



County of Los Angeles
CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

February 2, 2010

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**DEPARTMENT OF PUBLIC WORKS:
APPROVE 25120.5 MALIBU ROAD ACCESS WAY REFURBISHMENT PROJECT,
CAPITAL PROJECT NUMBER 86830;
AND APPROVE PROJECT SCOPE AND BUDGET
(THIRD DISTRICT) (3 VOTES)**

SUBJECT

Approval of the recommended actions will allow the Department of Public Works to repair and improve the existing access way at 25120.5 Malibu Road in the City of Malibu.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed project is categorically exempt from the California Environmental Quality Act pursuant to Article 19, Sections 15301, 15302, and 15303; and the revised County of Los Angeles Environmental Document Reporting Procedures and Guidelines, Class 1(b), (c), and (e) adopted by your Board on November 17, 1987.
2. Establish Capital Project No. 86830, approve the scope of work and total project budget of \$575,000 for the 25120.5 Malibu Road Access Way Refurbishment Project, which is funded with Vehicle License Fee Gap Loan funds of \$238,000 and prior year net County cost of \$337,000, and authorize the Director of Public Works to deliver the project using the Department of Public Works' Job Order Contracting program.

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

28 FEBRUARY 2, 2010

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

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3. Authorize the Director of Beaches and Harbors to execute a Cost Sharing Agreement and encroachment rights in a form similar to Attachment B, requiring the neighboring property owners benefiting from the project to share in its cost, as described herein.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the recommended actions will allow the Department of Public Works (Public Works) to proceed with finalization of design, obtain pertinent permits, and initiate construction activities for the 25120.5 Malibu Road Access Way Refurbishment Project.

The project site is a beach access way, located between two private properties at 25120.5 Malibu Road in Malibu, and is operated and maintained by the Department of Beaches and Harbors (Beaches and Harbors). The project consists of repairing and restoring structures in the access way that were damaged by seasonal storms and severe beach erosion. The access way is on a slope and the parking area is currently barricaded to prevent public parking due to the unstable foundation.

The project will involve minor excavation and grading to repair the eroded slope and to provide structural support. The structures to be repaired and restored consist of concrete and masonry stairs, masonry and metal security fence, a metal gate; installation of stone slope protection for erosion control and a small concrete earth retaining structure with internal groundwater drainage feature; and replacement of the damaged concrete parking lot, including restriping four public parking spaces. Construction will begin in February 2010 and will be substantially completed by May 2010 (see the Project Schedule included in Attachment A).

Construction of the project will require encroachment onto private property on both sides of the access way. Therefore, encroachment permits will be necessary from the property owners to undergo construction. The encroachment permits will be obtained from the property owners in conjunction with the Cost Sharing Agreement described below (See Facts and Provisions/Legal Requirements). The project improvements will benefit the neighboring property owners by safeguarding their property from storm damage and erosion. The slope to be repaired is approximately forty-five feet wide, of which approximately eight feet on one side is private property and approximately two feet on the other is privately owned property.

The initial project design was completed by a qualified and Board-approved engineering firm, and construction will be completed through a Board-approved Job Order Contract (JOC).

Green Building/Sustainable Design Program

In support of the County's Sustainable Design Policy, the design incorporates sustainable features to control storm water wave run-up and utilizing recycled construction materials wherever feasible. The materials specified by the design consultant are recommended and necessary for beach locations exposed to coastal storm waves and run-up. The design requirements of the slope protection, concrete stairs, and parking area at the exposed coastal site dictates that mostly in-kind materials must be used to repair and rebuild the damaged facility. Recycled materials will be used to the maximum extent possible to replace the parking stall car stops, new metal security fencing, metal gate, handrails along the stairs, and aggregate within the pavement. The internal groundwater drainage pipe will also be constructed using recycled product. Further, all the existing damaged materials will be removed and recycled for other projects.

Implementation of Strategic Plan Goals

The project supports the Countywide Strategic Plan Goal of Community and Municipal Services (Goal 3) by providing residents and visitors with safe and enhanced access to recreational facilities.

FISCAL IMPACT/FINANCING

The projected cost estimate for the access way improvements is \$575,000 as summarized in the Budget Summary of Attachment A. Sufficient appropriation is available in the Fiscal Year 2009-10 Capital Project Budget (C.P. 86830) to proceed with the project. The project is funded with Vehicle License Fee Gap Loan funds (\$238,000) and available prior year net County cost (\$337,000).

The property owners on both sides of the access way will benefit directly from the proposed project and will contribute \$12,000 towards the Beaches and Harbors' ongoing maintenance of this access way as compensation. It is intended for the property owners to enter into a Cost Sharing Agreement with the County, in a form similar to Attachment B that was reviewed by County Counsel to set forth the cost sharing arrangement.

Operating Budget Impact

Despite damage to the access way, it has continued to be opened and is serviced daily with other County access ways. Consequently, Beaches and Harbors does not anticipate any start-up or new ongoing operating costs for operations and maintenance other than those costs currently identified in the normal maintenance budget. The contribution by the private property owners under the Cost Sharing Agreement will partially offset the ongoing operating costs.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Upon your Board's approval and prior to construction, Public Works will obtain final approval of design and permits from the City of Malibu.

Beaches and Harbors will execute a Cost Sharing Agreement, in a form similar to Attachment B as reviewed and approved by County Counsel, with the neighboring property owners on both sides of the access way. The Cost Sharing Agreement will set forth the cost sharing arrangement between all parties benefiting from this project, specifying estimated costs, payment procedure, and the process of handling any disputes. This Agreement will also allow Public Works encroachment rights onto private property to proceed and complete the project. This Agreement also explains the scope of the project, the County's commitment to the work necessary to design and construct the project, the responsibility of the County to operate and manage the access way, provides the County with indemnity from any liability or injury occurring by any acts or omissions caused by the neighboring property owners, and the County's obligation to provide ongoing maintenance within the access way at the County's expense. Please see Attachment B for further details and terms of the Agreement.

Pursuant to your Board's Civic Art Policy, adopted December 7, 2004, and subsequently amended November 18, 2008, this project is exempt from the Civic Art policy funding allocation requirement.

ENVIRONMENTAL DOCUMENTATION

The proposed project is categorically exempt under the California Environmental Quality Act (CEQA) in accordance with State CEQA Guidelines, Sections 15301 (existing facilities), 15302 (replacement or reconstruction), and 15303 (new construction or conversion of small structures), as well as Class 1 (b), (c), and (e) of the revised County of Los Angeles Environmental Procedures and Guidelines. The project involves replacement of existing structures with new structures of substantially the same size, purpose, and capacity involving negligible or no expansion of capacity.

Upon your Board's approval of the project, Public Works will file a Notice of Exemption with the Registrar Recorder/County Clerk in accordance with Section 15062 of the State CEQA guidelines.

CONTRACTING PROCESS

The initial designs for this project were prepared using an existing Beaches and Harbors' as-needed contractor. Upon completion of the designs and permits, Public Works will proceed with construction by means of a JOC.

The Honorable Board of Supervisors
February 2, 2010
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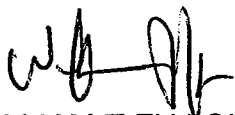
IMPACT ON CURRENT SERVICES (OR PROJECTS)

The Refurbishment project will impact access to the beach during construction; however, construction activities are scheduled during the off-season between the months of February 2010 to May 2010.

CONCLUSION

Please return one adopted copy of this letter to the Chief Executive Office, Capital Projects Division; Beaches and Harbors; and Public Works, Project Management Division I.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:GFSK
DJT:JT:zu

Attachments

- c: Executive Office, Board of Supervisors
- Civic Arts Commission
- County Counsel
- Department of Beaches and Harbors
- Department of Public Works
- Registrar-Recorder/County Clerk

February 2, 2010

ATTACHMENT A

**DEPARTMENT OF PUBLIC WORKS:
APPROVE 25120.5 MALIBU ROAD
ACCESS WAY REFURBISHMENT PROJECT
APPROVE PROJECT SCOPE AND BUDGET
CAPITAL PROJECT 86830**

I. PROJECT SCHEDULE

Project Activity	Scheduled Completion Date
Capital Project Approval	02/02/10
Design Documents	01/05/09*
Jurisdictional Approval	02/04/10
File Notice of Exemption	02/04/10
Construction Start	02/12/10
Substantial Completion	05/21/10
Final Acceptance	06/29/10

* Completion date of initial design documents.

II. PROJECT BUDGET SUMMARY

Project Activity	Proposed Budget
Land Acquisition	\$ 0
Construction	
Low Bid Construction Contract	\$ 0
Job Order Contract (cost estimate)	176,885
Change Orders	17,689
Departmental Crafts	0
Youth Employment	0
Construction Consultants	0
Misc. Expense	1,769
Telecomm Equip -- Affixed to Building	0
Civic Arts	0
Others: Utility Connection	3,500
Subtotal	<u>\$ 199,843</u>
Programming/Development	\$ 0
Plans and Specifications	\$ 97,577
Consultant Services	
Site Planning	\$ 7,215
Hazardous Materials	0
Geotech/Soils Report and Soils Testing	28,927
Material Testing/Survey	41,850
Cost Estimating	0
Topographic Surveys	0
Construction Management	67,600
Construction Administration	0
Environmental	0
Move Management	0
Equipment Planning	0
Legal	0
Construction/Change Order	0
Other: Title Investigation	0
Subtotal	<u>\$ 145,592</u>
Miscellaneous Expenditures	\$ 2,250
Jurisdictional Review/Plan Check/Permit	\$ 7,750
County Services	
Contract Compliance and Quality Control Inspection	\$ 23,550
Design Review	1,200
Design Services	1,579
Contract Administration	6,300
Project Management	78,300
Project Management Support Services	2,209
ISD Job Order Contract Management	0
DPW Job Order Contract Management	0
ISD ITS Communications	0
Project Security	0
Project Technical Support	2,500
Office of Affirmative Action	4,750
County Counsel	0
Other: Contract Recovery	1,600
Subtotal	<u>\$121,988</u>
TOTAL PROJECT COST	\$575,000

AGREEMENT

THIS AGREEMENT, made and entered into by and between Oceanif Condominium Homeowner Association a California homeowners association governing, located at 25120, 25122, 25124, and 25126 Malibu Road, Assessor Parcel Numbers 4459-015-023 to 026, respectively, in the City of Malibu (hereinafter referred to as HOA), and Howard Bernstein, an individual homeowner located at 25116 Malibu Road, Assessor Parcel Number 459-015-003, in the City of Malibu (hereinafter referred to as Bernstein) and the COUNTY OF LOS ANGELES, a political subdivision of the State of California, (hereinafter referred to as COUNTY):

WITNESSETH

WHEREAS, a certain beach access way located at 25120.5 Malibu Road (Access Way) in the City of Malibu (City), State of California, 90265, has been damaged by seasonal storm and beach erosion; and

WHEREAS, the Access Way is within the geographical boundaries of the City but is operated and managed by the County; and

WHEREAS, the County proposes to repair and/or restore the several structures making up the Access Way, including the concrete stairs, the metal security fence and a gate, the erosion control and support structure, and the asphalt-concrete paving and restriping of four parking spaces, which work is hereinafter referred to as the Project; and

WHEREAS, the Access Way is located between two private properties, where Oceanif Condominium Homeowner Association is located immediately west and adjacent to the Access Way and Bernstein's property is located immediately east and adjacent to the Access Way; and

WHEREAS, the County, the HOA, and Bernstein will benefit directly from the Project; and

WHEREAS, the County is willing to perform or cause to perform the preliminary and final design engineering, construction, construction inspection and engineering, materials testing, construction survey, contract administration, and all other pertinent work necessary to construct the Project; and

WHEREAS, the County proposes to perform ongoing maintenance for the Project within the access way easement at the County's expense; and

WHEREAS, the County, the HOA, and Bernstein are willing to finance their respective shares of the cost of the construction, defined below, for those portions of the Project that directly benefit their respective properties; and

WHEREAS, the cost of the construction is currently estimated to be One Hundred Seventy Six Thousand Eight Hundred Eighty Five and 41/100 Dollars (\$176,885.41), with the County's share being One Hundred Sixty Four Thousand Eight Hundred Eighty Six and 99/100 Dollars (\$164,886.99), the HOA's share being Eight Thousand Nine Hundred Ninety Eight and 86/100 Dollars (\$8,998.86), and Bernstein's share being Two Thousand Nine Hundred Ninety Nine and 56/100 Dollars (\$2,999.56).

NOW, THEREFORE, in consideration of the shared benefits to be derived by the County, the HOA and Bernstein and of the promises herein contained, it is hereby agreed as follows:

(1) DEFINITIONS:

- a. The total cost of the project, as referred to in this Agreement, shall consist of the costs of engineering, construction contract, contract administration, construction inspection and engineering, materials testing, construction survey, utility relocation, final signage and striping, and all other work necessary to construct the Project in accordance with the approved plans and specification.
- b. The cost of preliminary and final design engineering, as referred to in this Agreement, shall consist of the costs of environmental documentation; design survey; soil testing; preparation of plans, specifications, and cost estimates; right-of-way certification; utility engineering; and all other necessary work prior to the award of the construction contract for the Project and shall include overhead, administration, and depreciation in connection with any and all of the aforementioned items is paid by the County.
- c. The cost of construction contract for the Project, as referred to in this Agreement, shall consist of the total payments to the construction contractor(s) for the Project, and the total of all payments to utility companies or contractor(s) for the relocation of facilities necessary for the construction of the Project.

(2) THE HOA AGREES:

- a. To finance the HOA's share of the cost of Project, pursuant to paragraph (5) a., the actual amount of which is to be determined by a final accounting of the Project.
- b. To deposit with the County, following the execution of this Agreement and upon demand by the County, sufficient funds to finance its share of the cost of Project, currently estimated to be Eight Thousand Nine Hundred Ninety Eight and 86/100 Dollars (\$8,998.86). Said demand shall consist of a billing invoice.

- c. To grant to the County, at no cost to the County, any temporary right of way or easements that the HOA owns or has an easement for, that is necessary for the construction of the Project.
- d. Upon approval of construction plans for the Project, authorization to the County to construct those portions of the Project within the HOA's property boundary.
- e. To cooperate with the County in conducting negotiations with and, where appropriate, issue notices to public utility organizations and owners of substructures and overhead facilities regarding the relocation, removal, operation, and maintenance of all surface and underground utilities and facilities, structures, and transportation services, which interfere with the proposed construction of the Project.
- f. To appoint the County as the HOA's agent for the purpose of representing the HOA in all negotiations pertaining to the advertisement of the Project for construction bids, award, and administration of the construction contract and in all things necessary and proper to complete the Project.
- g. Upon completion of the Project, to maintain in good condition and at the HOA's sole expense all improvements constructed as part of the Project within HOA's property boundary.

(3) BERNSTEIN AGREES:

- a. To finance Bernstein's share of the cost of construction, pursuant to paragraph (5) a., below, the actual amount of which is to be determined by a final accounting of the Project.
- b. To deposit with the County, following the execution of this Agreement and upon demand by the County, sufficient funds to finance his share of the cost of construction, currently estimated to be Two Thousand Nine Hundred Ninety Nine and 56/100 Dollars (\$2,999.56). Said demand shall consist of a billing invoice.
- c. To grant to the County, at no cost to the County, any temporary right of way or easements that Bernstein owns or has an easement for that is necessary for the construction of the Project.
- d. Upon approval of construction plans for the Project, authorization to the County to construct those portions of the Project within Bernstein's property boundary.
- e. To cooperate with the County in conducting negotiations with and, where appropriate, issue notices to public utility organizations and owners of substructures and overhead facilities regarding the relocation, removal, operation, and maintenance of all surface and underground utilities and

facilities, structures, and transportation services, which interfere with the proposed construction of the Project.

- f. To appoint the County as Bernstein agent for the purpose of representing Bernstein in all negotiations pertaining to the advertisement of the Project for construction, bids, award, and administration of the construction contract and in all things necessary and proper to complete the Project.
- g. Upon completion of the Project, to maintain in good condition and at Bernstein's sole expense all improvements constructed as part of the Project within Bernstein's property boundary.

(4) COUNTY AGREES:

- a. To perform or cause to perform the preliminary and final engineering, design, construction inspection and engineering, materials testing, construction survey, contract administration, and all other work necessary to complete the Project.
- b. To finance the County's share of the cost of Project, pursuant to paragraph (5) a., below, the amount of which is to be determined by a final accounting of the Project costs.
- c. To obtain the HOA's and Bernstein's approval of plans for the Project prior to construction.
- d. To advertise the Project for construction bids, to award and to administer the construction contract, to do all things necessary and proper to complete the Project, and to act on behalf of the HOA and Bernstein in all negotiations pertaining thereto.
- e. To furnish the HOA and Bernstein, within one hundred twenty (120) calendar days after final payment to the contractor, a final accounting of the actual cost of the Project, including an itemization of actual unit costs and actual quantities for the cost of the Project.
- f. Upon completion of the Project, to maintain in good condition, and at the County's expense, all improvements constructed as part of the Project within the County's management and control.

(5) IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES AS FOLLOWS:

- a. The final accounting of the actual total cost of the Project shall allocate said total cost between the County, HOA, and Bernstein based on the location of the improvements and/or work done. Thus, the cost of all work or improvements (including all engineering, administration, and all other

costs incidental to any such work or improvement) located within the HOA's property boundary shall be borne by the HOA. Such costs constitute the HOA share of the cost of Project. The cost of all work or improvements (including all engineering, administration, and all other costs incidental to any such work or improvement) located within Bernstein's property boundary shall be borne by Bernstein. Such costs constitute Bernstein's share of the cost of Project. The cost of all work or improvements (including all engineering, administration, and all other costs incidental to any such work or improvement), located within the County's management and control. Such costs constitute the County's share of the cost of Project.

- b. If either the HOA's or Bernstein's deposit, as set forth in paragraphs (2) b. and (3) b. above, respectively, is not delivered to the County office, which is described on the billing invoice prepared by the County, prior to award of the Project, the County may delay the construction of the Project pending the receipt of either such payment.
- c. If the HOA's share of the cost of Project, based upon the final accounting, exceeds the HOA's deposit as set forth in paragraph (2) b., above, the County shall make a demand for the additional amount and the HOA shall either pay to the County the additional amount or if the HOA disputes the additional amount demanded, follow the procedure set forth in paragraph (5) f., below, for dealing with discrepancies. Said demand will consist of a billing invoice prepared by the County and delivered to the HOA. Conversely, if the HOA's share of the cost of Project, based on the final accounting, is less than the HOA's payment, the County shall refund the difference to the HOA within sixty (60) calendar days after completion of final accounting of the actual total cost of the Project.
- d. If the Bernstein's share of the cost of Project, based upon the final accounting, exceeds Bernstein's deposit as set forth in paragraph (3) b., above, the County shall make a demand for the additional amount and Bernstein shall either pay to the County the additional amount or if Bernstein disputes the additional amount demanded, follow the procedure set forth in paragraph (5) f., below, for dealing with discrepancies. Said demand will consist of a billing invoice prepared by the County and delivered to Bernstein. Conversely, if Bernstein's share of the cost of Project, based on the final accounting, is less than Bernstein's payment, the County shall refund the difference to Bernstein within sixty (60) calendar days after completion of final accounting of the actual total cost of the Project.

- e. If the HOA or Bernstein's final payment, as set forth in paragraph (5) c. and (5) d. above, respectively, is not delivered to the County office, which is described on the billing invoice prepared by the County within sixty (60) calendar days after the date of delivery to the HOA or Bernstein, as the case may be, the County is entitled to recover interest thereon on either or both delinquent payments, as the case may be, beginning sixty (60) calendar days from the date of the invoice at the rate of interest 10 percent annually (0.83333 percent per month).
- f. The HOA and Bernstein shall review the final accounting invoice for the cost of Project prepared by the County and delivered to the HOA and Bernstein and report to the County in writing any discrepancies within sixty (60) calendar days after the date of delivery to the HOA and Bernstein of each respective invoice. Undisputed charges shall be deducted from the HOA's and Bernstein's respective deposits. The County shall review all disputed charges and submit a written justification to the HOA and/or Bernstein, as the case may be, detailing the basis for those charges within sixty (60) calendar days of receipt of either the HOA's or Bernstein's written report. The HOA and/or Bernstein must submit justification to the County for nonpayment within sixty (60) calendar days after the date of the County's written justification. If not, previously disputed charges shall then be deducted from the HOA's and/or Bernstein's deposit, as the case may be, and any remaining deposit shall be refunded to the HOA and/or Bernstein, as the case may be, within sixty (60) calendar days.
- g. The County, at any time, may at its sole discretion, designate an alternative payment mailing address and an alternative schedule for payment of the HOA or Bernstein funds if applicable. The HOA and/or Bernstein shall be notified of such changes by invoice.
- h. During construction of the Project, the County shall furnish an inspector or other representative such as a project manager to perform the functions of an inspector. The HOA and/or Bernstein may also furnish, at no cost to County, inspectors or other representative (s) to inspect construction of the Project. Said inspectors shall cooperate and consult with County's project manager and designated inspector of record, but the orders of the County project manager and inspector to the contractors or any other person in charge of construction shall prevail and be final.
- i. This Agreement may be amended or modified only by written consent of all parties hereto. On behalf of the County, amendments and modifications of a nonmaterial nature may be made by the County's Director of Public Works or her delegates.

- j. Any correspondence, communication, or contact concerning this Agreement shall be directed to the following:

OWNERS: Mr. Howard Bernstein
25116 Malibu Road
Malibu, CA 90265

Oceanif Condominium Homeowner Association
c/o Robert Schuster
25120 Malibu Road
Malibu, CA 90265

COUNTY: Ms. Gail Farber
Director of Public Works
County of Los Angeles
Department of Public Works
P. O. Box 1460
Alhambra, CA 91802-1460

- k. Neither the County, nor any officer or employee of the County shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of the HOA or Bernstein under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of the HOA or Bernstein under this Agreement. It is also understood and agreed that, the HOA and Bernstein shall fully indemnify, defend, and hold County harmless from any liability imposed for injury occurring by reason of any acts or omissions on the part of the HOA or Bernstein under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of the HOA or Bernstein under this Agreement.
- l. This Agreement and all of its terms and conditions thereof shall be governed by and construed in accordance with the laws of the State of California. Both the HOA and Bernstein agree that the exclusive venue of any action arising from or connected with this Agreement shall be deemed to be in the courts of the State of California located in Los Angeles County, California.
- m. This Agreement may be signed in any number of counterparts. Each counterpart shall represent an original of this Agreement and all such counterparts shall collectively constitute one fully-executed document.
- n. The rights and obligations of the parties under this Agreement shall be binding upon the respective parties' respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized, by the HOA on _____, 20____, and by Bernstein on _____, 20____, and by the COUNTY OF LOS ANGELES on _____, 20____.

COUNTY OF LOS ANGELES

Director of Beaches and Harbors

ANDREA SHERIDAN ORDIN
County Counsel

By _____
Deputy

OCEANIF CONDOMINIUM HOMEOWNER ASSOCIATION
c/o Robert Schuster

By _____

HOWARD BERNSTEIN

By _____
Howard Bernstein