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Staff: SMR-SF
Staff Report: September 23, 2005
Hearing Date: October 13, 2005

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FINDINGS FOR CEASE AND DESIST ORDER CCC-05-CD-10 AND RESTORATION ORDER CCC-05-RO-06

CEASE AND DESIST AND RESTORATION ORDERS:	CCC-05-CD-10 and CCC-05-RO-06
RELATED VIOLATION FILE:	V-4-95-029
PROPERTY LOCATION:	5656 Latigo Canyon Road, Malibu, CA. (APN 4459-001-001) (**Exhibits 1 and 2**)
DESCRIPTION OF PROPERTY:	42-acre parcel on Latigo Canyon Road, located approximately one mile inland of Pacific Coast Highway in Malibu, CA, Los Angeles County.
PROPERTY OWNER:	Sanford J. Horowitz
VIOLATION DESCRIPTION:	Unpermitted development including (but not limited to) dumping of concrete, rebar, bricks, asphalt, plastics and metal materials into a canyon containing a blueline stream, which constitutes unpermitted streambed alteration (filling); unpermitted construction of two storage structures; removal of major vegetation and disturbance of Environmentally Sensitive Habitat; and unpermitted grading and paving of a building pad and two roads, one paved and one packed earth.
SUBSTANTIVE FILE DOCUMENTS:	1. Public records contained in the Commission file regarding Violation No. V-4-95-029; 2. Coastal Development Permit No. 5-89-1008; 3. Exhibits 1 through 15.

CEQA STATUS: Exempt (CEQA Guidelines (CG) §§ 15060(c)(2)), and Categorically Exempt (CG §§ 15061(b)(2), 15037, 15038, and 15321).

I. SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve Cease and Desist and Restoration Orders set forth below, to 1) direct Sanford Horowitz to cease and desist from performing unpermitted development on the subject property, and 2) require the restoration of the subject property. The unpermitted development includes but is not limited to dumping of concrete, rebar, bricks, asphalt, plastics and metal materials into a canyon containing a blueline stream, which constitutes unpermitted streambed alteration (filling); unpermitted construction of two storage structures; removal of major vegetation and disturbance of Environmentally Sensitive Habitat, including but not limited to removal of native chaparral; and unpermitted grading and paving of a building pad and two roads, one paved and one packed earth (**Exhibit 3a-3h site photos**). The unpermitted development is located down slope of an existing single-family residence on the property. The Commission approved a single-family residence in Administrative Coastal Development Permit ("CDP") No. 5-89-1000 (**Exhibit 4**). A January 24, 1977 aerial photo indicates that no development at all was located on the property prior to the effective date of the Coastal Act (**Exhibits 5a)**. A May 10, 1986 aerial photo indicates that the approved driveway and building pad was present, as well as the additional unpermitted roads, lower building pad, and storage structures (**Exhibit 5b**).

The unpermitted development on the subject property was performed without a CDP and is a violation of the Coastal Act. The Commission first learned about the Coastal Act violations on the subject property in 1995 and notified the previous owner of the violations in July of that year. The Commission recorded a Notice of Violation Action ("NOVA") regarding the debris dumping against the property title in November 1995. The current owner of the property, Mr. Sanford Horowitz, bought the property in 2000 and was aware of Coastal Act violations on the property when he purchased it.

The subject property is a 42-acre parcel located on Latigo Canyon Road in the Coastal Zone, approximately one mile inland of Pacific Coast Highway in Malibu, California. The subject property is located within the City of Malibu's coastal permit jurisdiction, while the Commission retains appeal jurisdiction for the portions of the property that are within 100 feet of two streams on the property (one of the two streams has been impacted by the debris dumping). The unpermitted development is inconsistent with the certified Local Coastal Program ("LCP") and the Coastal Act.

In an April 21, 2005 letter to City of Malibu planning staff, Commission staff asked the City to notify Commission staff whether the City intended to pursue an enforcement action to resolve the Coastal Act violations located on the subject property that are within the City's LCP jurisdiction (**Exhibit 6**). Section 30810(a) of the Coastal Act provides that the Commission may

issue an order to enforce the requirements of a certified local coastal program in the event that the local government requests that the Commission assist with or take primary responsibility for enforcement or if the local government is notified of the violation and declines to act, or does not take action in a timely manner. In a telephone response in June 2005, City of Malibu staff indicated that the City would prefer that the Coastal Commission assume enforcement jurisdiction for the entire subject property and to order abatement of violations on the subject property. The proposed Orders before the Commission would prohibit unpermitted development at the site, and would require restoration of the affected areas under Section 30811 of the Coastal Act.

Under Section 30810 of the Coastal Act the Commission may issue a Cease and Desist Order if it finds that any person has undertaken or is threatening to undertake any activity which requires a permit from the Commission without such a permit. No permit was issued for the various development activities performed at the site.

Under Section 30811 of the Coastal Act, to order restoration, the Commission must find that development has occurred without a coastal development permit, is inconsistent with the Coastal Act and is causing continuing resource damage. As explained herein, the development is 1) unpermitted, 2) inconsistent with the Coastal Act, and 3) causing continuing resource damage, and that, therefore, the standards for a restoration order are satisfied.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order are described in Section 13185, and procedures for a proposed Restoration Order are described in Section 13195, incorporating by reference Sections 13185 and 13186 of Title 14 of the California Code of Regulations (CCR).

For a Cease and Desist and Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13195, incorporating by reference Sections 13185, 13186, and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall

determine, by a majority vote of those present and voting, whether to issue the Cease and Desist and Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

III. MOTION/STAFF RECOMMENDATION OF APPROVAL/RESOLUTION

Staff recommends that the Commission adopt the following two motions:

1. A. MOTION:

> I move that the Commission issue Cease and Desist Order No. CCC-05-CD-10 pursuant to the staff recommendation.

1. B. STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

1. C. RESOLUTION TO ISSUE CEASE AND DESIST ORDER:

The Commission hereby issues Cease and Desist Order No. CCC-05-CD-10, as set forth below, and adopts the findings set forth below on grounds that the development described in the order has occurred without a coastal development permit. Upon approval, the Commission authorizes and orders that the actions set forth in the Cease and Desist Order be taken.

2. A. MOTION:

> I move that the Commission issue Restoration Order No. CCC-05-RO-06 pursuant to the staff recommendation.

2. B. STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

2. C. RESOLUTION TO ISSUE RESTORATION ORDER:

The Commission hereby issues Restoration Order number CCC-05-RO-06, set forth below, and adopts the findings set forth below on grounds that the development described in the order 1) has occurred without a coastal development permit, 2) is inconsistent with the Coastal Act, and 3) is causing continuing resource damage. Upon approval, the Commission authorizes and orders that the actions set forth in the restoration order be taken.

IV. FINDINGS FOR CEASE AND DESIST ORDER CCC-05-CD-10 and RETORATION ORDER CCC-05-CD-06

Staff recommends the Commission adopt the following findings in support of its action.

A. Description of Unpermitted Development

The development that is the subject of these Cease and Desist and Restoration Orders ("Orders") consists of: unpermitted development including (but not limited to) dumping of concrete, rebar, bricks, asphalt, plastics and metal materials into a canyon containing a blueline stream, which constitutes unpermitted streambed alteration (filling); unpermitted construction of two storage structures; removal of major vegetation and disturbance of Environmentally Sensitive Habitat, including but not limited to removal of native chaparral; and unpermitted grading and paving of a building pad and two roads, one paved and one packed earth (**Exhibit 3a-3h site photos**).

B. Background

In letters dated July 18, 1995 and October 3, 1995, the Coastal Commission sent a notice of violation to Forrest Freed, the former owner of 5656 Latigo Canyon Rd., regarding the unpermitted dumping of materials in a canyon containing a blueline stream (**Exhibits 7 and 8**). On November 13, 1995 a Notice of Violation Action ("NOVA") was recorded against the subject property (**Exhibit 9**). In letters dated January 23, 1996 and May 28, 1996, Commission staff reminded Mr. Freed of missed deadlines for submittal of a CDP application for removal of unpermitted development. In a letter dated February 4, 1998, Commission staff set a new deadline of March 4, 1998 for submittal of a complete CDP application. On February 28, 2000, Mr. Freed submitted an incomplete CDP application (No. 4-00-051) to remove debris on the site. In a letter dated March 27, 2000, Commission staff described numerous items that were required to complete the application, and set a deadline of June 27, 2000 for their submittal (**Exhibit 10**).

The current owner of the property, Mr. Sanford Horowitz, bought the property on October 6, 2000, after the Notice of Violation that had been recorded in the chain of title for the property. Mr. Freed withdrew CDP Application No. 4-00-051 on November 2, 2000.

Commission staff met with Horowitz's representative, Mr. Gregory Bloomfield, on October 12, 2001 to discuss the permit history of the site. Mr. Bloomfield was informed by staff that in addition to the unpermitted dumping of materials in the canyon and stream, the grading of the lower pad, two roads and placement of two mobile homes and erection of two storage buildings also appeared to be unpermitted development. The two mobile homes have since been removed from the property. Mr. Bloomfield asserted that aerial photos showed that the two roads were present in 1977. In fact, a January 24, 1977 aerial photograph of the subject property indicates that no graded roads, debris, buildings, or graded pads are visible on the site as of this date (**Exhibit 5a**). The Coastal Act's permit requirements became effective on January 1, 1977. During the October 2001 meeting, Commission staff advised Mr. Bloomfield that an application to retain the lower pad and structures on the pad would likely not be consistent with the Coastal Act because it did not appear to minimize landform alteration. Commission staff advised Mr.

Bloomfield and Mr. Horowitz in November of 2001 that an application for a CDP must be submitted before any removal or restoration work could begin on the subject property.

The unpermitted development on the subject property, which is located in the Coastal Zone, was performed without a coastal development permit and is a violation of the Coastal Act. Section 30600(a) of the Coastal Act requires that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit.

In 2002, Horowitz submitted an application for a plot plan review to the City of Malibu, proposing a tennis court on the lower pad and new development on the upper pad (next to the permitted single-family residence). The submittal did not address resolution of the Coastal Act violations on the subject property, was not a CDP application and did not address the issue of unpermitted development under the Coastal Act. In an April 21, 2005 letter to City of Malibu planning staff, Commission staff asked the City to notify Commission staff whether the City intended to pursue an enforcement action to resolve the Coastal Act violations located on the subject property that are within the City's LCP jurisdiction (**Exhibit 6**). Section 30810(a) of the Coastal Act provides that the Commission may issue an order to enforce the requirements of a certified local coastal program in the event that the local government requests that the Commission assist with or take primary responsibility for enforcement or if the local government is notified of the violation and declines to act, or does not take action in a timely manner. In a telephone response in June 2005, City of Malibu staff indicated that the City would prefer that the Coastal Commission take the lead in enforcement of the violations. In a letter dated July 12, 2005, the City of Malibu informed Mr. Horowitz that, because of lack of activity, the proposed project had been administratively withdrawn, effective as of July 7, 2005 (**Exhibit 11**).

On July 6, 2005, the Executive Director sent Mr. Horowitz a Notice of Intent (NOI) to Commence Cease and Desist and Restoration Order Proceedings, to seek an order compelling Mr. Horowitz to cease violating the Coastal Act and to restore the subject property (**Exhibit 12**). The NOI stated the basis for issuance of the proposed Cease and Desist and Restoration Orders, stated that the matter was tentatively being placed on the Commission's October 2005 hearing agenda, and provided the opportunity to respond to allegations in the NOI with a Statement of Defense form.

On August 10, 2005, Mr. Horowitz submitted a Statement of Defense in response to the NOI for the proposed Cease and Desist and Restoration Orders (**Exhibit 13**). The substance of the Statement of Defense, and the Commission's response, is outlined in subsequent sections below.

On August 5, 2005, the Executive Director issued a Notice of Intent to record a Notice of Violation of the Coastal Act (**Exhibit 14**). The NOI informed Mr. Horowitz that all unpermitted development on the subject property (i.e., the unpermitted construction of two storage structures; removal of major vegetation, grading and paving of a building pad and two roads, as well as the debris dumping that had been recorded in a previous NOVA), would be recorded in an updated NOVA unless Mr. Horowitz submitted a written objection to such recordation within 20 days of the issuance of the NOI (August 25, 2005). A written objection to the recordation of the updated

NOVA was not received; therefore, the updated NOVA was recorded on September 20, 2005 (**Exhibit 15**).

On September 20, 2005, Commission staff conducted another site visit to the subject property to confirm current site conditions. Staff confirmed that while two mobile homes had been removed from the property, the rest of the cited unpermitted development was still present, including the debris, two storage structures on the lower pad and the two unpermitted roads (**Exhibits 3e-3h**).

C. <u>Basis for Issuance of Cease and Desist Order:</u>

The statutory authority for issuance of this Cease and Desist Order is found in Section 30810 of the Coastal Act, which states:

> *(a) If the commission… determines that any person… has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person to cease and desist.*

Section 30810 also provides that:

> *(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.*

D. <u>Basis of Issuance of Restoration Order</u>

The statutory authority for issuance of this Restoration Order is provided for in §30811 of the Coastal Act, which states:

> *In addition to any other authority to order restoration, the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.*

Commission staff has already verified that no permit was issued for this development. The following paragraphs provide evidence that the unpermitted development is also inconsistent with specified resource protection policies of the certified LCP and the Coastal Act and is causing continuing resource damage.

Unpermitted Development is Inconsistent with the LCP and the Coastal Act

Water Quality

Section 30231 of the Coastal Act states, in part, that

> *"the quality of coastal waters, [and] streams appropriate to maintain optimum populations of marine organisms...shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff [and] preventing depletion of ground water supplies and substantial interference with surface water flow."*

Water Supply and Flood Control

Section 303256 of the Coastal Act states that:

> "*Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (l) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat."*

The 2002 City of Malibu Local Coastal Program ("LCP") incorporates Sections 30231 and 30236 of the Coastal Act and also includes several land use policies in its Local Implementation Plan that are designed to protect water quality and address stream protection and erosion control. These policies include:

> 17.1B All development should be designed to prevent the introduction of pollutants that may result in water quality impacts.
>
> 17.9A Alterations or disturbance of streams or natural drainage courses...shall be prohibited, except for: 1) necessary water supply projects where no feasible alternative exists; 2) flood protection for existing development where there is no other feasible alternative; and 3) the improvement of fish and wildlife habitat.

Grading and vegetation removal on the site has removed surface vegetation, ground cover, subsurface rootstock, and left areas of bare soil on the subject property. Dumping of concrete, rebar, bricks, asphalt, plastics and metal materials into a canyon containing a blueline stream has substantially altered the stream and negatively impacted the quality of coastal waters. These affected areas are highly susceptible to erosion and may contribute directly to the degradation of water quality in the surrounding coastal waters and streams through increased sediment input and the presence of materials that may be harmful to aquatic organisms and wildlife (asphalt and plastics). Therefore, based on these facts, the unpermitted development that is the subject of

these Orders is inconsistent with Sections 30231 and 30236 of the Coastal Act and with the certified LCP.

Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act states, in part, that

> *"Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas."*

The 2002 City of Malibu LCP defines Environmentally Sensitive Habitat area ("ESHA") as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." The LCP incorporates Section 30240 of the Coastal Act regarding ESHA and also includes several land use policies in its Local Implementation Plan that are designed to protect ESHA. These policies include:

4.1 The purpose of the environmentally sensitive habitat overlay zone or "ESHA" overlay zone is to protect and preserve areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and development. The environmentally sensitive habitat overlay zone shall extend not only over an ESHA area itself but shall also include buffers necessary to ensure continued protection of the habitat areas. Only uses dependent on the environmentally sensitive habitat areas and which do not result in significant disruption of habitat values shall be permitted in the ESHA overlay zone.

4.2 The ESHA overlay provisions shall apply to those areas designated environmentally sensitive habitat area on the Malibu LIP ESHA overlay map and those areas within 200 feet of designated ESHA. Additionally, those areas not mapped as ESHA, but found to be ESHA under the provisions of Section 4.3 of the Malibu LIP shall also be subject to these provisions.

4.3 A. Any area not designated on the ESHA Overlay Map that meets the "environmentally sensitive area" definition (Chapter 2 of the Malibu LIP) is ESHA and shall be accorded all the protection provided for ESHA in the LCP. The City shall determine the physical extent of habitat meeting the definition of "environmentally sensitive area" on the project site, based on the applicant's site-specific biological study, as well as available independent evidence.

4.3 B. Unless there is site-specific evidence that establishes otherwise, the following habitat areas shall be considered to be ESHA:

1. Any habitat area that is rare or especially valuable from a local, regional, or statewide basis
2. Any habitat area that contributes to the viability of plant or animal species that are designated or are candidates for listing as rare, threatened, or endangered under State or Federal law
3. Any habitat area that contributes to the viability of species that are designated "fully protected" or "species of special concern" under State law or regulations.
4. Any habitat area that contributes to the viability of species for which there is other compelling evidence of rarity, for example plant species eligible for state listing as demonstrated by their designation as "1b" (Rare or endangered in California and elsewhere) or designation as "2" (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society,
5. Any designated Area of Special Biological Significance, or Marine Protected Area.
6. Streams.

A natural drainage containing a blueline stream, which constitutes ESHA, has been directly impacted through the debris dumping, which has partially filled the canyon containing this drainage. The area surrounding the stream is dominated by healthy, contiguous chaparral habitat. Chaparral is ESHA if it is not isolated or in small patches, but is part of a large, healthy native habitat area. The unpermitted grading and vegetation clearance caused the direct removal and discouragement of the growth of watershed cover, including native chaparral on the subject property, which is also considered ESHA, resulting in a reduction in the amount and quality of the habitat and watershed cover in the area. Therefore, based on these facts, the unpermitted development that is the subject of these Orders is inconsistent with Section 30240 of the Coastal Act and with the certified LCP.

Scenic and Visual Qualities; Minimization of Natural Landform Alteration

Coastal Act Section 30251 states that:

> *"The scenic and visual qualities of coastal areas shall be considered 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 of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting."*

The 2002 City of Malibu LCP incorporates Section 30251 of the Coastal Act and also includes several land use policies in its Local Implementation Plan that are designed to protect scenic, visual, and hillside resources. These policies include:

> 6.1 The purpose of the Scenic, Visual, and Hillside Resource Protection Ordinance is to enhance and protect the scenic and visual qualities of coastal and mountain areas within the City of Malibu as a resource of public importance in accordance with the policies of the City's Local Coastal Plan (LCP) and the California Coastal Act. To implement the certified Land Use Plan (LUP), development standards, permit and application requirements, and other measures are provided *to ensure that 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 of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.* (emphasis added)
>
> 6.5A3 Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.
>
> 6.5A4 New development, including a building pad, if provided, shall be sited on the flattest area of the project site, except where there is an alternative location that would be more protective of visual resources or ESHA.

The unpermitted roads, pads, structures, and vegetation clearance on the subject property do not minimize landform alteration or disturbance to the natural drainage or native vegetation. Therefore, based on these facts, the unpermitted development that is the subject of these Orders is inconsistent with Section 30251 of the Coastal Act and with the certified LCP.

Geologic Stability

Section 30253 of the Coastal Act states, in part, that

> *"New development shall: (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard, [and] (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area."*

The 2002 City of Malibu LCP incorporates Section 30253 of the Coastal Act and also includes several land use policies in its Local Implementation Plan that are designed to ensure geologic stability. These policies include:

> 9.1 The purpose and intent of this chapter is to implement the policies of the City's certified Local Coastal Program (LCP) Land Use Plan (LUP) to

> insure that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. To implement the certified LUP, development standards, permit and application requirements, and other measures are provided *to ensure that permitted development is sited and designed to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, or in any way require the construction of protective devices that would substantially alter natural landforms along canyons*, hillsides, bluffs and cliffs. (emphasis added)

The grading of roads and removal of vegetation has left substantial areas of bare soils on steep slopes. Such areas will contribute significantly to erosion at the site. The unpermitted debris dumping has occurred on a steep slope. The unpermitted graded roads and pad, which have been cleared and graded on steep slopes and adjacent to the stream channel on the subject property, do not minimize landform alteration on the site, as is required by Section 30253. Therefore, based on these facts, the unpermitted development that is the subject of these Orders is inconsistent with Section 30253 of the Coastal Act and with the certified LCP.

Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations:

> *'Continuing,' when used to describe 'resource damage,' means such damage which continues to occur as of the date of issuance of the Restoration Order.*
>
> *'Resource' means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.*
>
> *'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development."*

Since the unpermitted development continues to exist at the subject property and, as described in detail in the sections above, is causing adverse impacts to resources protected by the Coastal Act that continue to occur as of the date of this proceeding, damage to resources is "continuing" for purposes of Section 30811 of the Coastal Act.

E. <u>CEQA</u>

The Commission finds that the cease and desist activities and removal of the unpermitted development and restoration of the property to the conditions that existed prior to the unpermitted development, as required by these Cease and Desist and Restoration Orders, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the

meaning of CEQA. The Cease and Desist and Restoration Orders are categorically exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(3), 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

F. Findings of Fact

1. Mr. Sanford J. Horowitz owns the property at 5656 Latigo Canyon Road (APN 4459-001-001).

2. Unpermitted development, including (but not limited to) dumping of concrete, rebar, bricks, asphalt, plastics and metal materials into a canyon containing a blueline stream; unpermitted construction of two storage structures; removal of major vegetation; and grading and paving of a building pad and two roads have occurred on the subject property.

3. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.

4. No permit was issued for the cited development activities on the subject property.

5. The unpermitted development is a violation of the Coastal Act.

6. The unpermitted development is inconsistent with Chapter 3 policies of the Coastal Act, including Sections 30231, 30236, 30240, 30251 and 30252.

7. The unpermitted development is inconsistent with resource protection policies of the certified Local Coastal Program, Local Implementation Plan Sections 4, 6, 9 and 17.

8. The unpermitted development is causing continuing resource damage.

9. A Notice of Violation Action (NOVA) has been recorded against the subject property.

G. Violators' Defenses and Commission Staff's Response

On August 10, 2005, Drew D. Purvis submitted a Statement of Defense in response to the NOI for the Cease and Desist and Restoration Orders, on behalf of Sanford Horowitz (**Exhibit 13**). The following section describes the defenses contained in the Statement of Defense and sets forth the Commission's response to each defense.

Owner's Defense:

1. "The current owner of the subject property (Mr. Sanford Horowitz) has not felt the need to retain legal council regarding this issue because it is his intent to comply fully to what he believes to be the current standing of this violation."

<u>Commission's Response</u>:

Based on the defenses raised in more detail below, this statement appears to be referring to Mr. Horowitz's assertion that before he purchased the property he was only aware of the Coastal Act violation concerning the debris dumping into the canyon and blueline stream, that he was not aware of any other alleged violations on the property, and that he intends to resolve only that part of the alleged violation involving the debris dumping (i.e., he appears to be asserting that he is not responsible for resolving the alleged violations regarding the unpermitted grading of the lower pad, the unpermitted grading of two roads leading to the lower pad, and the unpermitted placement of sheds on the lower pad).

Even if Mr. Horowitz was not aware when he purchased the property that the lower pad, structures on the pad, and roads were constructed in violation of the Coastal Act, as the current property owner, Mr. Horowitz is responsible for resolving all Coastal Act violations on the subject property.

<u>Owner's Defense</u>:

2. "I concur that unpermitted dumping of materials, including but not limited to: concrete, rebar, bricks, asphalt, plastics and metal materials [has occurred] in canyon containing a blue[line] stream."

<u>Commission's Response</u>:

Mr. Horowitz has acknowledged that when he purchased the subject property, he was aware of the violation regarding the debris dumping. Mr. Horowitz has indicated that he is willing to remove the materials from the canyon and stream, but he has not submitted a CDP application to obtain authorization to do so. This statement does not constitute a defense to issuance of the Orders.

<u>Owner's Defense</u>:

3. "I do not concur with the allegations of unpermitted placement of two mobile homes, unpermitted construction of two storage sheds, and grading and paving of a building pad and two roads, one paved and one packed earth."

<u>Commission's Response</u>:

Mr. Horowitz has stated that he only knew about the unpermitted debris dumping, and that he was not informed when he purchased the property about other alleged violations on the property (i.e., the unpermitted lower pad, the two unpermitted graded roads and the unpermitted sheds on the lower pad). As noted above, even if some of the unpermitted development on the subject property was performed or placed there by a previous owner, Mr. Horowitz is liable for actions of previous owners who may have conducted the unpermitted development. Mr. Horowitz is violating the Coastal Act by maintaining the unpermitted development on his property.

In addition, in (Leslie Salt Co. v. San Francisco Bay Conservation and Development Com. (1984) 153 Cal. App.3d 605, 622), the court held that:

> *"whether the context be civil or criminal, liability and the duty to take affirmative action [to correct a condition of noncompliance with applicable legal requirements] flow not from the landowner's active responsibility for [that] condition of his land…or his knowledge of or intent to cause such [a condition] but rather, and quite simply, from his very possession and control of the land in question."*

Mr. Horowitz is also maintaining conditions that are causing harm to water quality and therefore constitute a public nuisance. Mr. Horowitz is liable for abatement of public nuisances on the subject property based on Civil Code 3483, which states:

> *Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.*

<u>Owner's Defense</u>:

4. "I had no personal knowledge of any of the allegations [in #3 above]. When I purchased the resident [sic] the only issue that I was told about from the prior owner, his real estate agent, and the people who I met at the property from the Coastal Commission was this issue of illegal dumping of debris. The mobile homes, steel sheds, pads were never mentioned. Later Greg Bloomfield was told about the possibility of the road going down the canyon but we proved thru aerial photos that that road pre-dated the existence of the Coastal Commission."

<u>Commission's Response</u>:

The aerial photos provided by Mr. Horowitz do not prove that the road pre-dated the Coastal Act. In fact, these aerial photos of the subject property clearly indicate the opposite. The Statement of Defense included two attached photos, one dated May 5, 1975, and one dated April 20, 1987 (**Exhibit 13 pages 7 and 9**). No development is visible on the subject property in the 1975 photo. In the 1987 photo, development is clearly visible. Commission staff examined a similar set of aerial photos dating from 1977 and 1986 (described below), which also indicate that no development was located on the subject property prior to the effective date of the Coastal Act.

In an aerial photo dated January 24, 1977, no development at all is visible on the subject property (**Exhibit 5a**). In an aerial photo dated May 10, 1986, development is clearly visible on the subject property. Visible development in this photo includes the permitted driveway and upper building pad (before the single family residence was constructed) as well as the unpermitted lower graded building pad, two unpermitted graded roads leading down to the unpermitted pad, and two unpermitted storage structures on the lower pad (**Exhibit 5b**). Development on the subject property clearly occurred after the permitting requirements of the Coastal Act went into

effect on January 1, 1977. None of the development on the subject property, whether permitted or unpermitted, occurred before January 1977.

As discussed above, even if some of the unpermitted development on the subject property was performed or placed there by a previous owner, Mr. Horowitz is liable for removal of the unpermitted development and restoration of the site.

Owner's Defense:

6. "In regards to the unpermitted dumping of materials I have hired a team of technical and environmental consultants to study the existing condition and prepare recommendations for remediation of this condition. We intend to submit a comprehensive application before the end of the year. The two mobile homes were removed years ago."

Commission's Response:

The Statement of Defense includes three attached proposals dated February 17, 2005, December 2, 2003, and February 20, 2005 (**Exhibit 13, pages 10-20 and 24-30**). The February 17, 2005 proposal outlines a scope of work "to prepare a biological assessment for a new home and associated improvements within/adjacent to designated environmentally significant habitat area, Horowitz property, Latigo Canyon Area, Malibu, CA." The December 2, 2003 proposal outlines a scope of work "to provide a preliminary geologic and soils engineering investigation of the subsurface earth materials on the subject property for the proposed garage/guesthouse, pottery studio, spa and driveway retaining walls and provide appropriate recommendations." The February 20, 2005 proposal outlines a scope of work "to perform a grading and drainage plan for planning purposes and a local stormwater management plan (SWPCPC and SUSMP) for review by the City of Malibu." These work scopes are for the preparation of reports that would be prepared in support of new proposed development on the subject property, which would be located on the upper approved pad where the existing single-family residence is located. None of the proposed development listed in these work scopes addresses resolution of the existing Coastal Act violations on the site through removal of existing unpermitted development or restoration of the site or even address the area where the violations are located.

The Statement of Defense also includes an attached agreement for landscape design services (**Exhibit 13, pages 21-23**), dated February 21, 2005. This agreement describes a scope of work for "new planting plan for all areas around existing and new residence along property access road and private driveway approach; hardscape and softscape design for pool area, hillside area behind proposed garage/guest house, tennis court area, conceal graded hillside embankment below tennis court per cities request; irrigation plan around surrounding proposed landscaped areas; identify areas requiring landscape for erosion control measures; redesign drainage system as required by City for property located in the coastal zone at 5656 Latigo Canyon Road in the City of Malibu, California." Similar to the scopes of work discussed above, this landscaping agreement appears to be linked to new proposed development that would be located on the upper approved pad where the existing single-family residence is located. The landscaping agreement does refer to "tennis court area," which on plans submitted to the City of Malibu is proposed for

the unpermitted lower pad area, and to "conceal graded hillside embankment below tennis court," which is the location of the unpermitted debris in the canyon. The lower pad is unpermitted, does not appear to be approvable under the Coastal Act because it does not minimize landform alteration, and to "conceal" the debris slope is not an appropriate resolution of the Coastal Act violation.

The work scopes do not propose any measures to resolve the Coastal Act violations on the subject property. Therefore, it is apparent that Mr. Horowitz has not "hired a team of technical and environmental consultants to study the existing condition and prepare recommendations for remediation of this condition." In fact, it appears Mr. Horowitz is proposing to retain the unpermitted lower pad, is proposing to place new development at this location, and is proposing to "conceal" the unpermitted debris instead of removing the debris and restoring the site. During a site visit on September 20, 2005, Commission staff confirmed that no mobile homes were present on the lower pad, and they are not subject to the proposed Orders.

Staff recommends that the Commission issue the following Cease and Desist and Restoration Orders:

CEASE AND DESIST ORDER CCC-05-CD-10

Pursuant to its authority under Public Resource Code §30810, the California Coastal Commission hereby finds that unpermitted development has occurred on the site in violation of the Coastal Act, and hereby orders and authorizes Mr. Sanford Horowitz, his agents, contractors and employees, and any person(s) acting in concert with any of the foregoing (hereinafter referred to as "Respondents") to cease and desist from: dumping of concrete, rebar, bricks, asphalt, plastics, metal materials or other materials into a canyon containing a blueline stream; unpermitted construction of two storage structures; removing major vegetation; and grading and paving of a building pad and two roads and from conducting any other unpermitted development at the site which would require a CDP, and 2) maintaining on said property any unpermitted development including that referenced above or as otherwise referenced in Section IV.A of this report; and 3) conducting any future development in the future without first obtaining a CDP.

RESTORATION ORDER CCC-05-RO-06

Pursuant to its authority under Public Resource Code §30811, the California Coastal Commission finds that the development is 1) unpermitted, 2) inconsistent with the Coastal Act, and 3) causing continuing resource damage, and hereby orders and authorizes Mr. Sanford Horowitz, his agents, contractors and employees, and any person(s) acting in concert with any of the foregoing (hereinafter, "Respondents") to restore the subject properties to the extent provided below. Accordingly, the persons subject to this order shall fully comply with the following conditions:

A. Within 60 days of issuance of this Restoration Order, Respondents shall submit for the review and approval of the Executive Director of the Commission a Restoration, Revegetation and Monitoring Plan (hereinafter referred to as the "Restoration Plan"). The Executive Director may require revisions to this and any other deliverable required under these Orders. The Executive Director may extend this time for good cause.

   The Restoration, Revegetation and Monitoring Plan (hereinafter referred to as the "Restoration Plan") shall be prepared by a qualified restoration ecologist and a qualified engineering geologist or licensed engineer, as described in section (d), below and shall include the following:

   a) Goals and Performance Standards. Section A of the Restoration Plan shall present the following goals of the Restoration and Revegetation Project.

      1. Restoration of the property to the condition that existed prior to the unpermitted development through removal of all unpermitted development, including debris (including but not limited to: concrete, rebar, bricks, asphalt, plastics and metal materials) and storage structures, and restorative grading of the topography in the areas impacted by the unpermitted development, including the canyon slope, paving and the location of the unpermitted building pad and the two unpermitted roads. Restorative grading plans should include sections showing original and finished grades, and quantitative

breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate the original topography of the subject site prior to any grading disturbance. The restorative grading plans shall provide for the restoration of the property to the condition that existed prior to the unpermitted development to the maximum extent feasible. If Respondents believe the site cannot be completely restored to its pre-violation condition, they shall demonstrate to the Executive Director's satisfaction that the Restoration Plan proposes restoration to the maximum extent feasible. The location for any excavated debris and material to be removed from the site as a result of the restoration of the impacted areas shall be identified. If the dumpsite is located in the Coastal Zone and is not an existing sanitary landfill, a coastal development permit shall be required.

2. Revegetation of all graded areas and areas impacted by the removal of major vegetation so that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of revegetation activities.

3. Eradication of non-native vegetation within the areas subject to revegetation and those areas that are identified as being subject to disturbance as a result of the restoration and revegetation activities.

4. Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the revegetation of the impacted areas. The Restoration and Revegetation Project will not be successful until the revegetated areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal.

5. Stabilization of soils so that soil is not transported off the subject property or into the chaparral or riparian ESHA and so that slumping, gullying, or other surficial instability does not occur.

6. Section A of the Restoration Plan shall also include specific ecological and erosion control performance standards that relate logically to the restoration and revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (*e.g.*, specified average height within a specified time for a plant species).

7. Where absolute performance standards cannot reasonably be formulated, clear relative performance standards shall be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified.

Reference sites shall be located on adjacent areas vegetated with chaparral undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar slope, aspect and soil moisture. If the comparison between the revegetation area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

b) Restoration and Revegetation Methodology. Section B of the Restoration Plan shall describe the methods to be used to stabilize the soils and revegetate the impacted areas. Section B shall be prepared in accordance with the following directions:

1. The plan shall be designed to minimize the size of the area and the intensity of the impacts from disturbances caused by the restoration of the impacted areas. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently vegetated with chaparral shall not be disturbed by activities related to this restoration project. Prior to initiation of any activities resulting in physical alteration of the subject property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape.

2. Specify that the restoration of the site shall be performed using hand tools wherever possible, unless it has been demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to geological instability, minimization of landform alteration, erosion and impacts to native vegetation and the stream.

3. The qualified geologic engineer and restoration ecologist shall specify the methods to be used after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The plan shall specify the erosion control measures that shall be installed on the project site

prior to or concurrent with the initial grading operations and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment outside of the disturbed areas. The soil treatments shall include the use of mycorrhizal inoculations of the soil, unless it can be demonstrated to the satisfaction of the Executive Director that such treatment will not likely increase the survival of the plants to be used for revegetation.

4. Describe the methods for revegetation of the site. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using native plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the revegetation area.

5. Describe the methods for detection and eradication of nonnative plant species on the site. Herbicides shall only be used if physical and biological control methods are documented in peer-reviewed literature as not being effective at controlling the specific nonnative species that are or become established in the revegetation area. If herbicides are to be used in the revegetation area, specify the target plant, type of herbicide, concentration, and the precautions that shall be taken to protect native plants and workers, consistent with all applicable laws and regulations.

6. Specify the measures that will be taken to identify and avoid impacts to sensitive species. Sensitive species are defined as: (a) species which are listed by state or federal agencies as threatened or endangered or which are designated as candidates for such listing; (b) California species of special concern; (c) fully protected or "special animal" species in California; and (d) plants considered rare, endangered, or of limited distribution by the California Native Plant Society.

c) Monitoring and Maintenance. Section C of the Restoration Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:

1. The Respondents shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration ecologist and qualified geologic engineer, evaluating compliance with the performance standards. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet

the goals and performance standards specified in the Restoration Plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery at the site. Carry out the further recommendations and requirements for additional restoration activities that are authorized by Commission staff.

2. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the restoration of the project site. If any such inputs are required beyond the first two years, then the monitoring program shall be extended by an amount of time equal to that time during which inputs were required after the first two years, so that the success and sustainability of the restoration of the project site are ensured.

3. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the revised or supplemental restoration plan must be processed as a CDP, a new Restoration Order, or modification of Restoration Order CCC-05-RO-06.

d) Appendix A shall include a description of the education, training and experience of the qualified engineering geologist or licensed engineer and restoration ecologist who shall prepare the Restoration Plan. A qualified restoration ecologist for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration or revegetation of chaparral habitats. If this qualified restoration ecologist does not have experience in creating the soil conditions necessary for successful revegetation of chaparral vegetation, a qualified soil scientist shall be consulted to assist in the development of the conditions related to soils in the Revegetation and Monitoring Plan. A qualified engineering geologist or licensed engineer for this project shall be a geologist or engineer who has experience evaluating and designing soil stabilization projects in the Santa Monica Mountains area.

e) Submit interim erosion control plans for the review and approval of the Executive Director. The Interim Erosion Control Plan shall be prepared by a qualified restoration ecologist and shall include the following:

1. The Interim Erosion Control Plan shall demonstrate that:

   a. The following temporary erosion control measures shall be used: hay bales, straw wattles, silt fences.

b. Erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and resources.

2. The Interim Erosion Control Plan shall include, at a minimum, the following components:

   a. A narrative report describing all temporary runoff and erosion control measures to be used and any permanent erosion control measures to be installed for permanent erosion control.
   b. A detailed site plan showing the location of all temporary erosion control measures.
   c. A schedule for installation and removal of temporary erosion control measures, in coordination with the long term restoration, revegetation and monitoring plan discussed below.

B. Within 30 days of the approval by the Executive Director of the documents submitted under paragraph A, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under paragraph A:

1. Restore the topography consistent with the Restoration, Revegetation and Monitoring Plan required by Part A of this order and as approved by the Executive Director.

2. Submit to the Executive Director a report documenting the restoration of the topography. This report shall include photographs that show the restored site. This report shall include a topographic plan that is prepared by a licensed surveyor, shows two-foot contours, and represents the topographic contours after removal of the development and grading to achieve restoration of the topography to the maximum extent possible, as described in paragraph A.

C. Within 15 days of the approval by the Executive Director of the documents submitted under paragraph B2 above, or within such additional time as the Executive Director may grant for good cause, revegetate the disturbed areas with native plants, following the specifications of the Restoration Plan approved by the Executive Director, pursuant to paragraph A above.

D. In accordance with the required frequency and timing of monitoring reports set forth in the Restoration Plan, approved by the Executive Director pursuant to paragraph A above, submit to the Executive Director monitoring reports.

E. After approval of the monitoring reports by the Executive Director, implement within such timeframe as the Executive Director may specify all measures specified by the Executive Director to ensure the health and stability of the restored areas, as required by the Restoration Plan.

F. For the duration of the restoration project, including the monitoring period, all persons subject to this order shall allow the Executive Director of the Commission, and/or his/her

designees to inspect the subject property to assess compliance with the Restoration Order, subject to twenty-four hours advance notice.

Persons Subject to the Orders

Mr. Sanford J. Horowitz, his agents, contractors and employees, and any person(s) acting in concert with any of the foregoing

Identification of the Property

The property that is subject to these orders is located at 5656 Latigo Canyon Road in Los Angeles County (APN 4456-001-001).

Description of Unpermitted Development

All unpermitted development including (but not limited to) dumping of concrete, rebar, bricks, asphalt, plastics and metal materials into a canyon containing a blueline stream, which constitutes unpermitted streambed alteration (filling); unpermitted construction of two storage structures; removal of major vegetation and disturbance of Environmentally Sensitive Habitat; and grading and paving of a building pad and two roads, one paved and one packed earth.

Effective Date and Terms of the Orders

The effective date of these orders is October 13, 2005. The orders shall remain in effect permanently unless and until modified or rescinded by the Commission.

Findings

These orders are issued on the basis of the findings adopted by the Commission on October 13, 2003, as set forth in the attached document entitled "FINDINGS FOR CEASE AND DESIST ORDER CCC-05-CD-10 and RESTORATION ORDER CCC-05-CD-06".

Compliance Obligation

Strict compliance with the orders by all parties subject thereto is required. Failure to comply strictly with any term or condition of the orders, including any deadline contained in the orders, will constitute a violation of the orders and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS ($6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Sections 30820 and 30821.6. The Executive Director may extend deadlines for good cause.

Deadlines

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

Appeal

Pursuant to PRC § 300803(b), any person or entity against whom this order is issued may file a petition with the Superior Court for a stay of this order.

Government Liability

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Horowitz in carrying out activities required and authorized under this Cease and Desist Order, nor shall the State of California be held as a party to any contract entered into by Horowitz or his agents in carrying out activities pursuant to this Order.

Successors and Assigns

The Cease and Desist and Restoration Orders shall run with the land, binding all successors in interest, future owners of the Subject Property, heirs and assigns of Horowitz. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under these Orders.

No Limitation on Authority

Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with these Cease and Desist and Restoration Orders.

Access

Respondents agree to provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Orders. Nothing in these Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the property to view the areas where development is being performed pursuant to the requirements of the Orders for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of Respondents in carrying out the terms of these Orders.

Governing Law

These Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

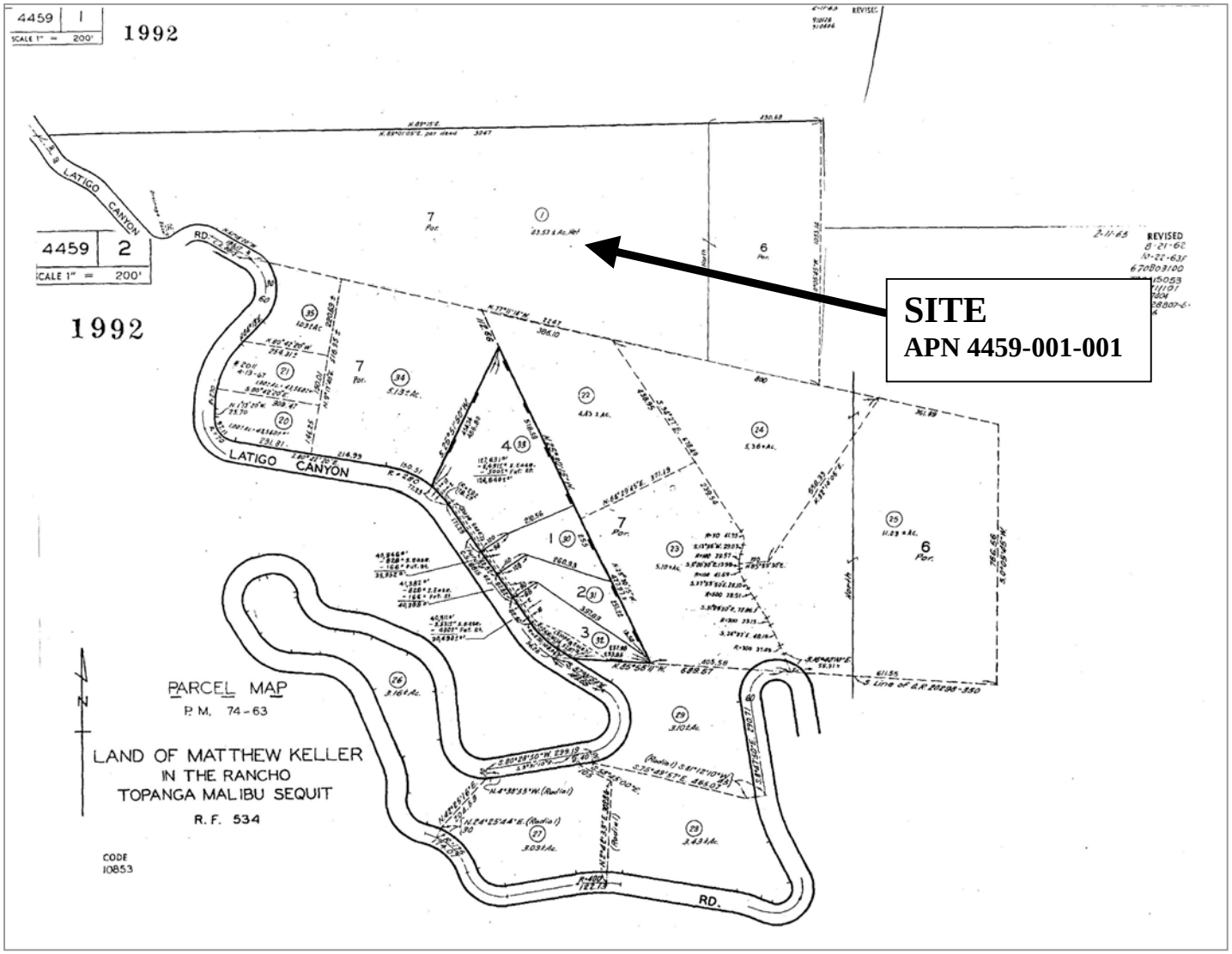
Executed in _____ on _____, on behalf of the California Coastal Commission.

By:_____ Peter Douglas, Executive Director

Exhibits

1. Site Location Map.
2. Parcel Map.
3. Site photos.
4. Administrative CDP 5-89-1000 approved site plan.
5. 1977 and 1986 aerial photos.
6. Letter dated April 21, 2005 from Commission to City of Malibu planning staff.
7. Letter dated July 18, 1995 from Commission to Forrest Freed, former property owner.
8. Letter dated October 3, 1995 from Commission to Forrest Freed, former property owner.
9. November 13, 1995 Notice of Violation Action (NOVA) recorded against the subject property.
10. Incomplete letter dated March 27, 2000 from Commission to Forrest Freed.
11. Letter dated July 12, 2005, from the City of Malibu to Sanford Horowitz.
12. Notice of Intent (NOI) letter dated July 6, 2005, from the Executive Director to Sanford Horowitz.
13. Statement of Defense dated August 10, 2005.
14. Notice of Intent (NOI) letter dated August 5, 2005, to record an updated Notice of Violation of the Coastal Act, from the Executive Director to Sanford Horowitz.
15. September 20, 2005 Notice of Violation of the Coastal Act (NOVA) reflecting updated description of Coastal Act violations recorded against the subject property.

Area location map.


4459 1
SCALE 1" = 200'
1992
4459 2
SCALE 1" = 200'
1992
LATIGO CANYON
LATIGO CANYON
RD.
SITE
APN 4459-001-001
PARCEL MAP
P. M. 74-63
LAND OF MATTHEW KELLER
IN THE RANCHO
TOPANGA MALIBU SEQUIT
R. F. 534
CODE
10853
REVISED

Parcel map

Exhibit 3a. 1995 site photo. Debris dumped in canyon is visible down slope of large shed.

Exhibit 3b. 1999 site photo. Packed earth road extends into debris dumped in canyon.

Exhibit 3c. 1999 site photo. Packed earth road extending into dumped debris.

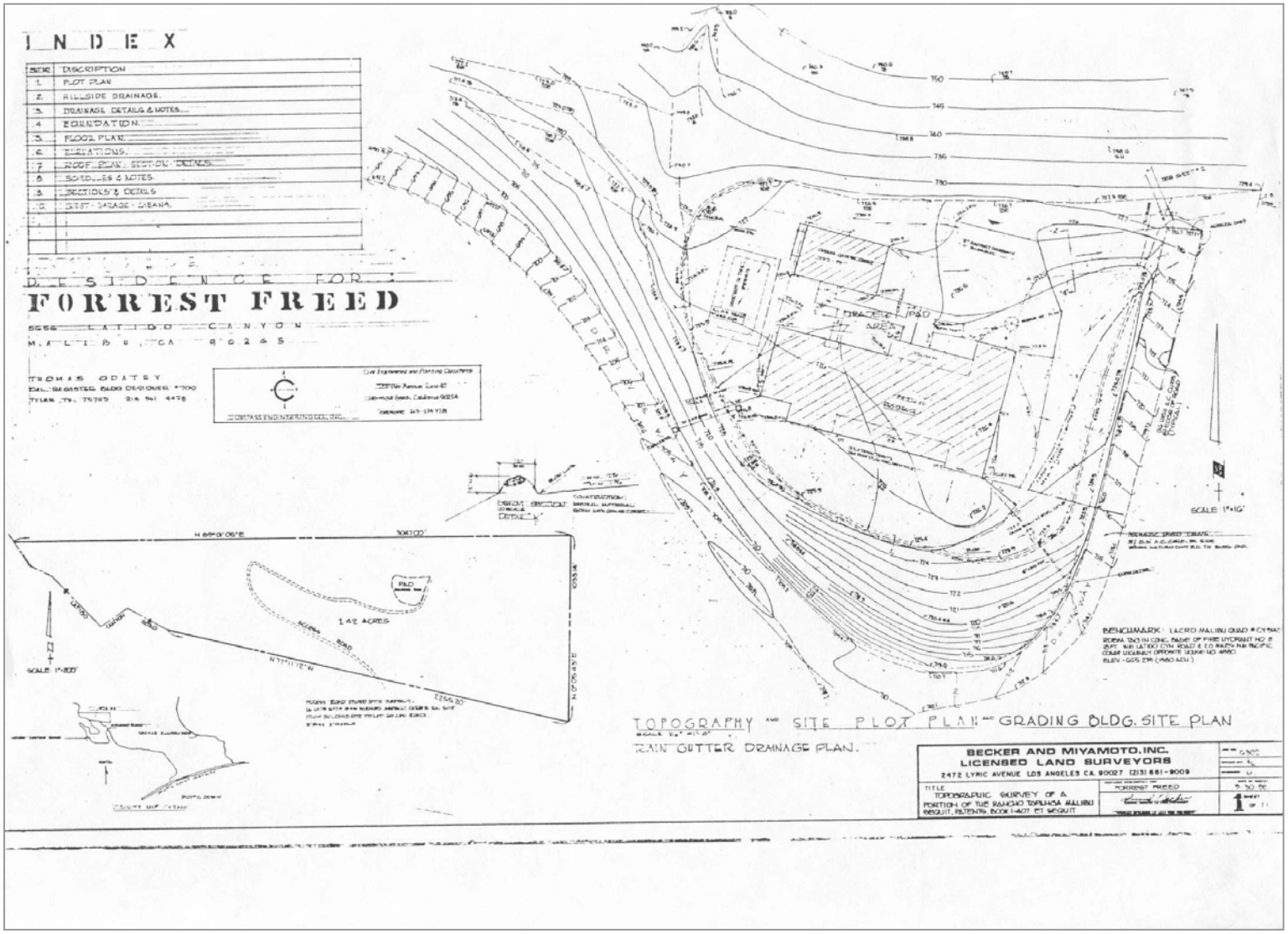
Exhibit 3d. 2000 site photo. Debris dumped into canyon and blueline stream.

Exhibit 3e. September 2005 site photo. Concrete debris with metal rebar.

Exhibit 3f. September 2005 site photo. Debris on upper slope; looking down at unpermitted sheds and paved lower building pad.

Exhibit 3g. September 2005 site photo. Debris extending into canyon and stream.

Exhibit 3h. September 2005 site photo. Unpermitted pad, shed and debris.



Administrative CDP 5-89-1000 approved site plan.

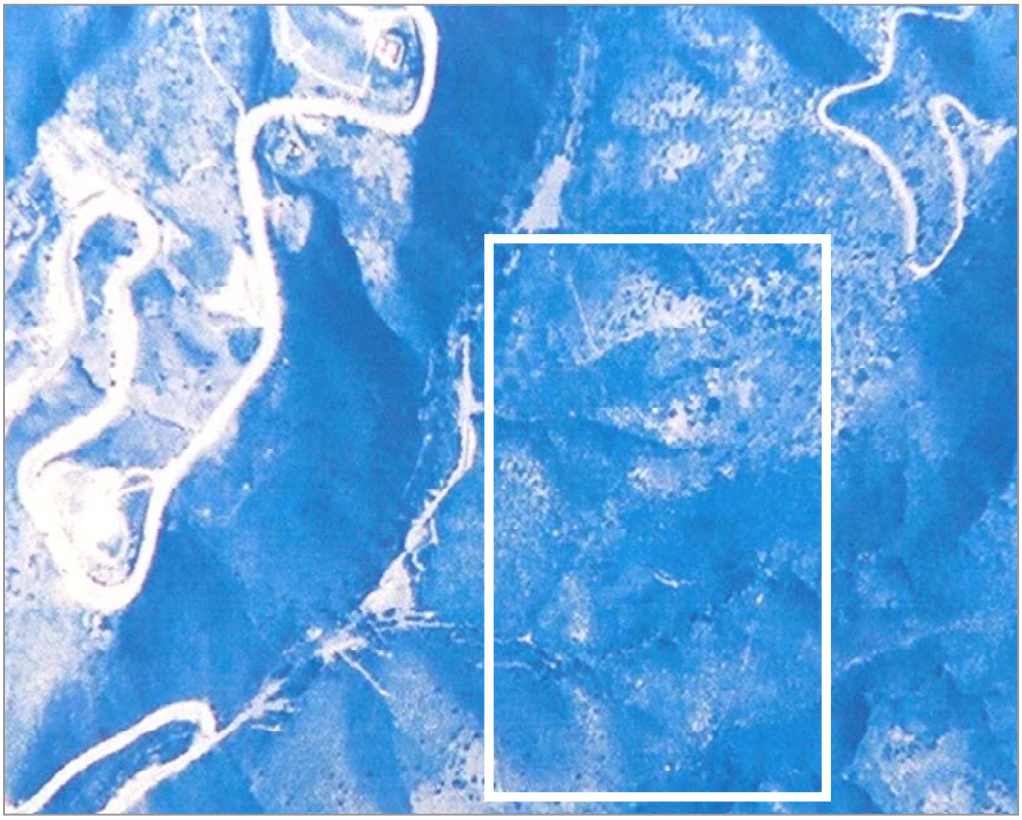


Exhibit 5a. January 24, 1977 aerial photo. No development visible on site (approximate site location is within the rectangle).

Exhibit 5b. May 10, 1986 aerial photo. Approved driveway and building pad are visible in center of site location; smaller rectangle indicates approximate location of unpermitted lower bulding pad, two roads, and storage structures.