

Memorandum

CALIFORNIA COASTAL COMMISSION
SOUTH COAST-REGION V
P. O. Box 1450
Long Beach, CA 90801
(213) 590-5071 (714) 846-0648

TO: STATE COMMISSION

FROM: MICHAEL L. FISCHER, EXECUTIVE DIRECTOR

SUBJECT: REQUEST FOR AMENDMENT TO PERMIT NO. P/PE-80-2707 (KENNETH/JEANNETTE CHIATE & ROGER/MARILYN WOLK)

PROCEDURES

In the case of permits issued by the Commission under the Coastal Act of 1976, the Commission regulations (Section 13166) permit applicants to request approval by the Commission of amendments to the project or permit conditions. The Commission may approve an amendment if it finds that the revised development is consistent with the Coastal Act. The staff recommends that the Commission hold a public hearing on the amendment request, and at the close of the public hearing, vote on the request.

1. Project Description. The project approved in the original permit application P-80-2707, and permit extension PE-80-2707 was the subdivision of a 5.3 acre parcel into two parcels of 2.6 acres and 2.7 acres each. The extension request was submitted by the applicant in order to resolve the question of the location of the vertical easement condition which the South Coast Regional Commission had found, after public hearing, would offer mitigation measures (in addition to a lateral access easement condition and no further subdivision until in conformance with the LCP of Los Angeles County) and thus could be found to be in conformance with the provisions of Chapter 3 of the California Coastal Act of 1976.

The vertical access condition was the subject of a great deal of discussion with both the South Coast Regional Commission staff and the State Commission legal staff in an attempt to locate a vertical easement which would be acceptable to all parties concerned. On November 18, 1980 an Irrevocable Offer to Dedicate (#80-1161952) a vertical access was recorded in the official records of Los Angeles County. A portion of that offer reads, in part, that:

"...The easement may be resited subject to issuance of a permit by the Regional Commission or the Commission where there is no Regional Commission. Improvements to the access easement may be required as a condition of the issuance of the permit."

At the time prior to the recordation, the applicant indicated in a letter to the Commission (File P-2707, August 20, 1979) that he owned only the parcel which was the subject of the above-referenced permit, and had no legal interest in an adjacent one-acre parcel. Since that time, the applicant purchased an interest in the adjoining one-acre parcel and recently applied for a permit to build a single-family dwelling on the one-acre parcel. The application for permit SF-80-7554 (Appeal #44-81) was approved and the permit has been issued.

The applicant has also submitted a request to construct a single-family dwelling on the 2.6 acre parcel, application for permit SF-81-7867 which was scheduled for hearing before the South Coast Regional Commission on June 1, 1981. A condition of approval on the requested application was for the applicant to construct the vertical access easement specifically as set forth in the recorded document #80-1161952.

Prior to the June 1, 1981 hearing, the applicant requested that the condition be changed allowing him to construct the vertical access easement in another location (a portion of which would be located on the one-acre parcel adjoining the 2.6 acre parcel). He was advised by staff to request a continuation of permit SF-81-7867 (#5-81-35) until such time as an amendment request could be placed on a calendar before the Commission for the relocation of the vertical access easement (#5-81-44/A/).

2. Proposed Amendment. The applicant states that the relocation of a portion of the vertical access over the one-acre parcel is now feasible since the applicant has a legal interest in the property. The applicant also states that because of the shape of the 2.6 acre parcel, the installation of a drain, and the relocation of the existing roadway, a better pedestrian access location can be provided which essentially provides a 10 foot vertical pedestrian access easement in the same location as initially required by the South Coast Regional Commission insofar as the easement runs from Pacific Coast Highway to the commencement of the one-acre parcel, and then"to run through the one-acre property (approximately 10 to 15 feet to the east of where it is currently located on the recorded offer to dedicate to the ocean end of the one-acre parcel, and then to run through the subject parcel to the beach in essentially the same location as previously dedicated". (See Exhibit 1.)

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the condition below, an amendment to the subject permit on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program in conformity with the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Conditions.

The amendment is subject to the following conditions:

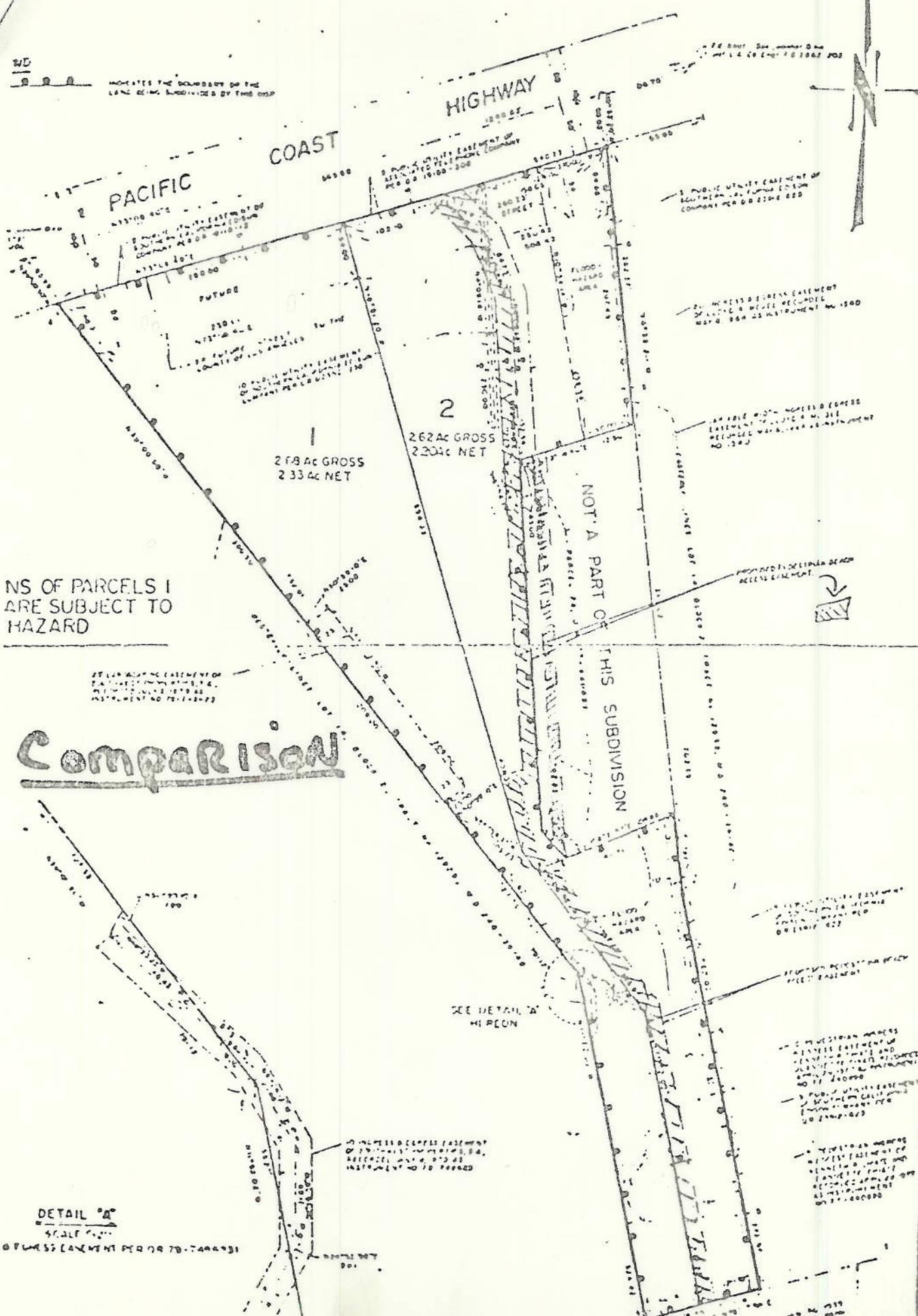
Prior to issuance of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public pedestrian access to the shoreline. Such easement shall be ten (10) feet wide located along the easterly portion of Assessor's Parcel Map #4460-32-14 in a southerly direction, thus following the most westerly portion of Assessor's Parcel Map #4460-32-13 to its most southerly end, and again reentering Assessor's Parcel Map #4460-32-14 following the most easterly portion in a southerly direction and extend from the Pacific Coast Highway to the mean high tide line of the Pacific Ocean. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Prior to issuance of permit, the applicant shall submit documentation which shows all legal interest in the subject parcels (APM #4460-32-13 and APM #4460-32-14), and shall submit a letter signed by all parties having legal interest in subject parcels which approves the recordation ^{and construction} of the vertical access easement on said parcels.

PARCEL MAP NO. 7543
 IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF LOS ANGELES
 STATE OF CALIFORNIA

ND
 INDICATES THE BOUNDARY OF THE
 LOCAL GOVERN. SUBDIVISION BY THIS MAP



NS OF PARCELS 1
 ARE SUBJECT TO
 HAZARD

Comparison

25' WIDE EASEMENT OF
 ELECTRIC CO. OF CALIF. CO.
 INSTRUMENT NO. 196-25

SEE DETAIL 'A'
 HEREON

DETAIL 'A'
 SCALE 1/4" = 100'

← EASEMENT PER OR 78-7444331

EXHIBIT

KENNETH R. CHIATE
707 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017

November 3, 1980

RECEIVED

NOV 5 1980

CALIFORNIA
COASTAL COMMISSION

Ms. Cindy Long
State of California
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105

Re: Permit 2707

Dear Cindy:

Enclosed is a copy of my final map showing the proposed pedestrian beach access easement in red. I have discussed the location of the easement with the Regional Staff and I am waiting final approval. Assuming we reach an agreement in the next day or two I would appreciate your attaching the enclosed parcel map as an exhibit to the offer to dedicate and if there are no other changes that need be made, please send it to me for execution. The Regional Planning Commission has agreed to accept a letter from the Coastal Commission indicating a permit has been issued but will be held in escrow until recordation of the final parcel map. As we agreed, you may retain possession of the permit until I provide proof of recordation showing the easement to be recorded clear of prior encumbrances. This should solve everybody's problem and allow me to submit the matter to Regional Planning Commission within the next week or so to assure final processing in advance of my deadline.

By copy of this letter I am providing an identical copy of the parcel map and indicated proposed beach access to the Regional Staff for their review.

I appreciate your expediting this matter. If you have any questions please let me know.

Very truly yours,



Kenneth R. Chiate

Enclosure

cc: California Coastal Commission
South Coast Region
666 East Ocean Boulevard
Suite 3107
P. O. Box 1450
Long Beach, California 90801
Attention: Mr. George Kalisik

KENNETH R. CHIATE
707 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017

November 6, 1980

Mr. George Kalisik
California Coastal Commission
South Coast Region
666 East Ocean Boulevard
Suite 3107
P. O. Box 1450
Long Beach, California 90801

Re: Application No. 7339 Amendment
Re Application No. 2707

Dear George:

This will confirm that in view of the Staff agreement to locate the easement entirely on the 5.3 acre parcel I hereby withdraw Application No. 7339 Amendment, since it is no longer necessary.

With respect to Application No. 2707 this will confirm my understanding that if, after recording the easement on the 5.3 acre parcel we desire to move it slightly to the east so that it crosses the 1 acre adjoining parcel, we will have to file an appropriate application to the Coastal Commission to accomplish the easement relocation, i.e. any change in the location of the easement after recordation must be by mutual agreement.

I hope this will provide you the confirmation you require and that Cindy can send me the executed documents for recording as soon as possible.

If anything further is required please advise.

Very truly yours,

Kenneth R. Chiata

cc: Ms. Cindy Long
State of California
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105

CALIFORNIA COASTAL COMMISSION

SOUTH COAST REGIONAL COMMISSION

666 E. OCEAN BOULEVARD, SUITE 3107

P.O. BOX 1450

LONG BEACH, CALIFORNIA 90801

(213) 390-5071 (714) 846-0648



August 24, 1979

Kenneth R. Chiate
707 Wilshire Boulevard
Los Angeles, CA 90017

Reference: P-2707

Dear Mr. Chiate:

We have received your letter requesting that your permit for land division be issued without further consideration as to the location of the easement. In order to clarify the intent of the Commission when imposing the vertical access condition on your project, I listened to the tapes of the hearing of March 27, 1979 when your land division was approved. I understand that you also listened to the tape on the day of our meeting to discuss the easement, August 15, 1979.

It is evident that it was clearly the intent of the Commission that the vertical easement is to be located in the area of the existing access easement to the site and from there to connect with that existing trailway which was cleared as part of a repair and maintenance permit. This precise location was discussed and shown in slides at the public hearing. Commissioner Doerfling made the motion to approve the project with several conditions. Commissioner Doerfling's motion regarding the vertical access easement directed the staff to "work out the details, but with the guideline that it be basically down the existing trail."

At no time during the hearing was the ravine at the east property boundary discussed as a potential location for the vertical easement. Ample opportunity was provided at the hearing for you to oppose the vertical location as proposed by staff. For the staff to approve and issue the permit without complying with the direction given us by the Commission is not possible.

As we discussed numerous times by phone and in this office, a ~~compromise~~ may be made in that the portion of the easement which extends over the relatively flat portion of the site, landward of the break in grade that descends to the beach, could be located anywhere within the existing access easement or west thereof. However, as the proposed easement reaches the break in slope, the easement must follow that drainage course located in the western portion of the site (the area which was issued the repair and maintenance letter). This should allow for your concerns in finding suitable sites for future single-family dwelling construction. Discussion with the County Department of Beaches indicate that vehicle access will not be required within the proposed easement.

Kenneth R. Chiate

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August 24, 1979

Without a deed restriction and attachments which reflect this location,
the permit will not be issued.

Sincerely yours,

SOUTH COAST REGIONAL COMMISSION



Cheri Perisho
Staff Planner

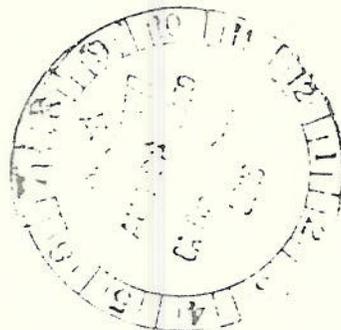
CP:mc



KENNETH R. CHIATE
707 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017

Chiate

August 20, 1979



Mr. Mel Carpenter
South Coast Regional Commission
P. O. Box 1450
Long Beach, California 90801

Re: Permit No. P-2707

Dear Mr. Carpenter:

Because I do not seek to amend the previous application, and request nothing more than that requested in the original application, I am not sure that this letter should be construed as an amendment. Nevertheless, I am told that the Commission will not at this time record the easements which have been sent to me (and already executed) for the reason that something additional is desired. I have requested that the easements be promptly recorded and have attached my personal checks for the recording fees. My requests have been denied for the reason the staff believes the easements initially described by the Commission in the documents which I have executed are not satisfactory to delineate the precise location of the easements.

I do not disagree with the fact the easements which the staff originally prepared and sent to me may not be as specific as desired. What I disagree with is what has now been proposed by the staff with respect to the precise location of the easements.

I was initially asked to execute certain deeds conveying a public easement from Pacific Coast Highway to the beach and across the beach. I have executed them, and I believe I am entitled to the permit at this time without further negotiations and without execution of any additional documents. Nevertheless, in an effort to avoid litigation, I am writing in the hope that you can review the matter and agree to issue the permit with the easement where I propose that it be located.

BRIEF HISTORY

I originally applied for a permit to divide the 5.3 acre parcel into four parcels. This was approved by the Regional Planning Commission but rejected by the Regional Coastal Commission. At that time I volunteered

to provide a vertical easement and submitted photographs (of which I have duplicate copies) showing precisely where the easement was proposed. The easement would be located essentially on the east property line in a relatively level area except for a short stepway from Pacific Coast Highway to the floor of the ravine where the easement was to be located. The photographs which I submitted clearly show a relatively level pathway almost all the way down to the beach. This easement would not interfere with the reasonable use and enjoyment of the existing and adjoining one acre parcel (not owned by me) or the parcels which I proposed to create.

After an unsuccessful appeal, I returned to the Regional Planning Commission and obtained a revised subdivision into two parcels. I then filed a new application to the Coastal Commission seeking a permit for a division of the 5.3 acre parcel into two parcels. The staff recommended against the permit. At the hearing I volunteered to grant the vertical easement which I had previously offered to dedicate (the tape recording of the hearing confirms this) and there was a presentation by the staff at the hearing concerning the possible location of the proposed easement. I had previously discussed with the staff alternative locations of the easement but nothing was firmly decided. It was my understanding the staff desired the easement down the existing trailway leading to the beach. My proposal was that the easement run in the ravine to the east of the existing trailway.

At the hearing there was no decision reached as to the location of the easement, except that I indicated I would attempt to work out something reasonable with the staff with the assumption that nothing unreasonable would be requested.

The tape recording of the hearing indicates that the motion to approve the application was on the condition that a lateral and vertical access be granted not to exceed 10 feet in width, the details to be worked out by the staff, with the guideline that the easement be "basically down the existing trailway to the sandy beach". A review of the transcript clearly reveals this was with reference to the lower portion of the easement only, where there was already an existing "trailway". There was no decision as to where the easement would be located as it extended from Pacific Coast Highway to the "trailway".

FORMAL NOTICE

Subsequent to the hearing I received a formal notice from the Commission indicating that the permit was approved with the following pertinent condition:

"Prior to issuance of the permit, applicant shall submit the following: A deed restriction for recording granting vertical access to give the public the privilege and right to pass and repass over a strip of Dedicators said real property 10 feet in width measured from the north property line and extending from the edge of the public right of way, Pacific Coast Highway, to the mean high tide line of the Pacific Ocean."

CURRENT DISPUTE

Pursuant to the notice and request, I completed the documents prepared by the Coastal Commission and returned them for filing. I was then advised by the staff to attach a parcel map with the easement located thereon. When I attempted to work out the precise location with staff, I quickly realized that staff and I have quite different intentions and objectives with respect to the location of the easement. This is the reason for the current dispute.

I desire to locate the easement to the east of the existing roadway, and preferably in the bottom or close to the bottom of an existing ravine. I believe this is the most suitable location for the easement for the following reasons:

1. A gated stepway can ultimately be constructed to prevent public access at night and other inappropriate times.

2. Except for the initial entrance to the easement from Pacific Coast Highway, which would require construction of perhaps 15 or 20 steps, the access is generally level and follows a scenic and environmentally rich path through the ravine and to the sandy beach.

3. The location of the easement is least likely to invade the privacy of the adjoining one acre parcel or the to-be-created parcels.

4. The amount of vegetation to be removed is minimal and a path following the natural contours of the ravine would eliminate the necessity of any significant tree removal.

I am told that the easement to the east of the roadway is not acceptable to the staff for the reason the Park Department has decided it would be more expensive to build it there because of the necessity of stairs from Pacific Coast Highway and the presence of the storm drain under PCH and the general drainage in the ravine. I am further advised that the area is not accessible as vehicular access. My response to these objections are as follows: First and foremost, it was never envisioned that there would be any vehicular access over the easement; it was assumed it would be used solely for pedestrian ingress and egress. Further, instead of locating the easement in the bottom of the ravine, it can be located slightly on the side so as to be unaffected by any drainage. Moreover, it is unlikely the easement would ever be used during the time the ravine would be carrying drainage, since the beach is seldom used when it is raining. I should add that I do not believe it would cost any significant amount more to construct the easement in the ravine than elsewhere.

The staff has requested that the easement be located down either the west property line or down the center of the property, or down the existing roadway to the one acre parcel. None of these locations are acceptable for the following reasons:

1. It would no doubt be objectionable by the owner of the one acre parcel to share their access easement with the public. Further, if the public easement was the roadway easement, it would not be possible to close off or gate the public access without likewise preventing access to the one acre parcel, which cannot be done.

2. An easement down the center of the newly created parcels would necessarily require that the parcels be sold and developed separately, thus practically requiring two homes rather than possibly one. Once the easement has been dedicated and is down the center of the 5.3 acre parcel, no one would ever purchase it for one home, since the easement would literally run down the middle of the property and possibly

August 20, 1979

through the center of the residence. It therefore makes a great deal more sense to keep the easement off of the useable portion of the 5.3 acre parcel, thus encouraging development of the 5.3 acre parcel as one residence rather than two. This consideration should be significant.

3. Locating the easement on the west property line would not be desirable to the adjoining property owner because it would obviously invade her privacy. Further, there is an extensive line of trees and other vegetation on the west property line, much of it recently planted by the adjoining property owner for additional privacy. To locate the easement there would destroy substantial natural vegetation, as well as recently planted vegetation the sole purpose of which was to provide privacy for the adjoining parcel. Moreover, an easement on the west property line would require a similar and perhaps greater expense to provide access from Pacific Coast Highway to the commencement of the easement, and again at the lower beach end of the access, to provide access to the existing trailway to the beach itself.

I am in favor of encouraging public access to the beach. I think, however, that this should not be at the expense of an existing property owner. To require access where it is desired by the staff would substantially reduce the value of the one acre parcel (which is not mine) and likewise substantially diminish the value of both to-be-created parcels. Wholly apart from the unreasonableness of the staff's request to locate the easement elsewhere than the eastern property line, there remains the fact the staff presumably evaluated the appropriate location of the easement and sent to me the proposed deed restrictions which I have completed and returned for filing. Accordingly, in my opinion, the Commission has little discretion at this point and should file the easement which I have executed as requested. Nevertheless, I will attempt to work out with you and staff a suitable precise location of the easement along the eastern portion of the property, providing that location does not interfere with the reasonable use and enjoyment of either the one acre parcel or my two parcels which are sought to be created by this permit.

Mr. Mel Carpenter

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August 20, 1979

Because of the time requirements of obtaining the final map, I do not believe there is adequate time to schedule this matter for a complete Coastal Commission hearing and await the possible appeals that might follow. I therefore am hopeful we can resolve this matter immediately. I do not think that locating the easement where I propose it will in any way deviate from the Commission's intentions and will certainly be consistent with what the official notice from the Commission has indicated would be appropriate.

I await your advices when we may meet to discuss the matter further.

Sincerely yours,


Kenneth R. Chiate