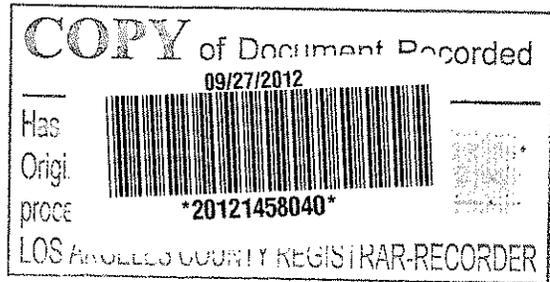


Recording Requested by and
When Recorded Return to:

California State Coastal Conservancy
1330 Broadway, 13th Floor
Oakland, Ca 94612
Attention: Legal Counsel [JJ]



Recording Fees Exempt per Gov Code § 6103

APN: 4452-002-011

CERTIFICATE OF ACCEPTANCE OF EASEMENT
(Ackerberg Public Access Easement)

This Certificate of Acceptance of Easement is made this ^{Sept.} 12th day of 2012 by the Mountains Recreation and Conservation Authority ("MRCA"), a local public entity established under the California Joint Powers Act.

Pertinent Facts

- A. The Mountains Recreation and Conservation Authority ("MRCA") is a local government public entity established pursuant to the California Joint Powers Act. The members of the MRCA are the Santa Monica Mountains Conservancy, a California state agency, and the Conejo Recreation and Park District and the Rancho Simi Recreation and Park District, both local park agencies established under California law. MRCA is dedicated to the preservation and management of local open space and parkland, watershed lands, trails, and wildlife habitat and manages and provides ranger services for public lands and parks that it owns and that are owned by other public agencies.
- B. The State Coastal Conservancy (the "Conservancy") is an agency of the State of California existing under Division 21 of the California Public Resources Code, which serves as a repository for interests in land whose reservation is required to meet the policies and objectives of the California Coastal Act (Division 20 of the California Public Resources Code) (the "Coastal Act") or a certified local coastal plan or program and whose statutory mandate includes the obligation to accept offers to dedicate public accessways required under the Coastal Act.
- B. The California Coastal Commission (the "Commission") is an agency of the State of California established pursuant to California Public Resources Code Section 30300 and is charged with primary responsibility for implementing and enforcing the Coastal Act.
- C. In 1985, Norman J. and Lisette Ackerberg, the then-owners of certain coastal property legally described as set forth in Exhibit A hereto (the "Property") in Malibu, California, executed and recorded an offer to dedicate a public access easement (the "OTD") across the Property as a condition to Coastal Development Permit No. 5-84-754, issued by the Commission. The

OTD was recorded on April 4, 1985 as Document No. 85 369283 of the Official Records of Los Angeles County and is attached hereto as Exhibit B.

- D. Access for All ("AFA"), a nonprofit corporation, created and existing under the laws of the State of California, accepted the OTD by executing and recording its Certificate of Acceptance as Document No. 03- 3801416 on December 17, 2003, in the Official Records of Los Angeles County.
- E. Under the terms of its Certificate of Acceptance, AFA held the public access easement (the "Easement") created by its acceptance subject to the condition that should AFA fail to carry out its responsibilities to manage the Easement for the purpose of allowing public pedestrian access to the shoreline, then all of AFA's right, title and interest in the Easement would vest in the Conservancy (or another delegated entity) upon: (1) a finding by the Conservancy, made at a noticed public hearing, that AFA failed to carry out its responsibilities and (2) the recording of a Certificate of Acceptance by the Conservancy or a designated qualified entity.
- F. On September 22, 2011, following a noticed public hearing, the Conservancy determined that AFA had failed to carry out its responsibilities under the Certificate of Acceptance to manage the Easement and, accordingly, the Conservancy adopted a resolution which authorized the Conservancy's Executive Officer to take all necessary steps (including the execution and recording of a Certificate of Acceptance) to vest all right, title and interest in the Easement in the Conservancy, or alternatively or subsequently, in another qualified entity designated by the Executive Officer of the Conservancy and acceptable to the Executive Director of the Commission.
- G. Following the September 22, 2011 public hearing, the Executive Officer of the Conservancy designated MRCA, whose purposes and powers include the holding, management and operation of lands for public recreational purposes, to accept the Easement. MRCA desires to take title to and to manage and operate the Easement.
- H. The Conservancy, MRCA and the Commission have agreed in writing to an unrecorded management plan for the Easement, dated July 25, 2012 (the "Management Plan"). Copies of the Management Plan, which may be amended upon the written agreement of all three parties, are maintained in the offices of the Conservancy and the Commission.
- I. The Conservancy and the Commission, independently, have found that the acceptance of the Easement by MRCA will serve to maintain public access to the coast, consistent with the objectives of California Public Resources Code Sections 30210 et seq., 30212.5, 30230, and 31400 et seq.

NOW, THEREFORE, MRCA, in light of the Pertinent Facts recited above, hereby accepts all right, title and interest in the Easement held by AFA, which was created by the OTD recorded on April 4, 1985, as Document No. 85 369283 in the Official Records of Los Angeles County and AFA's acceptance of the OTD by recording its Certificate of Acceptance on December 17, 2003, as Document No. 03 3801416 in the Official Records of Los Angeles County, subject to the following terms and conditions:

1. MRCA covenants and agrees to use, maintain and operate the Easement solely for public access to the coast, consistent with the terms, conditions and restrictions of the OTD.
2. MRCA covenants and agrees to use, maintain and operate the Easement consistent with the Management Plan, as it may be amended from time-to time by written agreement of MRCA, the Conservancy and the Commission.
3. If MRCA ceases to exist, or fails to carry out its responsibilities under this Acceptance to use, maintain and operate the Easement as specified in paragraphs 1 and 2, above, then all of MRCA's right, title and interest in the Easement shall vest in the State of California, acting by and through the Conservancy, or its successor, upon acceptance by the Conservancy; provided, however, that the State, acting through the Executive Officer of the Conservancy or its successor agency, may designate another public agency or private association acceptable to the Executive Director of the Commission (the "Designee"), in which case vesting shall be in the Designee rather than the State. Notwithstanding the foregoing, the right, title and interest of MRCA in the Easement may not vest in the Conservancy or Designee except upon (1) a finding by the Conservancy, made at a noticed public hearing, that MRCA has ceased to exist, is no longer qualified as a holder of the Easements (or one of them) or failed to carry out its responsibilities; and (2) recordation by the State or the Designee of a Certificate of Acceptance, substantially in the form set forth in California Government Code Section 27281. Nothing herein shall prevent MRCA from transferring the Easement, to a qualified entity pursuant to the terms of the Easement and subject to the terms of the OTD, the terms of the Management Plan, the approval of the Commission and the Conservancy, and the terms and conditions of this Acceptance, thereby relieving itself of the obligation to manage, operate, and maintain the Easement under the terms of this Acceptance.

The signature of MRCA's authorized representative below certifies that MRCA accepts the Easement pursuant to authority conferred by the Board of Directors of MRCA on August 7, 2012, and MRCA consents to the recordation thereof by its duly authorized officer. In accepting the Easement, MRCA covenants and agrees to the terms and conditions set forth above.

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

By: Rorie Skel
RORIE SKEL
 Its: Chief Deputy Executive Officer

Dated: September 12, 2012

ACKNOWLEDGMENT

STATE OF CALIFORNIA }ss
COUNTY OF VENTURA }ss

On SEPT. 12, 2012, before me, MALA H PATEL, ^{NOTARY} ~~PUBLIC~~,
personally appeared RORIE ANN SKEI,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/~~they~~ executed
the same in ~~his~~/~~her~~/~~their~~ capacity(ies), and that by ~~his~~/~~her~~/~~their~~ signature(s) on the
instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed
the instrument.

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

WITNESS my hand and official seal.



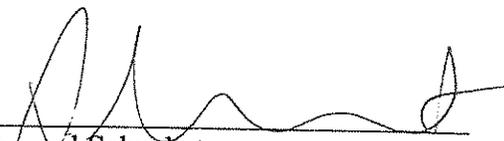
Signature Mala H Patel

(Notarial Seal)

ACKNOWLEDGMENT BY THE STATE COASTAL CONSERVANCY
OF MRCA ACCEPTANCE OF EASEMENT

This is to certify that the State Coastal Conservancy, through its Executive Officer, has designated the Mountains Recreation and Conservation Authority as the public entity to hold all right, title and interest in the Easement created by the OTD recorded on April 4, 1985, as Document No. 85 369283 in the Official Records of Los Angeles County and the Certificate of Acceptance recorded on December 17, 2003, as Document No. 03 3801416 in the Official Records of Los Angeles County, pursuant to the determination made and authority conferred by the State Coastal Conservancy on September 22, 2011.

STATE COASTAL CONSERVANCY

By: 
Samuel Schuchat
Its: Executive Officer

Dated: 8/28/12

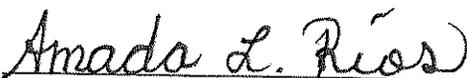
ACKNOWLEDGMENT

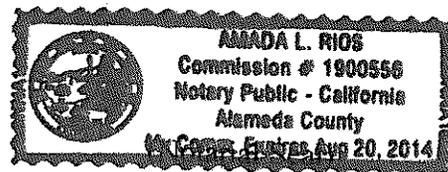
STATE OF California }ss
COUNTY OF Alameda }ss

On August 28, 2012, before me, Amada L. Rios, personally appeared Samuel Schuchat, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

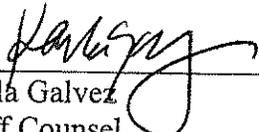
Signature 



ACKNOWLEDGMENT BY THE CALIFORNIA COASTAL COMMISSION
OF ACCEPTANCE OF EASEMENT

This is to certify that the Mountains Recreation and Conservation Authority is a public agency acceptable to the Executive Director of the California Coastal Commission to hold all right, title and interest in the Easement created by the OTD recorded on April 4, 1985, as Document No. 85 369283 in the Official Records of Los Angeles County and the Certificate of Acceptance recorded on December 17, 2003, as Document No. 03 3801416 in the Official Records of Los Angeles County.

CALIFORNIA COASTAL COMMISSION

By: 
Karla Galvez
Its: Staff Counsel

Dated: August 14, 2012

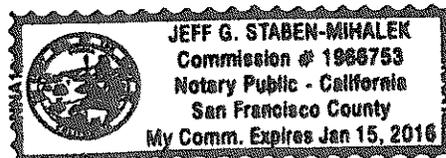
State of California
County of San Francisco

On August 14, 2012 before me, Jeff G. Staben-Mihalek, a Notary Public, personally appeared Karla Galvez, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature 



(Seal)

EXHIBIT "A"

Legal Description of the Property

Real property located in the city of Malibu, county of Los Angeles, state of California, more particularly described as follows:

Parcel One (APN 4452-002-013)

A PARCEL OF LAND IN LOS ANGELES COUNTY, STATE OF CALIFORNIA, BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, OF SAID COUNTY, SAID POINT OF BEGINNING BEING WESTERLY ALONG SAID SOUTHERLY LINE FOLLOWING THE ARC OF A CIRCULAR CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 5608.01 FEET, A DISTANCE OF 638.47 FEET FROM A POINT BEING DISTANT SOUTH 6°11'30" WEST 40 FEET FROM HIGHWAY ENGINEER'S CENTERLINE STATION 989 + 65.17 AT THE WESTERLY EXTREMITY OF THAT CERTAIN COURSE DESCRIBED IN SAID DEED AS SOUTH 83°48'30" EAST 2153.25 FEET, THENCE EASTERLY ALONG SAID SOUTHERLY LINE 86.54 FEET, THENCE LEAVING SAID SOUTHERLY LINE SOUTH 0°33'09" WEST 42.93 FEET; THENCE NORTH 88°48'37" WEST 10.70 FEET, THENCE SOUTH 1°11'23" WEST TO THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN; THENCE WESTERLY ALONG SAID TIDE LINE TO THE INTERSECTION WITH A LINE BEARING SOUTH 0°13'30" WEST FROM THE POINT OF BEGINNING; THENCE NORTH 0°13'30" EAST TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, AS CONTAINED IN VARIOUS DEEDS FROM MARBLEHEAD LAND COMPANY, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY:

(A) ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES AND RIPARIAN RIGHT, CONTAINED IN, ON, WITHIN AND UNDER SAID LAND BUT WITHOUT RIGHT OF ENTRY.

(B) ALL LITTORAL RIGHTS WITH THE FULL AND EXCLUSIVE RIGHT TO PRESERVE AND PROTECT SAID LITTORAL RIGHTS.

EXHIBIT "A" (continued)

Parcel Two (APN 4452-002-011)

THAT PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE COUNTY OF LOS ANGELS, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1, PAGE 407 ET SEQ., OF PATENTS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED IN BOOK 15228, PAGE 342 OF OFFICIAL RECORDS OF SAID COUNTY, SAID POINT OF BEGINNING BEING WESTERLY ALONG SAID SOUTHERLY LINE FOLLOWING THE ARC OF A CIRCULAR CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 5608.01 FEET, A DISTANCE OF 490.17 FEET FROM A POINT BEING DISTANT SOUTH 6° 11' 30" WEST 40 FEET FROM ENGINEER'S CENTERLINE STATION 989 PLUS 65.17 FEET AT THE WESTERLY EXTREMITY OF THAT CERTAIN COURSE DESCRIBED IN SAID DEED AS SOUTH 83° 48' 30" EAST 2153.25 FEET, THENCE WESTERLY ALONG SAID CURVE 61.76 FEET, THENCE LEAVING SAID SOUTHERLY LINE AND CURVE SOUTH 00° 33' 09" WEST 42.93 FEET, THENCE NORTH 88° 48' 37" WEST 10.70 FEET, THENCE SOUTH 10° 11' 23" WEST TO THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN, THENCE EASTERLY ALONG SAID TIDE LINE TO AN INTERSECTION WITH A LINE BEARING SOUTH 1° 11' 23" WEST FROM THE POINT OF BEGINNING, THENCE NORTH 1° 11' 23" EAST TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM, AS CONTAINED IN VARIOUS DEEDS FROM MARBLEHEAD LAND COMPANY, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

(A) ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES AND RIPARIAN RIGHT, CONTAINED IN, ON, WITHIN AND UNDER SAID LAND BUT WITHOUT RIGHT OF ENTRY;

(B) ALL LITTORAL RIGHTS WITH THE FULL AND EXCLUSIVE RIGHT TO PRESERVE AND PROTECT SAID LITTORAL RIGHTS.

EXHIBIT B

Return Original To and
Recording Requested By:
State of California
California Coastal Commission
691 Howard Street, 4th Floor
San Francisco, California 94105

85 369283

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA

APR 4 1985 AT 8 A.M.

Recorder's Office

FREE

IRREVOCABLE OFFER TO DEDICATE

I. WHEREAS, (1) Norman J. Ackerberg and Lisette Ackerberg, ^{1/4}
husband and wife as Joint Tenants %s/are

the record owner(s), hereinafter referred to as "owner(s)", of the real
property located at (2) 22486 Pacific Coast Highway, Malibu,

California, legally described as particularly set forth in attached (3)
Exhibit A hereby incorporated by reference and hereinafter referred to as
the "subject property"; and

II. WHEREAS, the California Coastal Act of 1976 (hereinafter referred
to as the "Act") creates the California Coastal Commission (hereinafter
referred to as the "Commission") and requires that any coastal development
permit approved by the Commission or local government as defined in Public
Resources Code Section 30109 must be consistent with the policies of the
Act set forth in Chapter 3 of Division 20 of the Public Resources Code; and

III. WHEREAS, the People of the State of California have a legal
interest in the lands seaward of the mean high tide line; and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the
owner(s) applied to the Commission for a coastal development permit for (4)
Demolition of an existing single family dwelling, guest house, swimming pool,
and construction of a new two-story single family dwelling and swimming pool,
and renovation of existing tennis court

on the subject property; and

V. WHEREAS, a coastal development permit no. (5) E-84-754 was

1 granted on (6) January 24, 1985 by the Commission in accordance

2 with the provisions of the Staff Recommendation and Findings (7) (Exhibit

3 5) attached hereto and hereby incorporated by reference, subject to the

4 following conditions: (B)

5 1. Vertical Access Condition. Prior to transmittal of the permit, the Executive
6 Director shall certify in writing that the following conditions have been satisfied. The applicant shall execute and record a document, in a form and content
7 approved by the Executive Director of the Commission, irrevocably offering to
8 dedicate to an agency approved by the Executive Director, an easement for public
9 pedestrian access to the shoreline. Such easement shall be 10 feet wide located
10 along the eastern boundary of the property line and extend from the northerly
11 property line to the mean high tide line. Such easement shall be recorded free
12 of prior liens except for tax liens and free of prior encumbrances which the
13 Executive Director determines may affect the interest being conveyed.

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

18 2. Revised Plans. Prior to transmittal of permit, the applicant shall be
19 required to submit revised plans which conform the structural and deck string-
20 line criteria contained in the adopted Interpretive Guidelines for the Malibu/
21 Santa Monica Mountains.

22 VI. WHEREAS, the subject property is a parcel located between the
23 first public road and the shoreline; and

24 VII. WHEREAS, under the policies of Sections 30210 through 30212 of
25 the California Coastal Act of 1976, public access to the shoreline and
26 along the coast is to be maximized, and in all new development projects
27 located between the first public road and the shoreline shall be provided;
28 and

29 VIII. WHEREAS, the Commission found that but for the imposition of the
30 above condition, the proposed development could not be found consistent
31 with the public access policies of Section 30210 through 30212 of the

NO PAPER
RECORDED
SEP

California Coastal Act of 1976 and that therefore in the absence of such a condition, a permit could not have been granted;

NON THEREFORE, in consideration of the granting of permit no. (9) 84-754 to the owner(s) by the Commission, the owner(s) hereby offer(s) to dedicate to the People of California an easement in perpetuity for the purposes of (10) public pedestrian access to the shoreline

located on the subject property (11) along the eastern boundary of the property line at a width of ten feet, and extending from the northerly property line to the mean high tide line and as specifically set forth by attached Exhibit C (12) hereby incorporated by reference.

This offer of dedication shall be irrevocable for a period of twenty-one (21) years, measured forward from the date of recordation, and shall be binding upon the owner(s), their heirs, assigns, or successors in interest to the subject property described above. The People of the State of California shall accept this offer through the local government in whose jurisdiction the subject property lies, or through a public agency or a private association acceptable to the Executive Director of the Commission or its successor in interest.

21 //
22 //
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INTLACOP
785 000 000

1
2 Acceptance of the offer is subject to a covenant which runs with
3 the land, providing that any offeree to accept the easement may not abandon
4 it but must instead offer the easement to other public agencies or private
5 associations acceptable to the Executive Director of the Commission for the
6 duration of the term of the original offer to dedicate. The grant of
7 easement once made shall run with the land and shall be binding on the
8 owners, their heirs, and assigns.

9 Executed on this 5th day of March, 1985, at Palm Beach,
10 Florida

11 Dated: March 5, 1985
12 Signed Norman J. Ackberg
13 Norman J. Ackberg

14 Type or Print Name of Above
15 Signed Lisette Ackberg
16 Lisette Ackberg
17 Type or Print Name of Above

18
19
20
21
22
23
24
25
26
27

RECEIVED
STATE OF FLORIDA
DEPARTMENT OF
TRANSPORTATION

85 369283

1 Acceptance of the Offer is subject to a covenant which runs with the
2 land, providing that any offeree to accept the easement may not abandon it but
3 must instead offer the easement to other public agencies or private
4 associations acceptable to the Executive Director of the Commission for the
5 duration of the term of the original Offer to Dedicate.

6 Executed on this _____ day of _____, at _____
7 _____, California.

8 Dated: _____ Signed _____
9 _____ Owner

10 _____
11 Type or Print

12 Signed _____
13 _____

14 Type or Print

15 **NOTE TO NOTARY PUBLIC:** If you are notarizing the signatures of persons signing
16 on behalf of a corporation, partnership, trust, etc., please use the correct
17 notary jurat (acknowledgment) as explained in your Notary Public Law Book.
18 State of California,)

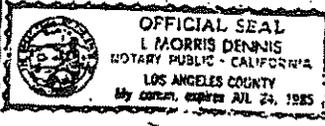
19)SS
20 County of Los Angeles

21 On this 1st day of April, in the year 1985, before
22 me L. Morris Dennis, a Notary Public, personally appeared

23 Norman Ackenberg and Lisette Ackenberg
24 personally known to me

25 I proved to me on the basis of satisfactory evidence
26 to be the person(s) whose name is subscribed to this instrument, and
27 acknowledged that he/she/they executed it

COURT PAPER
STATE OF CALIFORNIA
STO 113 (REV 8-72)



L. Morris Dennis
NOTARY PUBLIC IN AND FOR SAID COUNTY AND
STATE 85 369283

1 This is to certify that the Offer to Dedicate set forth above is
2 hereby acknowledged by the undersigned officer-on behalf of the California
3 Coastal Commission pursuant to authority conferred by the California
4 Coastal Commission when it granted Coastal Development Permit
5 No. 5-87-754 on January 24, 1985 and the California
6 Coastal Commission consents to recordation thereof by its duly authorized
7 officer.

8 Dated: March 27, 1985

9 T.R. Borman
10 Chief Counsel
11 California Coastal Commission

12
13 STATE OF California)

14 v)SS

15 COUNTY OF San Francisco)

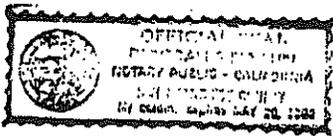
16 On March 27, 1985, before me Deborah S. Benrubi,

17 a Notary Public, personally appeared T.R. Borman, personally
18 known to me to be (or proved to me on the basis of satisfactory evidence)

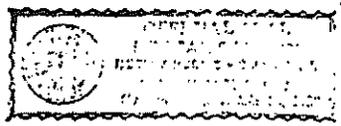
19 to be the person who executed this instrument as the Chief Counsel

20 TITLE

21 and authorized representative of the California Coastal Commission and
22 acknowledged to me that the California Coastal Commission executed it.



23
24 Deborah S. Benrubi
25 Notary Public in and for said County and
26 State



27
PUBLIC
NOTARY PUBLIC
CALIFORNIA
112-146-1000
CSP

EXHIBIT B

A. Project Description. The proposed project consists of the demolition of an existing single family dwelling, guest house and swimming pool and the construction of a new two-story single family dwelling with three-car garage, swimming pool and septic system. The newly proposed project involves construction of a new swimming pool on the seaward side of the residence. The previous swimming pool was located landward of the previously existing residence. In addition as part of the project, the applicant proposes to renovate an existing tennis court. Also, the proposed project will result in the relocation of the tennis court on the project site approximately 14 feet seaward.

B. Background. On June 9, 1983, the California Coastal Commission approved the construction of a 140-foot in length wood pile-supported, wood sheeted bulkhead. In its action to approve the project the Commission imposed a lateral access condition requiring an offer of dedication of an easement for public access from the mean high tide line to toe of the bulkhead. In addition the Commission required the applicants to assume the risks associated with development of the site which might result from flood or wave damage.

C. Public Access. The Coastal Act contains strong policy provisions in Sections 30210, and 30212, requiring public access to and along the shore. However, the requirements for the provision of access for the public to California's shoreline is not limited to the Coastal Act. The California Constitution in Article X, Section 4 provides:

No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purposes . . . and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof. (Emphasis added).

The Coastal Act contains more specific policies regarding the provision of public access to the State's shoreline. Coastal Act Section 30210 as set forth below, stipulates that in meeting the requirements of Section 4, Article X of the Constitution maximum public access, conspicuously posted shall be provided subject to certain conditions.

1. Lateral Access. The Coastal Act in Section 30210 requires the provision of public access along the shoreline in new development projects. An application for a seawall at this location in 1983 (5-83-360, Trueblood) was conditioned to provide public lateral access across the project site from the toe of the seawall to the mean high tide line. Therefore, the Commission finds that lateral access for the public has been provided for through prior permit action of the Commission and that the currently proposed project is consistent with Sections 30210 and 30212 of the Coastal Act as it relates to the provision of lateral access.

85 369283

2. Vertical Access. New development projects are required to provide public access in compliance with the public access provisions of Chapter 3 of the Coastal Act.

Section 30210.

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

Section 30212 of the Coastal Act contains several very explicit policy provisions regarding the location and type of public access to be provided.

Section 30212.

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the regional commission or the commission determines that such the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

In addition to the above provisions of the Coastal Act, Section 30214(a) addresses with a greater degree of specificity the time, place and manner of public access. Section 30214(a) states:

Section 30214.

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repose depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Additionally, the legislature has expressed its intent that the Commission balance the rights of the individual property owner with the public's constitutional right of access to the coast. Section 30214(b) states:

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article I of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article I of the California Constitution.

All projects requiring a Coastal Development permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. New development on sites located between the sea and the first public road may be required to provide vertical access under the policy provisions of Section 30212 of the Coastal Act. In determining where vertical access should be required, the Commission must consider the need to gain access to the shoreline in a given area, taking into account the physical constraints of the site, including, but not limited to, safety hazards, existence of fragile coastal resources, the location of support facilities, such as parking areas and the privacy needs of residents of the project site.

As outlined in the Seventh Edition, September 1983, Coastal Access Inventory within the area identified as the Malibu Coastline (a distance of about 27 miles from Topanga State Beach on the east to Leo Cabrillo State Beach on the west) only 16 vertical accessways have been recorded as a result of Coastal permit requirements. Of these, only 4 vertical accessways have been opened to the public. Accessways obtained through the Coastal permit process cannot be developed and/or actually used by

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the public until a public or private agency agrees to accept responsibility for maintenance and liability. The following is a list of vertical accessways that have been obtained via the Coastal permit process in Malibu.

<u>Coastal Permit No.</u>	<u>Street Address/Malibu</u>	<u>Width of Access</u>	<u>Open</u>
73-290	State Park/Point Dume	6'	Yes
73-511	26168 Pacific Coast Highway	6'	Yes
73-1526	22706 " " "	10'	Yes
74-2840	22626 " " "	2'	No
75-6376	22032 " " "	5'	No
76-8877	21554 " " "	6'	No
76-8957	25120 " " "	35'	Yes
77-376	19020 " " "	3'	No
77-574	26834 Malibu Cove Colony	5'	No
77-1466	31736 Broad Beach Road	5 -10'	No
77-2130	27398 Pacific Coast Highway	10'	No
78-3473	27700 " " "	10'	No
78-3591	20802 " " "	5'	No
79-4918	21202 " " "	10'	No
80-2707	27900 " " "	10'	No
5-83-136	22126-22132 Pacific Coast Highway	9'	No

In addition to the vertical accessways listed above, there are several vertical accessways in Malibu which are owned by the County of Los Angeles. One County accessway (at 22550 P. C. H.) is located within 500 feet of the project site; however, the accessway is closed and the County has no plans to open this accessway.

The project site is located in the Carbon Beach area of Malibu; one of the least publicly accessible beaches in the Malibu area. The existence of a solid row of residential structures along this stretch of Pacific Coast Highway effectively creates a private beach enclave. The residential development along Carbon Beach even precludes views of the ocean and shoreline from Pacific Coast Highway.

On the inland side of Pacific Coast Highway in the vicinity of the project are multi-unit apartment buildings, small offices and commercial structures. Although this particular area of Malibu has not experienced great demand for recycling of existing structures or development of the few vacant parcels, it appears inevitable that as the pattern of growth in Malibu continues, a demand for recycling and more intensive development will occur. In turn this will create a greater demand for beach usage.

In order to determine whether the currently proposed project complies with the access provisions of the Coastal Act and more specifically with Section 30212 of the Coastal Act, the Commission must determine whether adequate access exists nearby.

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The Commission has already found that the project meets the definition of new development, thus if adequate access does not exist nearby, access for the public from the nearest public roadway (P. C. H.) to the shoreline is required.

In its review of prior similar permit applications where the issue of vertical access has been raised, the Commission has used a 500-foot criteria as a guideline to determine whether adequate access exists nearby. More specifically, the Commission has previously made a determination in similar cases if open vertical access for the public exists within 500 feet of the project site, adequate access exists nearby. With respect to the currently proposed project, the Commission notes that the nearest open public vertical accessways are located 1,300 feet west of the project and 3,099 feet east of the project site. Since open vertical access for the public does not exist nearby, the Commission finds it is necessary to condition the project to provide for vertical access for the public, from Pacific Coast Highway across the project site to the shore. Only if so conditioned would the project be consistent with Section 30212 of the Coastal Act.

The Commission further finds that since the project site consists of two contiguous lots with a total frontage of 140 feet both the applicant and the Commission are afforded great flexibility in siting the vertical accessway. The Statewide Guidelines adopted by the Commission indicate that a vertical accessway when provided should be a minimum of 10 feet in width and should usually be sited along the borders of the project site. The Commission concludes the large size of the project site (40,041 square feet) affords great opportunity in the actual design of the vertical accessway across the project site benefiting both the applicant and the public. In addition, the Commission notes that there is on-street parking available on both sides on Pacific Coast Highway in the vicinity of the project. Therefore, the Commission concludes that adequate support facilities (for parking) exist within the vicinity of the project. Finally the Commission finds that if conditioned, as indicated above with a vertical accessway, the project would be in conformance with the access policies of Chapter 3 of the Coastal Act.

D. Scenic and Visual Resources/Seaward Encroachment. The Coastal Act in Section 30251 states:

Section 30251.

The scenic and visual qualities of coastal areas shall be conserved and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The proposed project consists of the demolition of an existing single family dwelling and swimming pool and the construction of a new

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two-story, 32-foot above average finished grade, single family residence with swimming pool. The project also involves renovation of an existing tennis court and the relocation of the tennis court approximately 14 feet seaward of its present location.

New development along the shoreline is of particular concern to the Commission. Section 30251 of the Coastal Act requires that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas. As one means of limiting the encroachment of residential development onto sand beach areas, the Commission has adopted a stringline guideline. With respect to this criteria, the Guidelines state:

"In a developed area where new construction is generally infilling and is otherwise consistent with Coastal Act policies, no part of a proposed new structure, including decks and bulkheads, should be built further onto a beach front than a line drawn between the nearest adjacent corners of the adjacent structures. Enclosed living space in the new unit should not extend farther seaward than a second line drawn between the most seaward portions of the nearest corner of the enclosed living space of the adjacent structure."

One of the purposes of this Guideline is to limit seaward encroachment on sandy beach areas. In the case of the currently proposed project, the applicant proposes to demolish an existing single family home and construct a significantly larger single family home. The proposed construction will occur landward of an existing seawall/bulkhead previously approved by the Commission. As proposed the new residence will conform with the Commission's stringline condition for structural development. However, other portions of the development including a solar trellis for the residence exceed the stringline. Also, the project calls for the seaward encroachment of a tennis court by 14 feet which could have a visual impact since if relocated the tennis court would be at the bulkhead line. Therefore, the Commission finds it necessary to condition the project to require revised plans which clearly indicate the project complies with both structural and deck stringlines. Only if so conditioned would the project be consistent with Section 30251 of the Coastal Act which addresses scenic and visual resources.

E. Hazards. Section 30253 (1) of the Coastal Act specifies that new development minimize risks to life and property in areas of high geologic flood and fire hazard. That an emergency permit was requested by the prior owner of the project site for construction of a 140-foot in length wood seawall attests to the potential flood hazard on the site. In approving the regular permit for construction of a seawall on the site, the Commission required the seawall to meet storm design criteria and for the project applicant to assume the risks associated with development of the site. Therefore, the Commission finds that the

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seawall will serve to mitigate the flood hazard which previously existed on the site and that as previously conditioned, the project is consistent with Section 30253 (1) of the Coastal Act.

F. Local Coastal Program. Section 30604(a) of the Coastal Act states in Part:

Section 30604.

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The County of Los Angeles adopted the Land Use Plan portion of the Malibu/Santa Monica Mountains area Local Coastal Program on December 28, 1982, for submittal to the Commission for certification. On March 24, 1983 the Commission voted to find that the Land Use Plan raised a "Substantial Issue" in terms of conformity with the Coastal Act and voted to deny the Land Use Plan as submitted.

At the time of this writing the Commission is scheduled to consider suggested modifications to the Malibu Land Use Plan at the Commission hearing in early January.

Among the suggested modifications which the Commission is scheduled to consider are access policies proposed as modifications to the County's Land Use Plan. With respect to beach access in general and vertical access specifically, the suggested modifications state:

4.1.2 COASTAL ACCESS

I. GENERAL POLICIES

P49 In accordance with Section 30214(a) of the Coastal Act, the time, place, and manner of public beach access requirements for new development will depend on individual facts and circumstances, including topographic and site characteristics, the capacity of the site to sustain use at the intensity proposed, the proximity to adjacent residential uses, the privacy of adjacent owners, the feasibility to provide for litter collection, and safety of local residents and beach users.

P50 In accordance with Section 30214(b) of the Coastal Act, the requirement of access shall be reasonable and equitable, balancing the rights of the individual property owner and the public.

Vertical Access

P51 For all land divisions, non-residential new development, and residential new development on lots with 75 or more feet of frontage or with an existing drainage or utility easement connecting a public street with the shoreline or on groups of two or more undeveloped lots with 50 feet or more of frontage per lot, an irrevocable offer of dedication of an easement to allow public vertical access to the mean high tide line shall be required, unless public access is already available at an existing developed accessway within 500 feet of the project site measured along the shoreline. Such offer of dedication shall be valid for a period of 21 years, and shall be recorded free of prior liens. The access easement shall measure at least 10 feet wide. Where two or more offers of dedication within 500 feet of each other have been made pursuant to this policy, the physical improvement and opening to public use of one offered accessway shall result in the abandonment of other offers located within 500 feet of the improved accessway.

Exceptions to the above requirement for offers of dedication may be made regarding beaches identified in the Land Use Plan's Area-Specific Marine Resource Policies (P111 through P113) as requiring limitations on access in order to protect sensitive marine resources.

P51b On the basis of a Beach Management Plan prepared by the County and approved by the Coastal Commission which takes into account beach recreation opportunities, the width of the beach, the presence of immediately adjacent residences or sensitive natural resources, local parking conditions, beach support facilities, the feasibility of emergency vehicle access to the beach, and related factors, accessways at greater intervals than would be required by P51 may be required, up to a maximum standard of separation for new vertical accessways of one accessway per 2000 feet of shoreline. Such a Beach Management Plan, which may be submitted to the Commission for its review at the same time as the implementing ordinances, shall assure that lateral access offers made in connection with coastal permits previously approved (as well as in connection with future permits and vertical access offers sufficient to meet the standard of separation included in the Plan) are accepted for maintenance and liability purposes by the County or other responsible entity acceptable to the Executive Director of the Coastal Commission. Reasonable restrictions on use of the beach to protect sensitive marine resources, minimize risks to public safety due to geologic and wave hazards and reduce potential conflicts with the privacy of nearby residences while promoting reasonable public access may be adopted by the accepting agency as part of the Beach Management Plan.

If the Commission were to approve the currently proposed project without a vertical access condition in advance of the development of a Beach

Revenue recovery system so that the costs of new accessways and adjacent beach operations are wholly covered to the extent possible.

New accessways should be obtained in conjunction with off-highway property where it is feasible to develop parking or public transit facilities and safe pedestrian systems.

(3) Beach access opportunities requiring vertical pedestrian pathways shall not be opened until the improvements are in place and a public agency is willing to accept management and liability for such accessways.

(c) The frequency of public access locations shall vary according to localized beach settings and conditions as set forth for Policy 55 P51 below. Vertical access standards and related dedication requirements may range from none in areas of major public beach holdings to one accessway per 1,000 feet of shoreline where accessways would be short and directly link roadways with adequate parking or transit access and the beach.

The Beach Access Program proposed above is directly related to the access policies of the suggested modifications. Thus, if the Commission were to approve the project, as proposed without a vertical access condition, the ability of the County to prepare a LCP in conformance with Chapter 3 of the Coastal Act would be prejudiced.

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Management Plan as indicated in proposed suggested modification P516 above, the ability of the County to prepare a Local Coastal Program in conformance with the policies of Chapter 3 of the Coastal Act would be prejudiced.

In addition to the proposed suggested modifications to the County of Los Angeles Land Use Plan access policies listed above, the suggested modifications also call for development of a beach access program to be implemented in conjunction with the proposed policies on public access. With respect to the beach access program the suggested modifications state:

2. BEACH ACCESS PROGRAM

Objectives

(a) The principal means of maximizing public access is to create and improve major accessways at locations where adequate parking and other necessary public improvements, including parking or public transit facilities where appropriate, can be provided to ensure adequate safety for users, traffic safety, security and privacy for adjacent residents, and clear public identification.

(b) Priorities for improved vertical public access in the Malibu Coastal Zone shall be in accordance with the ranking as depicted in Figure 5. Other criteria for determining priority for this new beach access are:

- (1) First priority shall go to expanding safe off-highway parking at existing beaches with lifeguards.
- (2) New accessway priorities shall feature:

Improvement of access to sandy beaches where there is no current public access.

Improvement of access to sandy beaches where the distance between existing accessways exceeds one-half mile.

Improvement of accessways using offers of dedication which were already made pursuant to the conditions of coastal permits issued by the Coastal Commission or the County where to do so would allow the County to avoid requiring future offers of dedication as provided by P51.
Capacity to allow emergency vehicle passage from highway to beach and return, except where steepness or the existence of stairs would not allow vehicle use.

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Add this paragraph to the findings on Ackerberg:

On page 7, after last paragraph just before Section D, insert:

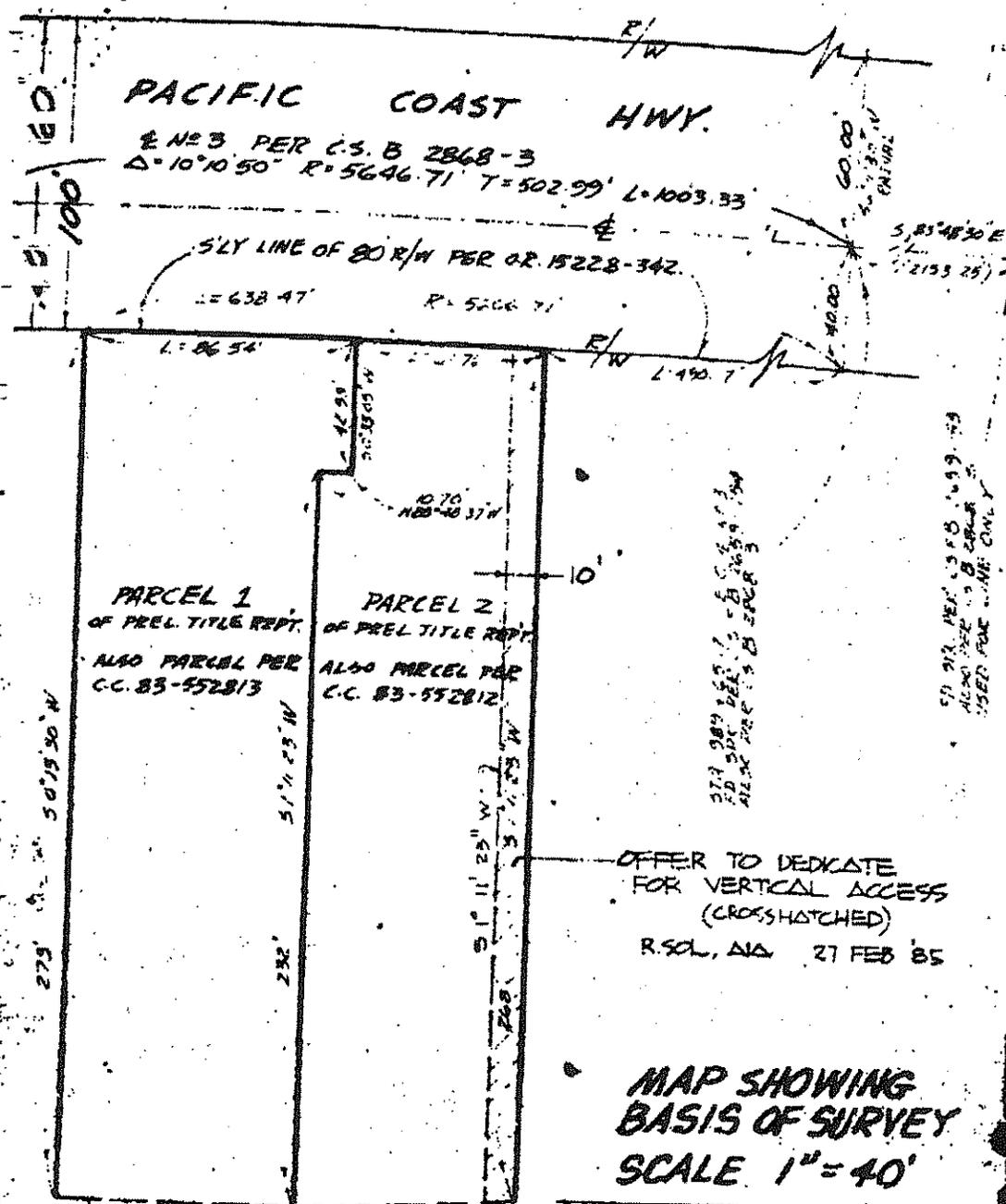
The Commission further finds that notwithstanding the fact the County of Los Angeles owns a vertical accessway within 500 feet of the project, that accessway has not been opened to the public and therefore the Commission cannot make a finding that "adequate access exists nearby." In addition, although the Commission has, in some cases, found that if an accessway is open to the public within 500 feet, new offers of vertical access dedication will not be required, such an approach is not appropriate here. The appropriate vehicle for establishing the policy relative to the precise spacing of vertical accessways and whether previously secured offers to dedicate vertical accessways can be extinguished if another vertical accessway is improved and opened within 500 feet of the subject property in the LUP. The Malibu LUP staff recommendation suggests a policy on this point. The Commission believes that as a matter of policy, publically owned vertical accessways should be improved and opened to public use before additional offers to dedicate vertical access easements are opened. This position assumes that the publically owned accessway is within 500 feet of the subject property, that it is equally suitable for public use based on management and safety concerns, and that improvements to accomplish public use are feasible. Once a public accessway has been improved and opened for public use, and a suitable policy and mechanism has been developed and adopted to ensure that such a vertical accessway remains open and available for public use and assuming the Commission has approved a policy that outstanding offers to dedicate additional

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vertical access easements within 500 feet of an opened vertical accessway can then be extinguished, staff will initiate actions to notify affected property owners that they can take steps to extinguish such offers to dedicate. As part of the Commission's public access program, procedures will be developed to implement this directive.

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PARCEL LINE CONNECTING POINTS ON ROAD WITH TIDE LINE @ EL. 100, AS SURVEYED DECEMBER 14, 1985

AKERBERG PROPERTY
 22466 PEH, MALIBU, CA

EXHIBIT C

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