such general public access. We will provide this information below and in the attached documents. The MPCPA would be happy to provide additional details, documents and testimony that the Commissioners might require to honor our requests given proper notification and time to gather the documentation and secure legal counsel.

#### **No Public Prescriptive Rights**

We would first wish to address the contention by Coastal Commission staff, in both the staff reports and at the Harbaugh public hearing that there may exist some evidence of previous public use of these private trail easements. The Mal Paso Creek Property Association asserts and will provide evidence that there has never been any legal public access to these easements. The associated properties and the easements have been private property for their entire recorded history of this region. Predating the ownership of these easements by MPCPA, beginning with the original property owners and forerunner property associations in 1954 (Yankee Beach Way easement - see exhibits A through C). Also see Exhibit D as a separate PDF attachment for the CC&Rs of the Carmel Rivera Property Association outlining the development of these easements for the restricted use of the property owners. It should be further noted that these easements "run with the land" and if abandoned by the dominant tenant(s) revert back to the private property ownership of the original Grantor of these easements or their descendants.

Prior to the acquisition of the land that by Charles Sawyer, who was the original developer of the southern portion of the Carmel Highlands (Yankee Point Acres, Carmel Riviera, Mal Paso Creek, Aurora Del Mar, which combined, make up the MPCPA), the land was privately held as the Victorine Ranch. Local historical accounts state that not only was this land fenced off along what was the Old Coast Road, but that there was also fencing all along the coastal bluffs in order to prevent cattle from falling off the hazardous cliffs; thereby preventing any public access to all portions of the coastline in what is now the greater Carmel Highlands community. The Victorine Ranch was the successor to the Rancho San Jose Y Sur Chiquito Spanish land grant, so again, all of the area in question has been in private ownership for the entire European settled history of the region. There is absolutely no record of public land ownership or general public access to any portions of the MPCPA properties, easements or other inland access to the coast in this area.

With regards to the Yankee Beach Way easement, Mrs. Harbaugh's property lies outside of the MPCPA boundaries, and as membership is restricted to Association property owners, she has absolutely no legal interest or control regarding any aspect of this easement. Therefore, in our opinion it would be improper for the Coastal Commission to place restrictions on her CDP in reference to these easements. In addition, we concur with Commission legal counsel that there is no "essential nexus" as defined in the Nolan v. California Coastal Commission case from the U.S. Supreme Court that could possibly warrant adding these conditions as part of Mrs. Harbaugh's CDP. Coastal Commission staff acknowledged this in their first report. **As detailed above, the MPCPA requests that all conditions and references to these easements be removed**

**from this permit application as irrelevant to the consideration of Mrs. Harbaugh's application.** For the record, the MPCPA has no opinion regarding the merits or details of this permit application not relating to the easement and access issues.

Many of the same land and private easement history also apply to the Spindrift Road trail easement(s) which MPCPA shares with the Carmel Highlands Association (CHA) through a mutual use agreement. The establishment and exclusive use of these easements date even further back in the public record to 1926 (see Exhibits E through H as separate attachments) and continue to present day. With the exception of the some of the essential legal documents, MPCPA has limited documentation regarding the historical operation and management of these particular easements by CHA, but we have knowledge regarding the fact that they have secured these easements over time and successive grants, much as MPCPA has with our portions of these easements. Indeed, their easement records specifically state the requirements to construct and maintain proper fencing as well as the duty to maintain these paths and structures, as do our easement documents, as the sole responsibility of the dominant tenants.

Again, it remains our contention that Mrs. Harbaugh has no legal right to enter into any agreement or OTD that affect the use or disposition of these restrictive easements. Furthermore, as a general matter we would contend, as stated above, that there exists no "essential nexus" as defined in the *Nolan v. California Coastal Commission* case to warrant any of these restrictive easement issues be part of this CDP. In fact, although we would need to consult competent legal advice on this, it appears to us that forcing Mrs. Harbaugh into an OTD as a condition of attaining a permit is strikingly similar in nature and fact to the agency's actions ruled as unconstitutional in the above-mentioned U.S. Supreme Court case.

#### **Yankee Beach Way Gate Pre-Dates Proposition 20 and the California Coastal Act**

Another issue that was raised in the Coastal Commission staff report and previous hearing is the contention that MPCPA may have committed violations of the Coastal Act and/or Coastal Zone Conservation Act (Proposition 20) by not applying for CDP's for an alleged installment of a gate in 1974. This contention is a factual error. All of the infrastructure in and along these easements were already in place prior to the existence of the MPCPA as an organization in 1968. This includes the existing fencing, steps, railings and, specifically, the gate at Yankee Beach Way. Attached is a testament from David Hart (see Exhibit K), a long-term community property owner stating his use of the locked gate at Yankee Beach Way dating from 1965. Also attached (Exhibit J) as a separate PDF is a copy of Mr. Hart's original CC&Rs recorded in 1958 that establish the use of the easement for the exclusive use of the private property owners of the community.

MPCPA has maintained the restrictive easements in accordance with the conditions of the original grant(s) of easement. Given an opportunity and reasonable notice, MPCPA would be able to supply the Commission with further evidence in the form of community member testimony and MPCPA organizational documents that support these historic conditions and existing structures. At no time has MPCPA: changed or relocated the already existing structures in place long prior to the passage of both Prop. 20 or the California Coastal Act - nor have we performed any of the following actions as listed on the Coastal Commission's website that would initiate a need for a CDP: demolition, construction, replacement, or changes to the size of a structure: Grading, removal of, or placement of rock, soil, or other materials: Clearing of vegetation in, or that provides, sensitive habitat: Repair or maintenance activities that could result in environmental impacts. The near pristine nature of the Yankee Beach environment, the frequent usage and permanent habitation by listed species both terrestrial and marine, and the healthy intertidal and coastal marine communities are a testament to the good resource stewardship of the MPCPA, CHA and the local property owners.

Finally, we would like to address what we regard as the potential for violations of the Carmel Area Land Use Plan of the LCP should the Coastal Commission staff continue with their current strategies as outlined in the Harbaugh CDP Application. Even though Mrs. Harbaugh's home is in an area of deferred certification, the certified LCP policies set forth in the Carmel Area Land Use Plan recognizes the history, extremely hazardous bluffs and sensitive resources that warrant very limited access along these restrictive easements – not to mention that all this land is privately held. Below are just a few of the policies and recommendations within the Carmel Area LUP that support the maintenance of these private restrictive easements (bold script added):

#### **Section 5.1 Introduction**

***Efforts to provide public access to the shoreline can be complicated by environmental, land use, or management constraints. Shoreline areas may be subject to topographic, tidal, or seasonal fire hazards. The Carmel coast also supports sensitive marine, plant, and wildlife habitats which may be damaged to varying degrees by unmanaged and excessive public access. Agricultural and residential land uses and a shortage of suitable parking areas pose a significant constraint to increasing public access to the shoreline. Finally, the lack of both state and local agency funds to finance acquisition, development, and maintenance of access areas is a major obstacle to improving shoreline access.***

#### **Section 5.2**

***6...The two notable shoreline destinations within this section -- Malpaso and Yankee Point Beaches -- are served by improved and maintained accessways. However, their potential for public access and use is limited by small size, private ownership, and location in a strictly residential community. A significant increase in public access and recreational use would conflict with the residential use of the area and could damage or degrade existing sensitive' habitats.***

#### **5.3.1 Key Policy**

**Public access shall be protected and provided where consistent with public safety needs and the need to protect the rights of private property owners and natural resource areas from overuse.**

#### **Section 5.3.2 General Policies**

***3. For areas not appropriate or planned for public access, such access should be discouraged. Where such areas are located on private land, the County and other public agencies should cooperate with landowners to develop effective methods for directing access to appropriate locations.***

***6. Shoreline access should be guided by detailed management plans. These plans shall incorporate community ideas and desires to guarantee quality preservation of the coast. The County should work closely with local citizen advisors, property owners and public agencies in planning for management of access.***

***8. In encouraging public access the County desires to insure that the privacy, safety, health, and property of residents are protected. The visiting public (which is generally unaware of the hazards presented by surf and tide) should not be directed into hazardous locations unless professional supervision is provided.***

#### **Section 5.3.3**

##### **2. Public Safety**

***a. Public safety should be considered wherever shoreline access is provided... Closure of access areas during periods of extreme fire hazard or high seas may also be appropriate.***

##### **3. Scenic and Natural Resource Protection**

***b. Where highly sensitive plant or wildlife habitat is present, access may be inappropriate and should not be permitted.***



#### **Section 5.3.4: Site Specific Recommendations (Table)**

- *Manage for visual access.*
- ***Manage for relatively low use intensities.***
- *Maintain existing visual and lateral access (pedestrian and bicycle) along Highway #1 and Spindrift and Yankee Point roads.*
- *Maintain and permit improvements to bluff top overlooks at Highlands Inn, north of Wildcat Creek and Spindrift Road.*
- ***Maintain existing provisions for public access to Yankee Beach (access available to local residents and their guests and to visitors to Behavioral Sciences Institute, Highlands Inn, and Pickle Pine Inn).***
- ***Residential area with a history of low public use. Trespass on private property should be discouraged and low use levels maintained.***
- ***Sensitive habitat: relatively undisturbed rocky intertidal area.***
- ***Steep cliffs and rocky shoreline pose hazards to shoreline users.***
- *High fire hazard in area east of Highway One.*

The MPCPA believes that adherence to the spirit, specific policies and recommendations within the Carmel Area LUP preclude any attempt to provide general public access to the private restrictive easements and/or any other overland access to Yankee Beach. This beach consists of a very small cove that is almost completely submerged at the highest tides. It supports a large diversity of sensitive coastal, intertidal and marine habitats that would be adversely affected and severely threatened by any increased public usage. The Carmel Highlands community has a long, historic and beneficial relationship with this sensitive habitat and natural resource which has had a major influence upon the continued preservation of this environment under the current Coastal Plan policies. We believe that the efforts of the Coastal Commission staff to pursue general public access to this sensitive habitat area are unwise, contrary to the resource protection mandate of the California Coastal Commission and the local Coastal Plan; and would amount to both potential and real "significant adverse impacts to the environment."

In summary, MPCPA believes that there are substantial factual errors and misrepresentations included within the Coastal Commission staff report for the Harbaugh CDP regarding the history, usage, conditions of the referenced easements and the alleged actions by MPCPA. We ask that these be corrected for the record. We also believe that it is inappropriate and possibly illegal for the Coastal Commission to illicit an OTD for any aspect of the restrictive easements referenced in the staff reports and permit application from Mrs. Harbaugh, as she does not share any legal rights to alter these easements and has no standing whatsoever with regards to the Yankee Beach Way easement. We, therefore, request that the Coastal Commission remove the OTD provision from consideration in this CDP Application. If the Commissioners require further documentation, testimony, or other information, we ask the Commission Chair to honor the applicant's request for a continuance in order for us to prepare a more detailed response and secure legal counsel. We reject the allegations of the Coastal Commission staff that MPCPA has violated Coastal Act provisions specifically with regards to the mistakenly claimed 1974 date referenced as to when the Yankee Beach Way access gate was operational and generally with the maintenance of these easements over time. MPCPA has provided the Commissioners with substantial proof that these restrictive easements and the infrastructure improvements were in place well before the passage of the California Coastal Act or Proposition 20. Finally, we believe that the efforts by Coastal Commission staff to secure general public access to Yankee Beach through this, or any future, CDP Application is in direct conflict with the policies and recommendations of the operational Coastal Plan for this area. Additionally, we sincerely believe, based upon our community's history and values, and separate from any of the property rights issues involved, that pursuing this course of action would cause irreparable harm to the sensitive habitats and coastal marine ecosystem preserved at Yankee Beach.

Thank you for this opportunity to comment on this important issue for our community and the local coastal environment.

Sincerely,



Michael A. Emmett,  
Board Member, Mal Paso Creek Property Association  
Approved by vote of the MPCPA Board of Directors:

Lynne Boyd  
Bill Brandwein  
Michael A. Emmett  
Ida Holber  
Sally Anne Smith

**Exhibit A: Deed From Charles Sawyer, et ux to Lawrence R. Patterson, et ux**  
**Recorded 6/25/1954 in Vol. 1535 Official Records at Pg. 425**

VOL 1535 PG 425  
 JUN 25 1954

**CHARLES D. SAWYER and MARIAN E. SAWYER, his wife,**  
**GRANT** to **LAWRENCE R. PATTERSON and CHARLOTTE T. PATTERSON, his wife,**

as Joint Tenants, all that real property situate in the  
 County of Monterey State of California,  
 described as follows:

Portions of Lots 14, 15 and 16, as shown on map entitled "Tract No. 281, Yankee Point  
 Acres," filed August 1, 1949, with the Recorder of Monterey County, California, in  
 Volume 5 of "Maps of Cities and Towns," at page 37, described as a whole as follows:  
 Beginning at the point of intersection of the westerly terminal line of Yankee Beach  
 Way with the dividing line between Lots 15 and 16 as shown upon said map; thence North  
 67° 56' 07" West 127.56 feet; thence South 82° 08' 51" West 100.61 feet to the shore  
 of the Pacific Ocean; thence along the shore of the Pacific Ocean North 29° 33' West  
 26.18 feet; thence North 81° 15' West 74.05 feet; thence North 39° 58' West 128.25  
 feet to the Northwest corner of said Lot 15; thence leaving the shore of the  
 Pacific Ocean North 82° 50' East 202.00 feet along the Northerly boundary of said Lot  
 15 to the Northwest corner of said Lot 14; thence South 7° 10' East 101.17 feet along  
 the dividing between said Lots 14 and 15; thence South 63° 32' 39" East 136.77 feet  
 to said Yankee Beach Way; thence Southerly along said westerly terminal line of  
 Yankee Beach Way along the arc of a curve to the left, the center of which bears  
 South 62° 28' 05" East 80 feet with a radius of 80 feet a central angle of 29° 20'  
 31" a distance of 20.69 feet to the point of beginning.  
 Being 0.630 acres, more or less.


Grantors reserve to themselves, their heirs and assigns, a right-of-way 10 feet in  
 width along the Northerly boundary line of said parcel of land for roadway and foot-  
 path purposes.

For Recorder's Use Only

**20791**

MONTEREY COUNTY  
 OFFICIAL RECORDS  
 FILED AT REQUEST OF  
 COAST COUNTIES LAND TITLE COMPANY  
 1954 JUN 25 PM 3 49  
**VOL 1535 PG 425**  
 Recorder

20791



**DATED** June 23, 1954

STATE OF CALIFORNIA  
 County of Monterey

**June 24**

I, Charles D. Sawyer, County and State, personally appeared  
CHARLES D. SAWYER and MARIAN E. SAWYER

known to me, and known to me to be the  
 persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

My commission expires September 25, 1956 C.D.N.

*Charles D. Sawyer*  
*Marian E. Sawyer*

**Coast Counties Land Title Company, Salt Lake City, Utah**

**Exhibit B: Deed From Charles Sawyer, et ux to Lawrence R. Patterson, et ux**  
**Recorded 2/02/1959 in Vol. 1929 Official Records at Pg. 482**

3

CHARLES G. SAWYER and MARION S. SAWYER, his wife,  
 GRANTORS

LAWRENCE R. PATTERSON and CHARLOTTE R. PATTERSON, his wife,  
 GRANTEE

ALL that certain real property situated in the County of Monterey, State of California, described as follows:

Portion of Lot 14 as shown upon map entitled: "Tract No. 181, Yankee Point Acres, filed August 1, 1949, with the Recorder of Monterey County, California, in Volume 5 of Maps, Cities and Towns," at page 37 described as follows:

BEGINNING at the Northeast corner of said Lot 14; running thence South 82° 50' West along the Northerly line of said Lot 14; a distance of 100 feet to the most Westerly corner of said Lot 14; thence along the Southwesterly line of said Lot 14, South 7° 10' East 101.17 feet; thence South 62° 32' 39" East 136.77 feet to Yankee Beach Way as shown upon said map; thence Northerly along the Westerly terminal line of said Yankee Beach Way along the arc of a curve to the right the center of which bears South 62° 25' 05" East 40 feet, a central angle of 302° 09' 15" a distance of 21.06 feet to the point of intersection of said Westerly terminal line of Yankee Beach Way with the dividing line between Lots 14 and 13 as shown upon said map; thence North 32° 18' 30" West 70.11 feet along the Easterly line of said Lot 14 to an angle point therein; thence North 7° 10' West 100 feet to the point of beginning.

CONTAINING 0.150 of an acre, more or less.

to Charles G. Sawyer and Marion S. Sawyer, public utilities, RESERVING (a) a roadway and footpath purposes over the Northerly 10 feet of the property hereinabove described, and (b) a northwesterly right of way for footpath purposes over a strip of land 5 feet in width, lying Westerly and Southwesterly of the following described line:

BEGINNING at the point of intersection of the dividing line between Lots 13 and 14 with the Northern boundary line of Yankee Point Acres, said dividing line, Lots and Yankee Point Acres are shown on that certain map entitled, "Tract No. 181, Yankee Point Acres", a portion of Rancho San Jose Y San Chiquito, in the County of Monterey, California, etc., filed for record August 1, 1949 in the office of the County Recorder of the County of Monterey, State of California, in Volume 5 of Maps, "Cities and Towns," at page 37; running thence from said point of beginning (1) South 7° 10' East along the said dividing line, 100.00 feet to an angle point therein; thence (2) South 32° 18' 30" East continuing along said dividing line 70.11 feet to a point on the Northwestern boundary line of Yankee Beach Way as shown on said map.

DATED: January 26, 1959.

STATE OF CALIFORNIA  
 County of Monterey  
 January 26, 1959

Charles G. Sawyer  
 Marion S. Sawyer

**Exhibit C: Deed From Charles Sawyer, et ux to Carmel Riviera Property Owners Association, Carmel Highlands Association and Mal Paso Creek Property Association**  
Recorded 2/20/1975 in Reel 960 Official Records at Pg. 916

<p>TO Charles G. Sawyer D. Box 3517 Carmel, CA 93924 LTC 126000-14</p> <p>MAIL TAX STATEMENTS TO Same</p>	<p style="text-align: right;">REEL 960 PAGE 916</p> <p style="text-align: center;"><del>CONFIDENTIAL</del></p> <p style="text-align: center;">COAST COUNTIES LAND TITLE CO. FEB 20 1 42 PM '75 <i>26</i></p> <p style="text-align: center;">OFFICE OF RECORDER COUNTY OF MONTEREY SALINAS, CALIFORNIA</p> <p style="text-align: right; font-size: 2em;">6</p> <p style="text-align: center;">REEL 960 PAGE 916</p>
-------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**GRANT DEED**

THE UNDERSIGNED GRANTOR DECLARE  
ELEMENTARY TRANSFER TAX is \$ 0  
☐ levied on full value of property conveyed, or  
☒ levied on full value less value of liens or encumbrances remaining at time of sale, and

CHARLES G. SAWYER AND MARIAN S. SAWYER, his wife

GRANT TO  
 CARMEL RIVIERA PROPERTY OWNER'S ASSOCIATION, a California corporation,  
 CARMEL HIGHLANDS ASSOCIATION, INC., a California corporation, and  
 MAL PASO CREEK PROPERTY ASSOCIATION, a California corporation

COUNTY OF MONTEREY

the real property situate in the  
 State of California, described as follows:  
 certain Rights of Way 5 and 10 feet in width for roadway, public  
 utilities and footpath purposes as reserved in the deed from Charles  
 Sawyer and Marian S. Sawyer, his wife, to Lawrence R. Patterson and  
 Charlotte T. Patterson, his wife, as joint tenants, recorded June 25,  
 1959 in Volume 1535 of Official Records of Monterey County, State of  
 California at page 425; and in the deed from Charles G. Sawyer and  
 Marian S. Sawyer, his wife to Lawrence R. Patterson and Charlotte T.  
 Patterson, his wife as joint tenants, dated January 26, 1959 and recorded  
 January 2, 1959 in Volume 1929 of Official Records of Monterey County  
 at page 482.

Jan. 7, 1975

Charles G. Sawyer
Marian S. Sawyer

NOTARY OF CALIFORNIA  
Monterey  
 January 7, 1975, before me, Daniel H. Tanner  
 a Notary Public in and  
 for County and State, personally appeared Charles G. Sawyer and Marian S. Sawyer  
 known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

FOR NOTARY SEAL OR STAMP

**Exhibit D: Attached to this email as a separate PDF: Exhibit D-CarmelRiviera\_CC&R-1956Jan17**  
Declaration of Conditions and Restrictions for Carmel Riviera, declared and recorded by Charles G. Sawyer, et ux, Recorded 1/17/1956 in Vol 1674 Official Records at pg. 23

**Exhibit E: Attached to this email as a separate PDF: Exhibit\_E-CHA\_Easement\_1926Oct25**  
Deed from Carmel Development Co. to Martin A. Flavin  
Recorded 10/25/1926 in Vol. 96 Official Records at Pg. 78

**Exhibit F: Attached to this email as a separate PDF: Exhibit\_F-CHA\_Easement\_1951Nov27**  
Deed from Carmel Development Co. to Carmel Highlands Community Firehouse  
Recorded 11/27/1951 in Vol. 1343 Official Records at Pg. 469

**Exhibit G: Attached to this email as a separate PDF: Exhibit\_G-CHA\_Easement\_1958Jun04**  
Deed from Bruno G. Ferri et al to Alfred Ghirardi  
Recorded 6/04/1958 in Vol. 1873 Official Records at Pg. 372

**Exhibit H: Attached to this email as a separate PDF: Exhibit\_H-CHA\_Easement\_1952Jun12**  
Deed from Carmel Development Company to Henry T. Holsman  
Recorded 6/12/1952 in Vol. 1386 Official Records at Pg. 400

**Exhibit I: Attached to this email as a separate PDF: Exhibit\_J-CarmelRiviera\_CC&R-1958Apr28**

DECLARATION OF PROTECTIVE COVENANTS

for

CARMEL RIVIERA, MONTEREY COUNTY, CALIFORNIA

PART A. PREAMBLE

Conditions, covenants, restrictions and easements affecting property in Carmel Riviera, Monterey County, California.

This Declaration, made this 17th day of January, 1956, by CHARLES G. SAWYER, hereinafter called Declarant

WITNESSETH:

Whereas, Declarant is the owner of the real property described hereunder in this Declaration, and is desirous of subjecting the real property described hereunder to the restrictions, covenants, reservations, easements, liens and charges hereinafter set forth, each and all of which is and are for the benefit of said property, and for each owner thereof, and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest, and any owner thereof;

NOW, THEREFORE, CHARLES G. SAWYER, hereby declares that the real property described in and referred to hereunder is, and shall be held, transferred, sold and conveyed subject to the conditions, restrictions, covenants, reservations, easements, liens and charges hereinafter set forth.

Definition of Terms:

Building site shall mean any lot, or portion thereof, or any two or more contiguous lots, or a parcel of land of record and in a single ownership and upon which a dwelling may be erected in conformance with the requirements of these covenants.

Property Subject to This Declaration:

The real property which is, and shall be, held and shall be conveyed, transferred and sold subject to the conditions, restrictions, covenants, reservations, easements, liens and charges with respect to the various portions thereof set forth in the various clauses and subdivisions of this Declaration is located in the County of Monterey, State of California, and is more particularly described as follows:

All that real property situated in Rancho San Jose y Sur Chiquito, County of Monterey, State of California, shown and delineated on that certain map entitled

Carmel Riviera, which is a portion of Rancho San Jose y Sur Chiquito, County of Monterey, State of California, filed January 17, 1956, in Volume 1674 of the Monterey County Record.



No property other than that described above shall be deemed subject to this Declaration, unless and until specifically made subject thereto.

The Declarant may, from time to time, subject additional real property to the conditions, restrictions, covenants, reservations, liens and charges herein set forth by appropriate reference thereto.

#### General Purposes of Conditions:

The real property described in Part A hereof is subjected to the covenants, restrictions, conditions, reservations, liens and charges hereby declared to insure the best use and the most appropriate development and improvement of each building site thereof; to protect the owner of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on building sites; to prevent haphazard and inharmonious improvement of building sites; to secure and maintain proper setbacks from streets, and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvement in said property, and thereby to enhance the values of investments made by purchasers of building sites therein.

#### PART B. AREA OF APPLICATION

B-1. Fully Protected Residential Area: The residential area covenants in Part C in their entirety shall apply to all lots in the above particularly described tract.

#### PART C. RESIDENTIAL AREA COVENANTS

C-1. No structure shall be erected, altered, placed or permitted to remain on any building site other than one detached single family dwelling not to exceed 3-1/2 stories or 35 feet in height, a private garage for not more than 7 cars, servants' quarters and other houses and buildings purely incidental and accessory to the use of the premises for single family residential purposes.

C-2. No building, wall, fence or other structure shall be erected, placed, or altered on any premises in said tract until the builder, contractor and subcontractors have been approved in writing and until the building plans, specifications, and plot plan showing the location of such building have been approved in writing as to conformity and harmony of external design, material, color, height, width, length, location and quality of construction, in relation to existing structures in the tract, and as to location of the building with respect to topography and finished ground elevation, by an architectural committee composed of HARRY M. PEORSICH, DAVID J. RUST, VIRGINIA NIELSON, CHARLES G. SAWYER, MARIAN B. SULLIVAN, or by a representative designated by a majority of the members of said committee. In the event of death or resignation of any member of said committee, the remaining member or members, shall have full authority to approve or disapprove such design and location, or to designate a representative with like authority. In the event said committee, or its designated representatives, fails to approve or disapprove such design and location within 30 days after said plans and specifications have been submitted to it, or, in any event, if no suit to



enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this Covenant will be deemed to have been fully complied with.

The architectural committee shall maintain an approved list of building contractors who may be used for building improvements and construction. In the event that Grantee desires to use a building contractor whose name does not appear on the approved list, the committee shall consider the said contractor and approve or disapprove his use. Such decision shall be based on the evidence of reliability, financial stability, and examples of prior work accomplished by said building contractor.

C-3. No residential structure shall be erected or placed on any building site which has an area of less than one acre, which shall not be subdivided or additional residential structures erected or placed on fractional portions of an acre; provided, however, that in the event the original owner and subdivider of the entire tract may see fit to sell building sites of less than one acre no residential structure on such fraction of an acre may be erected, or placed on an area of less than 20,000 square feet and with an average width of not less than 75 feet. This provision and exception shall apply only to the original owner and subdivider and any building site of less than one acre sold by the original owner and subdivider shall not be subdivided.

C-4. No building shall be located on any building site less than 90 feet from the center line of State Highway No. 1, less than 30 feet from the front lot line nor less than 20 feet from any side street line. No building shall be located less than 15 feet from any side lot line or 10 feet from any building on the same site.

Grantee agrees that improvements in the nature of dwellings and appurtenances shall be made only by contractors whose names appear on an approved list of building contractors, maintained and established by the said architectural committee as set up in Section C-2. In the event that grantee desires to use a building contractor other than one appearing on the approved list, he agrees to submit the name of the said contractor to the said architectural committee for its approval and that said approval shall be a condition precedent to his use of said building contractor.

C-5. Each building site upon which a single family dwelling unit, guest house, servants' quarters or other such buildings are erected, shall be provided with a service yard and with sanitary sewage disposal by a septic tank, and appurtenant facilities of adequate size and of a type approved by the Monterey County Health Department. Installation of such shall be to the approval of said Health Department.

C-6. No trailer, tent, shack, or temporary building of any kind shall be erected or placed on any building site, except that temporary construction sheds incidental to the construction of a building or dwelling on any building site may be permitted, if not used for human habitation, and only for the period during which such building or dwelling is under construction.

C-7. No commercial business, trade or activity of any kind shall be carried on on any building site, unless approved by the architectural committee as set up in Section C-2.

C-8. No sign of any kind or name plate shall be erected, placed or located on any building site or in any roadway area, unless such sign or name plate has been approved as to size, type and location by the architectural committee as set up in Section C-2.

C-9. No animals or poultry of any kind, other than house pets, shall be kept on any building site.

C-10. No main residential structure shall be permitted on any building site, the habitable ground floor area of which, exclusive of basements, porches and garages, is less than 750 square feet.

C-11. No trees, plants, shrubs or other natural growth shall be cut down, removed, trimmed, pruned or otherwise disturbed without approval is first obtained from the architectural committee as set up in Section C-2.

C-12. No fence, wall or mass planting shall be permitted to extend beyond the minimum building setback line established herein, except upon approval by the architectural committee as set up in Section C-2.

C-13. No fence, wall, hedge, planting or trees shall be erected or grown to exceed six feet (6') in height, unless approved by the architectural committee as provided in Section C-2, and any such fence, wall, hedge, planting or trees which may impair the view from any building site may be removed, trimmed, topped or lowered in height by the party whose view is impaired, providing approval is first obtained from the architectural committee as set up in Section C-2.

C-14. Oil drilling, oil development operations, refining, mining operations of any kind or quarrying shall not be permitted upon or in any of the building sites in the tract described herein, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any of the building sites.

All property, including yards, planting areas, service areas, or other areas within the described property, shall be maintained in a neat and attractive manner. No structures, plantings or other materials not normally incident to or a part of a residence shall be maintained without approval first having been obtained from the architectural committee as set up in Section C-2.

C-15. For the use of tract residents, owners of building sites, and their guests there is reserved the right to use Yankee Point Beach and Bay as a playground and there is reserved the right to establish and use a footpath or footpaths to the ocean, along creeks, and along rights of way when, where and as designated by the architectural committee as set up in Section C-2.

C-16. For the use of tract residents, and owners of building sites, there is reserved the right to draw water from and return water to the ocean through pipe lines laid along property lines approved for such purposes by the architectural committee as set up in Section C-2.

C-17. In addition to the easements shown on the Map, there are reserved in each building site easements for utility installation and maintenance five feet in width along each property line; and such additional easements may be used, provided approval is obtained from the architectural committee as set up in Section C-2.



MS 1671 pg 23

**PART D. GENERAL PROVISION.**

D-1. These Covenants are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 1981 (twenty-five year period), at which time said Covenants shall be automatically extended for successive periods of 10 years, unless by vote of a majority of the then owners of the building sites covered by these Covenants, it is agreed to change said Covenants in whole or in part.

D-2. If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the Covenants herein, it shall be lawful for any other person or persons owning any real property situated in said tract to prosecute any proceedings at law, or in equity against the person or persons violating or attempting to violate any such Covenant, and either to prevent him or them from so doing to recover damages or other dues for such violation.

**Penalty Clause.** In the event of violation of any of the Covenants or conditions contained herein by the parties hereto or any of them or their heirs or assigns, the Grantor shall have the right to cause the property to revert to the said Grantor. In the event of such violation and election of reversion on the part of the Grantor, the Grantor shall be liable for the repayment of the consideration paid for the unimproved real property within the said described property and no more. In the event that legal action is necessary to accomplish the said reversion or to enforce any condition or Covenant provided herein, the legal costs including reasonable attorneys' fees as fixed by the Court shall be paid by the person or persons violating said Covenant and/or condition.

D-3. Invalidation of any one or portion of any one of these Covenants and/or conditions by judgments, court orders or otherwise, shall in no wise affect any of the other provisions or portions thereof which shall remain in full force and effect.

Dated:

January 17, 1956

Charles G. Sawyer  
Declarant

**STATE OF CALIFORNIA**

County of Monterey

On this 17th day of January  
before me, Sally McGee

County of Monterey

State of California, residing therein,  
duly commissioned and sworn, personally appeared  
MARTIN S. SAWYER

Charles G. Sawyer  
a Notary Public in and for the

1926, a copy of which is recorded in the Office of the County Recorder of the County of Monterey, State of California, in Book 40 of Official Records at page 423, together with the debt thereby secured is fully paid, satisfied and discharged and the proper Certificate is hereby released from the lien of said mortgage.

IN WITNESS WHEREOF, I have hereunto set my hand the 22nd day of October 1926.

SIGNED AND DELIVERED IN THE PRESENCE OF

S. PEDINI

STATE OF CALIFORNIA, COUNTY OF MONTEREY)SS.

On the 22nd day of October A. D. One Thousand Nine Hundred and twenty-six before me, J. A. WASSON a Notary Public in and for said County of Monterey, in the State of California, and residing in said Monterey County, duly commissioned and qualified, personally appeared S. Pedini known to me to be the individual described in, whose name is subscribed to and who executed the annexed instrument and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in King City, in said Monterey County, the day and year last above written. (Notarial Seal).

J. A. WASSON  
Notary Public in and for Monterey County,  
State of California.

Recorded at the request of Bank of Italy, Oct. 23rd, 1926 at 8 min. past 9 A.M.  
.....49218

Vol. 96 O.R. Pg. 78

CARMEL DEVELOPMENT COMPANY

-to-

MARTIN A. FLAVIN

THIS INDENTURE, made the Fourteenth day of October in the year of our Lord one thousand nine hundred and Twenty-six, BETWEEN the CARMEL DEVELOPMENT COMPANY, a corporation with its principal place of business at and in the City and County of San Francisco California, the party of the first part, and MARTIN A. FLAVIN of the County of Monterey, State of California the party of the second part,

WITNESSETH: That the said party of the first part for and in consideration of the sum of Ten (\$10.00) Dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and upon the conditions hereinafter expressed does by these presents grant, bargain, sell, convey and confirm unto the said

... to his heirs and assigns, but subject to the condition hereinafter set forth, that certain lot, piece or parcel of land situate, lying and being in the Carmel Highlands Tract, County of Monterey, State of California, and bounded as follows, to wit:

Beginning at a point on the T-Survey Line, distant S. 22° 30' E., 31.00 feet from Station T-21, as said T-Survey Line and said Station T-21 are shown on "Map No. 8 of a part of Carmel Highlands Property, showing survey lines, a part of Rancho San Jose Y Sur Chiquito, Monterey County, California;" a copy of which map was filed March 13, 1920 in Volume 1 of Surveys page 101 in the office of the Recorder of Monterey County, California; running thence S. 22° 32' E. 132.63 feet to Station T-22; thence S. 59° 03' E., 75.70 feet to station T-23; thence N. 69° 24' E. 94.40 feet; thence leaving said T-Survey Line and running S. 6° 29' E. 344.60 feet to a point on the C-H-Survey Line; thence S. 32° 50' W. 193.8 feet to Station C-54 equals C-H-1 as per said map; thence N. 68° 22' W., along the C-Survey Line, 138.18 feet to a Station; thence N. 9° 26' E. 37.30 feet to a point; thence Northeastly following the arc of a circle, (whose radius is 400 feet, the center being S. 30° 31' E. 204.78 feet distant from the last described point), 128.04 feet to a point; thence Northeastly and Northerly following the arc of a circle (whose radius is 410 feet, the center being N. 44° 30' W. 216 feet distant from the last described point), 193.61 feet to a station, thence N. 6° 32' W., 71.10 feet to the point of beginning.

Also all that piece or parcel of land which lies between the shore line of the Pacific Ocean and that portion of the C-Survey Line which forms the Southwestly boundary of the above described tract of land.

Reserving however, from the first above described tract of land, a strip of land 12.50 feet in width along and adjoining the T-Survey Line for road purposes.

to  
Reserving also, the Carmel Development Company, a corporation the said party of the first part, its former grantees, its successors or assigns, of lands in the Carmel Highlands Property, being Lots 5, 6 and 7 as per Assessor's Map of Rancho San Jose Y Sur Chiquito Monterey County, California; to use for recreational and bathing purposes only, that part of the Ocean Beach conveyed in the above deed.

Reserving, also, a right of way Five feet in width, for pedestrians only; over and across the above described property, from

*See next Page*

... 1, 1.1, and 1.1 in the Carmel  
... Monterey, Santa Clara County, California, and  
... described as follows, to wit:

Beginning at a point on the T-Survey line, distant S. 22° 32' E., 100.00 feet to Station T-21, as shown on "Map No. 5 of a part of Carmel Highlands Property, showing survey lines, a part of Rancho San Jose Y Sur Chiquito, Monterey County, California;" a copy of which map was filed March 12, 1923 in Volume 1 of Surveys page 101 in the office of the Recorder of Monterey County, California; running thence S. 22° 32' E. 192.63 feet to Station T-22; thence S. 59° 03' E., 75.70 feet to station T-23; thence N. 69° 34' E. 94.40 feet; thence leaving said T-Survey Line and running S. 6° 29' E. 54.00 feet to a point on the C-H-Survey Line; thence S. 32° 50' W. 193.8 feet to Station C-54 equals C-H-1 as per said map; thence N. 68° 22' W., along the C-Survey Line, 186.12 feet to a Station; thence N. 9° 29' E. 67.30 feet to a point; thence Northeasterly following the arc of a circle, (whose radius is 302.7 feet, the center being S. 30° 51' E. 202.74 feet distant from the last described point), 103.01 feet to a point; thence Northeasterly and Northerly following the arc of a circle (whose radius is 216 feet, the center being N. 11° 20' W. 216 feet distant from the last described point), 193.01 feet to a station, thence N. 30° 03' W., 71.10 feet to the point of beginning.

Also all that piece or parcel of land which lies between the shore line of the Pacific Ocean and that portion of the C-Survey Line which forms the Southwesterly boundary of the above described tract of land.

Reserving however, from the first above described tract of land, a strip of land 12.50 feet in width along and adjoining the T-Survey Line for road purposes.

Reserving also <sup>to</sup> the Carmel Development Company, a corporation the said party of the first part, its former grantees, its successors or assigns, of lands in the Carmel Highlands Property, being Lots 5, 6 and 7 as per Assessors Map of Rancho San Jose Y Sur Chiquito Monterey County, California; the right to use for recreational and bathing purposes only, that part of the Ocean Beach conveyed in the above deed.

Reserving, also, a right of way five feet in width, for pedestrians only over and across the above described property, from the easterly boundary of the above described property to the shore line of the Pacific Ocean.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF, the said Corporation, party of the first part, by general resolution authorizing the undersigned officer so to do, which resolution is now of record in Book "M" of Miscellaneous Records, Monterey County, California, at page 166 caused its name and seal to be hereunto attached by its officer whose name is hereunto attached, the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

CARMEL DEVELOPMENT COMPANY

BY J. F. DEVENDORF

President.

(Corporate Seal).

STATE OF CALIFORNIA, )  
COUNTY OF MONTEREY ) SS.

On this 22nd day of October in the year one thousand nine hundred and twenty-six before me, R. C. DEXOE a Notary Public in and for the County of Monterey personally appeared J. F. Devendorf known to me to be the President of the Carmel Development Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of Monterey, the day and year in this certificate first above written. (Notarial Seal).

R. C. DEXOE  
Notary Public in and for the County of Monterey,  
State of California.

Recorded at the request of Carmel Development Co, Oct. 25, 1926 at 1 min. past 9 A.M.

....A.R....29238

C. H. THOMPSON JR. L.S.

000719



BRUNO G. FERRI AND MARION WILKINSON FERRI,  
his wife and BETTY LOU COYNER, her daughter

GRANT.....to

ALFRED GHIRARDI, a married man

all that real property situate in the

County of Monterey

State of California; described as follows:

15792  
MONTEREY COUNTY  
OFFICIAL RECORDS  
RECORDED AT REQUEST OF  
GRANT DEEDS AND GSA OFFICE  
1958 JUN 4 PM 4 16  
BOOK 1873 PAGE 372  
RECORDED  
360

Certain real property situate in Map No. 2 of a Part of Carmel Highlands Property, Rancho San Jose y Sur Chiquito, County of Monterey, State of California, particularly described as follows:

BEGINNING at the northeast corner of that certain parcel of land described as Parcel II in that certain deed from Flavia L. Flavin to Bruno G. Ferri et ux, dated November 9, 1955 and recorded January 16, 1956 in Volume 1673, Official Records of Monterey County at page 520, said corner being a point on the T-Survey Line lying N. 69° 34' E., along said line, 94.40 feet from Station T-23, as said T-Survey Line and said Station T-23 are shown and so designated on that certain map entitled, "Map No. 2 of a part of Carmel Highlands Property," filed in Volume 1 of Surveys at Page 101, Records of Monterey County; thence from said point of beginning, and following the easterly boundary of said parcel of land described as Parcel II in said deed

- (1) S. 6° 19' E., 346.16 feet (in said deed 344.60 feet), to the southeast corner of said Parcel II; thence, following the southerly boundary thereof
- (2) S. 82° 50' W., 100.00 feet; thence, leaving said boundary
- (3) N. 21° 51' 40" W., 103.61 feet; thence
- (4) N. 37° 12' 30" W., 91.16 feet to a 3" x 3" post; thence
- (5) N. 2° 16' 30" W., 66.03 feet; thence
- (6) N. 32° 03' E., 57.81 feet; thence
- (7) S. 75° 00' E., 49.00 feet; thence
- (8) N. 15° 37' E., 37.00 feet; thence
- (9) N. 3° 00' W., 24.00 feet to a point on said T-Survey Line lying N. 69° 34' E., along said line, 19.06 feet from said Station T-23; thence, following said T-Survey Line
- (10) N. 69° 34' E., 75.34 feet to the point of beginning, containing a gross area of 44,593 square feet or 1.024 acre, more or less, of which 0.022 acre lies within a county road reservation hereinafter described, leaving a net area of 1.002 acre, more or less.

SUBJECT TO a right of way for county road over a strip of land 12.50 feet wide lying along, adjacent to and on the southeasterly side of Course numbered (10) above.

SUBJECT, ALSO to a right of way for pedestrian travel only over a strip of land 5 feet wide lying along, adjacent to and on the northerly side of Course numbered (2) above, for the use of property owners of Carmel Highlands and their guests and tenants.

TOGETHER WITH a non-exclusive right of way for driveway over the following described parcel of land:

BEGINNING at the northerly terminal point of Course numbered (1) above, the above described parcel of land, said point being a point on said T-Survey Line lying N. 69° 34' E., along said line, 19.06 feet from said Station T-23; thence, following Course numbered (1) above, of the above described 1.002 acre parcel of land.



- BOOK 1873 PAGE 373
- (1) S. 3° 00' E., 24.00 feet; thence
  - (2) S. 15° 37' W., 36.00 feet to a point from which the southerly terminal point of said Course numbered (8) bears S. 15° 37' W., 1.00 feet; thence, leaving the boundary of the above described 1.002 acre parcel of land
  - (3) N. 75° 00' W., 15.00 feet; thence
  - (4) N. 15° 37' E., 33.54 feet; thence
  - (5) N. 3° 00' W., 16.93 feet to a point on said T-Survey Line; thence, following said T-Survey Line as shown on said map
  - (6) N. 69° 34' E., 15.72 feet to the point of beginning.

WITNESS my hand this 29<sup>th</sup> day of May, 1958

Betty Lou Coyner  
Bruno G. Ferri  
Marion Wilkinson Ferri  
STATE OF CALIFORNIA  
County of Los Angeles } ss.  
On May 29, 1958, before me, Adelle Hauer  
Notary Public, in and for said Los Angeles County and State, personally appeared  
Betty Lou Coyner  
whose name is subscribed to the within instrument,  
and acknowledged to me that she executed the same.  
My commission expires MY COMMISSION EXPIRES JUNE 12, 1960  
Notary Public

Monterey Coast Counties Land Title Company

STATE OF CALIFORNIA  
County of Monterey } ss.  
On this 2nd day of June, 1958, in the year one thousand nine hundred and fifty-eight  
before me, P. V. Gleason, a Notary Public in and for the  
County of Monterey, State of California, residing therein,  
duly commissioned and sworn, personally appeared  
Bruno G. Ferri and Marion Wilkinson Ferri  
known to me to be the persons whose names are subscribed to the within instrument  
and acknowledged to me that they executed the same.  
IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal  
in the County of Monterey, State of California, this 2nd day of June 1958.  
Notary Public in and for the County of Monterey, State of California  
My Commission Expires June 12, 1960

THIS INDENTURE, dated the 10<sup>th</sup> day of October, 1951, .  
 between CARMEL DEVELOPMENT COMPANY, a corporation organized and  
 existing under and by virtue of the laws of the State of Cali-  
 fornia, and having its principal place of business in the City  
 and County of San Francisco, the party of the first part, and  
 CARMEL HIGHLANDS COMMUNITY FIRE HOUSE , a corporation  
 organized and existing under and by virtue of the laws of the  
 State of California, the party of the second part,

3

W I T N E S S E T H:

That the said party of the first part, in consideration  
 of the sum of Ten Dollars (\$10.00), lawful money of the United  
 States of America, to it in hand paid by said party of the second  
 part, the receipt whereof is hereby acknowledged, does by these  
 presents grant unto said party of the second part a pedestrian  
 right-of-way over the following strip of land situated in Carmel  
 Highlands, Rancho San Jose y Sur Chiquito, County of Monterey,  
 State of California:

Beginning at the northeasterly corner of that cer-  
 tain tract of land conveyed from the Carmel Development  
 Company to Martin A. Flavin by a deed dated October 14,  
 1926, and recorded October 25, 1926, in Volume 96, Official  
 Records of Monterey County, California, at Page 78, said  
 northeasterly corner being a point on the T-Survey Line  
 from which Station T-23 bears S. 70° 01' 30" W., 94.40  
 feet, as said T-Survey Line and said Station T-23 are shown  
 on that certain map entitled "Licensed Surveyor's Map of  
 the Southwest Part of Carmel Highlands, Monterey County,  
 California," filed on May 23, 1928 with the Recorder of  
 Monterey County, California, in Volume 3 of Surveys at  
 Page 124; thence, following the easterly line of said tract  
 of land, said line being shown on said map

(1) S. 6° 19' E., 344.60 feet (found 346.16 feet) to  
 the southeasterly corner of said tract of land conveyed by  
 said deed; thence, following the CH-Survey Line shown on  
 said map

(2) N. 82° 50' E., 5.00 feet; thence, running parallel  
 to and 5.00 feet easterly from said Course (1)

(3) N. 6° 19' W., 345.75 feet (found 347.31 feet) to  
 a point on said T-Survey Line; thence, following said  
 T-Survey Line

(4) S. 70° 01' 30" W., 5.15 feet, to the point of

beginning, and being a strip of land 5.00 feet wide lying along, adjacent to, and on the easterly side of said easterly line of said tract of land conveyed by said deed.

This grant, however, is made subject to the following covenants and conditions:

1. The party of the second part agrees, contemporaneously with the delivery of this deed of grant to it, to build and complete a fence along the easterly line of such right-of-way, said fence to consist of redwood posts set not more than six (6) feet apart, and shall be set in holes two (2) feet deep, and shall extend above the surface of the ground for a height of four (4) feet, said posts to be 4" x 6" in size and said redwood to be of good quality. Said posts shall be connected with not less than four (4) strands of wire, one strand of which shall be at the top of said posts and the other three strands to be stretched on said posts so that said four strands will be equidistant from one another on said posts, said wires to be drawn taught and securely fastened to said posts. The expense of material and labor in constructing said fence shall be borne equally by the parties hereto. The party of the second part shall cause said fence to be built and shall bill the party of the first part for its share of the cost thereof, itemizing the items of such cost. The party of the second part agrees that said posts shall be kept in perfect alignment along said easterly line of said right-of-way, said right-of-way and said line for the erection of said fence having recently been surveyed and stakes inserted in the ground showing the boundaries thereof; the cost of said survey, which has been paid by the party of the first part, is the sum of \$63.50, one-half of which the party of the second part agrees to pay to the party of the first part contemporaneously with the delivery to it of this grant of right-of-way.

2. The party of the second part agrees, at its own sole expense, to keep said fence, both posts and wires, in good condition and to make repairs of any part of the same where such repairs are

necessary.

3. The party of the second part agrees to keep said right-of-way reasonably clean of tin cans, bottles and other refuse and shall allow no picnicking on said right-of-way.

4. If said right-of-way shall cease to be used by the party of the second part for a period of five (5) continuous years, said right-of-way shall be forfeited and shall revert to said party of the first part.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective corporate names, by their officers thereunto duly authorized, the day and year first hereinabove written.

CARMEL DEVELOPMENT COMPANY

By Edward Hohfeld  
President

Party of the First Part.

CARMEL HIGHLANDS COMMUNITY FIRE HOUSE

By Reuben Baer  
President.

And Wm. H. Ziegler  
Secretary.

Party of the Second Part.

STATE OF CALIFORNIA

CITY &

County of SAN FRANCISCO

ss.

On this Sixth day of November in the year one thousand nine hundred and fifty-one  
before me, WILLIAM H. BENDER, a Notary Public in and for  
the City and County of San Francisco, State of California,  
residing therein, duly commissioned and sworn, personally appeared  
EDWARD HOHFELD  
known to me to be the President  
of the corporation described in and that executed the within instrument, and also known to  
me to be the person who executed the within instrument on behalf of the corporation

THIS INDENTURE, dated this 2nd day of April, 1952,  
between CARMEL DEVELOPMENT COMPANY, a corporation organized and  
existing under and by virtue of the laws of the State of Cali-  
fornia, party of the first part, and HENRY T. HOLSMAN, party of  
the second part,

W I T N E S S E T H:

That the said party of the first part, for and in con-  
sideration of the sum of Ten Dollars (\$10.00), lawful money of  
the United States of America, to it in hand paid by said party of  
the second part, the receipt whereof is hereby acknowledged, does  
by these presents grant, bargain and sell unto the said party of  
the second part, and to his heirs and assigns forever, all that  
certain real property situate, lying and being in Carmel Highlands  
Property, Rancho San Jose y Sur Chiquito, County of Monterey,  
State of California, particularly described as follows:

Beginning at the northeasterly corner of that certain  
tract of land conveyed from the Carmel Development Company  
to Martin A. Flavin by a deed dated October 14, 1926, and  
recorded October 25, 1926, in Volume 96, Official Records  
of Monterey County, California, at Page 78, said north-  
easterly corner being a point on the T-Survey Line from  
which Station T-23 bears S. 70° 01' 30" W., 94.40 feet, as  
said T-Survey Line and said point T-23 are shown on that  
certain map entitled "Map #2 of a Part of Carmel Highlands  
Property," filed on March 18, 1920 with the Recorder of  
Monterey County, California, in Volume 1 of Surveys at  
Page 101, said T-Survey Line being also shown on that cer-  
tain map entitled "Licensed Surveyor's Map of the South-  
westerly Part of Carmel Highlands, Monterey County, Cali-  
fornia," filed on May 23, 1928 with the Recorder of  
Monterey County, California, in Volume 3 of Surveys at  
Page 124; thence, following said T-Survey Line, said line  
being the centerline of a County Road 25.00 feet wide

- (1) N. 70° 01' 30" E., 168.68 feet to Station T-24;  
thence
- (2) N. 49° 26' 30" E., 94.01 feet to Station T-25;  
thence
- (3) N. 12° 11' 30" E., 121.42 feet to Station T-26;  
thence
- (4) S. 55° 10' 30" E., 138.91 feet, to Station T-27;  
thence

J. G. L. T. CO. #23521

25168

(5) S.  $29^{\circ} 56' 30''$  E., 273.56 feet to Station T-28;  
thence

(6) N.  $78^{\circ} 20' 30''$  E., 301.61 feet to Station T-29;  
thence

(7) S.  $87^{\circ} 40' 30''$  E., 143.85 feet, more or less, to a point on the westerly line of the right of way of California State Highway V-Mon-56-H, said point being N.  $87^{\circ} 40' 30''$  W., 20.20 feet, more or less from Station T-30 shown on said maps; thence, leaving said T-Survey Line and following instead said westerly line of said highway right of way as said line is shown on Sheet 20 of the official plat of said Highway V-Mon-56-H, as said plat was prepared by the Department of Public Works, State of California, and approved June 29, 1931

(8) S.  $3^{\circ} 11' 30''$  W., 157.27 feet; thence

(9) S.  $41^{\circ} 50'$  W., 79.01 feet, to a point on the southerly line of Carmel Highlands Property, as said line is shown on said maps, said point on said line being S.  $82^{\circ} 50'$  W., 125.28 feet from stake CH-3 shown on said map entitled "Map #2 of a Part of Carmel Highlands Property;" thence, following said southerly line of said Carmel Highlands Property, said line being designated on said last-mentioned map as the CH-Survey Line, said line being also the northerly line of that certain subdivision known as Yankee Point Acres (see map entitled "Tract # 181 - Yankee Point Acres," filed on August 1, 1949, with the Recorder of Monterey County, California, in Volume 5, Maps of Cities and Towns, at Page 37)

(10) S.  $82^{\circ} 54'$  W., 847.66 feet, more or less, to the southeasterly corner of said tract of land conveyed from the Carmel Development Company to Martin Flavin; thence, following the easterly line of said tract of land

(11) N.  $6^{\circ} 19'$  W., 344.60 feet (found 346.16 feet) to the point of beginning and containing 6.75 acres, more or less.

EXCEPTING, however, from said tract of land hereinbefore described, that portion thereof lying within that certain County Road known as "Spindrift Road," said portion being more particularly a strip of land 12.50 feet wide lying along, adjacent to and on the southerly side of Courses (1) to (7) inclusive of the description of said tract of land.

RESERVING, also, from said tract of land a pedestrian right of way over a strip of land 5.00 feet wide lying along, adjacent to and on the easterly side of said Course (10), said right of way having been conveyed from the Carmel Development Company to Carmel Highlands Community Firehouse, a corporation, by a deed dated October 10, 1951 and recorded November 13, 1951 in Volume 1343, Official Records of Monterey County, California, at Page 469.

RESERVING, also, from said tract of land hereinbefore described a right of way for power transmission lines along

the route of the existing pole lines now belonging to the Pacific Gas and Electric Company.

SUBJECT to all taxes for the fiscal year 1952-1953, and to all existing covenants, conditions, restrictions and easements.

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns, forever.

IN WITNESS WHEREOF, the said party of the first part, by general resolution of its Board of Directors (which resolution is now of record in Volume 412 of Official Records, Monterey County, at page 464), has caused these presents to be executed in its corporate name, under its corporate seal, by the undersigned officer thereunto duly authorized by virtue of said general resolution, the day and year first above written.

CARMEL DEVELOPMENT COMPANY

By Edward Hohfeld  
President

STATE OF CALIFORNIA

County of SAN FRANCISCO

On this 2nd day of April in the year one thousand nine hundred and fifty-two

before me, WILLIAM H. BENDER, a Notary Public in and for the CITY AND County of SAN FRANCISCO, State of California, residing therein, duly commissioned and sworn, personally appeared

Edward Hohfeld

known to me to be the President of the corporation described in and that executed the within instrument, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the CITY AND County of SAN FRANCISCO the day and year in this certificate first above written.

William H. Bender

DECLARATION OF PROTECTIVE COVENANTS

For

CARMEL RIVIERA NUMBER 2,

MONTEREY COUNTY, CALIFORNIA.

PART 1. PREAMBLE.

Conditions, covenants, restrictions and easements affecting property in Carmel Riviera, Monterey County, California.

This Declaration, made this 28th day of April, 1958, by CHARLES G. SANYER, hereinafter called Declarant

WITNESSETH:

Whereas, Declarant is the owner of the real property described hereunder in this Declaration, and is desirous of subjecting the real property described hereunder to the restrictions, covenants, reservations, easements, liens and charges hereinafter set forth, each and all of which is and are for the benefit of said property and for each owner thereof, and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest, and any owner thereof:

NOW, THEREFORE, CHARLES G. SANYER, hereby declares that the real property described in and referred to hereunder is, and shall be held, transferred, sold and conveyed subject to the conditions, restrictions, covenants, reservations, easements, liens and charges hereinafter set forth.

DEFINITION OF TERMS:

Building site shall mean any lot, or portion thereof, or any two or more contiguous lots, or a parcel of land of record and in a single ownership and upon which a dwelling may be erected in conformance with the requirements of these Covenants.

PROPERTY SUBJECT TO THIS DECLARATION:

The real property which is, and shall be, held and shall be conveyed, transferred and sold subject to the conditions, restrictions, covenants, reservations, easements, liens and charges with respect to the various portions thereof set forth in the various clauses and subdivisions of this Declaration is located in the County of Monterey, State of California, and is more particularly described as follows, to wit:

All that Real property situated in Rancho San Jose y Sur Chiquito, County of Monterey, State of California, shown and delineated on that certain map hereto attached, marked "Exhibit A," and hereby made a part hereof, being Tract No. 321, Carmel Riviera, Number 2, a subdivision of Rancho San Jose y Sur Chiquito, filed in Volume 6, at page 128, Maps of Cities and Towns of the County Recorder of the County of Monterey, State of California, herein referred to as the "Map."

No property other than that described above shall be deemed subject to this Declaration, unless and until specifically made subject thereto.



The Declarant may, from time to time, subject additional real property to the conditions, restrictions, covenants, reservations, liens and charges herein set forth by appropriate reference thereto.

GENERAL PURPOSES OF CONDITIONS:

The real property described in Part A hereof is subjected to the covenants, restrictions, conditions, reservations, liens and charges hereby declared to insure the best use and the most appropriate development and improvement of each building site thereof; to protect the owner of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on building sites; to prevent haphazard and inharmonious improvement of building sites; to secure and maintain proper setbacks from streets, and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvement in said property, and thereby to enhance the values of investments made by purchasers of building sites therein.

PART B. AREA OF APPLICATION

B-1. Fully Protected Residential Area: The residential area covenants in Part C in their entirety shall apply to all lots in the above particularly described tract.

PART C. RESIDENTIAL AREA COVENANTS.

C-1. No structure shall be erected, altered, placed or permitted to remain on any building site other than one detached single family dwelling not to exceed 3-1/2 stories or 30 feet in height, a private garage for not more than 7 cars, servants' quarters and other houses and buildings purely incidental and accessory to the use of the premises for single family residential purposes.

C-2. No building, wall, fence or other structure shall be erected, placed, or altered on any premises in said tract until the builder, contractor and sub-contractors have been approved in writing and until the building plans, specifications, and plot plan showing the location of such building have been approved in writing as to conformity and harmony of external design, material, color, height, width, length, location and quality of construction, in relation to existing structures in the tract, and as to location of the building with respect to topography and finished ground elevation, by an architectural committee composed of Marjorie Allen, Joan S. Jenkins, Floyd M. Carter, Charles G. Sawyer, Marian B. Sullivan, or by a representative designated by a majority of the members of said committee. In the event of death or resignation of any member of said committee, the remaining member, or members, shall have full authority to approve or disapprove such design and location, or to designate a representative with like authority. In the event said committee, or its designated representatives, fails to approve or disapprove such design and location within 30 days after said plans and specifications have been submitted to it, in any event, if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this Covenant will be deemed to have been fully complied with.

The architectural committee shall maintain an approved list of building contractors who may be used for building improvements and construction. In the event that Grantee desires to use a building contractor whose name does not appear on the approved list, the committee shall consider the said contractor and approve or disapprove his use. Such decision shall be based on the evidence of reliability, financial stability, and examples of prior work accomplished by said building contractor.

C-3. No building site of less than 20,000 square feet shall be allowed or subdivided, unless approved by the Monterey County Planning Commission.

C-4. No building shall be located on any building site less than 90 feet from the center line of State Highway No. 1, less than 30 feet from the front lot line nor less than 20 feet from any side street line. No building shall be located less than 15 feet from any side lot line or 10 feet from any building on the same site, unless a variance has been approved by the architectural committee as set up in section C-2.

Grantee agrees that improvements in the nature of dwellings and appurtenances shall be made only by contractors whose names appear on an approved list of building contractors, maintained and established by the said architectural committee as set up in Section C-2. In the event that grantee desires to use a building contractor other than one appearing on the approved list, he agrees to submit the name of the said contractor to the said architectural committee for its approval and that said approval shall be a condition precedent to his use of said building contractor.

C-5. Each building site upon which a single family dwelling unit, guest house, servants' quarters or other such buildings are erected, shall be provided with a service yard so constructed as to prevent laundry or garbage containers to be seen from any public highway and with sanitary sewage disposal by a septic tank, and appurtenant facilities of adequate size and of a type approved by the Monterey County Health Department. Installation of such shall be to the approval of said Health Department.

C-6. No trailer, tent, shack, or temporary building of any kind shall be erected or placed on any building site, except that temporary construction sheds incidental to the construction of a building or dwelling on any building site may be permitted, if not used for human habitation, and only for the period during which such building or dwelling is under construction.

C-7. No commercial business, trade or activity of any kind shall be carried on on any building site, unless approved by the architectural committee as set up in Section C-2., and the Monterey County Planning Commission, or Monterey County ordinance.

C-8. No sign of any kind or name plate shall be erected, placed or located on any building site or in any roadway area, unless such sign or name plate has been approved as to size, type and location by the architectural committee as set up in Section C-2.

C-9. No animals or poultry of any kind, other than house pets, shall be kept on any building site.

C-10. No main residential structure shall be permitted on any building site, the ~~minimum~~ habitable ground floor area, exclusive of basements, porches and garages, is less than 1000 square feet, unless approved by the architectural committee as set up in Section C-2.

C-11. No trees, plants, shrubs or other natural growth shall be cut down, removed, trimmed, pruned, or otherwise disturbed without approval is first obtained from the architectural committee as set up in Section C-2.

8-11 1865 and 584

C-12. No fence, wall or mass planting shall be permitted to extend beyond the minimum building setback line established herein, except upon approval by the architectural committee as set up in Section C-2.

C-13. No fence, wall, hedge, planting or trees shall be erected or grown to exceed six feet (6') in height, unless approved by the architectural committee as provided in Section C-2, and any such fence, wall, hedge, planting or trees which may impair the view from any building site may be removed, trimmed, topped or lowered in height by the party whose view is impaired, providing approval is first obtained from the architectural committee as set up in Section C-2.

C-14. Oil drilling, oil development operations, refining, mining operations of any kind or quarrying shall not be permitted upon or in any of the building sites in the tract described herein, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any of the building sites.

All property, including yards, planting areas, service areas, or other areas within the described property, shall be maintained in a neat and attractive manner. No structures, plantings or other materials not normally incident to or a part of a residence shall be maintained without approval first having been obtained from the architectural committee as set up in Section C-2.

C-15. For the use of tract residents, owners of building sites, and their guests, there is reserved the right to use Yankee Point Beach and Bay as a playground and there is reserved the right to establish and use a footpath or footpaths to the ocean, along creeks, and along rights of way when, where and as designated by the architectural committee as set up in Section C-2.

C-16. For the use of tract residents, and owners of building sites, there is reserved the right to draw water from and return water to the ocean through pipe lines laid along property lines approved for such purposes by the architectural committee as set up in Section C-2.

C-17. In addition to the easements shown on the Map, there are reserved in each building site easements for utility installation and maintenance five feet in width along each property line; and such additional easements may be used, provided approval is obtained from the architectural committee as set up in Section C-2.

There is hereby reserved, granted and dedicated to the County of Monterey the right to maintain and extend drainage structures, cuts and fills alongside of and outside of the right-of-way of all streets, ways, places and drives heretofore or hereafter dedicated by Charles G. Sawyer for public use to the County of Monterey. There is reserved the right for the architectural committee as set up in Section C-2 to dedicate a non access easement 1 foot wide along any future boundary of State Highway No. 1, subject to the conditions that it shall not be open for public use until such time as it is opened by formal order of the Board of Supervisors of Monterey County, California.

C-18. The premises hereby conveyed shall not be occupied, leased, rented, conveyed or otherwise alienated, nor shall the title or possession thereof pass to another without the written consent of the Grantor, except that the Grantor shall not withhold such consent if and after a written consent is given to permit such occupation, leasing, renting, conveyance or alienation by a majority of the owners of the fifteen (15) building sites most immediately adjacent to the said premises, and which adjoin or face said premises for a distance of five (5) building sites from the respective side lines of said premises, and also the five (5) building sites which are most immediately adjacent thereto and across any street upon which said premises front; except transfer of title by way of devise or inheritance, in which case the devisees or heirs shall take such property subject to the restrictions herein imposed and except that said property may be

STATE OF CALIFORNIA  
County of Monterey  
On this 28<sup>th</sup> day of April in the year one thousand nine hundred and fifty-eight  
before me, \_\_\_\_\_ a Notary Public in and for the County of \_\_\_\_\_  
State of California, residing therein, duly commissioned and sworn, personally appeared  
Charles G. Sawyer and Marian S. Sawyer  
known to me to be the President and Vice President  
of the corporation described in and that executed the within instrument, and also known to me to be  
the person S who executed the within instrument on behalf of the corporation therein named, and  
acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the  
County of Monterey the day and year in this certificate  
first above written. Charles A. Duke  
Notary Public in and for the County of Monterey State of California.  
My Commission Expires 3-22-60

Form No. 28 (Acknowledgment—Corporation)  
Date 1196-1196.1) 1196.1)

County of Monterey  
On this 28<sup>th</sup> day of April in the year one thousand nine hundred and fifty-eight  
before me, \_\_\_\_\_ a Notary Public in and for the County of \_\_\_\_\_  
State of California, residing therein, personally appeared Charles G. Sawyer  
and Marian S. Sawyer  
known to me to be the person whose name is subscribed to the within instrument  
and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal  
the day and year in this  
first above written. Charles A. Duke  
Notary Public in and for the County of Monterey State of California.  
My Commission Expires 3-22-60

Form No. 32 (Acknowledgment—General)  
Date 1196-1196.1) 1196.1)

**Exhibit J: David Hart testament to existence of Yankee Beach Way gate in 1965.**

**Carmel Highlands, Monterey County  
Harbaugh Coastal Permit Application No. 3-18-0650**

I, David Hart, declare:

My wife, Susan, and I (S H Hart Trust), bought our property at 152 Carmel Rivera Drive in the Carmel Highlands in 1965.

Our house was built in 2007 and we have lived there since. While we did not live in the Highlands from 1967 to 2007, we visited the Highlands and the private Yankee Point Beach frequently whenever we were in the area.

We have always paid our dues to Mal Paso Community Property Association (MPCPA) and had a beach key whenever we lived.

Our access to Yankee Point Beach has always been via a locked gate on Yankee Beach Way since we acquired our property on 7 April 1965. Keys were provided by MPCPA (whenever we paid our dues). Private access to the beach was a condition of our deed. See attached document, paragraph C-15. We are not aware of any period of open or public access to the Yankee Point Beach in the intervening 54 years.

I declare under penalty of perjury under the laws of the State of California that the facts contained in this declaration are true and correct.

Executed on June 11, 2019 at Carmel Highlands, Carmel, California

*David A. Hart*  
David Hart

## Document 3

## **Moroney, Ryan@Coastal**

---

**From:** Kemp, Christine <CKemp@nheh.com>  
**Sent:** Tuesday, June 11, 2019 6:23 PM  
**To:** CentralCoast@Coastal  
**Cc:** jerskine@nossaman.com; Darla Harbaugh (darlunee@aol.com); Warren, Louise@Coastal; Ainsworth, John@Coastal; Moroney, Ryan@Coastal  
**Subject:** June 2019 Agenda - Item Thu 16a -Harbaugh Application No. 3-18-0650

Declaration from David Hart submitted with regard to the above referenced application.

*Christine*

Christine G. Kemp

**NOLAND, HAMERLY, ETIENNE & HOSS**

A Professional Corporation

333 Salinas Street

P.O. Box 2510

Salinas, CA 93901

(831) 424-1414 ext. 271

(831) 424-1975 (fax)

[ckemp@nheh.com](mailto:ckemp@nheh.com)

[www.nheh.com](http://www.nheh.com)

***Serving the Central Coast Since 1928***

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## Document 4



California Coastal Commissioners

We are writing to address both the issue of Ms. Harbaugh's permit and the issue of the private pedestrian easement to the beach below.

**Re: Harbaugh permit:**

We fully supported Ms. Harbaugh's Application No. 3-18-0650 for a Coastal Development Permit as stated in the original staff report, which was heard before the Commission on April 10<sup>th</sup>.

We were pleased to see the original staff report recommending approval and acknowledging that the pedestrian easement/beach access issue could not be addressed through this permit application because there was no nexus. This was clearly stated by staff in their report and in their presentation to the Commission on April 10.

In recommending approval, and leaving the access issue to another day, Staff was according to Ms. Harbaugh the same consideration and the same treatment as the Commission accorded to the applications of her immediate neighbors Kaplan (1999 consent calendar) and Venkatesh (2015 permit waiver).

However, instead of following staff's original recommendations, Commissioners offered Ms. Harbaugh the Commission's version of Hobson's Choice, an OTD.

With her permit approval on the line, Ms. Harbaugh agreed to an OTD predicated on two specific preceding events, (1- that it is established under law that there is a public prescriptive right to use the private trail easement owned by Carmel Highlands Association, and 2-that all six other trail segments are obtained first, within the requisite 21 year period).

Shockingly, this agreement was then re-interpreted and transformed from one thing into something completely different - then memorialized into the new proposed revised findings before you today.

This is a serious mis-representation of what transpired in the hearing. It is a betrayal of Ms. Harbaugh's willingness to accept a condition Staff knew the Coastal Commission could not legally require.

We urge you to undo your latest findings, and accord Ms. Harbaugh the same consideration as her neighbors were given, or at the very least, accept her OTD as intended.

**Re the pedestrian access issue:**

As you know, the pedestrian easement was created in 1921 as a private easement, well before the Coastal Act. It has always been private. During the 2003 review of the Monterey county LCP, Monterey County reaffirmed to the Coastal Commission that there was no history of public access on this private easement. In addition, the County did not believe the private easement was appropriate for public access.

If the Coastal Commission intends to revisit this issue, we hope it will be through a legal finding of a prescriptive public access. If the Commission intends to attack this issue one permit at a time, we ask that it provide public notice to all the owners of the easement: that it intends to make public the historically private easement granted for the benefit of all the Carmel Highlands residents.

We are one family of approximately 800 residents in the Highlands and have lived here almost 40 years. We own and operate a small visitor-serving business there. We are in our second year of caretaking 2 miles of Highway One through Cal Trans' Adopt-a-Highway program. We serve and meet a lot of Highlands residents on a regular basis. Had it been made clear that the private easement/pedestrian access issue was to be debated in conjunction with this permit application, you would have had a full house at your April 10 hearing.

Thank you for your consideration,

Dan & Dasha Keig  
200 Crest Rd.  
Carmel, Ca 93923  
[dankeig@aol.com](mailto:dankeig@aol.com)  
June 11, 2019

## Document 5

Th16A

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

From: Adams, Mary L. [mailto:AdamsML@co.monterey.ca.us]  
Sent: Wednesday, June 12, 2019 4:34 PM  
To: cgroom@smcgov.org  
Cc: Dan Carl; john.ainsworth@coastal.ca.gov  
Subject: CCC 6/13/19 Agenda Item Th16a

Dear Commissioners and CCC staff:

>

> It has just been brought to my attention that a new condition of approval has been added to your revised findings on Application # 3-18-0650 (Harbough Redevelopment). While I do not have any concerns with the Commission's decision on this project from your April meeting, I am concerned that the changes to the findings and conditions that are being proposed for your approval tomorrow are significantly different than what was presented at the April meeting. I have heard from several constituents that the applicant and neighborhood are not being given adequate time and opportunity to respond to these changes related to public access. I respectfully request that you continue this matter to your July hearing to allow sufficient time for the applicant to further confer with staff and respond to the proposed changes. In addition, the CCC's meeting that month will be closer and allow more access to local residents.

>

> Thank you.

Mary L. Adams, Supervisor  
District 5  
Monterey County

## Document 6

## **Moroney, Ryan@Coastal**

---

**From:** Kemp, Christine <CKemp@nheh.com>  
**Sent:** Wednesday, June 12, 2019 8:19 PM  
**To:** Moroney, Ryan@Coastal  
**Cc:** Craig, Susan@Coastal; Ng, Michael@Coastal; Warren, Louise@Coastal; jerskine@nossaman.com; Darla Harbaugh (darlunee@aol.com)  
**Subject:** RE: Harbaugh - 3-18-0650 - June 13 hearing- ItemTh16a

Ryan –

What is the reference to applicant and staff discussing these issues “in multiple meetings”? We had one conference call after you sent us the proposed OTD and you chose to ignore our (co-counsel John Erskine and my) core complaint, that since, Chair Bochco had clearly stated that public use would have to be established “by law”, confirming that the public had a right to access the clearly private easement, AND that all trail segments over all other 6 properties were obtained first, both of these conditions were a precedent to any dedication that would have to occur.

You stated to us during that one conference call, something to the effect of “why would we need that first precondition, if Ms. Harbaugh was willing to provide an offer to dedicate her portion of the easement?”

My response was “because the easement is owned by the Association, and she doesn’t control the private easement”. This is not like the situation where a property owner controls all aspects of a piece of real estate.

The staff has also ignored the Commissioner’s pressure put on Ms. Harbaugh under the threat of having her permit denied, used to get Ms. Kemp and Ms. Harbaugh to accept even a two condition precedent OTD. Commissioner Brownsey was informed by staff, that there was no nexus between the remodel and an OTD. But then, a vague, unsubstantiated “enforcement” action got introduced and even though staff stated that Ms. Harbaugh had nothing to do with the unsubstantiated “violation”, Commissioner Brownsey and Peskin indicated that Ms. Harbaugh’s application should be denied.

It’s beyond any question, that staff stated in the hearing that there was absolutely no code violation or unpermitted development associated with 172 Spindrift.

*Christine*

Christine G. Kemp

**NOLAND, HAMERLY, ETIENNE & HOSS**

A Professional Corporation

333 Salinas Street

P.O. Box 2510

Salinas, CA 93901

(831) 424-1414 ext. 271

(831) 424-1975 (fax)

[ckemp@nheh.com](mailto:ckemp@nheh.com)

[www.nheh.com](http://www.nheh.com)

***Serving the Central Coast Since 1928***

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---

**From:** Moroney, Ryan@Coastal [<mailto:Ryan.Moroney@coastal.ca.gov>]

**Sent:** Wednesday, June 12, 2019 9:30 AM

**To:** Kemp, Christine

**Cc:** Craig, Susan@Coastal; Ng, Michael@Coastal; Warren, Louise@Coastal; [jerskine@nossaman.com](mailto:jerskine@nossaman.com); Darla Harbaugh ([darlunee@aol.com](mailto:darlunee@aol.com))

**Subject:** RE: Harbaugh - 3-18-0650 - June 13 hearing- ItemTh16a

Dear Ms. Kemp:

Please see attached addendum to the revised findings staff report, which is also being uploaded to the website. Thank you,

Ryan Moroney  
Central Coast District Supervisor  
California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, CA 95060-4508  
<http://www.coastal.ca.gov/>  
[ryan.moroney@coastal.ca.gov](mailto:ryan.moroney@coastal.ca.gov)  
(831) 427-4863 general



---

**From:** Kemp, Christine [<mailto:CKemp@nheh.com>]

**Sent:** Friday, June 07, 2019 4:22 PM

**To:** Moroney, Ryan@Coastal

**Cc:** Ainsworth, John@Coastal; [jack.ainsworth@coastal.ca.gov](mailto:jack.ainsworth@coastal.ca.gov); Craig, Susan@Coastal; Ng, Michael@Coastal; Warren, Louise@Coastal; [jerskine@nossaman.com](mailto:jerskine@nossaman.com); Darla Harbaugh ([darlunee@aol.com](mailto:darlunee@aol.com))

**Subject:** Harbaugh - 3-18-0650 - June 13 hearing- ItemTh16a

Dear Mr. Moroney:-

Attached are two letters submitted on behalf of Applicant, Darla Harbaugh, (Application 3-18-0650) regarding Staff's proposed OTD and Revised Findings scheduled to be heard by the Commission on June 13, Item Th16a.

Hard copies of both letters were hand delivered to your Santa Cruz office this afternoon.

Sincerely,

*Christine*

Christine G. Kemp

NOLAND, HAMERLY, ETIENNE & HOSS

A Professional Corporation

333 Salinas Street

P.O. Box 2510

Salinas, CA 93901

(831) 424-1414 ext. 271  
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## Document 7

GEORGE DEUKMEJIAN  
(Previously Duke-may-jin)  
ATTORNEY GENERAL

STATE OF CALIFORNIA



OFFICE OF THE ATTORNEY GENERAL

Department of Justice

3580 WILSHIRE BLVD  
LOS ANGELES, CALIFORNIA 90010  
(213) 736-2304

May 21, 1979

RECEIVED AT COMMISSION  
MEETING

APR 14 1983

FROM: Bill Reordan

Mr. W. K. Reordan  
President  
Carmel Highlands Association, Inc.  
Route 1, Box 73  
Carmel, California 93921

Re: Yankee Point Beach Implied Dedication  
Investigation

Dear Mr. Reordan:

This letter is written in response to your inquiries concerning the investigation conducted by this office for the California Coastal Commission insofar as such study concerned Yankee Point Beach.

Although Yankee Point Beach was not one of the areas which was selected for investigation, some of the questionnaires which were circulated in connection with Malpaso Beach also commented on use of Yankee Point Beach. Since data was received, an initial study of the Yankee Point Beach area was made to determine whether an in-depth investigation should be conducted.

The initial study included:

1. An examination of the historical files of the Monterey Peninsula Herald for references of public use of the beach.
2. Review of title data concerning the area.
3. Inspection of the access-ways to the beach and adjacent areas.

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Mr. W. K. Reordan

-2-

4. Evaluation of questionnaires completed by persons having knowledge of the area.
5. Interviews of persons familiar with the beach.
6. Comments from one local homeowners association.

Based upon this initial study, it is concluded that no in-depth investigation is necessary since the public use of the area has not been of such a nature to give rise to any public prescriptive rights at Yankee Point Beach. The reasons supporting this conclusion are summarized below.

Yankee Point Beach is a very small beach located in an isolated cove accessible only by descending adjacent cliffs or by water. The beach is not visible from any road, and accessways do not give any physical indication of terminating at a beach. The beach is located 1,000 to 2,000 feet from Highway 1. No historical references to public use of the beach have been found in the local newspaper. There has been no governmental maintenance of the beach. The earliest deed reserving an accessway to the beach seeks to restrict beach use to local property owners, tenants and guests. Admittedly, there has been some public use of the area. In the majority of instances reported, these persons, at least initially, were guests of local residents. Other reports of public use do not appear to be of such a substantial nature to give rise to public prescriptive rights.

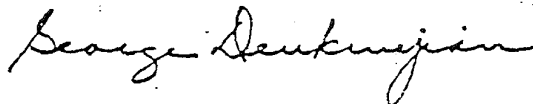
The two existing accessways to the beach have been closed to the public by locked gates since 1965 and 1974, respectively.

Since 1962, the area above the beach has been subdivided and fully developed. There are no public parking lots, parks, restaurants or businesses in the area which would attract members of the public.

The foregoing conclusion is being concurrently transmitted to the California Coastal Commission, together with a supporting report. This investigation concerning Yankee Point Beach is now concluded.

It is my hope that this satisfactorily answers any questions you may have with regard to this matter.

Most cordially,



GEORGE DEUKMEJIAN  
Attorney General

GD:pf

cc: Senator Robert P. Nimmo  
Mr. Edward Y. Brown

000272

## Document 8



RECEIVED

YANKEE POINT BEACH: PRELIMINARY INVESTIGATION NOV 23 1979

CENTRAL COAST COMM.  
REGION III

I

### INTRODUCTION

This report summarizes the data received with respect to the potential public prescriptive rights at Yankee Point Beach. This data was received in conjunction with the implied dedication investigation which was conducted with respect to Malpas Creek Beach, which is located near Yankee Point Beach.

The implied dedication investigation in the Malpas Beach area was conducted pursuant to an interagency contract between the Attorney General's Office and the California Coastal Commission (Contract No. R7-77-20). The areas to be studied, pursuant to that contract, were chosen by staff members of the State and Regional Coastal Commission in conjunction with the Attorney General's Office. They were chosen on the basis of need and in light of the area's potential for future development. The areas chosen were MacAbee Beach and Malpas Beach. Linda Locklin was retained as an independent consultant to conduct the investigations and prepare reports summarizing the results of those investigations (Contract No. 78-201). These reports have been drafted and will be finalized in the near future.

Yankee Point Beach was not one of the areas which was initially selected to be investigated, however, some of the affidavits which were submitted with respect to Malpas Beach also commented on use of Yankee Point Beach, which is located one-half mile north of Malpas Beach. Since data was received, an initial study of the Yankee Point Beach area was made to determine whether an in-depth investigation should be conducted.

The initial study included:

1. An examination of the historical files of the Monterey Peninsula Herald for references of public use of the beach.
2. Review of title data concerning the area.
3. Inspection of the accessways to the beach and adjacent areas.
4. Evaluation of questionnaires completed by persons having knowledge of the area.

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5. Interviews of persons familiar with the beach.
6. Comments from one local homeowners association.

Based upon this initial study, it is concluded that no in-depth investigation is necessary since the public use of the area has not been of such a nature to give rise to public prescriptive rights at Yankee Point Beach. The reasons supporting this conclusion are summarized below.

Yankee Point Beach is a very small beach located in an isolated cove accessible only by descending adjacent cliffs or by water. The beach is not visible from any road, and accessways do not give any physical indication of terminating at a beach. The beach is located 1,000 to 2,000 feet from Highway 1. No historical references to public use of the beach have been found in the local newspaper. There has been no governmental maintenance of the beach. The earliest deed reserving an accessway to the beach seeks to restrict beach use to local property owners, tenants and guests. Admittedly, there has been some public use of the area. In the majority of instances reported, these persons, at least initially, were guests of local residents. Other reports of public use do not appear to be of such a nature to give rise to public prescriptive rights.

The two existing accessways to the beach have been closed to the public by locked gates since 1965 and 1974, respectively.

Since 1962, the area above the beach has been subdivided and fully developed. There are no public parking lots, parks, restaurants or businesses in the area which would attract members of the public.

Several residents of the Carmel Highlands were very concerned at the fact that such a study was being conducted. They became even more concerned when it was discovered that data were also being received with respect to Yankee Beach and that they would be summarized in the report. Several individuals wrote the Attorney General's Office in this regard. These individuals received responses from Attorney General Evelle Younger. Copies of these letters and Attorney General Younger's responses are attached hereto as Appendix B. In addition, Senator Nimmo wrote directly to Attorney General Deukmejian regarding the study. On January 24, 1979, Attorney General Deukmejian requested that this office discontinue its involvement in the investigation and to furnish him with a full report by January 31, 1979. A copy of Senator Nimmo's letter, Attorney General Deukmejian's memorandum and the responsive report, without attachments, are attached hereto as Appendix C.

While the office review of this matter was being made, attempts to set up meetings with various property owner groups

to receive their input and to hear their concerns with respect to Yankee Beach were held in abeyance. The Malpas Creek Property Owners Association, which had been contacted, ultimately supplied some data with respect to the study. (See Appendix D.) Members of other organizations wrote this office directly concerning a proposed meeting between this office and Mr. Kew. These individuals expressed their concern over the fact that contact had been made with Mr. Kew, and not their own group(s). However, because the matter was under review, no responses were prepared with respect to these letters. (See Appendix E.) After review of this matter was completed, it was decided that a preliminary investigation of Yankee Beach should be completed and input from the property owners be received. The Carmel Highlands Association of homeowners was contacted and an opportunity to provide input provided. (See Appendix F.)

## II.

### SUMMARY OF DATA

#### 1. Property Description

Yankee Beach is located at Yankee Point, approximately eight miles south of the City of Monterey. (See Exhibits A and B.) Linda Locklin and members of this office made visits to the Yankee Point--Malpas Creek area to examine the property and to look for specific evidence of public use (i.e., trails, fences, signs, etc.). The entrance to the accessways to Yankee Point Beach and the surrounding areas were examined. Information on the beach was derived from user reports, and photographs, although no physical inspection of the beach was made.

Yankee Beach is not visible from Spindrift Road, Yankee Beach Way, or Highway 1. It has been described as a small beach bound by fractured granite rocky cliffs.

The Carmel-Big Sur area is characterized by an intermittently rocky shoreline, which is rich in tidepools and intertidal light forms. The thick offshore kelp beds comprise prime sea otter and fishery habitat areas. This area is under the jurisdiction of California Sea Otter State Fish and Game Refuge. The purpose of this Refuge is to provide a safe habitat for sea otter to live in; the only restriction that is imposed in this 300-mile square area is that no one may carry a loaded firearm. Individual property owners that live within the Refuge are excluded from this restriction.

The main access route to the Carmel-Big Sur area is via Highway 1 which runs north and south along the coast and is located from 1,000 feet to 2,000 feet from the shoreline. The area immediately surrounding Yankee Beach is comprised of

residential lots. Specifically, Yankee Beach is bound by two parcels, both of which are developed with single-family residence.

Prior to 1962, the beach area was basically open as the surrounding area had not been subdivided. Currently, access is gained to Yankee Beach via two trails. (See Exhibit C.) These routes begin on Yankee Beach Way and Spindrift Road; both of these trails are presently fenced and locked. The Spindrift Road accessway was closed in 1962 and locked in 1965. It is not readily visible from the road. Yankee Beach Way was closed and locked in June 1974. It is visible from the road but is presently designed to blend in with the surrounding fences. (See Exhibit D.) Only residents of the Carmel Highlands are issued keys to these accessways. The residents can obtain these keys from the Carmel Highlands Fire Department.

## 2. Title Data

An investigation of the title to these properties was conducted using the facilities of Title Insurance and Trust Co. in Salinas, California.

Yankee Point Beach is bound by two parcels. Mr. McGee owns the northern parcel and Ms. Doris Wright owns the southern parcel. (See Exhibit C.) Three rights of way or easements were discovered, leading to Yankee Point Beach. They include the following:

(a) Flavin Accessway. In 1921, when the Carmel Villas Company conveyed a certain tract of parcel to Martin A. Flavin, it was subject to the following:

"This grant of the above-described property subject to the right of the Carmel Villas Company, a corporation, to allow property owners of the Carmel Highlands, and their tenants, and their personal guests, to pass over and upon said real property, but said right of the Carmel Villas Company to allow said person's access to said property is strictly limited to said person mentioned and may not be extended to any others, and the burden shall rest on said Carmel Villas Company to at all times enforce said restrictions as to the persons who may be allowed to pass over and upon said property, and the failure of said Carmel Villas Company so to do shall ipso facto terminate forever the right of said Carmel Villas Company to allow said person's access to said property, and upon such termination of said Carmel Villas Company, and all other persons, shall have no further right to pass over or upon said property, or any part thereof, or any access whatsoever thereto."

The parcel to which this accessway was reserved in an S-shaped parcel which goes from Spindrif Road to the beach. There is no evidence that this accessway was ever developed, and it is unknown whether it presently exists. The deed reflecting this right of way and a map depicting the corridor or S-shaped parcel which this right of way relates to is indicated as the Flavin Parcel are attached hereto as Exhibit E.

(b) Yankee Beach Way Access. Charles Sawyer was the subdivider of the area around the Yankee Beach Way. He subdivided the area in 1949. In 1954, he conveyed the parcels over which the Yankee Beach Way access now goes over to a Lawrence R. Patterson and Charlotte P. Patterson, husband and wife. No accessway was reserved. In 1959, the Pattersons conveyed the property back to Charles Sawyer. On the same day, Mr. Sawyer reconveyed the property to the Pattersons. However, this time he reserved the following:

"Reserving to Charles G. Sawyer and Marianne Sawyer, his wife, and their heirs and assigns, a right of way for a roadway, public utilities, and foot path purposes over the northerly 10 feet of the property hereinabove described, and (b) a right of way for foot path purposes over a strip of land 5 feet in width lying westerly in southwesterly of a described line."

On the same day, February 2, 1959, the Pattersons conveyed the property to Doris Marianne Wright, the present owner.

In 1975, one year after he was allowed to construct the gate over the accessway, Charles Sawyer conveyed to accessway to three local property owners associations.

A copy of the deeds evidencing in the above-referenced transactions and a map depicting the accessway which is referred to as the Yankee Beach Way Accessway are attached hereto as Exhibit F.

(c) Spindrif Accessway. The following three reservations were contained in a deed dated October 23, 1926, from the Carmel Development Company to Martin A. Flavin:

"Reserving however, from the first above described tract of land, a strip of land 12.50 feet in width along and adjoining the T-Survey Line for road purposes.

"Reserving also to the Carmel Development Company, a corporation, the said party of the first part, its former grantees, its successors or assigns, of lands in the Carmel Highlands Property, being Lots 5, 6 and 7 as per

Assessors Map of Rancho San Jose Y Sur Chiquito, Monterey County, California; the right to use for recreational and bathing purposes only, that part of the Ocean Beach conveyed in the above deed,

"Reserving also, a right of way five feet in width, for pedestrians only over and across the above described property, from the easterly boundary of the above described property to the shoreline of the Pacific Ocean."

In addition, in 1958 and in 1960, two surveys were recorded which indicated this five foot pedestrian right of way over the properties.

The deeds, recorded surveys which evidence the above transactions, and a map depicting the Spindrift Road accessway are attached hereto as Exhibit G.

### 3. Questionnaires.

The questionnaires received with respect to Yankee Beach were initially distributed with respect to the investigation being conducted in Malpaso Creek area. A sample of the type of questionnaire used in that investigation is attached hereto as Exhibit H. The map used with respect to that questionnaire also showed the location of Yankee Beach. This map was used in order that the person filling out the questionnaire could more adequately pinpoint exactly where Malpaso Beach was located. (There are several small beaches up and down the coast and they are called by several names.) However, apparently because Yankee Beach was indicated on the map, several of the individuals filling out questionnaires also indicated that they were using Yankee Beach. The following is a brief summary of their statements.

Witness A - On the map attached to the affidavit, she indicates that she has used Yankee Beach from 1967 to the present. She indicates that she obtained a key to Yankee Beach and that there were signs indicating that the area was private. She is a resident of the area.

Witness B - On the map attached to the questionnaire, she states with respect to Yankee Beach that it has been her impression that this was always a private beach and that it was inaccessible from the shore.

Witness C - On the map attached to the questionnaire, he made a mark indicating that he used Yankee Beach but did not make statements in this regard.



Witness D - In his questionnaire, he made the following comment: "How about getting access to Yankee Cove too -- used often late 60's-early 70's until gate put across access path." On the map attached to the questionnaire, he indicated the accessway that he used which is the accessway off Yankee Beach Way.

Witness E - She indicated that from 1964 to 1978, she used Yankee Beach an average of once a week. She indicated that she received permission from Charles Sawyer, the subdivider of the area, to go down to said beaches. She states that there often were residents of the area at Yankee Beach. She states that the area was posted with "Private Property - No Trespassing" signs.

Witness F - He indicates that although he didn't use MacAbee Beach or Malpasos Beach he did use Yankee Point Cove or Yankee Beach. He said he walked to the beach from the public road and that there were between 0 and 30 people there when he got down to the beach. He states that he used the beach for sunbathing and diving. He states that he used the beach as though it was public property. He saw no "No Trespassing" signs, however, he did see a fence with a gate at Yankee Point. On the map, he indicated that he used Yankee Beach in 1967.

Witness G - He indicates that he used Yankee Beach from 1967 to 1978, one to two times per month. He says he used Yankee Beach for sunbathing, bird watching, and that he is a resident of the area and indicates that he walked down on an easement from his home on Spindrift Road.

Witness H - She is a resident of the area and indicated that she has used the private Carmel Highlands Beach marked on the map. On the map she put an "X" on top of the little cove just north of Yankee Beach. It is unclear whether she meant to indicate Yankee Beach.

Witness I - On the map attached to her affidavit, she put an arrow pointing to Yankee Beach probably indicating that she used Yankee Beach. However, she did not respond directly by indicating any use of Yankee Beach.

Witness J - He indicates that he used Yankee Beach as a skin diving and scuba diving area. He gained access from a boat or by crossing the property; he did not specify which property.

Witness K - He is a teacher of scuba diving and indicates that he used the Yankee Beach area extensively for diving. He states that he saw others there many times. He states that he also used the area for hiking. He states that he used the property as though it was public property and that only recently was a fence erected at Yankee Point Beach.

Witness L - He indicates that he used the areas near Yankee Beach. However, he indicates that access was via boat.

Witness M - On the map attached to his affidavit, he indicated that he used the Yankee Beach area for scuba diving in 1977.

Witness N - In her affidavit regarding Malpaso Beach, she states that she also used Yankee Point Beach although accessway was very difficult due to signs and interference from residents.

Witness O - He indicates that he used the area but he had to borrow a key from a Carmel Highlands resident. He indicates that he saw 4 to 10 other people using the area.

Witness P - On the map attached to the questionnaire, she indicates that she used Yankee Point Beach area.

Copies of the above questionnaires which mentioned Yankee Beach are attached hereto as Appendix A.

#### 4. Input From Property Owners

The property owners in this area include all of the residents of the Carmel Highlands area. Each of these residents has access to the key to the beach which they must obtain from the Fire Department. The residents in the area generally feel that Yankee Beach is their private beach.

The Malpasco Property Owners Association was the only organization to collect data with respect to the use of Yankee Beach and to submit it for the purpose of this investigation. Mr. Kew, the president of this association, drafted and distributed a questionnaire. The results of Mr. Kew's investigation as summarized by Mr. Kew are attached hereto as Appendix D. Generally, according to Mr. Kew, the answers to his questionnaires tend to show there is no sufficient public use of the area to establish prescriptive rights. Mr. Kew did not submit copies of the questionnaires to this office, only his summary. Copies of the questionnaires have been requested.

The other property owners associations in the area were invited to submit data with respect to the use of the area. These property owners associations decline to do so. However, the letters written by members of these associations generally provide the tenor of their position in this regard. Basically, they agree with Mr. Kew's conclusion that there is insufficient use of the area to establish prescriptive rights. Copies of these letters are attached hereto in Appendices B and G.

The above statements of the property owners in the area should be compared with the statements made by the property owners in 1974 when they were seeking permission from the Coastal Commission to build the gate across Yankee Point Drive accessway. Copies of those letters are attached hereto as Appendix H. The general tenor of those letters is that there had been increasing public use of the access path from Yankee Point Drive. This was why the Carmel Highlands residents and Charles Sawyer wanted to build the gate. (The current investigation does not appear to support the contentions of extensive public use reported by the property owners, although there may have been an increase in use due to urbanization of the general Monterey area. Subsequent information from property owners contradicts statements in those letters.) At the time Mr. Sawyer was apparently the owner of the access easement. As stated above, he subsequently conveyed it to the property owners associations.

The Attorney General's Office had advised the Regional Coastal Commission that the building of the fence is a development

within the terms of the Proposition 20 and that the construction of this fence is not exempt from the permit requirements under the Public Resources Code. However, because a permit probably would have been granted for the building of the fence, the Regional Coastal Commission chose not to pursue the question of the fence and gate being constructed. However, Mr. Sawyer was notified that he may eventually be required to remove that fence pursuant to a Local Coastal Plan. (See Appendix H.)

#### 5. Governmental Involvement

No evidence of maintenance of the area by governmental agencies has been revealed.

As stated above, the Yankee Beach area is a part of the Sea Otter Reserve and therefore is within the jurisdiction of the Department of Fish and Game. However, the Department of Fish and Game has no direct concern with public access in this area.

The keys to the accessways have been dispensed to residents by the Fire Department. Applications for the keys, which indicate that you are a resident of the area, must be obtained at the Fire Department.

#### 6. Oral Interviews

Pursuant to this preliminary investigation, several individuals who are familiar with Yankee Point Beach were contacted. Summaries of their statements are as follows:

Witness Q - He indicates that he used to live in the Carmel Highlands and that he still has relatives who live in the area. He indicated that he visited Yankee Beach frequently. He states that the beach is not visible from the surrounding road and that it is relatively not accessible. He describes the beach as being a small beach. He states that when he saw other individuals on the beach, they appeared to be local residents.

Witness R - She states that she used the Yankee Beach area frequently in the early 1960's. She states that she came to Yankee Beach from her residence in Salinas. She states that she knows the residents of the Carmel Highland area and that they would use the beach together. She states that she doesn't remember any gate or fences. She states that if there were gates or fences, she would have disregarded them and climbed over them to get to the beach.

Witness S - He states that he used the beach several

times in the early 1960's. He had relatives who owned a house in the area. He indicates that his relatives showed him the beach and used the beach with them. He states that there may have been a gate at the access to the beach but does not think that it was locked. He describes the beach as being relatively small. He states that often there are other individuals on the beach but he felt that because of the beach's location they were probably other residents of the area. He states that he used the beach for picnicking and other recreational activities. He states that he saw no evidence of governmental maintenance of the beach.

#### 7. News Reports and Photos

An investigation was made to determine if there were newspaper reports or any old photos of the area indicating public use. This investigation was made by examining the files of the Monterey Peninsula Herald newspaper. However, no such articles or photos were found concerning Yankee Point Beach.

### III

#### CONCLUSION

As stated above, this study is a result of the preliminary investigation of Yankee Point Beach in order to determine whether the evidence is sufficient to warrant an in-depth implied dedication study. In light of the evidence summarized above, it is the conclusion of this report that no such investigation is warranted inasmuch as public use of the area was not of such a nature to give rise to public prescriptive rights.

A review of the evidence received to date reveals that Yankee Point Beach has been used by members of the public as well as local residents. Several individuals have indicated they have used the beach as though it were public for: sunbathing, picnicking and skindiving. In addition, the local residents have complained about the influx of "trespassers" on their beach at the time of locking the accessway from Yankee Beach Way in 1974.

For the public to obtain an easement by way of implied dedication, it must be shown that it has been used by members of the public for the prescriptive five year period without permission or interference from the property owners. It must be shown that the land was used as though it was public and the use must be substantial rather than minimal. In light of the evidence received to date, it appears that it would not be possible to establish all of these elements with respect to Yankee Point Beach.

The existence of these prerequisite elements for public prescriptive rights at Yankee Point Beach have not been found to exist. First, access is restricted. The local residents have restricted access to the beach. Gates have been constructed in front of each accessway. Consequently, public use, to be effective to establish a public easement, would have to have occurred prior to the construction of these gates. In addition, several restrictions contained in the title reflect an intent on the part of the property owners to limit use of the beach to local residents. Finally, Yankee Point Beach is located in a remote area. Yankee Point Beach is not visible from the surrounding roads. Consequently, it is doubtful that it received much use by those who did not have direct knowledge of its existence. Most of the reported use of the area is by local residents and their guests, it does not appear that the reported general public use was of such a nature to give rise to public prescriptive rights.

Although some of the information received concerning public use is contradictory, based upon an overall evaluation of this matter no in-depth investigation is warranted for the reasons discussed above.

## Document 9

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ELECTRONICALLY FILED BY  
Superior Court of California,  
County of Monterey  
On 10/21/2020  
By Deputy: Conder, Perla

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21 Attorneys for Respondents  
22 CALIFORNIA COASTAL COMMISSION; and  
23 JOHN AINSWORTH, Executive Director of the  
24 California Coastal Commission

24 SUPERIOR COURT OF THE STATE OF CALIFORNIA

25 FOR THE COUNTY OF MONTEREY

26 DARLA HARBAUGH,  
27 Petitioner,  
28 vs.

Case No: 19CV002295  
Hon. Thomas W. Wills, Dept. 15



CALIFORNIA COASTAL COMMISSION, A  
STATE AGENCY; JOHN AINSWORTH,  
EXECUTIVE DIRECTOR OF THE  
CALIFORNIA COASTAL COMMISSION;  
AND DOES 1-25,

Respondents.

**[CORRECTED] JOINT STIPULATION  
TO ENTRY OF REMAND ORDER;  
[PROPOSED] ORDER REMANDING  
THE CASE**

Date Action Filed: June 7, 2019

1 **STIPULATION FOR REMAND**

2 Petitioner Darla Harbaugh (“Petitioner” or “Ms. Harbaugh”) and Respondents the  
3 California Coastal Commission and its Executive Director John Ainsworth (collectively,  
4 “Respondent” or “Commission”) through their respective attorneys of record hereby stipulate  
5 and agree as follows:

6 1. The Court may enter an order remanding this matter to the Commission for a  
7 hearing to reconsider the terms of Special Condition No. 12 and any revised findings in support  
8 thereof (“Remand Hearing”) as imposed on Ms. Harbaugh’s Coastal Development Permit (CDP  
9 No. 3-18-0650) to remodel her residence in the Carmel Highlands area of unincorporated  
10 Monterey County, CA;

11 2. To stay, subject to the approval of the Court, this action against the Commission  
12 pending the Remand Hearing.

13 3. No later than the Commission’s December 9-11, 2020 meeting, the Commission  
14 will hold a public Remand Hearing for the sole purposes of reconsidering the terms of Special  
15 Condition No. 12 imposed on Ms. Harbaugh’s application to remodel her home, adopting  
16 associated findings, and considering the restarting of the permit expiration date;

17 4. The Commission reserves full discretion to accept, amend or reject the revised  
18 Special Condition No. 12, as set forth in Exhibit A to the Settlement Agreement between the  
19 Parties, associated revised findings, and resetting the CDP’s two year term;

20 5. In agreeing to this stipulation, none of the Parties concedes that the arguments or  
21 positions of the other Party are valid or meritorious.

22 [Signatures on following page]

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Dated: October 20, 2020

NOSSAMAN LLP  
JOHN P. ERSKINE  
JOHN J. FLYNN III  
STEPHANIE N. CLARK

By: /s/ Stephanie N. Clark  
Stephanie N. Clark

Attorneys for Petitioner DARLA HARBAUGH

Dated: October 20, 2020

ATTORNEY GENERAL FOR THE STATE OF  
CALIFORNIA  
XAVIER BECERRA  
ASSISTANT ATTORNEY GENERAL  
SHARI POSNER

By: /s/ Shari Posner  
Shari Posner

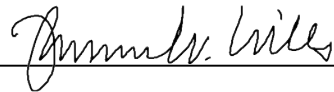
Attorneys for Respondents CALIFORNIA  
COASTAL COMMISSION and JOHN  
AINSWORTH

1 **PROPOSED ORDER**

2 The Court, having considered the stipulation of the Parties and good cause appearing  
3 therefor, orders that the Commission's conditional approval of Ms. Harbaugh's Coastal  
4 Development Permit to remodel her home at 172 Spindrift Road, CDP No. 3-18-0650, is hereby  
5 remanded to the Commission and that this action, Monterey County Superior Court Case No.  
6 19CV002295, be stayed until further notice to the Court. The Commission will hold a public  
7 hearing for the sole purposes of considering the inclusion of a revised Special Condition No. 12,  
8 in the form set forth in Attachment A to the Settlement Agreement, as a condition on Ms.  
9 Harbaugh's Coastal Development Permit application for the remodeling of her home and  
10 adjusting the CDP expiration date. The Commission reserves full discretion as allowed by law  
11 to accept, amend or reject the revised Special Condition No. 12, associated revised findings and  
12 resetting the CDP's two year term. The parties will be responsible for their own attorneys' fees  
13 and costs incurred in this case. The writ hearing date of January 11, 2021 is vacated.

14 IT IS SO ORDERED.

15  
16 Date: October 21, 2020



17 Hon. Thomas W. Wills  
18 Judge of the Superior Court  
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# EXHIBIT A

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Petitioner DARLA HARBAUGH (“Ms. Harbaugh”) and Respondents THE CALIFORNIA COASTAL COMMISSION AND JOHN AINSWORTH, EXECUTIVE DIRECTOR OF THE CALIFORNIA COASTAL COMMISSION, (collectively “the Commission”) in the case of *Harbaugh v. California Coastal Commission, et al.*, Monterey County Superior Court Case No. 19CV002295. At times, the individual parties to the Agreement are referred to herein as “Party,” or collectively as “Parties.”

### RECITALS

A. Ms. Harbaugh filed Monterey County Superior Court Case No. 19CV002295 (“the Action”) against the Commission on June 10, 2019, and amended the Action on July 11, 2019. The Action, in the current form of a First Amended Verified Petition for Writ of Mandate and Complaint for Declaratory Relief (the “Petition”), seeks review of (a) the Commission’s April 10, 2019 decision to impose a particular condition (“Special Condition No. 12”) on its granting of Ms. Harbaugh’s coastal development permit (“CDP”) to remodel and redevelop her property and home at 172 Spindrift Drive (the “Project”) in the unincorporated Carmel Highlands portion of Monterey County, and (b) the Commission’s June 13, 2019 decision to approve revised findings for its earlier action and specific language for Special Condition No. 12. Specifically, the Action seeks judicial review of the Commission’s imposition of Special Condition No. 12, which requires Ms. Harbaugh to offer to dedicate a public access easement across a portion of her property, over which runs a portion of an existing private easement.

B. Ms. Harbaugh continues to stand by her allegations in her Petition in the Action, and the Commission continues to stand by its disagreement with each and all of Ms. Harbaugh’s allegations in her Petition.

C. Ms. Harbaugh and the Commission recognize that continuing the litigation will result in significant costs to each party, with an uncertain outcome for each party. As a result, in an effort to settle the litigation, on September 25, 2020, Ms. Harbaugh and Executive Director John Ainsworth executed a document entitled “MEMORANDUM OF UNDERSTANDING REGARDING SETTLEMENT TERMS” (“MOU”) setting forth the terms in which the Parties agreed to cooperate in good faith to pursue a settlement of the Action.

### AGREEMENT

In consideration of the mutual promises and covenants made in this agreement, the Parties agree as follows:

1. Incorporation of Recitals. The above Recitals are incorporated herein by reference.

2. Settlement Terms.

2.1 The Settlement Agreement shall be effective on the date when all the parties have signed it.

2.2 The Parties agree to stipulate in a filing with the Court: (i) to a remand to the Coastal Commission for the Commission to conduct a public hearing for the sole purpose of considering modifying the terms of Special Condition No. 12 as set forth in Attachment A to this Settlement Agreement and adopting associated Commission Findings (“Remand Hearing”); and (ii) to stay Ms. Harbaugh’s pending legal Action against the Commission pending the Remand Hearing.

2.3 Commission staff agrees to schedule the Remand Hearing as soon as practicable after the court issues an order remanding the matter, and in no event later than the Commission’s December 2020 meeting scheduled for December 9-11, 2020.

2.4 Commission staff agrees to recommend that the Commission adopt the revised Special Condition No. 12 as set forth in Attachment A and related Findings that reflect revised Special Condition 12. Notwithstanding the limited nature of the remand, as described in section 2.2, Staff further agrees to recommend that all standard conditions will apply anew, including that the permit will expire two years from the date of the Commission action at the Remand Hearing, unless extended per Commission regulations.

2.5 If the Commission approves the revised version of Special Condition No. 12 as set forth in Attachment A to this Settlement Agreement and adopts associated Commission Findings on remand, the Parties agree to work in good faith to prepare any further documentation and materials needed to issue Ms. Harbaugh’s Coastal Development Permit. For example, the Commission will prepare the Offer to Dedicate language, which shall be consistent with and incorporate the terms of the revised Special Condition No. 12 as set forth in Attachment A to this Settlement Agreement, and to process and review as promptly as possible any documents submitted by Ms. Harbaugh necessary to obtain her Coastal Development Permit. Likewise, Ms. Harbaugh will provide documents in a diligent manner, such as the necessary survey and preliminary title report, as promptly as possible upon request.

3. Dismissal of the Action. If on remand the Commission acts to adopt the revised Special Condition No. 12, as set forth in Section 2.4 above, and otherwise does not alter the remainder of the conditions in the previously Adopted Revised Findings over Petitioner’s objection at the Remand Hearing, Petitioner will dismiss Monterey County Superior Court Case No. 19CV002295, in its entirety, with prejudice, through the filing of the necessary Request for Dismissal forms within 90 days of the Commission’s final approval of the revised Condition No. 12 and associated Findings.

4. Commission’s Discretion. The Commission retains full discretion as allowed by law to accept, amend, or reject the revised Special Condition No. 12, the related revised findings, and resetting the CDP’s two year term, after full public hearing.

5. Release. The Parties agree that if the Commission acts to adopt the revised Special Condition No. 12 as set forth in Section 2.4 above and otherwise does not alter the remainder of the conditions in the previously Adopted Revised Findings, but for revising the expiration date on the CDP as set forth above, the Commission and its agents, officers, and

employees shall be released from all claims that Ms. Harbaugh has raised in the Action with respect to the Commission's Adopted Revised Findings dated June 13, 2019.

6. Fees and Costs. The Parties shall assume and pay for their respective attorneys' fees and legal costs and expenses related to the CDP, this Agreement and the underlying Action.

7. Counsel. The Parties represent that they have consulted or have had the opportunity to consult legal counsel prior to the execution of this Agreement and have executed this Agreement with full knowledge of its meaning and effect.

8. Binding Effect on Successors and Assigns. The Parties agree that the terms, conditions and provisions of this Agreement are binding upon, and shall inure to the benefit of all assigns and successors-in-interest of each of the Parties

9. Entire Agreement. Except as otherwise provided for herein, this Agreement constitutes the entire and only agreement between the parties with reference to the subject matter hereof and supersedes any prior representation agreement, oral or written, with respect thereto. The Parties further agree that no representation, warranty, agreement or covenant has been made with regard to this Agreement, except as expressly recited herein, and that in entering into this Agreement, no party is relying upon any representation, warranty, agreement or covenant not expressly set forth herein.

10. Additional Acts. The Parties agree to perform any acts and execute any documents consistent with the terms and conditions of this Agreement that may be needed, desired or required to effectuate the terms, conditions, and provisions hereof.

11. No Admissions. Each party agrees that the settlement is made in compromise of disputed claims and that by entering into and performing the obligations of this Agreement, no party concedes or admits the truth of any claim or any fact and the execution and performance of this Agreement shall not be construed as an admission by any Party.

12. Governing Law. This Agreement shall be construed, enforced and governed by the laws of the State of California, and shall constitute a binding settlement by the Parties, which may be enforced under the provisions of the California Code of Civil Procedure.

13. Mutual Drafting. The Parties agree that this Agreement shall not be construed in favor of, or against, any party by reason of the extent to which any Party or their counsel participated in the drafting of this Agreement.

14. Amendment. This Agreement can be amended only by a writing, signed by each of the Parties.

15. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same Agreement. Facsimile or PDF signatures will have the same force and effect as original signatures.



16. Authority. The Parties represent and warrant that they have full and complete authority to execute this Agreement and that they have not assigned or transferred (voluntarily, involuntary or by operation of law), to any person or entity, any right, title or interest in any claim released and discharged herein.

Dated:

\_\_\_\_\_  
John Ainsworth, Executive Director,  
California Coastal Commission

Dated:

10/17/2020

\_\_\_\_\_  
Darla Harbaugh, Petitioner

Approved as to form:

Dated:

\_\_\_\_\_  
Shari Posner, Deputy Attorney General  
Attorneys for Respondents the Commission

Dated:

\_\_\_\_\_  
John Flynn, Nossman, L.L.P.  
Attorneys for Petitioner Darla Harbaugh

Dated:

10/17/2020

\_\_\_\_\_  
Christine Kemp, NOLAND, HAMERLY et al.  
Attorneys for Petitioner Darla Harbaugh

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16. Authority. The Parties represent and warrant that they have full and complete authority to execute this Agreement and that they have not assigned or transferred (voluntarily, involuntary or by operation of law), to any person or entity, any right, title or interest in any claim released and discharged herein.

Dated: October 19, 2020



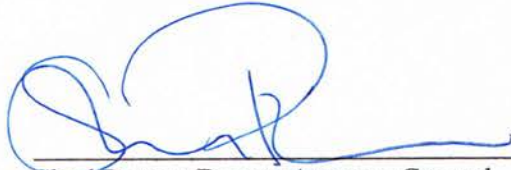
John Ainsworth, Executive Director,  
California Coastal Commission

Dated:

Darla Harbaugh, Petitioner

Approved as to form:

Dated: 10/19/2020



Shari Posner, Deputy Attorney General  
Attorneys for Respondents the Commission

Dated:

John Flynn, Nossman , L.L.P.  
Attorneys for Petitioner Darla Harbaugh

Dated:

Christine Kemp, NOLAND, HAMERLY et al.  
Attorneys for Petitioner Darla Harbaugh

16. Authority. The Parties represent and warrant that they have full and complete authority to execute this Agreement and that they have not assigned or transferred (voluntarily, involuntary or by operation of law), to any person or entity, any right, title or interest in any claim released and discharged herein.

Dated:

\_\_\_\_\_  
John Ainsworth, Executive Director,  
California Coastal Commission

Dated:

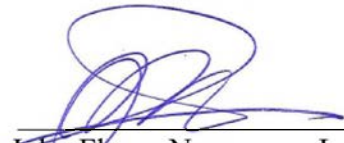
\_\_\_\_\_  
Darla Harbaugh, Petitioner

Approved as to form:

Dated:

\_\_\_\_\_  
Shari Posner, Deputy Attorney General  
Attorneys for Respondents the Commission

Dated: October 19, 2020

  
\_\_\_\_\_  
John Flynn, Nossaman, L.L.P.  
Attorneys for Petitioner Darla Harbaugh

Dated:

\_\_\_\_\_  
Christine Kemp, NOLAND, HAMERLY et al.  
Attorneys for Petitioner Darla Harbaugh

# **ATTACHMENT “A”**

## **Proposed Revised Special Condition 12**

**(a) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** and in order to implement the Permittee's agreement to record an offer to dedicate under the terms and conditions set forth herein, the Permittee shall execute and record a document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private entity (which agency or entity shall assume all liability, other than that specified in Civil Code section 846(d), maintenance, repair, and security for public use of the easement) approved by the Executive Director, a public access easement for public access and recreational uses in perpetuity as set forth herein. Such offer shall be irrevocable for a period of 21 years. The easement shall be coterminous with the existing portion of the beach access easement that is located along the southeastern perimeter of the Permittee's property, as shown in the Record of Survey map, recorded in Monterey County on December 22, 1958, in Volume X-1 of Official Records, Page 231 (the "Easement"). Nothing in this dedication shall require Permittee to remove the existing fence running parallel to the Easement. Any proposed repair and/or replacement of any portion of Permittee's existing fence is not part of this CDP and will therefore be considered independently at the time of the proposal. No development, as defined in Section 30106 of the Coastal Act, shall occur within the Easement area except for grading and construction necessary to maintain public access amenities.

The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the perimeter of the Easement area prepared by a licensed surveyor based on an on-site inspection of the Easement area. Public use of the Easement area shall be limited to one hour before sunrise to one hour after sunset daily. Any restrictions on public use adopted for the trail system or as part of a Local Coastal Program Policy, whichever is more protective of resources and privacy rights, in the future would apply to the segment over the Permittee's property as well.

The Easement area that is the subject of the offer to dedicate shall not be required to be open and available for public access or recreational uses unless and until:

Public access rights from Spindrift Road and Yankee Beach Way to the Easement area are established or confirmed by a final court judgment, with such judgment no longer subject to judicial review. Consistent with the offer to dedicate, Permittee shall not voluntarily, in her individual capacity, interfere with or oppose any efforts to establish or confirm public access rights along the portion of the access trail over Permittee's property. Nothing in this condition, however, shall limit Permittee's rights as a member of the Carmel Highlands Association or in support of the Mal Paso Creek Association or a subsidiary group of landowners of one or both associations, to oppose the above-referenced court action, or to defend any legal or regulatory action in which Permittee, or her successor or assignee, is a named party.

(b) The irrevocable offer to dedicate shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed, except for the easement and access rights held by the Carmel Highlands Association and its members, the Mal Paso Creek Association and its members, and the adjacent property owners over which the trail runs commonly referenced as Assessor Parcel Numbers 241-301-014; 241-301-018; 243-141-017; 241-141-016 and 243-141-005. The document shall provide that the offer of dedication shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property.

(c) The offer to dedicate shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner, and shall be irrevocable for a period of 21 years, such period running from the date of recording, and it shall indicate that once the restrictions on the use of land have become enforceable, they shall remain as enforceable covenants, conditions and restrictions running with the land in perpetuity (unless the parties agree to remove the restrictions). The restrictions set forth in the offer to dedicate shall become enforceable on the date that both of the following have occurred: (1) the acceptance of the offer by an entity approved by the Executive Director in writing, and (2) public access rights have been established as indicated in the final paragraph of subdivision (a). Until such time that public access rights have been established as indicated in the final paragraph of subdivision (a), acceptance of the offer to dedicate by a third party shall not imply that said third party or any other entity has any access rights or any other rights to the Easement area.

(d) If, by December 31, 2060, public access rights have not been established as indicated in the final paragraph of subdivision (a), or if, at any time, there is a final judicial determination that no public rights exist along any portion of the trail, the offer and any acceptance thereof will be extinguished. The recorded offer to dedicate shall provide that: (1) if either of the conditions set forth in the prior sentence occurs, the offer and any acceptance thereof both expire; and (2) if the offer and acceptance expire as set forth in part (1) of this sentence, the party who accepted the offer shall execute and record a release of its acceptance and an acknowledgement that the offer and acceptance have expired within 30 days of December 31, 2060 or within 30 days of a final judicial determination that no public rights exist, whichever is earlier.

1 **PROOF OF SERVICE**

2 The undersigned declares:

3 I am employed in the County of Orange, State of California. I am over the age of 18 and  
4 am not a party to the within action; my business address is c/o Nossaman LLP, 18101 Von  
Karman Avenue, Suite 1800, Irvine, CA 92612.

5 On October 20, 2020, I served the foregoing **[CORRECTED] JOINT STIPULATION**  
6 **FOR REMAND AND [PROPOSED] ORDER** on parties to the within action as follows:

7 ☒ (By U.S. Mail) On the same date, at my said place of business, Copy enclosed in a sealed  
8 envelope, addressed as shown on the attached service list was placed for collection and  
9 mailing following the usual business practice of my said employer. I am readily familiar  
10 with my said employer's business practice for collection and processing of  
correspondence for mailing with the United States Postal Service, and, pursuant to that  
practice, the correspondence would be deposited with the United States Postal Service,  
with postage thereon fully prepaid, on the same date at Irvine, California.

11 ☐ (By Facsimile) I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e),  
12 to the number(s) listed on the attached sheet. Said transmission was reported complete  
13 and without error. A transmission report was properly issued by the transmitting  
14 facsimile machine, which report states the time and date of sending and the telephone  
number of the sending facsimile machine. A copy of that transmission report is attached  
hereto.

15 ☐ (By Overnight Service) I served a true and correct copy by overnight delivery service for  
16 delivery on the next business day. Each copy was enclosed in an envelope or package  
17 designated by the express service carrier; deposited in a facility regularly maintained by  
the express service carrier or delivered to a courier or driver authorized to receive  
documents on its behalf; with delivery fees paid or provided for; addressed as shown on  
the accompanying service list.

18 ☒ (By Electronic Service) By emailing true and correct copies to the persons at the  
19 electronic notification address(es) shown on the accompanying service list. The  
20 document(s) was/were served electronically and the transmission was reported as  
complete and without error.

21 ☒ (By Electronic Service) Pursuant to California Rules of Court, rules 2.251(a)(2) and  
22 2.251(a)(3), by submitting an electronic version of the document(s) to OneLegal, through  
23 the user interface at [www.onelegal.com](http://www.onelegal.com), I caused the document(s) to be sent to the  
person(s) listed on the attached service list.

24 Executed on October 20, 2020.

25 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that  
26 the foregoing is true and correct.

27 /s/ Leanne Boucher  
28 Leanne Boucher

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**SERVICE LIST**

Shari Posner  
Deputy Attorney General  
Land Law Section  
California Department of Justice  
1515 Clay Street, 20th Floor  
Oakland, CA 94612-1413  
Telephone: 510.879.0858  
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*CALIFORNIA COASTAL COMMISSION, a  
state agency; and JOHN AINSWORTH,  
Executive Director of the California Coastal  
Commission*



## **CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877  
WEB: [WWW.COASTAL.CA.GOV](http://WWW.COASTAL.CA.GOV)



# **F12c**

**3-18-0650 (HARBAUGH SFD)  
NOVEMBER 6, 2020 HEARING**

**CORRESPONDENCE**



**VIA E-MAIL AND U.S. MAIL**

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Refer To File #: 503516-0001

May 22, 2019

Ryan Moroney  
Central Coast District Supervisor  
California Coastal Commission  
Central Coast Area Office  
725 Front Street, Suite 300  
Santa Cruz CA 95060-4508

**Re: 172 Spindrift (Harbaugh) OTD Condition**

Dear Ryan:

We have reviewed the attached transcript of the April 10, 2019 hearing on CDP Application No. 3-18-0650 (Harbaugh) for the remodel of 172 Spindrift. We would direct the Commission staff's attention to page 17 (lines 14-25), page 18 (lines 17-25), page 19 (lines 1-15), and page 20 (lines 1-14). The record clearly indicates that Ms. Harbaugh, through her attorney at the hearing, Christine Kemp, agreed to the rather vaguely stated Offer to Dedicate ("OTD") condition, relative to the 5' segment of private trail easement on her property,<sup>1</sup> if such OTD contained two conditions precedent:

1. It is established under law that there is a public prescriptive right to use the private trail easement owned by the Carmel Highlands HOA; and
2. All six other trail segments are obtained first, within the requisite 21-year period.

The entire public access issue was clearly predicated on a yet-to-be-determined legal finding of public use. As Louise Warren stated at the hearing, "The issue with this is, it is all private property..." (transcript page 14). Moreover, both your staff report and Ms. Warren's further response to questions from Chair Bochco clearly state that since there are essentially no impacts to existing, established public access,<sup>2</sup> nor increase in intensity of use of the area, there is no legal basis to extract an access easement from Ms. Harbaugh with this project. Page 3 of the Commission's April 10, 2019 Staff Report states, "...Staff has not identified project impacts that by themselves are adequate to support this requirement (public access)."

The further staff suggestion that an enforcement action looking at an allegedly unpermitted 1974 locked fence/gate on a third entrance to the trail is completely irrelevant as far

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<sup>1</sup> It should be noted that this 5' of private trail easement is outside of her existing wooden fence.

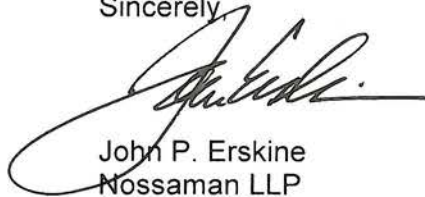
<sup>2</sup> See also Commission findings for approval of the adjacent Kaplan home (CDP 3-99-027), which stated that under Nollan and other established case law, there was "no basis to require any access."

as Ms. Harbaugh's application and CDP approval is concerned. Ms. Harbaugh did not construct the gate, and her existing wooden fence is outside (e.g., does not block) the 5' private trail easement to the beach that is adjacent to her property.

Finally, on behalf of Ms. Harbaugh, we object to the obvious deviation from what Ms. Kemp agreed to at the Commission hearing – a simple, contingent OTD that would terminate in 21 years if the two events described were not accomplished, and therefore also object to section (c) of the draft OTD – the condition should not remain as a recorded CC&R in perpetuity.

Please let us know if you would like to discuss this further, or have any questions.

Sincerely



John P. Erskine  
Nossaman LLP

JPE:dlf  
Attachment

cc: Louise Warren, Esq. [[Louise.Warren@coastal.ca.gov](mailto:Louise.Warren@coastal.ca.gov)]  
Darla Harbaugh [[darlunee@aol.com](mailto:darlunee@aol.com)]  
Christine G. Kemp, Esq. [[ckemp@nheh.com](mailto:ckemp@nheh.com)]

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7                   **AUDIOTAPE TRANSCRIPTION OF PARTIAL**  
8                   **CALIFORNIA COASTAL COMMISSION MEETING**  
9                   **APRIL 10, 2019**  
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14                   TRANSCRIBED BY:     Jenna Osborn, Certified Shorthand  
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1 MS. SUSAN CRAIG: Okay. This brings us to agenda  
2 item 23B, which is the Harbaugh residence in the  
3 Unincorporated Carmel Highlands area of Monterey County. Ryan  
4 Moroney who is a Supervisor in the Central Coast District  
5 office will present this item. And we have a power point  
6 presentation for this item.

7 MR. RYAN MORONEY: Thank you, Susan.

8 Good afternoon, Commissioners. Item 23B is a  
9 proposal to redevelop an existing three-story residence and  
10 attached guest house into a single two-story residence on an  
11 approximately one and a half acre bluff top parcel in the  
12 Carmel/Highlands area of Monterey County

13 Next slide please.

14 The property and existing home sit atop a coastal  
15 bluff overlooking Yankee Point Beach. Although Monterey  
16 County has a certified local coastal program, the project is  
17 located in what's called an area of deferred LCP certification  
18 because of issues related to public access to Yankee Point  
19 Beach, involving several properties, including this one, at  
20 the time of LCP certification in 1981. Therefore, the  
21 Commission retains CDP authority over this site and the  
22 standard of review for this application is the Coastal Act  
23 with the County's LCP providing guidance.

24 Next slide please.

25 Two main coastal resource issues are raised by the

1 proposed project. The first relates to the effects that  
2 coastal hazards may have on the site due to its location atop  
3 a coastal bluff. Because the proposed project includes  
4 substantial redevelopment to over 50 percent of the  
5 structures, major structural components the proposed project  
6 constitutes redevelopment, whereby the entire structure needs  
7 to be cited and designed for safety and stability without the  
8 need for shoreline armory. The Applicant's geotechnical  
9 analysis found no evidence of measurable bluff retreat at the  
10 site over the past 60 years. It estimated it continued a low  
11 potential for erosion at this location, including accounting  
12 for sea level rise, and ultimately concluded that the proposed  
13 home will be set back adequately to avoid coastal hazards over  
14 its lifetime.

15           The Commission's technical staff concur that the site  
16 is basically stable and that the residence is set back  
17 adequately from the bluff edge to satisfy Coastal Act  
18 stability and structural integrity standards. In addition,  
19 special conditions are included that ensure the Applicant  
20 internalizes potential coastal hazards risks, including by  
21 prohibiting future shoreline armory and bluff retention  
22 devices, and by requiring that the structure be removed and  
23 the site restored over time should it become damaged by  
24 coastal hazards in the future. Thus as conditioned, the  
25 project can be found consistent with the Coastal Act's hazards

1 policies.

2 Slide four please.

3 The proposed project also raises an issue of public  
4 access to Yankee Point Beach. Historically the beach area was  
5 used by the general public prior to the surrounding bluff area  
6 being subdivided. However, following the subdivision and  
7 residential development such unhindered general public access  
8 to Yankee Point Beach was blocked off and only residents in  
9 the Carmel Highlands area and their guests are allowed to  
10 access this beach today.

11 Slide five please.

12 Specifically access to Yankee Point Beach is via two  
13 trails that begin on Yankee Beach Way and Spindrift Road, both  
14 of which are public streets, but both of these trails are  
15 presently blocked for general public access by a fence and  
16 locked gate where only Carmel Highland residents are issued  
17 keys and allowed to use this access way via a private easement  
18 arrangement.

19 Although the fences and locked gates at the public  
20 streets are not situated on the Applicant's property, the  
21 trails that extend from the two locked gates converge into a  
22 single trail that ultimately leads across the Applicant's  
23 property to a stairway down to Yankee Point Beach. This lack  
24 of public access from the public streets to Yankee Point Beach  
25 at this location, and the lack of a proposed plan or policies

1 to pursue such public access through the LCP is the reason why  
2 these parcels are currently an area of deferred LCP  
3 certification and are instead subject to the Commission's  
4 direct CDP authority.

5 Although staff has inquired into the possibility, the  
6 Applicant does not propose to alter any of the foregoing  
7 private access components or provisions, including for the  
8 100-foot or so section of that private system that is located  
9 on the Applicant's property. Further, staff is not  
10 recommending that the Applicant be compelled to do so through  
11 conditions, because staff has not identified project impacts  
12 to public access, which by themselves would warrant an  
13 exaction of that nature. And because the Applicant controls  
14 only the beach side portion of the access way where  
15 intervening sections of it are on other properties.

16 Slide six, please.

17 In any case, the Commission's enforcement staff are  
18 now taking a fresh look at potential permitting violations  
19 related to this private beach access arrangement, including  
20 for potentially unpermitted 1974 locked fence on Yankee Beach  
21 Way that blocks the ability of the general public to make  
22 their way to the beach, as well as unpermitted -- what appear  
23 to be unpermitted improvements to the private access staircase  
24 and may pursue enforcement action if justified.

25 Slide seven.



1 In sum, staff has worked very closely with the  
2 Applicant on the project and the Applicant is in agreement  
3 with the recommended special conditions. Again, staff and the  
4 Applicant were unfortunately not able to reach an agreeable  
5 solution relative to the public access issue associated with  
6 Yankee Point Beach, that caused the Commission to defer  
7 certification for this area, but enforcement staff will be  
8 reviewing and pursuing its available options with respect to  
9 that arrangement separately from this permit action.  
10 Therefore, as conditions, staff recommends approval of the  
11 CDP. The motion is found on the top of page 6 of the staff  
12 report. And this concludes staff's recommendation -- or  
13 presentation.

14 CHAIR BOCHCO: Thank you. Any ex partes?

15 Seeing none, I have two speakers here, Tina Hannas  
16 and Christine Kemp.

17 MS. TINA HANNAS: Hi, I'm Tina Hannas, I'm the permit  
18 coordinator and agent for the Applicant, Ms. Darla Harbaugh.  
19 Thank you all so much for being here today. We worked very  
20 closely with coastal staff, Mike Watson and Ryan Moroney over  
21 the past several months in putting together this very detailed  
22 staff report for your review and approval. I'm the person  
23 that put together the drawings, the reports, all the technical  
24 information. So if you have any questions about the  
25 development of the project itself, I'm happy to answer your

1 questions.

2 My associate Christine Kemp is legal on board and she  
3 is here primarily to go over any -- respond to any questions  
4 you might have regarding the coastal easement access trails.

5 Any questions?

6 CHAIR BOCHCO: Go ahead, if you have nothing else to  
7 say, if the questions -- the Commission will ask them to you  
8 when we get back to us. We're not back to us yet.

9 MS. TINA HANNAS: I just want to let you know that I  
10 have read the staff report and the conditions and agree to  
11 them.

12 CHAIR BOCHCO: Thank you.

13 MS. TINA HANNAS: Thank you.

14 CHAIR BOCHCO: Ms. Kemp, do you have anything to say  
15 or --

16 MS. CHRISTINE KEMP: Thank you, Commissioners. My  
17 name is Christine Kemp, I'm an attorney at Noland Hamerly  
18 representing Ms. Harbaugh. We support staff's recommendation  
19 and we ask you to approve the project as presented to you. I  
20 presented two alternatives for some language in the staff  
21 report but I'm withdrawing those after having spoken with  
22 staff and believe that they merely reflect condition number  
23 10, which we are comfortable with condition number 10 with  
24 regard to acknowledging the Coastal Commission recognizes  
25 there's a public access issue. I want to point out that that

1 issue is not related to this property in terms of it being a  
2 much larger issue that involves an association that -- that  
3 monitors that trail -- that has the keys, has the gates and  
4 that there's nothing on Ms. Harbaugh's property that impedes  
5 the access. It's outside of her fence, but it is -- it does  
6 involve a much bigger picture but, as Mr. Moroney pointed out,  
7 there's no basis for exacting anything additional from her as  
8 a part of this permit. So I'm here to answer any questions  
9 for you, clarify anything, but we do request that you follow  
10 staff's report. We have worked very much closely with Ryan  
11 Moroney and gone over all the conditions, we're comfortable  
12 with them, and we would ask that you support staff's  
13 recommendation and we accept the conditions and grant our  
14 approval as recommended.

15 CHAIR BOCHCO: Thank you.

16 MS. CHRISTINE KEMP: We're here to answer questions  
17 as well.

18 CHAIR BOCHCO: Thank you.

19 Okay. Commissioner Brownsey. You can sit down.

20 COMMISSIONER BROWNSEY: Yes, thank you, Madam Chair.

21 I have a couple questions for staff and perhaps also  
22 the enforcement staff with respect to this. I think, from my  
23 perspective, it makes it very difficult to assess a permit  
24 when there is such a clear violation to public access under  
25 Chapter 3, which is my understanding the law that we're

1 looking at in terms of evaluating this permit. Correct?

2 MS. SUSAN CRAIG: Yes, it is Chapter 3 policies.

3 COMMISSIONER BROWNSEY: Yes. And so -- and one of  
4 the elements of the access to Yankee Beach is, in fact, on the  
5 Applicant's property?

6 MS. SUSAN CRAIG: Right. A portion of the trail is  
7 on her property.

8 COMMISSIONER BROWNSEY: And then the stairs that go  
9 down to the beach itself?

10 MS. SUSAN CRAIG: Are those on her property?

11 MR. RYAN MORONEY: A portion of the stairs.

12 COMMISSIONER BROWNSEY: A portion of the stairs.

13 Okay. So and maybe this is to the enforcement staff. My  
14 understanding is that -- that the policy staff indicated that  
15 enforcement is taking a look at this -- at these issues. I  
16 think is there anything that -- what I'm trying to ascertain  
17 is it just seems that the Commission would want to address any  
18 public access violations really before considering a permit  
19 that -- when a permittee comes before us, we're really looking  
20 at conditions that relate to the effectuation of the permit,  
21 the project. It's difficult to evaluate one when there's also  
22 violations that are not going to be addressed as a condition  
23 of permit.

24 Could -- could you respond to that?

25 MS. SUSAN CRAIG: Well, the violation that I think

1 you're referring to is one of the gates that was put up in the  
2 '70s without a permit. However, that is not located on this  
3 Applicant's property. And so I think that's a confounding  
4 factor here. We didn't -- I don't believe we had a violation  
5 finding in this report because the violation of the locked  
6 gate is not on her property, it's on a separate property that  
7 she does not own.

8 COMMISSIONER BROWNSEY: But people can't walk on her  
9 property. So access is blocked --

10 MS. SUSAN CRAIG: Right, from this gate --

11 COMMISSIONER BROWNSEY: On her property.

12 MS. SUSAN CRAIG: -- that was put up on someone  
13 else's property, yes.

14 (Desk sign incorrectly says "Laura Koteen")

15 MS. LISA HAAGE: And I would just add, Madam Chair,  
16 that -- that we would prefer to have violations resolved in  
17 advance of a permit matter. The Commission has indicated its  
18 preference for that historically as well, and for a variety of  
19 reasons that we wholly concur with. We didn't find out about  
20 this violation until relatively late in the process, and  
21 that's also not uncommon. We often don't have, as the Permits  
22 Director said, we didn't have a violation file open, we  
23 weren't aware of it until the permitting process took place.  
24 I think you're raising valid questions about the extent to  
25 which the access violation is related to this property and

1 what control they had over the access, both the constriction  
2 and the unpermitted development, and we are just starting to  
3 look into that. And I apologize that we don't have a more  
4 definitive answer for you today but we share your concern  
5 about having one precede the other but there's just -- we're  
6 playing catch up, and as soon as we can find something more  
7 definitive, we will be back.

8 COMMISSIONER BROWNSEY: So this is troubling to me  
9 because -- and I'll just finish at this point, thank you,  
10 Madam Chair, is that even if you resolve the gate issue, it's  
11 still possible that people could be blocked from crossing this  
12 area if no trespassing signs went up or other things because  
13 it is, in fact, at this point part of a whole. And if it were  
14 resolved, if this last leg of the access to the beach were  
15 resolved, that may put some additional pressure on some of the  
16 other property owners to resolve this violation, perhaps more  
17 quickly, and -- so I'm concerned and I'm -- I'm very -- I'm  
18 leaning towards asking the Commission to deny the permit until  
19 the public access questions are addressed and resolved. And  
20 so I will just put that out there, Madam Chair, in case  
21 there's --

22 CHAIR BOCHCO: Commissioner Peskin.

23 COMMISSIONER PESKIN: Further to what Commissioner  
24 Brownsey was asking, I mean, obviously it is the subdivision  
25 that created the public access issues, and so what I wanted to

1 understand is, is this property part of an HOA, and, if so,  
2 there is, I think, a nexus and a connection. If it is a  
3 standalone property and they don't control the other parts of  
4 the access or the gate, maybe it's a different case. But if  
5 there's an HOA and they are part of that HOA, then I would  
6 tend to lean towards Supervisor Brownsey's -- I mean  
7 Commissioner Brownsey's position.

8 MR. RYAN MORONEY: There is an HOA. It's -- I think  
9 it involves about 200 properties in the Carmel Highlands area.  
10 And the HOA actually holds the easements over each of the six  
11 parcels that are involved, and they manage the access ways and  
12 give out the keys. And presumably they, you know, repair the  
13 stairs or did what looked like to be a stair repair.

14 COMMISSIONER PESKIN: So, I mean, this is not that  
15 different than the case that we had in Santa Cruz with the  
16 keys and the gate and the HOA.

17 MS. LOUISE WARREN: One difference with Santa Cruz  
18 was...public.

19 CHAIR BOCHCO: The easements were on public?

20 MS. LOUISE WARREN: (Inaudible)

21 CHAIR BOCHCO: Oh.

22 MS. LOUISE WARREN: (Inaudible)

23 COMMISSIONER PESKIN: Right. It was a special  
24 district.

25 MS. LOUISE WARREN: (Inaudible)

1           COMMISSIONER PESKIN: And then I guess another  
2 question is as a permit condition would the Applicant be  
3 willing to -- I mean, they -- there is language that they  
4 acknowledge the easement stuff but would they also say that to  
5 the extent that the other portions of the easement are  
6 resolved during the enforcement action or what have you, that  
7 they would not in any way protest that and that their portion  
8 of the easement would not be at issue?

9           MR. RYAN MORONEY: That's -- that's something we did  
10 discuss with the Applicant's representative, essentially  
11 something like an offer to dedicate for the portion that's on  
12 her property and should all six come together at some point in  
13 the future, that would be one way of addressing the issue.  
14 Again, we couldn't -- we didn't feel comfortable recommending  
15 that as a special condition though.

16          CHAIR BOCHCO: Why not?

17          MR. RYAN MORONEY: We didn't feel that there was an  
18 adequate nexus.

19          COMMISSIONER PESKIN: I mean, I'm not sure why you  
20 guys are taking that position through the Chair. I mean, if  
21 it is true, and it seems like you all think it's true because  
22 that's what you just represented that the gate was put up in  
23 1974, then I think the nexus is there. I'm -- I mean, I can  
24 read you the -- you know, the Chapter 3 language --

25          CHAIR BOCHCO: That's probably not necessary. Let's



1 have Louise weigh in on this as a lawyer.

2 MS. LOUISE WARREN: I just want to clarify what we  
3 are concerned about here is...compensation. The issue with  
4 this is it is all private property, while the gate we believe  
5 is a violation. I don't believe that...we have evidence that  
6 this was ever open to the public use, so I don't -- I think we  
7 are hoping to establish that and so I don't -- I think we're  
8 hoping to establish that the public has access, but it is  
9 currently a private easement...it is an easement for the  
10 members of the HOA to use. It is a private easement, not a  
11 public easement.

12 COMMISSIONER PESKIN: Isn't the question whether or  
13 not prior to 1974 the public used it? Isn't that the  
14 question?

15 MS. LOUISE WARREN: I think there is an open  
16 question. I don't think we have evidence to... I will  
17 defer --

18 COMMISSIONER BROWNSEY: Madam Chair.

19 CHAIR BOCHCO: Commissioner -- wait, is Commissioner  
20 Peskin finished?

21 COMMISSIONER PESKIN: I just want to read 30211,  
22 "Development shall not interfere with the public's right of  
23 access of the sea."

24 CHAIR BOCHCO: All right. Commissioner Brownsey.

25 COMMISSIONER BROWNSEY: If I recall from staff

1 report, there was public use of the -- of this beach prior to  
2 the gates going up and prior to the development. So, again,  
3 this was -- this -- if you look at that area, there aren't  
4 that many actual beaches. And so this was a beach that was  
5 utilized by the public until the gates went up.

6 MS. CHRISTINE KEMP: May I address the --

7 CHAIR BOCHCO: No, you may not. Wait till you're  
8 called on please.

9 MS. CHRISTINE KEMP: Okay.

10 COMMISSIONER BROWNSEY: That's what the staff  
11 report --

12 CHAIR BOCHCO: She's asking you whether or not it's  
13 in the staff report.

14 MR. RYAN MORONEY: The question is whether?

15 CHAIR BOCHCO: Whether or not you established in the  
16 staff report that prior to the gates going up in the '70s  
17 there was public access.

18 MR. RYAN MORONEY: That's our understanding, but we  
19 don't have a prescriptive right study or any -- that goes  
20 beyond that general understanding.

21 MR. JACK AINSWORTH: And my understanding is that was  
22 a reference from a finding from the LCP, correct?

23 MR. RYAN MORONEY: Correct.

24 MR. JACK AINSWORTH: That there was evidence of --  
25 there was some evidence of --

1 CHAIR BOCHCO: Well that's fairly --

2 MR. JACK AINSWORTH: So yeah, this is a decision I  
3 think that should be left in your hands and based on the  
4 evidence before you.

5 CHAIR BOCHCO: Thank you.

6 MR. JACK AINSWORTH: And we do have some -- some  
7 evidence.

8 CHAIR BOCHCO: Anybody else? Anyone? Nope. Okay.  
9 Well, I'll just weigh in too. I find it -- first of all, as  
10 Ms. Haage said, in my term on this Commission, the Commission  
11 in the past does want to resolve access issues, any violation  
12 issues prior to giving new permits for new development.  
13 That's what we want. So just kind of keep that in mind for  
14 the future. Because I think, you know, given the difficulty  
15 we have with the number of enforcers and the difficulty in  
16 even finding a lot of these problems, you know, Mr. Fudge  
17 isn't there, sometimes we don't even get notice of it.

18 So what I would suggest is let's really look  
19 carefully at any project that has any violation, even if we  
20 didn't know it ahead of time, we would really like to see it  
21 resolved first.

22 As to this one, what you're telling me is that you  
23 have some evidence of public access prior to the gates going  
24 up. What I'm -- what I'm disturbed about is not that the HOA  
25 put up the gate and it's not on her property, what I'm already

1 concerned about is that they've told you they're not going to  
2 agree ahead of time that if access is established, that they  
3 will grant it. And I think that should be part of the permit.  
4 If it's legally grantable, which will be determined either by  
5 enforcement or whoever, then they should grant it now. And if  
6 it's not, then it's not an issue.

7 So I guess I should ask you a question, Ms. Kemp.  
8 Would that -- would your client agree to that?

9 MS. CHRISTINE KEMP: Let me double check with her but  
10 I believe so.

11 CHAIR BOCHCO: Would you?

12 MS. CHRISTINE KEMP: I also want to address the  
13 public access issue. This easement --

14 CHAIR BOCHCO: No, I don't want that. I asked you a  
15 question. This is not a public hearing. I asked you a  
16 question.

17 So would you ask if it is established, which we are  
18 now saying it hasn't been yet, if it is to be established that  
19 there has been and will be public access under the law and  
20 whether that be by prior use or however it plays out, will  
21 your clients agree in this permit that they will honor that?  
22 That they will -- that they will not fight that; that they've  
23 already agreed that if it's legal and established as part of  
24 their permit, the easement on their little piece of property  
25 there, will have been established by now.

1 MS. CHRISTINE KEMP: And just clarify if you could  
2 please how that becomes established.

3 CHAIR BOCHCO: By law. I mean, you know, we're not  
4 saying that if somebody just makes up their mind and -- we're  
5 saying if the law requires it under the Coastal Act, under the  
6 LCP, under prior use, I mean, you know, you're a lawyer, you  
7 know what I'm talking about. So I'm just saying if it is now  
8 legally established in the future, do we have to fight your  
9 client, or are they willing to say yes, as a condition of this  
10 permit, if that is established in the future we will not fight  
11 access on our easement, which we saw in the picture. It's  
12 there.

13 MS. CHRISTINE KEMP: Yes. Let me just --

14 CHAIR BOCHCO: Would you ask? Thank you.

15 MR. JACK AINSWORTH: Madam Chair.

16 CHAIR BOCHCO: Yes.

17 MR. JACK AINSWORTH: One way to deal with this is  
18 just have the Applicant offer the easement, the ten-foot wide  
19 easement over the -- of the area in question.

20 CHAIR BOCHCO: Yes, if it's established, right? I  
21 mean, I don't -- she shouldn't have to give it away if no one  
22 else is going to give access and are not required to give  
23 access, but if it is, then she's agreeing now that she will  
24 offer to dedicate, I think that's the word.

25 MR. JACK AINSWORTH: It would be her offer to open

1 the easement once that -- all the connections are made, the  
2 easement would be open.

3 CHAIR BOCHCO: Right.

4 MS. CHRISTINE KEMP: She's willing to agree as you  
5 described that she would not fight that if all of the legal  
6 pieces come together and it's established that it was public  
7 access. I think there is a lot of evidence --

8 CHAIR BOCHCO: Well, I'm sorry, because I kind of  
9 misspoke the language of it. Jack is now giving us the  
10 language. So listen to what he's asking for and see if that's  
11 the same.

12 MR. JACK AINSWORTH: Yeah. The cleanest way to deal  
13 with this is for the Applicant to offer a ten-foot wide  
14 easement over that exist -- over that private easement area.

15 CHAIR BOCHCO: If it's established to be a  
16 requirement.

17 MR. JACK AINSWORTH: Right. Well, this would be the  
18 offer -- we believe that there is some evidence of a -- of use  
19 there prior to the putting in of the gates.

20 CHAIR BOCHCO: Right, but we'd have to establish that  
21 and prove that, and that's what I'm saying, I don't think she  
22 needs to do anything except say that she won't fight this, or  
23 however you want to phrase it, once it's established for that  
24 group of people on those easement signs we saw --

25 MR. JACK AINSWORTH: Yeah, once all the connections

1 are made, they, you know, that they would come together.

2 CHAIR BOCHCO: Yeah. Well if she's willing to agree  
3 that you guys can work out the language, but then I think our  
4 problem is resolved.

5 Commissioner Brownsey?

6 COMMISSIONER BROWNSEY: Yes, Madam Chair, just to  
7 incorporate your comments and those of our Chair, which is I  
8 will move that the Commission approve coastal development  
9 permit number 3-18-0650 pursuant to the staff recommendations  
10 and including a ten-foot offer to dedicate of the current  
11 easement of -- to give a ten-foot offer to dedicate easement  
12 to the current easement, once all the connections are made  
13 from the illegal gates to the ocean. And I'm asking for a yes  
14 vote.

15 COMMISSIONER PESKIN: So I just have a procedural  
16 question, which is do we -- I mean, either staff offers that  
17 or I think we actually have to make an amending motion.

18 MS. LOUISE WARREN: I feel like it's a motion -- it's  
19 a motion all is one (Inaudible) consensus for...

20 CHAIR BOCHCO: Well, Ms. Kemp, do you want to weigh  
21 in any further --

22 MS. CHRISTINE KEMP: Well, I think the question is  
23 what's the triggering factor and the establishment of the  
24 public use, and normally that would be a court of law because  
25 it's a prescriptive easement --

1 CHAIR BOCHCO: Well, no, normally it would be the  
2 Coastal Commission, and then if you want to sue about it, you  
3 sue about it. But that's my point. If we prove that this is  
4 a viable public easement through our Commission, through their  
5 research, which they are now going to do very quickly, and  
6 that means the other homeowners are going to be asked for the  
7 same thing, it's not like you're going to be singled out, you  
8 will have already agreed to that and grant the easement  
9 automatically basically. In other words, we don't have to go  
10 through this again, for your client. Not for the other folks.  
11 The other folks we'll deal with them later.

12 MS. CHRISTINE KEMP: Right. And -- the answer to  
13 that is yes.

14 CHAIR BOCHCO: Thank you. Thank you.

15 Okay. So Louise, are you happy with the motion?  
16 Jack, are you happy?

17 MR. JACK AINSWORTH: Yeah.

18 MS. SUSAN CRAIG: I think we're fine.

19 CHAIR BOCHCO: No, you're not happy.

20 MR. JACK AINSWORTH: We are ecstatic.

21 CHAIR BOCHCO: Susan, you're not happy?

22 MS. SUSAN CRAIG: No, we're happy. Yes.

23 CHAIR BOCHCO: You're happy. Oh, good. All right.  
24 Thank you very much.

25 MS. CHRISTINE KEMP: Thank you.



1 CHAIR BOCHCO: So the maker -- Commissioner Uranga,  
2 second it, or you want to speak now, please. Thank you.

3 COMMISSIONER URANGA: No, I second it. I totally  
4 agree with Commissioner Brownsey and her viewpoint with this.  
5 What I saw from the beginning is that this is basically a  
6 gated community when it comes right down to it. And when you  
7 have a gated community such as this, it limits access. And  
8 we're all about access.

9 So I would support the motion as it's put on the  
10 table.

11 Thank you.

12 CHAIR BOCHCO: Thank you.

13 So we can take a vote. So the makers of the motion  
14 are asking for a yes vote on the motion as presented by  
15 Commissioner Brownsey, which has an additional condition.

16 Is there any unwillingness for unanimous yes vote?

17 Seeing none, the motion passes.

18 Okay. Thank you very much. And thank you, Ms. Kemp.

19 (End of audiotape.)  
20  
21  
22  
23  
24  
25

1 STATE OF CALIFORNIA )  
2 ) ss.  
3 COUNTY OF MONTEREY )

4 I, JENNA OSBORN, Certified Shorthand Reporter No.  
5 8681 for the State of California, certify the audio recording  
6 was transcribed to the best of my ability.

7 I further certify that I am not of counsel or  
8 attorney for either or any of the parties to said recording,  
9 nor in any way interested in the outcome of the cause named in  
10 said caption and that I am not related to any party thereto.

11 IN WITNESS WHEREOF, I have hereunto set my hand this

12 \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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20 \_\_\_\_\_  
21 CERTIFIED SHORTHAND REPORTER  
22 FOR THE STATE OF CALIFORNIA  
23  
24  
25

April 4, 2019

Stephen W. Pearson

Anne K. Secker

Randy Meyenberg

Michael Masuda

Christine G. Kemp

Terrence R. O'Connor

Timothy J. Baldwin

\* Charles Des Roches

\* Leslie E. Finnegan

Ana C. Toledo

\* Robert D. Simpson

Lindsey Berg-James

Nicholas W. Smith

Danny J. Little

**FOR DELIVERY TO ALL COASTAL COMMISSIONERS  
THROUGH COASTAL COMMISSION STAFF**

**E-MAIL AND OVERNIGHT DELIVERY to Ryan Moroney, Commission Staff**

California Coastal Commission  
c/o Ryan Moroney  
Santa Cruz District Staff  
725 Front Street, Ste. 300  
Santa Cruz, CA 95060

Re:	Application Number:	3-18-0650
	Applicant:	Darla Harbaugh
	Project Location:	172 Spindrift Road, Carmel Highlands
	Hearing Date:	April 10, 2019

Harry L. Noland  
(1904-1991)

Paul M. Hamerly  
(1920-2000)

Myron E. Etienne, Jr.  
(1924-2016)

Peter T. Hoss  
(1934-2018)

Dear Commissioners:

I am writing on behalf of Darla Harbaugh whose above referenced project is set for hearing before your Commission on April 10<sup>th</sup>. As recommended by staff, we urge your Commission to approve Ms. Harbaugh's project.

We appreciate staff's thorough analysis of her project, and their recommendation for approval. I did, however, want to address comments in the staff report regarding the existing Coastal Access Trail Easement running along the southern boundary of Ms. Harbaugh's property, to clarify why use of the existing Trail Easement is unrelated to Ms. Harbaugh's project.

**1. The Coastal Access Trail Easement Was Established in 1921**

The existing Coastal Access Trail Easement running along Ms. Harbaugh's southern property line was created in 1921 for the benefit of a wide range of properties

in the Carmel Highlands area. Attached, as **Exhibit A**, is a copy of the 1921 Trail Easement deed, along with copies of a 1926 and 1946 deed which also reference the Trail Easement, as well as a copy of the Survey Map recorded in Vol. 1 Page 101 referenced in the early deeds. This Coastal Access Trail Easement was created well before the Coastal Act.

**2. Ms. Harbaugh Does Not Control the Existing Trail Easement**

Ms. Harbaugh does not control the existing 1921 Trail Easement. The Trail Easement, which has been in place for over 95 years, is owned by a multitude of owners in the Carmel Highlands area, and is managed and controlled by the Carmel Highlands Association, a corporation, established in December 1936. The Association has a large and broad membership of approximately 200 homes throughout the Carmel Highlands area who have deeded access rights to the Trail Easement, and whose rights are not controlled by Ms. Harbaugh. The Carmel Highlands Association website <http://www.carmelhighlands.org> describes the history of the Trail Easement, its membership area, and how the Association manages the Trail Easement.

Control, access, and management of the 1921 Trail Easement by the Carmel Highlands Association since 1936, is unrelated to Ms. Harbaugh's project. Nor does the existing Trail Easement involve just six adjacent properties. The Trail Easement involves approximately 200-400 property owners throughout the Carmel Highlands area, as well as their family members and guests, which could mean in excess of 1000 people have rights to access to the Trail Easement at any given time.

**3. Ms. Harbaugh is Not Obstructing, Nor Interfering With, Use of the Existing Trail Easement**

Ms. Harbaugh is not obstructing use of the existing Coastal Access Trail Easement, in any manner. The Trail Easement lies outside Ms. Harbaugh's fence, adjacent to her southernmost property line. A chain link fence runs along both sides of the Coastal Access Trail Easement outside Ms. Harbaugh's fence for about 100 feet, including some steps leading to the beach. Ms. Harbaugh does not have control over the existing Coastal Access Trail Easement, nor has she placed any obstructions on the Trail Easement, either by signage, gates, or fence lines, that would impede use of the Trail Easement, as shown in the photographs attached as **Exhibit B**.

**4. There is No Legal Nexus Between Ms. Harbaugh's Project and Coastal Access, and Hence No Basis to Require Access.**

There is no impact to coastal access, or the existing Trail Easement, arising from Ms. Harbaugh's project, as Ms. Harbaugh's house remodel does not obstruct public access. Therefore, as staff acknowledges, there is no legal nexus or basis to exact public access through Ms. Harbaugh's property as a condition of her project approval.

**In Summary**

There is existing 1921 Coastal Access Trail Easement adjacent to the southern boundary of Ms. Harbaugh's property, outside her fence, which is unaffected by Ms. Harbaugh's project.

Ms. Harbaugh does not control the 98 year old Trail Easement, nor, is she, or has she, taken any actions to impede use of the existing Trail Easement.

The Coastal Access Trail Easement is controlled and managed by an approximately 200 member Incorporated Association whose members and guests throughout the Carmel Highlands area have access rights over the Trail Easement.

We request your Commission approve Ms. Harbaugh's project, as recommended by staff.

We look forward to appearing before your Commission on April 10 to answer any questions you may have.

Sincerely,

NOLAND, HAMERLY, ETIENNE & HOSS  
A Professional Corporation



Christine G. Kemp

CGK:acc

Encls: Exhibits A & B

cc: Ryan Moroney, Coastal Commission Staff

# **EXHIBIT A**

# **1921 DEED**

1921 Deed

W.W.E.  
B.P.  
BY REV.  
STAMPS  
\$1.00  
Cancelled.

✓ CARMEL VILLAS COMPANY  
(Corp'n)

-70-

✕ MARTIN A. FLAVIN

..... organized and existing under the laws of the State of California, the party of the first part, and MARTIN A. FLAVIN, of the County of Santa Clara, State of California, the party of the second part:

WITNESSETH: That the said party of the first part, for and in consideration of the sum of TEN dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents, grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece or parcel of land, situate, lying and being in the County of Monterey, State of California, and bounded and particularly described as follows, to-wit:

All that part of the RANCHO SAN JOSE Y SUR CHIQUEIRO, in the County of Monterey, State of California, described as follows, to wit:

BEGINNING at a point on the Coast (O-line) Survey, distant S. 68° 22' E., 83.83 feet from station O-53; thence S. 66° 22' E., along said O-line, 67.5 feet; thence N. 9° 29' E., 57.5 feet to a point; thence Northeasterly following the arc of a circle (whose radius is 202.75 feet, the center being S. 80° 31' E., 202.75 feet from the last described point) 128.04 feet to a point; thence Northeasterly and Northerly, following the arc of a circle (whose radius is 216 feet, the center being N. 44° 20' W. 216 feet from the last described point) 193.01 feet to a point; thence N. 5° 32' W. 23.4 feet to a point which is 12.5 feet West from a line drawn between Station T-21 and Station T-22; thence N. 22° 32' W., 58.8 feet; thence N. 81° 53' W., 50 feet to a point which is distant 59.35 feet S. 86° W., from Station T-21; thence S. 5° 32' E., 96.23 feet to a point; thence Southerly and Southwesterly along the arc of a circle (whose radius is 150 feet, the center being S. 84° 29' W., 150 feet from the last described point) 134.04 feet; thence Southwesterly, following the arc of a circle (whose radius is 268.75 feet, the center being S. 44° 20' E., 268.75 feet from the last described point) 169.72 feet to a point; thence S. 9° 29' W. 59.03 feet to the point of beginning.

This grant of the above described property is subject to the right of the Carmel Villas Company, a corporation, to allow property owners of the Carmel Highlands, and their tenants, and their personal guests, to pass over and upon said real property, but said right of the Carmel Villas Company to allow said persons access to said property is strictly limited to said persons mentioned, and may not be extended to any others, and the burden shall rest on said Carmel Villas Company to at all times enforce said restrictions as to the persons who may be allowed to pass over and upon said property, and the failure of said Carmel Villas Company so to do shall ipso facto terminate forever the right of said Carmel Villas Company to allow said persons access to said property, and upon such termination said Carmel Villas Company, and all other persons, shall have no further right to pass over or upon said property, or any part thereof, or any access whatsoever thereto.



TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining,

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever.

W.W.H.  
N.P.

IN WITNESS WHEREOF, the said party of the first part, by its Vice-President and Secretary thereunto duly authorized, has caused its name to be hereto subscribed and its corporate seal to be hereto affixed, the day and year first above written, by virtue of a resolution adopted by its Board of Directors duly assembled. (Corporate Seal)

CARMEL VILLAS COMPANY,  
BY Elliott McAllister  
Vice-President.

BY J. F. Devendorf  
Secretary.

STATE OF CALIFORNIA )  
CITY AND COUNTY OF SAN FRANCISCO ( SS.

On this 27th day of August in the year One Thousand Nine Hundred and Twenty-one, before me, W. W. HEALEY, a Notary Public in and for the said City and County, residing therein, duly commissioned and sworn, personally appeared Elliott McAllister and J. F. Devendorf known to me to be the Vice-President and Secretary respectively of Carmel Villas Company the Corporation described in and that executed the within instrument, and also known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and they duly acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal, at my office in said City and County of San Francisco, the day and year in this Certificate first above written. (Notarial Seal)

My Commission expires  
August 28, 1921.

W. W. HEALEY  
Notary Public in and for the said  
City and County of San Francisco,  
State of California.

Recorded at the Request of R. R. SYER, Sept 1st A.D. 1921 at 4 min. past 9 A. M.

ARTHUR FAGET  
at ux

-TO-

FAGET ENGINEERING COMPANY  
(Corp'n)

of the first part, and FAGET ENGINEERING COMPANY, a corporation, the party of the second part, WITNESSETH:

THAT the said parties of the first part, in consideration of the sum of Ten (\$10) Dollars lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain and sell unto the said

THIS INSTRUMENT, made this 27th day of August, 1921, between ARTHUR FAGET and CECILIA FAGET, his wife, of the City and County of San Francisco, State of California, the parties

U.S.  
NOT. REV.  
STAMPS  
\$1.00  
Cancelled

# **1926 DEED**

1926 Deed

## KNOW ALL MEN BY THESE PRESENTS:

✓ THAT the mortgage dated the 25th day of June, 1924 made and executed by A. B. McKEYNOLDS and IDA M. McKEYNOLDS of the County of Monterey, State of California to S. DEDINI of the same county and State which mortgage was, on the 10th day of July 1924 recorded in the office of the County Recorder of the County of Monterey, State of California, in Book 40 of Official Records at page 429, together with the debt thereby secured, is fully paid, satisfied and discharged and the property therein described is hereby released from the lien of said mortgage.

IN WITNESS WHEREOF, I have hereunto set my hand the 22nd day of October 1926.

SIGNED AND DELIVERED IN THE PRESENCE OF S. DEDINI

STATE OF CALIFORNIA, COUNTY OF MONTEREY)SS.

On the 22nd day of October A. D. One Thousand Nine Hundred and twenty-six before me, J. A. WASSON a Notary Public in and for said County of Monterey, in the State of California, and residing in said Monterey County, duly commissioned and qualified, personally appeared S. Dedini Known to me to be the individual described in, whose name is subscribed to and who executed the annexed instrument and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in King City, in said Monterey County, the day and year last above written. (Notarial Seal).

J. A. WASSON  
Notary Public in and for Monterey County,  
State of California.

✓ Recorded at the request of Bank of Italy, Oct. 23rd, 1926 at 8 min. past 9 A.M.  
.....A.R.....29210

1926 Deed

✓ CARGEL DEVELOPMENT COMPANY

-to-

MARTIN A. FLAVIN

..... THIS INDENTURE, Made the Fourteenth day of October in the year of our Lord one thousand nine hundred and Twenty-six, BETWEEN the CARGEL DEVELOPMENT COMPANY, a corporation with its principal place of business at and in the City and County of San Francisco California, the party of the first part, and MARTIN A. FLAVIN of the County of Monterey, State of California the party of the second part;

WITNESSETH: That the said party of the first part for and in consideration of the sum of Ten (\$10.00) Dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and upon the conditions hereinafter expressed does by these presents grant, bargain, sell, convey and confirm unto the said



party of the second part and to his heirs and assigns forever, but subject to the conditions hereinafter expressed, all that certain lot, piece or parcel of land situate, lying and being in the Carmel Highlands Property, County of Monterey, State of California, and bounded and particularly described as follows, to wit:

Beginning at a point on the T-Survey line, distant S. 22° 32' E., 23.00 feet from Station T-21, as said T-Survey Line and said Station T-21 are shown on "Map No. 2 of a part of Carmel Highlands Property, showing survey lines, a part of Rancho San José Y Sur Chiquito, Monterey County, California;" a copy of which map was filed March 18, 1920 in Volume 1 of Surveys page 101 in the office of the Recorder of Monterey County, California; running thence S. 22° 32' E., 132.68 feet to Station T-22; thence S. 59° 06' E., 75.70 feet to station T-23; thence N. 69° 34' E. 94.40 feet; thence leaving said T-Survey Line and running S. 6° 29' E. 344.60 feet to a point on the O-H-Survey Line; thence S. 82° 50' W. 193.6 feet to Station O-H-1 equals C-H-1 as per said map; thence N. 68° 22' W., along the O-Survey Line, 186.18 feet to a Station; thence N. 9° 29' E. 67.30 feet to a point; thence Northeasterly following the arc of a circle, (whose radius is 202.75 feet, the center being S. 80° 31' E. 202.75 feet distant from the last described point), 123.04 feet to a point; thence Northeasterly and Northerly following the arc of a circle (whose radius is 216 feet, the center being N. 44° 20' W. 216 feet distant from the last described point), 193.01 feet to a station, thence N. 5° 32' W., 71.10 feet to the point of beginning.

Also all that piece or parcel of land which lies between the shore line of the Pacific Ocean and that portion of the O-Survey Line which forms the Southwesterly boundary of the above described tract of land.

Reserving however, from the first above described tract of land, a strip of land 12.50 feet in width along and adjoining the T-Survey Line for road purposes.

Reserving also <sup>to</sup> the Carmel Development Company, a corporation the said party of the first part, its former grantees, its successors or assigns, of lands in the Carmel Highlands Property, being Lots 5, 6 and 7 as per Assessor's Map of Rancho San José Y Sur Chiquito Monterey County, California; the right to use for recreational and bathing purposes only, that part of the Ocean Beach conveyed in the above deed.

Reserving, also, a right of way five feet in width, for pedestrians only over and across the above described property, from the easterly boundary of the above described property to the shore line of the Pacific Ocean.



TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF, the said Corporation, party of the first part, by general resolution authorizing the undersigned officer so to do, which resolution is now of record in Book "M" of Miscellaneous Records, Monterey County, California, at page 166 caused its name and seal to be hereunto attached by its officer whose name is hereunto attached, the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

CARMEL DEVELOPMENT COMPANY

(Corporate Seal)

BY J. F. DEVENDORF  
President.

STATE OF CALIFORNIA, }  
COUNTY OF MONTEREY } SS.

On this 22nd day of October in the year one thousand nine hundred and twenty-six before me, R. C. DEYOE a Notary Public in and for the County of Monterey personally appeared J. F. Devendorf known to me to be the President of the Carmel Development Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of Monterey, the day and year in this certificate first above written, (Notarial Seal).

R. C. DEYOE  
Notary Public in and for the County of Monterey,  
State of California.

Recorded at the request of Carmel Development Co, Oct. 25, 1926 at 1 min. past 9 A.M.  
...A.R.,...29236

C.N. THORUP ET ALS

- to -

CHRISTIAN CHRISTENSEN ET UX

his wife, J. A. BARDIN and HILA J. BARDIN his wife, the parties of the first part, and CHRISTIAN CHRISTENSEN and LAURA CHRISTENSEN, husband and wife, the parties of the second part,

WITNESSETH:

That the said parties of the first part, in consideration of the sum of

THIS INSTRUMENT, made this 20th day of October 1926, between C. N. THORUP and CORA L. THORUP

# **1946 DEED**

1946 Deed

NOW, THEREFORE, you are commanded to attach and safely keep all property of such defendant within your County, not exempt from execution, or so much thereof as will be sufficient to satisfy plaintiff demand against such defendant unless such defendant give to you security, by the undertaking of at least two sufficient sureties, which must be approved by a judge or justice of the court issuing this writ, or if said writ of attachment is from another county, then by a judge of justice of a court having jurisdiction in cases involving the amount claimed in the attachment, in the county where the levy shall have been made or is about to be made; or deposit a sum of money with you in an amount sufficient to satisfy such demand against such defendant, besides costs, or in an amount equal to the value of the property of such defendant which has been or is about to be attached, in which case you will take such undertaking or sum of money in lieu of the property which has been or is about to be attached; provided, however, if you levy upon personal property, other than money, belonging to a going concern, then you must, if the defendant consents, place a keeper in charge of said attached property, at plaintiff expense, for at least two days; after the expiration of said two days, you must take said property into your immediate custody unless other disposition has been made by the court or the parties to this action; and hereof make due and legal service and return.

WITNESS my hand and the Seal of the said Justice's Court, this 3rd day of December, 1946.

RAY BAUGH

Justice of the Peace

ATTEST: L. M. WHITE

Clerk

(SEAL)

Recorded at request of JOHN L. MCCOY, Sheriff on December 13, 1946 at 41 min. past 4 P. M. ....#39669.....Fee \$1.10.....Edner

COPYED

U. S.  
N. L. F. V.  
STAMPS

\$82.50  
Cancelled

# GRANT DEED

37729

For value received MARTIN A FLAVIN, a single man, GRANTS to DUDLEY PHELPS SANFORD and MARGARET C. SANFORD, his wife, as JOINT TENANTS, all that certain real property situate in the County of Monterey, State of California, described as follows, to-wit:

All that part of the Rancho San Jose Y Sur Chiquito, described as follows:

BEGINNING at station O-47 on the Coast (O-line) Survey, as per "Map No. 2 of a part of Carmel Highlands Property, showing survey lines, a part of Rancho San Jose y Sur Chiquito, Monterey County, California", said map being recorded in the office of the County Recorder of Monterey County; thence following said Coast

1946 Deed



(O-line) Survey, as per said map, S. 25° 10' W., 597.70 feet to station O-48; S. 53° E., 157.03 feet to Station O-49; S. 0° 30' E., 279.38 feet to Station O-50; S. 35° 51' E., 181.86 feet to Station O-51; N. 3° 28' E., 546.59 feet to Station O-52; N. 66° 03' E., 184.40 feet to Station O-53 and S. 68° 22' E., 151.33 feet; thence leaving said O-line, N. 9° 29' E., 67.3 feet to a point; thence Northeasterly following the arc of a circle (whose radius is 202.75 feet, the center being S. 80° 31' E., 202.75 feet from the last described point), 128.04 feet to a point; thence Northeasterly and Northerly, following the arc of a circle, (whose radius is 216 feet, the center being N. 44° 20' W., 216 feet from the last described point), 193.01 feet to a point; thence N. 5° 32' W., 71.10 feet to a point on the T-Survey line, distant S. 22° 32' E., 23.00 feet from Station T-21, as per said map; thence N. 22° 32' W., 23 feet to Station T-21; thence N. 17° 44' E., 2.0 feet; thence leaving said T-Survey line, and running N. 81° 53' W., 443.3 feet to a point; thence S. 8° 07' W., 12.5 feet to Station O-47, and the point of beginning.

Being a part of Carmel Highlands Property in the Rancho San Jose y Sur Chiquito, Monterey County, California.

ALSO, all land lying between the shore line of the Pacific Ocean, and that part of the (O-line) Survey, from Station O-47 to a point distant 151.33 feet, S. 68° 22' E., from Station O-53.

**SUBJECT TO:**

1. County taxes of the fiscal year 1946-47, including possible personal property taxes, now a lien, not yet due or payable.
2. No guarantee of title to any portion of the property herein described lying outside of the Grant boundary.

**3. Reserving the following portion for road purposes:**

A strip of land 12.5 feet wide lying Southerly from and adjoining the following described line: Beginning at a point on the T-Survey line, distant 2 feet N. 17° 44' E., from Station T-21; thence N. 81° 53' W., 443.3 feet to a point distant 12.5 feet, N. 8° 07' E., from Station O-47.

ALSO a strip of land 12.5 feet wide, lying Westerly from and adjoining a line drawn from Station T-21 to Station T-22 of the T-Survey line, as recited in the Deed from Carmel Villas Company, a corporation, to Martin A. Flavin, dated August 27, 1921 and recorded September 26, 1921 in Volume 185 of Deeds at page 15, Monterey County Records.

WITNESS my hand this 2nd day of November, 1946.

MARTIN A. FLAVIN

STATE OF CALIFORNIA, }  
COUNTY OF MONTEREY } SS.

On November, 2, 1946, before me, C. L. BERRY a Notary Public, in and for said County and State, personally appeared MARTIN A. FLAVIN, a single man, known to me to be the person whose name is subscribed to the within instrument, and acknowledged



to me that he executed the same.

O. L. BERKEY

Notary Public in and for the County  
of Monterey, State of California.

(Notarial Seal)

My commission expires:

10-3-1948

Recorded at request of SALINAS TITLE GUARANTEE COMPANY on December 13, 1946 at 43  
min. past 4 P. M. ....#39670.....Fee \$1.20.....Edner

COPIED  
11/10/48

#### JOINT TENANCY DEED

THIS INDENTURE made the Thirteenth day of December one thousand nine hundred and Forty-six BETWEEN CRESPIN GOMEZ the party of the first part, and BENITO GOMEZ and PRISCILLA GOMEZ, Husband and wife the parties of the second part,

WITNESSETH: That the party of the first part, in consideration of the sum of \_\_\_\_\_ dollars, lawful money of the United States of America, to me in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, and sell unto the said parties of the second part, in joint tenancy and to the survivor of them, and to the heirs and assigns of such survivor forever, all of that certain lot, piece, or parcel of land situate in Vosti Subdivision, Soledad County of Monterey, State of California, and bounded and described as follows, to wit:

A part of Lot 13 as said lot is shown and so designated on that certain map entitled "Vosti Subdivision No. 2", filed for record April 21, 1942 in Volume 4 of Cities and Towns, at Page 64, Monterey County Records, said part being particularly described as follows, to wit:

Beginning at a point in the southeasterly boundary of said Lot 13 from which the southerly corner thereof bears along said boundary S. 38° 31' W., 50.0 feet distant and running thence from said point of beginning along said boundary

- (1) N. 38° 31' E., 40.0 feet; thence leave said boundary and running
- (2) N. 51° 29' W., 130.0 feet to a point in the line common to said lot 13 and Fourth Street, thence along said common line

- (3) S. 38° 31' W., 40.0 feet; thence leave said common line and running
- (4) S. 51° 29' E., 130.0 feet to the place of beginning.

Containing an area of 0.119 acres of land.

Courses all true.

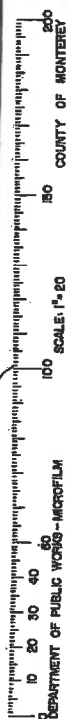
TOGETHER with the tenements, hereditaments, and appurtenances, thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

**MAP**

Recorded at the Request of  
J.F. Devenardy, Mar. 18 in 1920  
at 40 minutes past 3 P.M. in Vol. 1  
of Surveys. Page -- Records of  
Monterey Co. Cal.  
F.A. ASBOTT  
County Recorder  
Jes. D.H.

July & August, 1919 H. B. FISHER, Surveyor.  
Scale 1 in = 200 ft.

Scale 1 in = 200 ft.



BRADING THRESH		D.A.	
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# **EXHIBIT B**

**Trail adjacent to Harbaugh property line**













Gopalakrishnan Venkatesh  
Brenda A. Venkatesh  
173 Spindrift Road  
Carmel, California 93921

December 3, 2018

RMA Planning Department  
c/o Liz Gonzales, Planner  
168 W Alisal Street, 2nd Floor  
Salinas, CA 93901

California Coastal Commission  
c/o Mike Watson  
725 Front Street, Ste. 300  
Santa Cruz, CA 95060

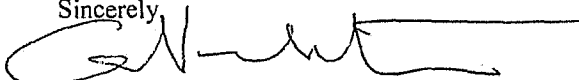
Re: 172 Spindrift, Carmel, CA 93923 (Harbaugh)  
Monterey County Planning Application No.: PLN 140635  
CA Coastal Commission/Central Coast District Application No.: 3-18-0650

Dear Ms. Gonzales and Mr. Watson:

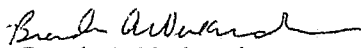
We own the property at 173 Spindrift Road, immediately east of Ms. Harbaugh's property at 172 Spindrift Road. As our property is located just above and adjacent to the Harbaugh property, our property is the property most affected by construction on the Harbaugh property.

We reviewed Ms. Harbaugh's revised plans dated August 1, 2017, and further revised November 14, 2018, for the addition to her home, as well as the revised landscape plan dated August 1, 2017, being submitted to the Monterey County Planning Department under PLN140635. We have no objection to Ms. Harbaugh's updated development plans for 172 Spindrift Road in Carmel, as shown on the architectural plans by Conrad Asturi Studios, Inc. dated November 14, 2018, and Landscape plans by Westfall Design Studio dated August 1, 2017.

Sincerely,



Gopalakrishnan Venkatesh

  
Brenda A. Venkatesh

PLN 14 0635