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Items Th17 & 18

Staff: CAC-SF
Staff Report: November 3, 2005
Hearing Date: November 17, 2005

STAFF REPORT AND FINDINGS FOR CEASE AND DESIST ORDER AND RESTORATION ORDER

CEASE AND DESIST ORDER AND RESTORATION ORDER:

CCC-05-CD-13 and CCC-05-RO-09

RELATED VIOLATION FILE:

V-4-03-047

PROPERTY LOCATION:

The property is located at 32340 Pacific Coast Highway, in Malibu, Los Angeles County (**Exhibit 1**).

DESCRIPTION OF PROPERTY:

Approximately 4.39 acres, located on a coastal bluff and headland, approximately .2 miles upcoast from El Matador State Beach and approximately .8 miles downcoast from El Pescador State Beach (APN 4473-014-009)

PROPERTY OWNER:

Graeme and Brenda Revell

VIOLATION DESCRIPTION:

Unpermitted development includes a locked metal gate, metal fence wrapped at both ends with razor wire, wooden stairs, removal of native bluff-top vegetation, and landscaping; Noncompliance with Special Conditions of amended Coastal Development Permit No. A-220-80, involving 1) failure to construct required public access improvements from beach to the headland, across the headland, and back to the beach and 2) obstruction of the required public access easement.

- SUBSTANTIVE FILE DOCUMENTS:**
1. Public records contained in Notice of Violation File No. CCC-05-NOV-12
 2. Public Records contained in Cease and Desist Order and Restoration Order Files No. CCC-05-CD-13 and CCC-05-RO-09;
 4. CDP No. P-10-20-77-2107
 5. CDP No. A-220-80
 6. Irrevocable Offer to Dedicate (Document No. 82 557828)
 7. Amended Irrevocable Offer to Dedicate (Document No. 87 28221)
 8. Acceptance Certificate (Document No. 02 2191101)
 9. Exhibits 1 through 13.

CEQA STATUS: Exempt (CEQA Guidelines (CG) §§ 15060(c)(2)), and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321).

I. SUMMARY OF STAFF RECOMMENDATION

The property at issue in this enforcement matter is located at 32340 Pacific Coast Highway, in Malibu, in Los Angeles County (“the property”). The property, identified by APN 4473-014-009, is a 4.39-acre parcel, located on a coastal bluff, approximately .2 miles upcoast from El Matador State Beach and approximately .8 miles downcoast from El Pescador State Beach. A headland on the property extends from the coastal bluff into the ocean, cutting off lateral beach access. The headland is a rare geological outcropping and is part of the valuable coastal bluff habitat in the area. The top of the headland and adjacent bluff face were vegetated with coastal sage scrub prior to the undertaking of unpermitted development on the property and constitute environmentally sensitive habitat areas (ESHAs). Native vegetation was removed from the top of the headland and replaced with landscaping including an irrigated lawn. A metal locked gate and fence, with razor wire wrapped around both ends, were constructed on the bluff edge and a set of wooden stairs extends along the entire bluff face from the top of the headland to the beach.

The initial Coastal Development Permit (CDP), authorizing development on the property was approved by the Commission in 1978. The Commission was concerned about the lack of public access in the area and included conditions in the permit specifically requiring the provision of both vertical and lateral public access. In 1980, at the request of the owners of the property at the time, the Commission approved an amendment to the initial permit, CDP No. A-220-80 (“the existing permit”), deleting the vertical access condition, due to the fact that two vertical

accessways had opened since the initial permit was approved.¹ The lateral access requirement, however, was not deleted and in fact, as a condition of permit approval, lateral access was increased to encompass the entire beach from the mean high tide line to the base of the bluff with access up and over the headland. In fact, the Amended Irrevocable Offer to Dedicate an easement (OTD), which was recorded pursuant to the existing permit, states:

VIII. WHEREAS, the Commission found that but for the imposition of the above condition [for provision of lateral access], the proposed development could not be found consistent with the public access policies of Sections 30210 through 30212 of the California Coastal Act of 1976 and that, therefore, in the absence of such a conditions, a permit could not have been granted.

Thus, the provision of lateral public access was essential to the approval of the permit and to compliance of the proposed development with the Coastal Act.

Graeme and Brenda Revell (“the Revells”) acquired the property in May 2004. The Revells were on notice of the public access easement and the access improvements required under the existing permit when they purchased the property. Moreover, the Revells’ representative in this matter was also informed, before the Revells purchased the property, that the property was the subject of an ongoing Commission enforcement investigation into potential Coastal Act violations.

Unpermitted development on the property includes a locked metal gate, a metal fence, razor wire wrapped around both ends of the fence, wooden stairs, removal of native vegetation, and placement of landscaping (**Exhibits 2a-2e**). The unpermitted locked gate and fence, located at the top of the headland, prevent public access across the headland, and are in violation of the Coastal Act as well as the terms and conditions of the existing permit and the public access easement that resulted from acceptance of the OTD. Moreover, the existing permit required the construction of public access improvements, allowing the public to travel from the beach on one side of the headland, across the headland, to the beach on the other side. The plans for the improvements required by the permit were submitted to the Commission and approved, but the improvements have not been constructed. The unpermitted wooden stairs currently located on the upcoast side of the headland are within the lateral public access easement, do not adequately comply with permit conditions, and, more importantly, due to the locked gate and fence with razor wire at the top of the stairs, the stairs provide only the Revells with vertical access to the beach from the headland. The staircase required to be constructed on the other side of the headland is completely absent. Lateral public access to the beach is completely obstructed as a result of the violations on the property, and at the present time, only the Revells have access to the public access easement area on top of the headland.

Staff recommends that the Commission approve Cease and Desist Order CCC-05-CD-13 and Restoration Order CCC-05-RO-09 (“the Orders”) as described below, directing the Revells to: 1) cease and desist from construction and/or maintenance of unpermitted development, 2) remove

¹ No vertical accessways existed near the property when the initial permit was approved.

all unpermitted development from the property, 3) restore areas of the property that have been negatively impacted by unpermitted development to the condition they were in before Coastal Act violations occurred, and 4) allow public use of the easement and construct the public access improvements up and over the headland, in compliance with the Coastal Act and with the terms and conditions of the existing permit.

The activities that have occurred on the property constitute development, as defined in Coastal Act Section 30106. The development was undertaken without a CDP, in violation of Coastal Act Section 30600. Moreover, the unpermitted development, obstruction of use of the public access easement, and failure to construct public access improvements across the headland, specifically and directly violates the existing permit and the public access easement that was created pursuant to the existing permit. Thus, the Commission has the authority, under Coastal Act Section 30810, to issue a Cease and Desist Order in this matter.

All of the Coastal Act violations cited in this report remain on the property, and are causing continuing resource damage with respect to public access and recreation, ESHA, and scenic and visual qualities. The unpermitted development, failure to construct the required public access improvements, and obstruction of public use of the easement violate the Coastal Act and the City of Malibu Local Coastal Program's Land Use Plan (LUP). Furthermore, the Revells have taken no steps to remedy these violations.

The unpermitted development is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations. The locked gate and fence prohibit public access to and across the headland, which was required under the existing permit to ensure that the permitted development complied with the access provisions of Chapter 3 of the Coastal Act. The coastal bluffs, of which the headland is a part, constitute ESHA under the LUP and the views of and from the headland warrant protection as scenic resources. Vegetation removal has adversely impacted the scenic value of the property and disturbed or eradicated portions of the valuable bluff habitat, and the substitution of non-native plants including an irrigated lawn, trees, and shrubs, has suppressed regrowth of native vegetation and significantly increased the potential for erosion of the headland. Consequently, the Commission has the authority, under Coastal Act Section 30811, to issue a Restoration Order in this matter.

The property lies within the City of Malibu, which has a certified Local Coastal Program. However, the Commission has jurisdiction in this matter because the violations involve a Commission-issued CDP. In addition, pursuant to Coastal Act Section 30810(a)(2), the City of Malibu has authorized the Commission to conduct these proceedings.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are set forth in Section 13185 and 13195 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

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 person, other than the violator or its representative. Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator or his representative 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 13185, 13186, and 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 Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of two separate motions, corresponding to the Cease and Desist Order and the Restoration Order respectively, per staff recommendation or as amended by the Commission, will result in issuance of the Orders.

III. STAFF RECOMMENDATION

1.A. Motion - Cease and Desist Order:

I move that the Commission issue Cease and Desist Order No. CCC-05-CD-13 pursuant to the staff recommendation.

1.B. Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Cease and Desist Order CCC-05-CD-13. The motion passes only by an affirmative vote of the 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-13, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a CDP and in violation of an existing CDP.

2.A. Motion - Restoration Order:

I move that the Commission issue Restoration Order No. CCC-05-RO-09, pursuant to the staff recommendation.

2.B. Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Restoration Order CCC-05-RO-09. 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 No. CCC-05-RO-09, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a CDP, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage.

IV. FINDINGS FOR CEASE AND DESIST ORDER CCC-05-CD-13 AND RESTORATION ORDER CCC-05-RO-09

A. Permit History

On January 16, 1978, the South Coast Regional Commission approved CDP No. P-10-20-77-2107, for the development of a single-family residence, garage, swimming pool, and tennis court on the property, with special conditions providing for lateral and vertical public access (**Exhibit 3**). The property owner at that time was unhappy with the permit conditions and appealed the permit. The Commission denied the appeal on the grounds that no substantial issue was raised. The prior landowner then filed a Petition for a Writ of Mandate, challenging the permit conditions. After several years of litigation, the petition was withdrawn and the previous landowner was allowed to file a permit application to amend the initial permit to delete the vertical public access requirement. Due in part to the fact that the prior owner had agreed to expand the once 25-foot lateral access easement to provide full lateral access across the beach from the mean high tide line to the base of the bluff, the Commission granted the amendment, CDP No. A-220-80 (the existing permit) on November 19, 1981 (**Exhibit 4**). This amendment application, which was approved, included the conditions which have not been complied with and which are addressed in the pending enforcement action.

Special Condition 1 of the permit required the recordation of an OTD, establishing a lateral public access easement from the mean high tide line to the base of the bluff and over the headland, prior to issuance of the permit. The prior owner recorded the initial OTD, pursuant to the existing permit, on June 2, 1982 (**Exhibit 5**). (An amended OTD (OTD) was recorded on January 8, 1987, solely to correct an inadequate legal description of the easement (**Exhibit 6**.) State Lands Commission accepted the easement on September 18, 2002 (**Exhibit 7**). On August 15, 1986, the Commission approved plans to build two stairways, one on either side of the headland, extending from the beach to the headland, pursuant to the permit requirements.

B. History of Violation

The property, identified as APN 4473-014-009, is a 4.39-acre site located at 32340 Pacific Coast Highway in Malibu in Los Angeles County. The property contains a single-family residence, pool, and tennis court, all of which are located on top of a coastal bluff and which were authorized under the existing permit, which established the public access provisions. Stairs along the eastern property boundary lead down the bluff to the base of a headland that juts out into the ocean. The headland obstructs lateral beach access. In order to travel from the beach on one side of the headland to the other, the public would have to walk out into the ocean, around the headland, which is very difficult at medium and high tides.

On November 5, 2003, Commission staff received an anonymous report that a fence and locked gate had been erected on the property, impeding access across the headland, and native vegetation had been removed and replaced with non-native plants including an irrigated lawn, and shrubs. Subsequent review of aerial photographs confirmed that this development was present on the property and had occurred sometime before 2002.

On February 11, 2004, while representing the Revells as potential purchasers of the property, Lynn Heacox notified Commission staff that the Revells were considering purchasing the property. At that time, Commission staff told Mr. Heacox that the property was the subject of an investigation into potential Coastal Act violations including unpermitted development and noncompliance with the public access requirements of an existing CDP. Mr. Heacox was also informed about the easement on the property, which was already recorded and in the legal chain of title. On March 5, 2004, Mr. Heacox informed Commission staff that the Revells were in escrow to purchase the property and wanted to review relevant permit files. The Revells had conducted a title search and had reviewed copies of the initial OTD and the OTD with attachments. The three exhibits attached to the OTD were a complete legal description of the property, a copy of the Staff Recommendation and Findings for CDP No. A-220-80, and a legal description of the lateral access easement (See Exhibit 6).² Commission staff notes that these documents provided notice to the Revells of the location of the lateral public access easement on the property and the requirement for construction of access improvements to facilitate provision of access from one side of the beach to the other, across the headland. After their representative discussed the matter with Commission staff, and after reviewing the recorded documents and permit requirements, the Revells purchased the property on May 13, 2004.

Mr. Heacox requested all permit files concerning the property. These files were archived and required more time to retrieve than files concerning more recent permits. However, the files were located in February 2005 and provided, as requested, to Mr. Heacox in March 2005. Mr. Heacox was also provided with historical aerial photographs of the site at that time (**Exhibit 9**).

² Commission staff notes that, although not mentioned by the Revells, a fourth attachment, labeled Exhibit D, was also recorded with the amended OTD. Exhibit D provides a metes and bounds description of the easement and a map showing the location of the location of the easement.

Pursuant to the anonymous complaint received, upon review of permit files, and in light of information obtained during a March 11, 2004 site visit, Commission staff confirmed that the access improvements required under the existing permit had not been constructed, and, in addition, that the locked gate, fence with razor wire, landscaping, and vegetation removal were not authorized by a permit and constituted unpermitted development. In the interim, Commission staff had also been contacted, as described above, by Mr. Heacox, the representative of the Revells as prospective purchasers. Commission staff reiterated the permit requirements to him during multiple conversations, both before and after the Revells purchased the property, in an attempt to obtain compliance with the permit requirements. Consequently, on March 1, 2005, Commission staff sent a Notice of Violation to the Revells (**Exhibit 10**). Commission staff made subsequent attempts to resolve this matter administratively through letters dated April 19, 2005 and July 21, 2005 (**Exhibit 11**). The Revells responded to the letters on April 29, 2005 and July 29, 2005, refuting Commission staff's allegations and providing no offer to resolve the violations (**Exhibit 12**). Thus, on September 9, 2005, the Executive Director issued a Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings (NOI) to the Revells (**Exhibit 13**).

A Statement of Defense (SOD) form was sent to the Revells along with the NOI, affording the Revells the opportunity to present defenses to the issuance of the orders. The NOI and the SOD form specified a twenty-day time period for submittal of an SOD, as required under Section 13181(a) of the Commissions Regulations, and the final date for submittal of the SOD was September 30, 2005. The Revells submitted an SOD on September 30, 2005 (**Exhibit 14**).

C. Description of Unpermitted Development

The unpermitted development located on the property includes a locked metal gate, metal fence, razor wire wrapped around both ends of the fence, wooden stairs, removal of native bluff-top vegetation, and landscaping. In addition, the public access improvements required under the existing permit have not been constructed and the locked gate and fence completely obstruct lateral public access, thereby violating the existing permit and preventing public use of the easement across the headland.

D. Basis for Issuance Orders

1. Basis for Issuance of Cease and Desist Order

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

(a) If the commission, after public hearing, 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.

(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.

Development is defined in Coastal Act Section 30106, which states:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes. (emphasis added)

The activities conducted on the property clearly constitute development as defined in Coastal Act Section 30106 and, as such, are subject to the following permit requirements provided in Coastal Act Section 30600(a):

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone... shall obtain a coastal development permit.

No CDP was obtained for the cited development on the property, as required under Coastal Act Section 30600(a) and no exemptions to Coastal Act permit requirements apply. Consequently, the Commission is authorized to issue CCC-05-CD-13 pursuant to Section 30810(a)(1). The locked gate and fence obstruct public access across the headland and prevent public use of the easement, in violation of the existing permit. Moreover, the failure to construct the access improvements up and over the headland also constitutes a violation of the permit. Therefore, the Commission also has authority to issue CCC-05-CD-13 under Section 30810(a)(2).

2. Basis for Issuance of Restoration Order

The statutory authority for issuance of this Restoration Order is provided for in Coastal Act Section 30811, which states, in relevant part:

In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a.] the development has occurred without

a coastal development permit from the commission..., [b.] the development is inconsistent with this division, and [c.] the development is causing continuing resource damage.

a. Development Has Occurred Without a Coastal Development Permit

As previously presented in Section D.1 of this report, Commission staff has verified that the cited development on the property was conducted without a CDP and has verified that no exemptions to Coastal Act permit requirements applies.

b. Unpermitted Development Also Violates Existing Permits

As discussed above, the Commission approved the existing permit, as amended, on November 19, 1980, authorizing construction of a single-family residence, pool, garage, and tennis court on the property. The provision of public access was required by the Commission in order to bring the proposed development authorized by the permit into compliance with provisions of the Coastal Act, including provisions concerning public access. Although the Commission deleted the vertical access requirement that was attached to the previous permit (in exchange for enhanced lateral access), the lateral access requirement clearly remains in the existing permit. In fact, the Staff Recommendation and Findings attached to the OTD, reviewed by the Revells, provided the following statement regarding the importance of provision of public access at this site and in approving the permit:

Both the South Coast Regional Commission and the State Commission have long been concerned about the restrictions on public access to the State tidelands along the 27 miles of coast in Malibu. The area was subdivided many years ago into primarily single-family lots with no provision of public amenities, resulting in the continuing prescription of public tidelands for private use in this critical area close to the large urban population of Los Angeles...The Commission concludes that as conditioned to require the dedication and provision of lateral access, the project is consistent with Sections 30210-30212 of the Coastal Act.

As noted above, the OTD (now an easement) was recorded in the chain of title for the property. The Revells had access to and reviewed the Staff Recommendation and Findings attached to the OTD quoted above, and, as such, had specific notice of the importance of the public access requirements of the existing permit.

In addition, Special Condition 2 of the existing permit states the following:

Prior to the issuance of the permit, the applicant shall submit plans, for the review and approval in writing of the Executive Director, showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with the approved plans shall be completed prior to occupancy of the residence approved herein.

On August 15, 1986, the Commission approved plans, submitted by a previous landowner, for the construction of stairways on either side of the headland. However, the access improvements were not constructed, violating Special Condition 2 of the existing permit. Moreover, unpermitted development completely obstructs the public accessway.

c. Unpermitted Development Also Violates the OTD and the Terms of the Easement

Special Condition 1 of the existing permit states the following:

The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement shall extend from the mean high tide line to the base of the bluff for the width of the project site and shall include an easement area, conforming to the plans attached as Exhibit 2, over the headland on the site for pedestrian access and viewing.

On June 2, 1982, the previous landowner executed and recorded the initial OTD, offering a lateral public access easement, in perpetuity, as required by Special Condition 1. An amended OTD (OTD) was recorded on January 8, 1987, solely to provide a more complete legal description of the easement than the initial OTD. The OTD was accepted by the State Land Commission on July 23, 2002 and thereby becomes a valid easement. In fact, the Commission specifically noted the importance of public access in this permit decision, as set forth in the OTD:

VIII. WHEREAS, the Commission found that but for the imposition of the above condition, the proposed development could not be found consistent with the public access policies of Sections 30210 through 30212 of the California Coastal Act of 1976 and that, therefore, in the absence of such a conditions, a permit could not have been granted.

The OTD, pursuant to Special Condition 1, offered a lateral access easement from the mean high tide line to the base of the bluff on the property and across the headland. Exhibits B, C and D, attached to and recorded with the OTD, provide more detailed descriptions of the location of the easement. Exhibits B and C include Special Condition 1 from the existing permit and Exhibit D includes a metes and bounds description of the easement and a map showing the location of the easement. In these documents, which were not only recorded in the chain of title, but actually obtained and reviewed by the Revells before they purchased the property, the location of the easement is clearly identified.

The locked gate and fence completely obstruct public access within the easement across the headland, which constitutes a violation of the existing permit and the OTD. The Revells had specific notice of the location of the easement from the existing permit and the recorded OTD, as amended, and attachments. In addition, the OTD clearly states that it runs with the land, binding all successors in interest. Therefore, the Revells had notice of their obligations with respect to

public access across the headland and of the fact that the unpermitted development violates the requirements of the OTD.

d. Unpermitted Development is Inconsistent with the Coastal Act and the LUP

The unpermitted development is inconsistent with the following resource protection policies of Chapter 3 of the Coastal Act and the LUP³:

i. Section 30210 – 30212 Public Access

Coastal Act Section 30210 states in relevant part:

[M]aximum public access... shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212(a) states:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development...

The Commission attached special conditions, establishing a lateral public access easement and public access improvements to facilitate lateral public access, to the existing permit as amended, and clearly stated that the conditions were necessary to bring the proposed development into compliance with the Coastal Act.⁴ Unpermitted development consisting of a locked gate, a fence wrapped at both ends with razor wire, and landscaping is located within the easement, completely obstructing public access across the headland. In addition, the accessway improvements required under the existing permit have not been constructed, prohibiting public access to the headland.

LUP Policies:

Chapter 2 of the LUP provides policies concerning public access. Policy 2.1 states that public land, including easements, shall be utilized for public recreation or access purposes. Moreover,

³ The LUP incorporates all Coastal Act Sections mentioned in this report as LUP policies. Therefore, violations of the Coastal Act concurrently violate the LUP.

⁴ As noted above, the original permit included a vertical accessway and was later scaled back at the owner's request, to a lateral accessway with public access improvements to facilitate public use.

Policy 2.2 states that new development should minimize adverse impacts to public access to and along the beach. Although Policy 2.23 prohibits development on coastal bluff faces, an exception is made for public accessway improvements. In addition, Chapter 4 of the LUP, pertaining to shoreline and bluff development, includes relevant public access policies. Policy 4.17 requires that applications for new beachfront or bluff-top development contain maps and documentation pertaining to all dedications for public access or open space on the property. The policy states that no development will be approved within the dedicated areas. Additionally, Policy 4.29 restates the public access improvement exception to the prohibition for bluff face development.

Thus, under the LUP, the easement on the property should be utilized for public access and the unpermitted development, located within the easement and completely obstructing public access violates Policies 2.2 and 4.17. Furthermore, the access improvements required under the existing permit to provide public access can be built on the face of the headland. Therefore, the accessway improvements are allowed under the LUP and the failure to construct the improvements, and the obstruction of public access, is inconsistent with the public access provisions of both the Coastal Act and the LUP.

ii. Section 30240 – Environmentally Sensitive Habitat

Coastal Act Section 30107.5 provides the following definition for environmentally sensitive habitat area (ESHA):

“Environmentally sensitive area” means 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.

Coastal Act Section 30240 states:

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 headland is a rare geological outcropping and is part of the coastal bluff habitat the area. Aerial photographs show that the headland contained native vegetation prior to the undertaking of unpermitted development on the headland, which took place sometime before 2002 (See Exhibit 2a). Adjacent bluff face areas do not contain development and are vegetated with coastal sage scrub (See Exhibit 2e). The unpermitted stairs extend from the top edge of the bluff, down the entire bluff face. Additionally, the locked gate is located at the edge of the top of the bluff, the fence extends along the edge of the bluff, and the landscaping covers the entire headland and extends inland onto the bluff behind the headland. But for the unpermitted development, the areas subject to these Orders would still contain coastal sage scrub and are, therefore, protected

as ESHA. Thus, the cited unpermitted development has been conducted within ESHA and is inconsistent with Coastal Act Section 30240.

LUP Policies:

Chapter 3 of the LUP provides policies concerning ESHA. Policy 3.1 states that bluffs and areas of coastal sage scrub are considered ESHA under the LUP, unless there is site-specific evidence that refutes the designation. There is no such evidence with regards to the cited areas of the property. In fact, the uniqueness of the headland and the vegetation on adjacent coastal bluffs supports the LUP's ESHA designation. Additionally, Policy 3.6 states that ESHA shall not be deprived of protection as ESHA because the vegetation has been removed illegally. The vegetation on the headland and the bluff face was removed in violation of the Coastal Act and was replaced with unpermitted development. Thus, the site remains ESHA and warrants protection under Chapter 3 of the LUP. Additionally, policy 3.51 states that disturbed areas' ESHA, such as the coastal sage scrub on the headland and bluff face on the property, should be restored if feasible. It is feasible to restore the native vegetation on the headland and bluff after all unpermitted development has been removed. Thus, the removal of coastal sage scrub disrupted ESHA and is inconsistent with the Coastal Act and the LUP.

iii. Section 30251 - Scenic and Visual Qualities

Coastal Act Section 30251 states, in relevant part:

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, [and] to be visually compatible with the character of surrounding areas.

The existing permit states that the lateral public access easement extends “over the headland on the site for pedestrian access and viewing.” (emphasis added) Thus, the Commission specifically acknowledged that the scenic value of the views from the headland should be protected, which is currently not the case. Additionally, the headland itself is part of the shoreline and should be visibly compatible with the rest of the bluff and beach. Currently, the top of the headland is landscaped with an irrigated lawn, shrubs, and plants, which are not compatible with the native vegetation that characterizes the surrounding coastal bluffs, and is inconsistent with Coastal Act Section 30251.

LUP Policies:

Chapter 6 of the LUP pertains to scenic resource protection. Policy 6.5 requires that new development be sited and designed to minimize impacts to scenic resources. Policy 6.27 requires that new development minimize removal of natural vegetation and the preservation of natives on site. The unpermitted development on the property impacts scenic resources and resulted in the removal of native vegetation from the top of the headland, inconsistent with the LUP.

iv. Section 30253 – Minimization of Adverse Impacts

The unpermitted development is also inconsistent with Coastal Act Section 30253, which provides in relevant part:

New development shall:

(2) 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 bluffs and cliffs... (emphasis added)

Native vegetation was removed from the top of the headland and replaced with an irrigated lawn. The irrigating the top of the headland will increase bluff-top erosion of the headland and is inconsistent with Coastal Act Section 30253.

c. 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. (emphasis added)

As of the date of this report, the unpermitted development continues to exist at the subject property, and, as described above, continues to cause adverse impacts to public access, scenic resources, and the stability of the headland that are protected under Chapter 3 of the Coastal Act. Thus, the resource damage is “continuing” as required by Coastal Act Section 30811, enabling the Commission to issue Restoration Order CCC-05-RO-09.

3. Provisions of CCC-05-CD-13 and CCC-05-RO-09

As stated in Section D.2.c of this report, the Commission found it necessary to impose lateral public access requirements as part of the existing permit to bring the proposed development project authorized under the permit into compliance with the resource protection policies of Chapter 3 of the Coastal Act. The cited development on the property was conducted without a CDP and completely blocks public access, preventing public use of the easement, and in fact,

restricting the use of the easement to the private property owner. The access improvements up and over the headland that are required by the existing permit were not constructed. Issuance of CCC-05-CD-13 and CCC-05-RO-09 will ensure appropriate removal of the unpermitted development, restoration of the site, and provision of public access, bringing the property into compliance with the Coastal Act, the LUP, and the existing permit.

The proposed Cease and Desist and Restoration Orders will direct the Revells to: 1) cease and desist from construction and/or maintenance of unpermitted development, 2) remove all unpermitted development from the property, 3) restore areas of the property that have been negatively impacted by unpermitted development to the condition they were in before Coastal Act violations occurred, 4) comply with the terms and conditions of the existing permit that provide public access, and 5) refrain from attempting to limit or interfere with public use of the easement.

E. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of Commission Cease and Desist Order CCC-05-CD-13 and Restoration Order CCC-05-RO-09 to compel removal of the unpermitted development, restoration of the property to the condition that existed prior to the unpermitted development, and provision of required public access is exempt from 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 Order and Restoration Order are exempt from the requirement of preparation of an Environmental Impact Report, based on Sections 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

F. Findings of Fact

1. The Revells own the 4.39-acre property located at 32340 Pacific Coast Highway in Malibu in Los Angeles County, identified as APN 4473-014-009.
2. CDP No. A-220-80 was issued to authorize certain development on this parcel and included conditions regarding public access. The provisions run with the land.
3. The OTD, required under CDP No. A-220-80 was recorded on January 8, 1987 and has been in the chain of title for this property since that time. The OTD was accepted on September 18, 2002 and became a legal easement, currently held by the State Lands Commission.
4. Unpermitted development on the property includes a locked metal gate, metal fence, razor wire wrapped around both ends of the fence, wooden stairs, removal of native bluff-top vegetation, and landscaping. In addition, the unpermitted development, failure to construct the required accessway improvements, and obstruction of public use of the easement, violate the conditions of the existing permit.

5. On November 5, 2003, Commission staff received an anonymous report that a fence and locked gate had been erected on the property. Commission enforcement staff opened a violation file on this matter on November 5, 2003.
6. Lynn Heacox notified Commission staff in February, 2004 that his clients, the Revells, were in escrow to buy the property and wanted to review permit files.
7. Prior to purchasing the property, the Revells had conducted a preliminary title search, and had obtained and reviewed the initial OTD and the amended OTD with three attachments. These documents contained the public access conditions listed in the existing permit, a legal description and map of the lateral public access easement required under the existing permit, and a provision stating that the offer to dedicate the easement runs with the land, binding all successors in interest of the property.
8. Prior to purchasing the property, the Mr. Heacox was notified twice by Commission staff that the property was the subject of an investigation into potential Coastal Act violations.
9. The Revells purchased the property on May 13, 2004.
10. Mr. Heacox requested permit files pertaining to the property. The files became available in February 2005 and were provided to Mr. Heacox in March 2005.
11. Commission staff sent letters to the Revells on March 1, 2005, April 19, 2005, and July 21, 2005, providing deadlines for voluntary resolution of the matter. The Revells responded with letters on April 29, 2005 and July 29, 2005 and declined to voluntarily comply with the permit conditions,
12. The Executive Director issued an NOI on September 9, 2005.
13. The unpermitted development listed in the NOI and addressed in this report remains on the property and continue to prevent public access to the easement. Furthermore, the access improvements required under the existing permit have not been constructed. The unpermitted development prevents public use of the easement created pursuant to the existing permit.
14. The unpermitted development is inconsistent with Chapter 3 of the Coastal Act, including Sections 30210, 30211, 30212, 30240, 30251, and 30253.
15. The unpermitted development is causing continuing resource damages, as defined in Coastal Act Section 30811 and Section 13190 of the Commission's regulations.

G. Violators' Defenses and Commission Staff's Response

The Revells submitted an SOD on September 30, 2005. The following paragraphs present statements made by the Revells and the Commission staff's response to those statements. The Revells attached previous correspondence with Commission staff dated April 29, 2005 and July

29, 2005 and a May 3, 2005 letter to the State Lands Commission as exhibits to the SOD. The exhibits do not raise additional defenses to the issuance of the Orders in this matter but are included in the exhibits for this matter since they were submitted by the Revells. Each defense raised in the SOD is discussed below.

1. The Revells' Defense:

The Revells vigorously contend that they were good faith purchasers who have not performed any development on the property, including but not limited to, the construction of a locked gate, wooden stairs, removal of native bluff-top vegetation, and/or landscaping on the property.

Response:

Commission staff does not assert that the Revells constructed the unpermitted development on the property, but rather, that they currently own the property where the unpermitted development is present and that they must remove it. The Revells were on notice that the provision of public access across the headland and construction of access improvements from the beach to the headland and across the headland were required when they purchased the property. In fact, although not a legal requirement for enforcement of the Coastal Act or permit requirements, in this case, the Revells had actual notice from review of legal, recorded documents and were given personal notice of the legal requirements prior to their purchase of the property. Response #2 below provides a more detailed explanation of this issue.

The Revells are responsible for the unpermitted development that persists on the property regardless of whether it was conducted by a prior owner. The development authorized by the existing permit was constructed, and the Revells are currently benefiting from the permit. However, the Revells are not in compliance with the public access condition of the existing permit, because the unpermitted development on the property completely obstructs lateral public access. The Commission specifically found that providing a public lateral access easement and access improvements over the headland was necessary to find that the permit was, in its entirety, consistent with the Coastal Act. All the terms of a permit, both the benefits and the burdens, run as to subsequent owners. Therefore, the Revells enjoy the benefits of the existing permit but also bear responsibility for complying with the permit's public access requirements. This general principle is clearly applicable in this case: Not only does the OTD explicitly state that the public access conditions imposed therein run with the land, but, in 1994, the court in *Ojavan Investors v. California Coastal Commission* stated that:

It is well established that the burdens of permits run with the land once the benefits have been accepted. (26 Cal.App.4th 516, 527.)

Thus, although the permit was applied for and obtained by a prior owner, and the same prior owner recorded the OTD, the conditions of both documents run with the land and bind the Revells as successors in interest.

Additionally, the unpermitted development remains a continuing violation of the Coastal Act and a continuing public nuisance that the current owners are liable for correcting. By maintaining the unpermitted development, the Revells are also preventing use of the public access easement. The Coastal Act represents a legislative declaration that acts injurious to the state's natural resources constitute a public nuisance. (*Leslie Salt Co. v. San Francisco Bay Conservation etc. Com.* (1984) 153 Cal. App.3d 605, 618; *CREED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 318.) Courts have held that the Coastal Act is a "sensitizing of and refinement of nuisance law." (*CREED*, at 319.)

The Revells are responsible for correcting conditions in their property that create a public nuisance on the 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 therefore in the same manner as the one who first created it.

Likewise, the Revells are responsible for correcting conditions on their property that violate the Coastal Act and the existing permit, and that prevent the use of a public access easement. In *Leslie Salt* (p. 622), the court held that:

[W]hether 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.

Thus, even if certain unpermitted development was constructed by the prior owner, the Revells' maintenance of that development without a permit constitutes a continuing violation of the Coastal Act and the existing permit and the Revells are required to correct those violations.

2. The Revells' Defense:

[T]he Revells contend that, prior to their purchase of the subject property, they did not receive adequate notice of the dedicated public access. While Special Condition No.s 1 and 2 of CDP No. A-220-80 required recordation of the documents, the documents recorded did not include a copy of the approved access improvement plans. Without viewing the improvement plans it was impossible for the Revells to reasonably understand the extent of the required public access proposed accessway improvements.

Response:

The Revells clearly had both actual and constructive notice of the public access requirements through several means. The public access provisions of the permit were publicly available and, in fact, the OTD was in the recorded chain of title to their property. No further mention of the public access requirements is necessary for them to be legally binding (*Ojavan Investors v. California Coastal Commission* (1994) 26 Cal.App.4th 516, 527.). However, in this matter, the

Revells also were notified by Commission staff. As noted above, the Revells' representative, Lynn Heacox, contacted Commission staff in February 2004 and stated that the Revells were in escrow to purchase the property and wanted to review relevant permit files. The Revells had conducted a title search, and had obtained and reviewed the initial OTD and the amended OTD with attachments. The Revells reviewed the following three OTD attachments: a complete legal description of the property, a copy of a Staff Recommendation and Findings for the existing permit, and a legal description of the lateral access easement. These attachments and the OTD provided the Revells with notice of the requirements for provision of public access and construction of access improvements.

The Revells were also on notice as to the location of the easement. The Staff Recommendation and Findings attached to the OTD provides the following physical description of the property:

The proposed project site is a bluff-top lot adjacent to the shoreline in Malibu. A headland exists on the site pitting out into the water blocking lateral access.

No other landform on the property fits this description and, indeed, the recorded easement directly crosses the headland. The location of the headland was in fact discernable from the attachments reviewed by the Revells before they purchased the property. In addition, the OTD incorporates the language of Special Condition 1 of the existing permit into the recorded document, which states in relevant part:

Such easement shall extend from the mean high tide line to the base of the bluff for the width of the project site and shall include an easement area, conforming to the plans attached in Exhibit 2, over the headland on the site for pedestrian access and viewing. (emphasis added)

Moreover, Exhibit D, which was recorded as an attachment to the OTD, provides both a metes and bounds description of easement and a map, utilizing the metes and bounds description, showing the location of the easement.

Thus, the Revells were on notice as to the location of the headland and were on notice that the public access easement extended across the headland.

Additionally, the Staff Recommendation and Findings attached to the OTD incorporates the language of Special Conditions 2 of the existing permit, which states in relevant part:

Access Improvements. Prior to issuance of the permit, the applicant shall submit plans... showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with the approved plans shall be completed prior to occupancy of the residence approved herein. (emphasis added)

The Staff Recommendation and Findings was adopted by the Commission and sets forth the conditions of approval for the existing permit that require recordation of the OTD and

construction of public accessway improvements up and over the headland. As stated above, the location of the headland can be discerned. Furthermore, the following notification was provided in the Staff Recommendation and Findings attachment that access improvements were required to facilitate access through the easement:

[T]he inability to pass around the headland would remain an impediment to determining that adequate public access exists on the parcel. The applicant proposes to eliminate this access impediment by enlarging the lateral accessway to include the entire sandy beach, and to improve and dedicate an easement for public access and viewing across the headland.

Thus, there is no question as to the location of the accessway improvements. During the time the Revells were in escrow and when they purchased the property, the locked gate and fence wrapped with razor wire completely blocked public access across the headland, and no stairway existed on the downcoast side of the headland. Therefore, the Revells were not only on notice of the access requirements, they were also on notice that the required access, including required access improvements, had not been provided. Additionally, we note that the OTD, as recorded by its very terms, binds successors in interest, and provided notification to the Revells of their obligation to provide public access pursuant to the existing permit and OTD.

3. The Revells' Defense:

Mr. Heacox was thereafter advised by Commission staff that permit files for the subject CDP had been lost and were not available for review. Only subsequent to receiving the Notice of Violation... dated March 1, 2005, were the Revells able to obtain a copy of the improvement plans and realize the extent of the Special Conditions.

Response:

The permit files relating to this property had been archived, and were not immediately readily available in February 2004 when Mr. Heacox requested them. Commission staff obtained the files in February 2005 and provided them to Mr. Heacox at that time.

However, the requirements for an easement and for public access were, as noted previously, actually commemorated in recorded documents which were both legally sufficient to inform the Revells of the requirements and publicly available. Commission staff notes that the extent of the Special Conditions was discernable from the OTD and attachments, and that the Revells admit to reviewing these documents prior to the purchase of the property.

4. The Revells' Defense:

The Revells deny that the previous construction of [the cited unpermitted development] on the property has obstructed public access.

[U]ntil the State Lands Commission has evidenced it's agreement to assume responsibility and liability for both the accessway and accessway improvements, neither the Revells, nor any other party, can be properly alleged to have interfered with the public's access across the subject property.

Response:

The easement is physically blocked by unpermitted development. A locked metal gate and fence wrapped at both ends with razor wire completely obstructs public access to and across the headland. Moreover, the easement across the headland has not been made available to the public as required by Special Condition 2 of the existing permit and is blocked by landscaping.

Despite the complete obstruction of the accessway, the Revells, citing Coastal Act Section 30212(3), assert that the access is not open because the State Lands Commission has not accepted responsibility and liability for the easement. Coastal Act Section 30212(a)(3) states:

Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

In the SOD, the Revells acknowledge that the State Lands Commission has accepted "all rights, title, and interest in the real property" conveyed by the OTD. This acceptance is considered to include the acceptance of responsibility and liability for the easement. Thus, the State Lands Commission has satisfied Section 30212(3) and no additional documentation is required. The easement is not currently operating as a public accessway because the easement is blocked by unpermitted development and the access improvements have not been constructed, not because the easement has not been adequately accepted. The purpose of this enforcement action is to address these very issues and to open the accessway.

5. The Revells' Defense:

The Revells contend that the wooden stairs were constructed prior to the approval of CDP No. A-220-80, and that there was no landscaping condition in the approved CDP which prevented the former owners of the property to plant grass on a severely degraded bluff-top.

Response:

Contrary to the Revells' assertion, the available evidence indicates that the wooden stairs were not constructed prior to the approval of the existing permit. The Revells submitted 1978 Commission transcripts as evidence that the existing stairway was present in 1978. Upon subsequent review of historic aerials of the property, Commission staff has concluded that a stairway was located on the upcoast side of the headland as early as 1977 and is most likely the stairway mentioned in the transcripts. However, the 1977 stairway was made of a dark material, most likely metal, and the design of the stairway differs from the present light-colored wood

stairway. The stairway in the 1977 photograph, and mentioned in the cited transcripts is not the stairway that exists on the property today. In any event, it is clear that the Commission required that the existing wooden stairway be replaced with steel stairs per the approved plans as required by Special Condition No. 2 of CDP No. A-220-80.

In addition, Commission staff reviewed historic aerials and concluded that removal of native vegetation and planting of non-native grass, plants, and trees occurred sometime during or after 2001. These activities clearly constitute development as defined in the Coastal Act and were conducted without a CDP. In addition, irrigation of the landscaping can increase erosion of the headland, which is inconsistent with Coastal Act Section 30253.

The Revells claim that the landscaping is exempt from Coastal Act permitting requirements because the existing permit did not explicitly prohibit such activities. A CDP, by definition, permits development that is identified in the permit application and allowable under the Coastal Act. The CDP did not authorize this development. The landscaping was conducted without a CDP, and due to its location on a bluff and beach, does not qualify for an exemption from Coastal Act permit requirements (see Section 13250(b) of the Commission's regulations). Therefore, it constitutes unpermitted development and is properly a subject of the Orders.

6. The Revells' Defense:

Clearly the improvements could have been constructed years ago and subsequently washed out to sea.

Response:

In fact, all evidence clearly indicates this is not the case. The Revells have not been able to produce any evidence that the access improvements that were required by the existing permit were previously constructed. Moreover, no remnants of such improvements are visible on the sides or top of the headland. Furthermore, except for the stairs on the upcoast side of the headland discussed above that were present in 1977 and the existing unpermitted staircase, no improvements to the headland are visible in the historic aerials, available from 1972, 1976, 1977, 1979, 1986, 1987, 1993, 2001, 2002, 2004, and 2005. Accordingly, there is no support for the Revells' assertion.

7. The Revells' Defense:

Upon obtaining a copy of the approved plans for the access improvements (after March 1, 2005) the Revells' agent, Mr. Heacox,... was advised that the City of Malibu would not issue a building permit for the proposed improvements because of their gross failure to meet the minimum requirements of Uniform Building Code ("UBC").

Response:

The California Uniform Building Code (UBC) does not apply to the cited access improvements. Section 101.3 of Chapter 1 of the UBC provides the scope of the documents, and states the following:

The provisions of this code shall apply to the construction, alteration, moving, demolition, repair, maintenance, use, and occupancy of any building structure within this jurisdiction, except work located primarily in a public way... (emphasis added)

Moreover, the standards for stairways in the UBC apply to stairs that are part of a structure or the access to a structure, but do not apply to a stairway for public recreational access to or along a beach blufftop. The construction of the cited accessway improvements would take place within a public easement, and the stairway is not part of, or for the purpose of access to, a structure. In addition, the changes allegedly necessary for compliance with the UBC that were outlined in the April 29, 2005 letter from the Revells' attorney are minor, and even if the minor modifications are incorporated, the resulting stairways will substantially conform to the plans that were approved by the Commission in 1986. As Commission staff has previously informed the Revells, these modifications will not require an amendment to the existing permit and can be included in the Accessway Improvement Plan, required pursuant to the Orders.

8. The Revells' Defense

The Revells contend that the State Lands Commission, upon its acceptance of the accessway, has the responsibility for paying the cost of bringing the improvement plans into compliance with the requirements of the UBC in light of the fact that said agency accepted the amended Irrevocable Offer to Dedicate prior to the Revells' purchase of the subject property.

Response:

The State Lands Commission is not financially responsible for construction of the required accessway improvements. The construction of the access improvements was a specific requirement of the existing permit, and as such, falls to the permit holder. The improvements required under the existing permit have not yet been constructed. As holder of the easement, State Lands Commission agreed to repair and maintain the easement and accessway improvements, not to construct them initially. Furthermore, both the existing permit and OTD contain provisions that explicitly state that the documents, and therefore the access requirements listed therein, run with the land and bind successors in interest of the property. The Revells are currently enjoying the benefit of the permitted development without accepting the burden of the conditions imposed to bring the development into conformity with the Coastal Act. Therefore, the Revells, as owners of the property, are responsible for constructing the improvements.

Commission staff also notes that the Revells, as owners of the property, are responsible for removing the unpermitted development that blocks the easement and violates the existing permit,

whether or not they were the owners when the State Lands Commission accepted the easement.⁵ Recordation of the OTD, including requirements for provision of lateral public access and construction of accessway improvements, was a prior to issuance condition of the permit. The prior owner of the property recorded the OTD, as required, at the Los Angeles County Recorder's Office and, thereafter, the document became publicly available. No further mention of the public access requirements is necessary for them to be legally binding. (*Ojavan Investors v. California Coastal Commission* (1994) 32 Cal.Rptr.2d 103, 109.)

Additionally, the court in *Ojavan* (id.) stated that:

It is well established that the burdens of permits run with the land once the benefits have been accepted.

Thus, although the OTD was recorded by a previous owner, the conditions therein run with the land and bind the Revells. The Revells currently enjoy the benefits of the issued permit, namely the development authorized by the permit, without accepting the burdens of complying with the permit's public access requirements.

9. The Revells' Defense

[I]n April 1987 an Initial Violation Report was made by a neighboring property owner alleging that a former owner of the subject property constructed a ten (10) foot high chain link fence, approximately forty (40) feet long, with barbed wire on top, extending from the Pacific Coast Highway to the bluff. ... Although there is no reference to the disposition of the violation, a violation number of V-5-MAL-87-125 was assigned to the violation report.

The Revells contend that the Commission knew or should have known about the alleged violations contained in the [NOI], in or about April 1987 at the time of its investigation of V-5-MAL-87-125.

Response:

The violation report received in 1987 did not concern the Coastal Act violations that are the subject of this report. There is no evidence that a site visit was made, that the reported violation actually existed on the property, and, whether, if the violations did exist, the property owner removed the fence voluntarily. There is also no evidence that any of the cited unpermitted development on the headland and adjacent bluff were present on the site at that time. In fact, review of historic aerials shows that vegetation removal and landscaping had not yet occurred. The 1987 violation report pertained to an entirely different and unrelated violation, located on the north portion of the property, on the top of a steep coastal bluff. The violations that are the subject of this report are located seaward of the coastal bluff on the headland and beach.

⁵ Commission staff notes that this unpermitted development must also be removed in order to construct the required accessway improvements.

In fact, the violation case mentioned in the defense above was opened on April 9, 1987. The final date listed on the building permit issued for the construction of the single-family residence on the property is September 2, 1987, five months after the violation case was opened. Therefore, the residence was not yet completed or occupied when the violation was reported. Because the existing permit requires the construction of the required accessway improvements prior to occupancy of the residence, the lack of those improvements in April 1987 would not constitute a violation of this condition. Thus, Commission staff could not be on notice that a violation of the permit had occurred, because, at that time, a violation had not yet occurred.

10. The Revells' Defense

Nevertheless, without an admission of wrongdoing or legal liability, and solely for purposes of settlement of the pending Coastal Act violations as delineated in the [NOI], and in consideration of the Coastal Commission acknowledging and agreeing that the alleged violations have been satisfied in full, the Revells will agree to pay the Coastal Commission, or fund designated by the Coastal Commission, the sum of Fifty Thousand Dollars (\$50,000.00), which sum the Revells estimate to be the approximate cost to construct the accessway improvement plans as originally approved by the Commission.

Response:

Commission staff contacted the Revells' attorney to clarify this statement, and was told by the attorney that the Revells intended the sum to be paid in lieu of resolving the violations on the property, that this offer of \$50,000 in their letter was to "settle" the case, and that the violations would remain in place. Commission staff reminded the Revells' attorney that Commission staff cannot agree to payment of money in exchange for allowing violations of the Coastal Act and the conditions of the existing permit to remain on the property.

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

CEASE AND DESIST ORDER CCC-05-CD-13, Revell

Pursuant to its authority under Public Resource Code Section 30810, the California Coastal Commission (hereinafter “the Commission”) hereby orders and authorizes Graeme and Brenda Revell (hereinafter referred to as “Respondents”) to take all actions required by this Order by complying with the following conditions:

1. Immediately cease and desist from maintaining unpermitted development on property located at 32340 Pacific Coast Highway in Malibu and identified as APN 4473-014-009 (hereinafter “the property”).
2. Immediately cease and desist from engaging in any further development on the property not authorized by a coastal development permit, this Order, or Restoration Order No. CCC-05-RO-09.
3. Immediately comply with the terms and conditions of Coastal Development Permit No. A-220-80.
4. Refrain from any attempts to limit or interfere with public use of the easement created by the Offer to Dedicate recorded January 8, 1987 (Instrument No. 87-28221).
5. Plans, Submittals, and Work to be Performed
 - A. Removal of Unpermitted Development
 - i. Within 30 days of the issuance of this Order, Respondents shall submit a Removal Plan, for the review and approval of the Executive Director, for removal of all unpermitted development on the property, including but not limited to: a locked metal gate; a metal fence, razor wire; wooden stairs and any associated development such as footings, rails, and landings; irrigation equipment and the border around the irrigated lawn; and lounge chairs. Removal of non-native landscaping shall be addressed in the Restoration Order No. CCC-05-RO-09. The Removal Plan must be prepared by a certified civil engineer or other qualified professional, licensed by the State of California and must contain the following provisions:
 - a. A detailed description of proposed removal activities. Respondents shall utilize removal techniques that, to the extent possible, minimize impacts to the headland, bluff, and beach.
 - b. A timetable for removal.
 - c. Identification of the disposal site for removed development. The site must be a licensed disposal facility located outside of the Coastal Zone.

Any hazardous materials must be transported to a licensed hazardous waste disposal facility.

ii. If the Executive Director determines that any modifications or additions to the submitted Removal Plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the Removal Plan for approval within 10 days of the notification.

iii. Removal shall commence no later than 10 days after the approval of the Removal Plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved plan.

iv. Within 10 days of the completion of the removal of all unpermitted development from the property, submit evidence that the removal has been completed pursuant to the approved plans.

v. If mechanized equipment is used, the Removal Plan must contain the following provisions:

- Type of mechanized equipment required for removal activities;
- Length of time equipment must be used;
- Routes utilized to bring equipment to and from the property;
- Storage location for equipment when not in use during removal process;
- Hours of operation of mechanized equipment;
- Contingency plan in case of a spill of fuel or other hazardous release from use of mechanized equipment that addresses clean-up and disposal of the hazardous materials and water quality concerns;
- Measures to be taken to protect water quality.

B. Construction of Public Access Improvements

i. Within 30 days of the issuance of this Order, Respondents shall submit an Accessway Improvement Plan for the construction of public access improvements from the beach to the headland on both sides of the headland, as required under Special Condition 2 of Coastal Development Permit No. A-220-80. The Accessway Improvement Plan shall include the following provisions:

- a. Geological Report: Respondents shall submit a geological report, prepared by a qualified geologist, recommending the acceptable location

for the stairway foundations, and the method in which the foundations will be anchored into bedrock and otherwise constructed to withstand the impact of wave action that is expected to occur at this location.

b. Design of Improvements: A plan illustrating the design of proposed stairways from the beach to the headland on both sides of the headland was approved by the Commission on August 15, 1986. Respondents shall construct two stairways, one located on either side of the headland and extending from the beach to the headland using the approved plan and in compliance with the recommendations in the geological report required pursuant to Section a of this Order. If Respondents conclude that modifications to the approved plan are necessary to the success of the project, Respondents shall include those modifications and justifications for them in the plan and clearly indicate in the plan what modifications are suggested.

c. Construction Procedures: The Accessway Improvement Plan shall include the following information pertaining to the construction of the stairs:

- Timeline for construction of the accessway improvements.
- Hours of operation of mechanized equipment, limited to weekdays between sunrise and sunset;
- Location, inland from the beach, for storage of mechanized equipment when not in use;
- A contingency plan addressing: 1) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment; 2) clean-up and disposal of hazardous materials; and 3) water quality concerns;
- Transportation and disposal plan for materials be disposed of at a Commission-approved location outside of the Coastal Zone. If a disposal location within the Coastal Zone is selected, a coastal development permit is required;
- Measures to protect against impacts to water quality from construction.

ii. If the Executive Director determines that any modifications or additions to the Accessway Improvement Plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the Accessway Improvement Plan for approval within 10 days of the notification.

iii. Within 10 days of approval of the Access Improvement Plan by the Executive Director, Respondents shall commence construction of the accessway improvements. Construction should be conducted and completed according to the timeline included in the Accessway Improvement Plan.

iv. Within 10 days of completion of the accessway improvements, Respondents shall submit evidence of the completion to the Executive Director for review and approval of the project. After review of the evidence, the Executive Director shall specify any measures to ensure that the accessway improvements were constructed according to the approved Accessway Improvement Plan. Respondents shall implement these measures, within the timeframe specified by the Executive Director.

I. Persons Subject to the Order

Persons subject to this Cease and Desist Order are Respondents, their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

II. Identification of the Property

The property that is subject this Order is described as follows:

Approximately 4.39 acres, located at 32340 Pacific Coast Highway in Malibu, on a coastal bluff and headland, approximately .2 miles upcoast from El Matador State Beach and approximately .8 miles downcoast from El Pescador State Beach (APN 4473-014-009).

III. Description of Unpermitted Development and Violation of Coastal Development Permit

The unpermitted development located on the property includes a locked metal gate, metal fence, wooden stairs, removal of native bluff-top vegetation, and landscaping. In addition, public access improvements required under Coastal Development Permit No. A-220-80 have not been constructed and the locked gate and fence completely obstruct lateral public access, thereby violating the existing permit and its terms include those providing for the public access easement (that resulted from acceptance of the Amended Irrevocable Offer to Dedicate an easement).

IV. Commission Jurisdiction and Authority to Act

The property lies within the City of Malibu, which has a certified Local Coastal Program. The Coastal Commission has jurisdiction, however, to take enforcement action to remedy the Coastal Act violations on the property due to the fact the violations involve a Commission-issued Coastal Development Permit. In addition, the City of Malibu has authorized the Commission to conduct

these proceedings, pursuant to Coastal Act Section 30810(a)(2). The Commission issues this order pursuant to its authority under Coastal Act Section 30810.

V. Effective Date and Terms of the Order

The effective date of the Order is the date of approval by the Commission. The Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

VI. Submittal of Documents

All documents submitted pursuant to this Order must be sent to:

California Coastal Commission
Attn: Christine Chestnut
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219.

with a copy sent to:
California Coastal Commission
Attn: Pat Veasart
89 S. California Street Suite 200
Ventura, CA 93001-2801

VII. Findings

The Order is issued on the basis of the findings adopted by the Commission at the November 2005 hearing, as set forth in the attached document entitled: Staff Report and Findings for Cease and Desist Order and Restoration Order, as well as the testimony and any additional evidence presented at the hearing.

VIII. Compliance Obligation

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties, under Coastal Act Section 30821.6, of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which the violation persists, in addition to any other penalties authorized under Chapter 9 of the Coastal Act, including exemplary damages under Section 30822.

IX. Extension of Deadlines

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

X. Site Access

Respondents shall provide access to the property, at all reasonable times, including when work is being conducted pursuant to this order, for Commission staff and any agency having jurisdiction over the work being performed under this order. Commission staff shall provide 24-hour notice

before entering the property. Nothing in this order is intended to limit in any way the right of entry or inspection that any agency may otherwise have be operation of any law.

XI. Modifications and Amendments to this Consent Order

Except as provided in Section IX of this order, this order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

XII. Appeal

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the order is issued may file a petition with the Superior Court for a stay of this order.

XIII. Government Liability

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents 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 Respondents or their agents in carrying out activities pursuant to this Order.

XIV. Successors and Assigns

This Cease and Desist Order shall run with the land, binding all successors in interest, future owners of the Subject Property, heirs and assigns of Respondents. Respondents shall provide notice to all successors, heirs and assigns of any remaining obligations under this Order.

XV. 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 this Cease and Desist Order.

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

By: _____ Peter Douglas, Executive Director

RESTORATION ORDER CCC-05-RO-09, Revell

Pursuant to its authority under Public Resource Code Section 30811, the California Coastal Commission hereby orders and authorizes Graeme and Brenda Revell (hereinafter referred to as “Respondents”) to restore the property by complying with the following conditions:

A. Removal of Unpermitted Development

i. Within 30 days of the issuance of this Order, submit a Removal Plan, for the review and approval of the Executive Director, for removal of all unpermitted development on the property, including but not limited to: a metal locked gate; a metal fence, razor wire; wooden stairs and any associated development such as footings, rails, and landings; irrigation equipment and the border around the irrigated lawn; and lounge chairs. Removal of non-native landscaping shall be addressed in the Restoration Plan, addressed in Section B below. The Removal Plan must be prepared by a certified civil engineer or other qualified professional, licensed by the State of California and must contain the following provisions:

a. A detailed description of proposed removal activities.

b. A timetable for removal.

c. Disposal site for removed development. The site must be a licensed disposal facility located outside of the Coastal Zone. Any hazardous materials must be transported to a licensed hazardous waste disposal facility.

ii. If the Executive Director determines that any modifications or additions to the submitted Removal Plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the Removal Plan for approval within 10 days of the notification.

iii. Removal shall commence no later than 10 days after the approval of the Removal Plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved plan.

iv. Within 10 days of the completion of the removal of all unpermitted development from the property, submit evidence that the removal has been completed pursuant to the approved plans.

v. If mechanized equipment is used, the Removal Plan must contain the following provisions:

- Type of mechanized equipment required for removal activities;

- Length of time equipment must be used;
- Routes utilized to bring equipment to and from the property;
- Storage location for equipment when not in use during removal process;
- Hours of operation of mechanized equipment;
- Contingency plan in case of a spill of fuel or other hazardous release from use of mechanized equipment that addresses clean-up and disposal of the hazardous materials and water quality concerns;
- Measures to be taken to protect water quality.

B. Restoration of Impacted Areas Impacted by Unpermitted Development or the Removal of Unpermitted Development

i. Within 30 days of the issuance of this Order, Respondents shall submit, for the review and approval of the Executive Director, a Restoration Plan that removes all non-native vegetation from the top of the headland and restores the areas impacted by the construction or removal of unpermitted development on the property to the condition that existed prior to the unpermitted development. The Restoration Plan shall be prepared by a qualified restoration ecologist and shall include the following provisions:

a. Goals and Performance Standards

- Restoration of the property to the condition that existed prior to the unpermitted development through eradication of non-native vegetation and revegetation of the headland. The location for any materials to be removed from the site as a result of the restoration of the impacted areas shall be identified. If the dump site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit shall be required.
- Eradication of non-native vegetation within the areas subject to revegetation and those areas which are identified as being subject to disturbance as a result of the activities conducted in accordance with this Order.
- 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.

- Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the revegetation of the impacted areas. Restoration 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.

- Stabilization of soils to minimize erosion of the headland.

- 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).

- Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will 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 areas vegetated with coastal bluff top vegetation, undisturbed by development or vegetation removal, 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

- 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 coastal

bluff vegetation shall not be disturbed by activities related to this restoration project.

- Specify that the restoration of the site shall be performed using hand tools wherever possible, unless it can be 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.

- The Restoration Plan 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. 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 revegetation activities and maintained until the impacted areas have been revegetated to minimize erosion. 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.

- 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.

- 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 become established in the revegetation area. If herbicides are to be used in the revegetation area, specify the precautions that shall be taken to protect native plants and workers, consistent with all applicable laws and regulations.

- Describe the use of artificial inputs, such as watering or fertilization that shall be used to support the plantings becoming established. Specify that only the minimal necessary amount of such inputs shall be used.

- 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.

- The property owner 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, 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.

- 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 three 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 three years, so that the success and sustainability of the restoration of the project site are ensured.

- 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-02-RO-02.

d. Appendix A

- Provide a description of the education, training and experience of the qualified geologist, restoration ecologist, and soil scientist, if relevant, 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 coastal bluff 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 soil scientist for this project shall be a soil scientist who has experience in assessing, designing and implementing measures necessary to create soil conditions to support revegetation and prevent instability or erosion. A qualified geologist for this project shall be a geologist who has experience evaluating and designing soil stabilization projects on coastal bluffs.

ii. Within 30 days of approval of the Restoration Plan by the Executive Director, Respondents shall complete the following tasks, in accordance with the Restoration Plan specified in this Order:

- removal of the all non-native vegetation from the top of the headland

- revegetation of the top of the headland and any areas impacted by activities conducted pursuant to this Order.

iii. Respondents shall submit monitoring reports to the Executive Director, in accordance with the schedule set forth in the Restoration Plan, as approved by the Executive Director pursuant to Section 4.B.i above.

iv. After review of the monitoring reports, the Executive Director shall specify any measures to ensure health and stability of the restored areas, as required by the Restoration Plan. Respondents shall implement these measures, within the timeframe specified by the Executive Director.

C. Construction of Public Access Improvements

i. Within 30 days of the issuance of this Order, Respondents shall submit an Accessway Improvement Plan for the construction of public access improvements from the beach to the headland on both sides of the headland, as required under Special Condition 2 of Coastal Development Permit No. A-220-80. The Accessway Improvement Plan shall include the following provisions:

a. Geological Report: Respondents shall submit a geological report, prepared by a qualified geologist, recommending the acceptable location for the stairway foundations, and the method in which the foundations will be anchored into bedrock and otherwise constructed to withstand the impact of wave action that is expected to occur at this location.

b. Design of Improvements: A plan illustrating the design of proposed stairways from the beach to the headland on both sides of the headland was approved by the Commission on August 15, 1986. Respondents shall construct two stairways, one located on either side of the headland and extending from the beach to the headland using the approved plan and in compliance with the recommendations in the geological report required pursuant to Section a of this Order. If Respondents conclude that modifications to the approved plan are necessary to the success of the project, Respondents shall include those modifications and justifications for them in the plan and clearly indicate in the plan what modifications are suggested.

c. Construction Procedures: The Accessway Improvement Plan shall include the following information pertaining to the construction of the stairs:

- Timeline for construction of the accessway improvements.
- Hours of operation of mechanized equipment, limited to weekdays between sunrise and sunset, excluding the Memorial Day and Fourth of July Holidays;
- Location for storage of mechanized equipment when not in use, inland from the beach;
- A contingency plan addressing: 1) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment; 2) clean-up and disposal of hazardous materials; and 3) water quality concerns;
- Transportation and disposal plan for materials be disposed of at a Commission-approved location outside of the Coastal Zone. If a

disposal location within the Coastal Zone is selected, a coastal development permit is required;

- Measures to protect against impacts to water quality from construction.

ii. If the Executive Director determines that any modifications or additions to the Accessway Improvement Plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the Accessway Improvement Plan for approval within 10 days of the notification.

iii. Within 10 days of approval of the Access Improvement Plan by the Executive Director, Respondents shall commence construction of the accessway improvements. Construction should be conducted and completed according to the timeline included in the Accessway Improvement Plan.

iv. Within 10 days of completion of the accessway improvements, Respondents shall submit evidence of the completion to the Executive Director for review and approval of the project. After review of the evidence, the Executive Director shall specify any measures to ensure that the accessway improvements were constructed according to the approved Accessway Improvement Plan. Respondents shall implement these measures, within the timeframe specified by the Executive Director.

v. Respondents shall refrain from any attempts to limit or interfere with public use of the easement created by the Offer to Dedicate recorded on January 18, 1987 (Instrument No. 87-028221)) and the Certificate of Acceptance recorded on September 18, 2002 (Instrument No. 02-2191101).

I. Persons Subject to the Order

Persons subject to this Restoration Order are Respondents, their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

II. Identification of the Property

The property that is subject this Order is described as follows:

Approximately 4.39 acres, located at 32340 Pacific Coast Highway in Malibu, on a coastal bluff and headland, approximately .2 miles upcoast from El Matador State Beach and approximately .8 miles downcoast from El Pescador State Beach (APN 4473-014-009).

III. Description of Unpermitted Development

The unpermitted development located on the property includes a locked metal gate, metal fence, wooden stairs, removal of native bluff-top vegetation, and landscaping. In addition, public access improvements required under CDP No. A-220-80 have not been constructed and the locked gate and fence completely obstruct lateral public access, thereby violating the existing permit.

IV. Commission Jurisdiction and Authority to Act

The property lies within the City of Malibu, which has a certified Local Coastal Program. The Coastal Commission has jurisdiction, however, to take enforcement action to remedy the Coastal Act violations on the property due to the fact the violations involve a Commission-issued CDP. In addition, the City of Malibu has authorized the Commission to conduct these proceedings. The Commission issues this order pursuant to its authority under Coastal Act Section 30811.

V. Effective Date and Terms of the Order

The effective date of the Order is the date of approval by the Commission. The Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

VI. Submittal of Documents

All documents submitted pursuant to this Order must be sent to:

California Coastal Commission
Attn: Christine Chestnut
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219.

with a copy sent to:
California Coastal Commission
Attn: Pat Veasart
89 S. California Street Suite 200
Ventura, CA 93001-2801

VII. Findings

The Order is issued on the basis of the findings adopted by the Commission at the November 2005 hearing, as set forth in the attached document entitled: Staff Report and Findings for Cease and Desist Order and Restoration Order, as well as the testimony and any additional evidence presented at the hearing.

VIII. Compliance Obligation

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties, under Coastal Act Section 30821.6, of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which the violation persists, in addition to any other penalties authorized under Chapter 9 of the Coastal Act, including exemplary damages under Section 30822.

IX. Extension of Deadlines

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

X. Modifications and Amendments to this Consent Order

Except as provided in Section IX of this order, this order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

XI. Appeal

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the order is issued may file a petition with the Superior Court for a stay of this order.

XII. Government Liability

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

XIII. Successors and Assigns

This Restoration Order shall run with the land, binding all successors in interest, future owners of the Subject Property, heirs and assigns of Respondents. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this Order.

XIV. 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 this Restoration Order.

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

By: _____ Peter Douglas, Executive Director

CCC-05-CD-13 and CCC-05-RO-09

Exhibit List

Exhibit

Number

Description

1. Site Map and Location.
- 2a-2e Site Photographs.
3. CDP No. P-10-20-77-2107, approved by the Commission on January 16, 1978.
4. CDP No. A-220-80, approved by the Commission on November 19, 1980.
5. Irrevocable Offer to Dedicate, recorded in the Los Angeles County Recorder's Office on June 2, 1982.
6. Amended Irrevocable Offer to Dedicate, with attachments, recorded in the Los Angeles County Recorder's Office on January 8, 1987.
7. Certificate of Acceptance of Amended Irrevocable Offer to Dedicate, recorded in the Los Angeles County Recorder's Office on September 18, 2002.
8. Letter from Lynn Heacox to Commission staff, dated March 21, 2005.
9. Notice of Violation, sent to the Revells from Commission staff, dated March 1, 2005.
10. Letter from Commission staff to the Revells, dated April 19, 2005 and to Alan Block, attorney for the Revells, dated July 21, 2005.
11. Letters from Alan Block, attorney for the Revells, to Commission staff, dated April 29, 2005 and July 29, 2005.
12. Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings, issued by the Executive Director to the Revells, dated September 9, 2005.
13. Statement of Defense, submitted by Alan Block, attorney for the Revells, on behalf of the Revells, dated September 28, 2005. The three exhibits submitted as attachments to the SOD are already included in this report as Exhibit 12.

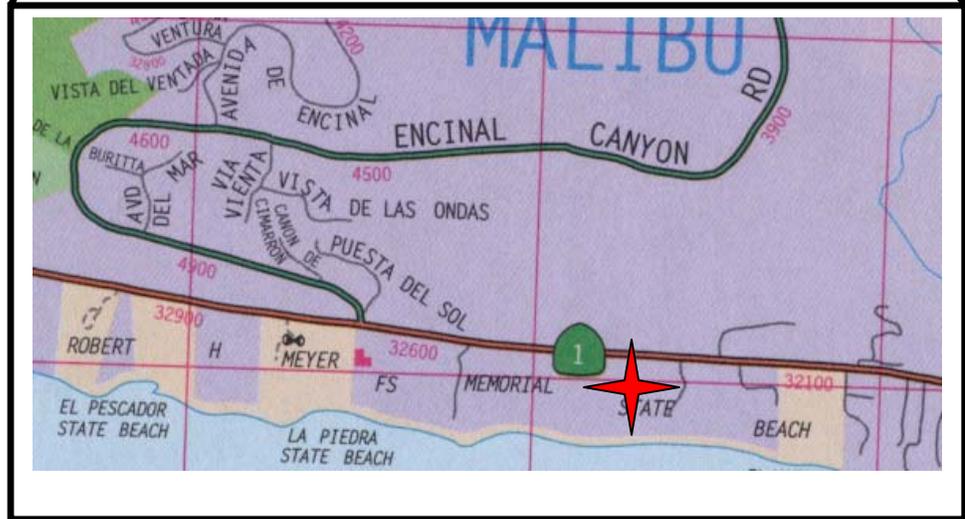
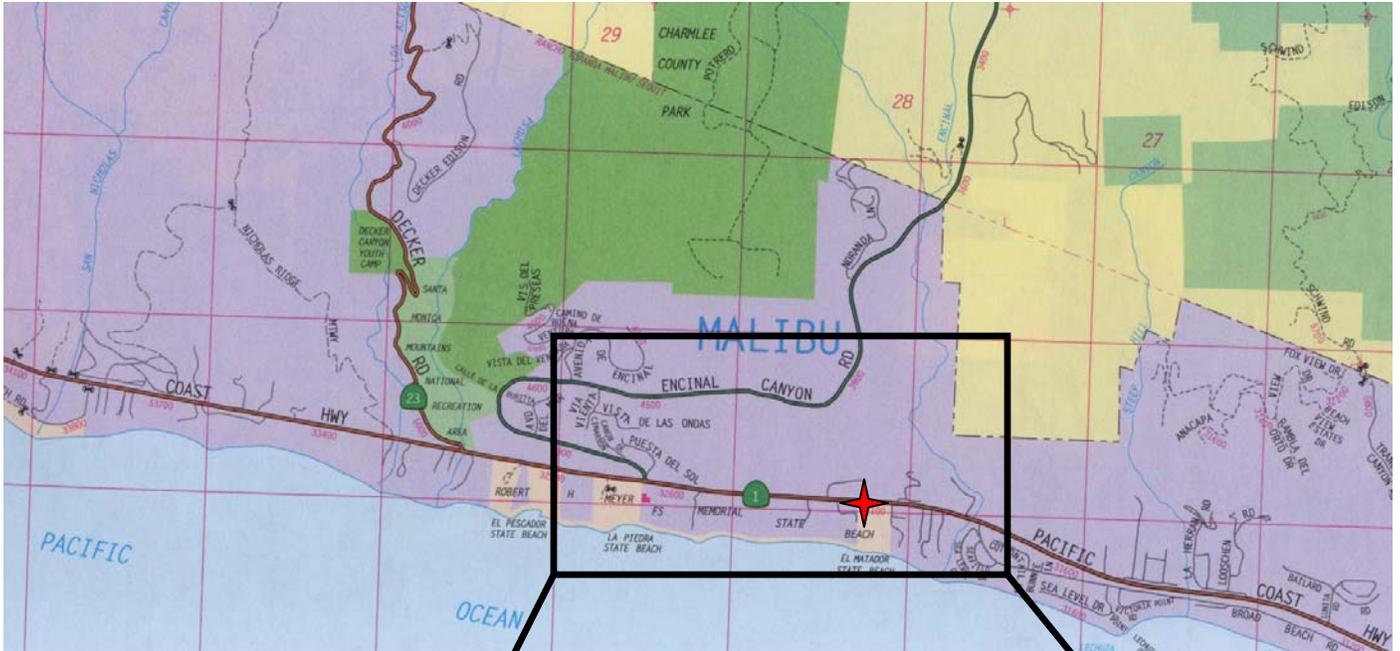


Exhibit 1: Site Map.



Exhibit 2a: 1977 photograph showing the headland and bluff.



Exhibit 2b: 2005 photograph looking southeast across the headland.



Exhibit 2c: 2005 photograph showing the locked gate, fence, razor wire, and the top portion of the stairs.

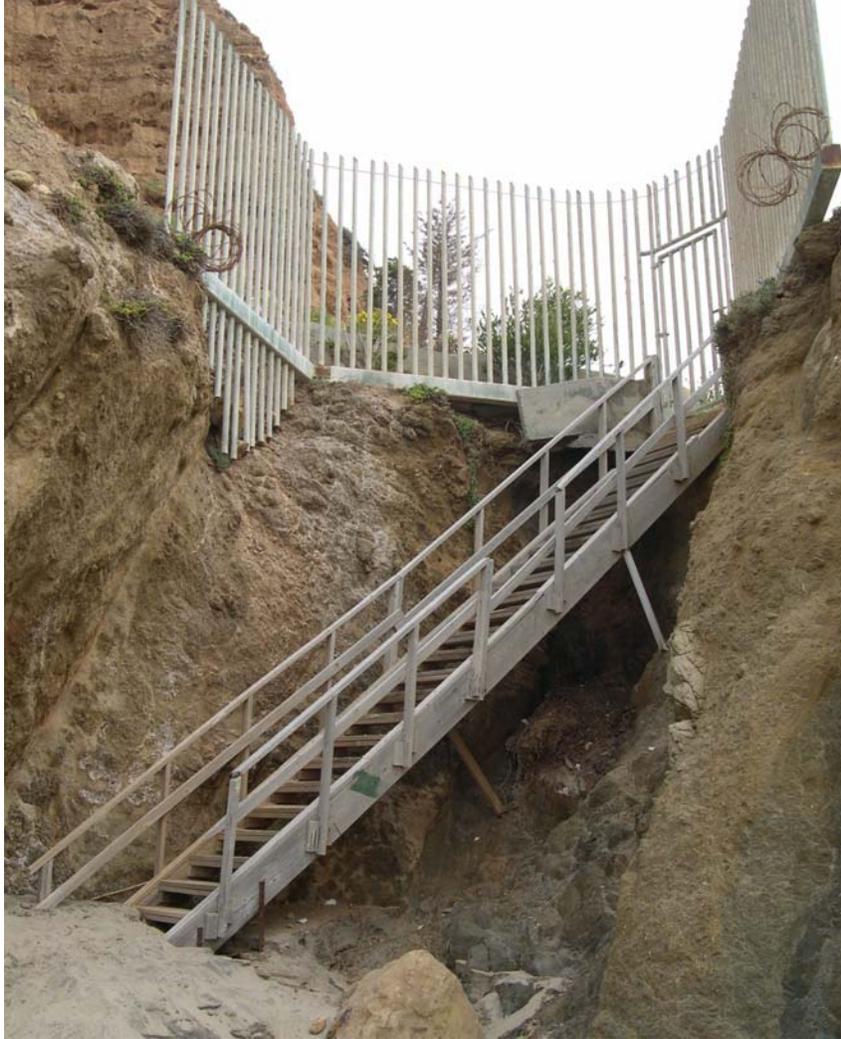


Exhibit 2d: 2005 photograph providing a view of the stairway, locked gate, fence, and razor wire.



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Exhibit 2e: 2005 aerial photograph of the Revell property and surrounding area, including coastal bluffs vegetated with coastal sage scrub.

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
666 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1450
LONG BEACH, CALIFORNIA 90801
(213) 590-5071 (714) 846-0648



COASTAL DEVELOPMENT PERMIT

00096

Application Number: P-10-20-77-2107

Name of Applicant: John J. Benton

ERFC 425 North Michigan, Chicago, IL 60611

Permit Type: Emergency
 Standard
 Administrative

Development Location: 32354 Pacific Coast Highway, Malibu, CA

Development Description: Construct a 1½-story plus basement, five-bedroom and study, single-family dwelling with servant's quarters and a two-car detached garage, swimming pool and unlit tennis court, 19 feet below centerline of frontage road, with conditions.

I. The proposed development is subject to the following conditions imposed pursuant to the California Coastal Act of 1976:

See attached Page 3 for conditions.

Condition/s Met On _____ By _____

II. The South Coast Commission finds that:

A. The proposed development, or as conditioned;

00097

1. The developments are in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976.
2. If located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, the development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976.
3. There are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available for imposition by this Commission under the power granted to it which would substantially lessen any significant adverse impact that the development, as finally proposed may have on the environment.

III. Whereas, at a public hearing, held on January 16, 1978 at Torrance by a 12 to 0 vote permit application number P-10-20-77-2107 is approved.

- IV. This permit may not be assigned to another person except as provided in Section 13170, Coastal Commission Rules and Regulations.
- V. This permit shall not become effective until a COPY of this permit has been returned to the Regional Commission, upon which copy all permittees or agent(s) authorized in the permit application have acknowledged that they have received a copy of the permit and have accepted its contents.
- VI. Work authorized by this permit must commence within two years from the date of the Regional Commission vote upon the application. Any extension of time of said commencement date must be applied for prior to expiration of the permit.
- VII. Issued on behalf of the South Coast Regional Commission on _____, 197 ____.

M. J. Carpenter
Executive Director

I, _____, permittee/agent, hereby acknowledge receipt of Permit Number P-10-20-77-2107 and have accepted its contents.

(date)

Exhibit 3
CCC-05-CD-13 and CCC-05-RO-09
(s) (Revell) Page 2 of 3

Conditions for P-77/2107

00098

Prior to issuance of permit, applicant shall submit:

1. revised plans indicating:
 - a. that all proposed development, including swimming pool, decking and terraces, shall be set back at least 25 feet from the top of the sea cliff as indicated on the site plan,
 - b. that all proposed development, including paths, decking and terraces, shall be set back at least 10 feet from the top of the bank as indicated on the site plan, and
 - c. that all structures and landscaping shall be set below center grade of Pacific Coast Highway to protect public views to the ocean;
2. a deed restriction for recording:
 - a. stating that no development shall occur seaward of a setback line of 25 feet from the top of the sea cliff as indicated on the site plan and additionally a copy of the site plan shall be recorded with this restriction,
 - b. granting lateral public access 25 feet inland from the mean high tide line including the right to cross the headland at the base of the cliff by an accessway designated by the applicant,
 - c. stating that no structure or landscaping shall extend above center grade of Pacific Coast Highway,
 - d. granting vertical access to give the public the privilege and right to pass and repass over a strip of dedicatory's said real property 10 feet in width measured from the eastern property line and then following the centerline of the existing trail as designated on the site plan and extending from the edge of the public right-of-way, Pacific Coast Highway (State Highway 1), to the mean high tide line of the Pacific Ocean, and
 - e. limiting the use of the structures to a single-family dwelling; and
3. plans for a drainage system, that shall be constructed and maintained to dispose roof and surface runoff into gravel filled wells or other retention methods that maintain a rate of discharge at the level that existed prior to development; the use of overland storm channels is not permitted.

* * *

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

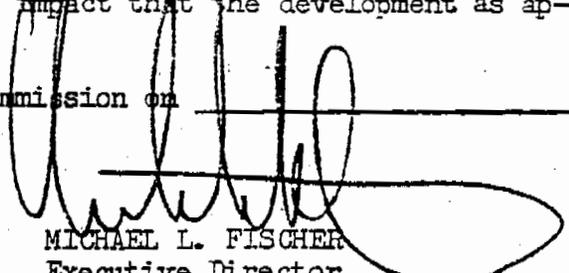
On November 19, 1980, by a vote of 10 to 0, the California Coastal Commission granted to John Benton an amendment to Permit A- 220-80, subject to the conditions set forth below, for changes to the development or conditions imposed on the existing permit issued on January 16, 1980. Changes approved by this amendment consist of changing the design of the residential structure and modifying the access conditions

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 32354 Pacific Coast Highway, Encinal Beach, Malibu

After public hearing held on September 17, 1980, the Commission found that, as conditioned, the proposed amendment is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976; will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976; if between the sea and the public road nearest the sea, is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976; either (1) will not have any significant adverse impact on the environment or (2) there are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact that the development as approved may have on the environment.

Issued on behalf of the California Coastal Commission on _____


MICHAEL L. FISCHER
Executive Director

By Janet Sullivan

The undersigned permittee acknowledges receipt of the California Coastal Commission, this amendment to Permit A- 220-80, dated January 16, 1980, and fully understands its contents, including all conditions imposed.

Date _____

A- 220-80

2. Accessway Improvements. Prior to issuance of the permit, the applicant shall submit plans, for the review and approval in writing of the Executive Director, showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with the approved plans shall be completed prior to occupancy of the residence approved herein.

3. Revised Plans. The applicant shall submit revised plans, for the review and approval in writing of the Executive Director, showing that the proposed wall is sited so as not to interfere with public views from Pacific Coast Highway. All construction shall be in conformance with the plans submitted with this amendment request as modified through this condition.

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

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA
JUN 2 1982 AT 8 A.M.
Recorder's Office

FREE # G

IRREVOCABLE OFFER TO DEDICATE

I. WHEREAS, JOHN H. BENTON is the record owner ("Owner") of the real property located at 32354 Pacific Coast Highway, Malibu, County of Los Angeles, California, legally described as particularly set forth in attached Exhibit "A" hereby incorporated by reference, and hereinafter referred to as the "Property"); and

II. WHEREAS, the California Coastal Commission, hereinafter referred to as the "Commission", is acting on behalf of the People of the State of California; and

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

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the Owner applied to the Commission for a coastal development permit for a development on the Property; and

7134762 ~~20~~

V. WHEREAS, a coastal development permit No. A-220-80 was granted on November 19, 1980 by the Commission in accordance with the provisions of the Staff Recommendation and Findings, Exhibit "B" attached hereto and incorporated herein by reference subject to the following condition:

Public Access. Prior to issuance of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement shall extend from the mean high tide line to the base of the bluff for the width of the project site and shall include an easement area, conforming to the plans attached in Exhibit 2, over the headland on the site for pedestrian access and viewing. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

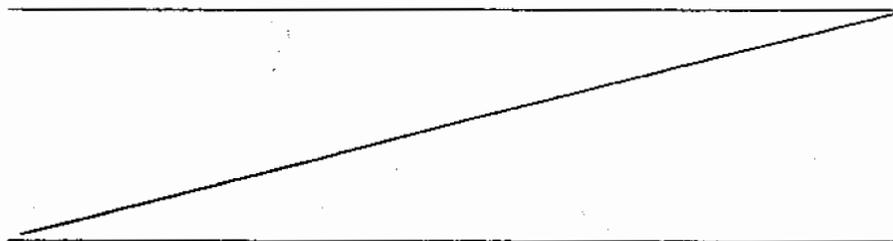
The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

VI. WHEREAS, the Property is a parcel located between the first public road and the shoreline; and

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

VIII. WHEREAS, the Commission found that but for the imposition of the above condition, the proposed development could not be found consistent with the public access policies of Sections 30210 through 30212 of the California Coastal Act of 1976 and that, therefore, in the absence of such a condition, a permit could not have been granted.

NOW, THEREFORE, in consideration of the granting of permit No. A-220-80 to the Owner by the Commission, the Owner hereby offers to dedicate to the People of California an easement in perpetuity for the purposes of allowing the



public access and passive recreational use of the beach and other areas located on the Property as specifically described in Exhibit "C" attached hereto.

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

Acceptance of the offer is subject to a covenant which runs with the land, providing that the first offeree to accept the easement may not abandon it, but must instead offer the easement to other public agencies or private associations acceptable to the executive director of the Commission for the duration of the term of the original offer to dedicate. The grant of easment once made shall

run with the land and shall be binding on the owners, their heirs and assigns.

Executed on this 29th day of March, 1982, in the City of Santa Monica, County of Los Angeles.

John H. Benton

JOHN H. BENTON

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

82- 557828

On May 10, 1982, before the undersigned, a Notary Public in and for said State, personally appeared JOHN H. BENTON, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.



Janice S. Thomas

NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE



82- 557828

This is to certify that the Offer to Dedicate set forth above, dated March 29 , 1982, and signed by John H. Benton owner, is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Amended Coastal Development Permit No. A-220-80 on November 19, 1980, and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: April 13, 1982

Steven D. Brown

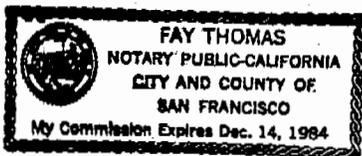
Legal Counsel
California Coastal Commission

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

On April 13, 1982, before the undersigned, a Notary Public in and for said County and State, personally appeared Steven D. Brown, Legal Counsel
Name Title

_____ of the California Coastal Commission and known to me to be the person who executed the within instrument on behalf of said Commission, and acknowledged to me that such Commission executed the same.

Witness my hand and official seal.



Fay Thomas
Notary Public

82- 557828

TITLE INSURANCE AND TRUST COMPANY

DESCRIPTION:

PARCEL 1:

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

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF BEGINNING BEING DISTANT SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST 40 FEET AND SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 112.74 FEET FROM ENGINEER'S CENTER LINE STATION 298 PLUS 67.32 AT THE WESTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE DESCRIBED IN SAID DEED AS SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 2044.20 FEET, SAID POINT BEING ALSO IN THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO LOUISA D'ANDELOT CARPENTER, RECORDED JUNE 22, 1944 AS INSTRUMENT NO. 606, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 87 DEGREES 40 MINUTES 30 SECONDS WEST 112.74 FEET ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY, WITH A RADIUS OF 10040 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, 12.26 FEET; THENCE SOUTH 2 DEGREES 24 MINUTES 06 SECONDS WEST TO A POINT IN THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN; THENCE EASTERLY ALONG SAID TIDE LINE TO THE INTERSECTION OF SAID TIDE LINES AND THAT LINE WHICH BEARS SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 2 DEGREES 19 MINUTES 30 SECONDS EAST ALONG THE WESTERLY LINE OF SAID CARPENTER PARCEL AND ITS PROLONGATION TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF THE 100 FOOT STRIP OF LAND DESCRIBED IN DEED FROM MARBLEHEAD LAND COMPANY, TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385, OFFICIAL RECORDS OF LOS ANGELES COUNTY.

ALSO EXCEPTING THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER SAID LANDS, AND EVERY PART THEREOF, BUT WITHOUT SURFACE RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED AUGUST 15, 1944 IN BOOK 21198 PAGE 122, OFFICIAL RECORDS.

ALSO EXCEPT ANY PORTION OF SAID LAND, WHICH AT ANY TIME WAS TIDE OR SUBMERGED LAND AND BECAME UPLAND BY OTHER THAN FROM NATURAL CAUSES.

PARCEL 2:

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

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, IN THE OFFICE

FROM DEN'S HEADS:
POOR RECORD IS DUE TO
QUALITY OF ORIGINAL DOCUMENT

EXHIBIT A

82- 557828

TITLE INSURANCE AND TRUST COMPANY

OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF BEGINNING BEING DISTANT SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST 40 FEET AND SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 112.74 FEET FROM ENGINEER'S CENTER LINE STATION 298 PLUS 67.32 AT THE WESTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE DESCRIBED IN SAID DEED AS SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 2044.20 FEET; THENCE SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 58.94 FEET ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP TO THE NORTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO RAYMOND W. ROESSLER AND WIFE, RECORDED IN BOOK 20706 PAGE 289, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL, SOUTH 31 DEGREES 28 MINUTES 05 SECONDS EAST 343.67 FEET; THENCE SOUTH 6 DEGREES 27 MINUTES 00 SECONDS EAST TO A POINT IN THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN; THENCE WESTERLY ALONG SAID TIDE LINE TO THE INTERSECTION OF SAID TIDE LINE AND THAT LINE WHICH BEARS SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 2 DEGREES 19 MINUTES 30 SECONDS EAST TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER SAID LANDS AND EVERY PART THEREOF, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED JUNE 22, 1944 IN BOOK 21052 PAGE 100, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE 100 FOOT STRIP OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION OF RANCHO TOPANGA MALIBU SEQUIT, AS PER PATENT RECORDED IN BOOK 1 PAGES 407, ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; CONVEYED TO JOHN T. BOND, BY DEED RECORDED IN BOOK 24379 PAGE 137, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF 100 FOOT STRIP OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE NORTHEASTERLY CORNER OF PARCEL 2 OF THE LAND CONVEYED TO JOHN T. BOND; THENCE ALONG THE SOUTHERLY LINE OF SAID 100 FOOT STRIP; NORTH 87 DEGREES 40 MINUTES 30 SECONDS WEST 45.69 FEET; THENCE SOUTH 68 DEGREES 58 MINUTES 12 SECONDS EAST 62.36 FEET TO THE EASTERLY BOUNDARY OF SAID PARCEL 2; THENCE ALONG SAID EASTERLY LINE, NORTH 31 DEGREES 28 MINUTES 05 SECONDS WEST 24.06 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT ANY PORTION OF SAID LAND WHICH AT ANY TIME WAS TIDE OR SUBMERGED LAND AND BECAME UPLAND BY OTHER THAN FROM NATURAL CAUSES.

82- 557828

87 28221

Return Original To and
Recording Requested By:

State of California)
California Coastal Commission)
631 Howard Street, 4th Floor)
San Francisco, CA 94105)

RECORDED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
31 MIN. 3 PM JAN 8 1987
PAST.

FEE \$ 51.00

24

This supersedes Document No. 62-557828
recorded on June 2, 1982 at 8:00 AM at
the Los Angeles County Recorder's office.

AMENDED IRREVOCABLE OFFER TO DEDICATE

I. WHEREAS, JOHN H. BENTON is the record owner ("Owner") of the real property located at 32354 Pacific Coast Highway, Malibu, County of Los Angeles, California, legally described as particularly set forth in the attached Exhibit A hereby incorporated by reference, and hereinafter referred to as the "Property"; and

II. WHEREAS, the California Coastal Commission, hereinafter referred to as the "Commission", is acting on behalf of the People of the State of California; and

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

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the Owner applied to the Commission for a coastal development permit for a development on the Property; and

V. WHEREAS, a coastal development permit no. A-220-80 was granted on November 19, 1980 by the Commission in accordance with the provisions of the Staff Recommendation and Findings,

Exhibit "B" attached hereto and incorporated herein by reference, and subject to the further condition set forth in Exhibit "C" attached hereto and incorporated herein by reference; and

VI. WHEREAS, the Property is a parcel located between the first public road and the shoreline; and

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

VIII. WHEREAS, the Commission found that but for the imposition of the above condition, the proposed development could not be found consistent with the public access policies of Sections 30210 through 30212 of the California Coastal Act of 1976 and that, therefore, in the absence of such a condition, a permit could not have been granted; and

IX. WHEREAS, on November 2, 1981, Owner executed an Irrevocable Offer to Dedicate ("Offer") certain real property to the People of California for purposes of complying with the public access condition of the coastal development permit; and

X. WHEREAS, the Offer did not include a full and complete legal description of the real property which Owner intended to dedicate to the People of California; and

XI. WHEREAS, Owner has prepared this Amended Irrevocable Offer to Dedicate ("Amended Offer") which supercedes and rescinds the prior Offer; and

XII. WHEREAS, the Commission concurs that the Amended Offer more accurately states a legal description of the real

property which Owner must dedicate to the People of California as a condition of complying with the terms of the coastal development permit; and

XIII. WHEREAS, the Commission agrees that an acknowledgment of the Amended Offer by or on behalf of the Commission shall result in an abandonment of any claim of right pursuant to the previous Offer.

NOW THEREFORE, in consideration of the granting of permit no. 220-80 to the Owner by the Commission, the Owner hereby offers to dedicate to the People of California an easement in perpetuity for the purposes of allowing the public access and passive recreational use of the beach and other areas located on the Property as specifically described in Exhibit "D" attached hereto and incorporated by this reference.

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

Acceptance of the offer is subject to a covenant which runs with the land, providing that the first offeree to accept the

easement may not abandon it, but must instead offer the easement to other public agencies or private associations acceptable to the executive director of the Commission for the duration of the term of the original offer to dedicate. The grant of easement once made shall run with the land and shall be binding on the owners, their heirs and assigns.

Executed on the 12th day of November, 1986, in the City of Santa Monica County of Los Angeles.


JOHN H. BENTON

87- 028221

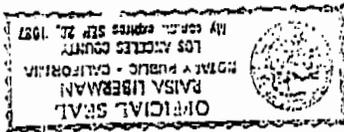
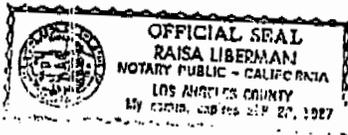
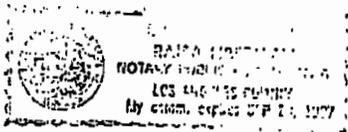
jh bent.off

State of California)
County of Los Angeles) SS.
_____)

On November 12, 1986, before me the undersigned, a Notary Public in and for said State, personally appeared JOHN H. BENTON, whose name is subscribed to the within instrument, and acknowledge that he executed the same.

Witness my hand and official seal.

Raisa Liberman
Notary Public in and for said
County and State



87-28221

jhbent.off

This is the certify that the offer of dedication set forth above dated November 12, 1986, and signed by JOHN B. BENTON, owner, is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. A-220-80 on November 19, 1980 and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

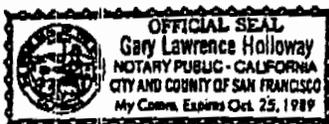
Dated: December 11, 1986

Judith W. Allen
On Behalf of
California Coastal Commission
Judith W. Allen
Staff Counsel

State of California
County of San Francisco

SS.

On this 11th day of December in the year 1986, before me, Gary Lawrence Holloway, Notary Public, personally appeared Judith W. Allen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the authorized representative of the California Coastal Commission and the person whose name is subscribed to this instrument and acknowledged that she executed it.
IN WITNESS WHEREOF I hereunto set my hand and official seal.



Gary Lawrence Holloway
Notary Public

87- 028221

6

jhbent.off

(Retyped for legibility)

81019 1154275

R 108
TITLE INSURANCE AND TRUST COMPANY

DESCRIPTION:

PARCEL 1:

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

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF BEGINNING BEING DISTANT SOUTH 2 DEGREES 19 MINUTES, 30 SECONDS WEST 40 FEET AND SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 112.74 FEET FROM ENGINEER'S CENTER LINE STATION 293 PLUS 67.32 AT THE WESTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE DESCRIBED IN SAID DEED AS SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 2044.20 FEET. SAID POINT BEING ALSO IN THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO LOUISA D'ANDELOT CARPENTER, RECORDED JUNE 22, 1944 AS INSTRUMENT NO. 606, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 87 DEGREES 40 MINUTES 30 SECONDS WEST 112.74 FEET ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY, WITH A RADIUS OF 10040 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, 12.26 FEET; THENCE SOUTH 2 DEGREES 24 MINUTES 06 SECONDS WEST TO A POINT IN THE ORDINARY HIGH TIDE LINE OF THE PACIFIC [O]CEAN; THENCE EASTERLY ALONG SAID TIDE LINE TO THE INTERSECTION OF SAID TIDE LINES AND THAT LINE WHICH BEARS SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 2 DEGREES 19 MINUTES 30 SECONDS EAST ALONG THE WESTERLY LINE OF SAID CARPENTER PARCEL AND ITS PROLONGATION TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF THE 100 FOOT STRIP OF LAND DESCRIBED IN DEED FROM MARBLEHEAD LAND COMPANY, TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385, OFFICIAL RECORDS OF LOS ANGELES COUNTY.

ALSO EXCEPTING THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER SAID LANDS, AND EVERY PART THEREOF, BUT WITHOUT SURFACE RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED AUGUST 15, 1944 IN BOOK 21198 PAGE 122, OFFICIAL RECORDS.

ALSO EXCEPT ANY PORTION OF SAID LAND, WHICH AT ANY TIME WAS TIDE OR SUBMERGED LAND AND BECAME UPLAND BY OTHER THAN FROM NATURAL CAUSES.

PARCEL 2:

87- 028221

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

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T.R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, IN THE

Exhibit 6

CCC-05-CD-13 and CCC-05-RO-09
(Revell) Page 7 of 24

TITLE INSURANCE AND TRUST COMPANY

OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF BEGINNING BEING DISTANT SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST 40 FEET AND SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 112.74 FEET FROM ENGINEER'S CENTER LINE STATION 298 PLUS 67.32 AT THE WESTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE DESCRIBED IN SAID DEED AS SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 2044.20 FEET; THENCE SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 58.94 FEET ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP TO THE NORTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO RAYMOND W. ROESSLER AND WIFE, RECORDED IN BOOK 20706 PAGE 289, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL, SOUTH 31 DEGREES 28 MINUTES 05 SECONDS EAST 343.67 FEET; THENCE SOUTH 6 DEGREES 27 MINUTES 00 SECONDS EAST TO A POINT IN THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN; THENCE WESTERLY ALONG SAID TIDE LINE TO THE INTERSECTION OF SAID TIDE LINE AND THAT LINE WHICH BEARS SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 2 DEGREES 19 MINUTES 30 SECONDS EAST TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER SAID LANDS AND EVERY PART THEREOF, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED JUNE 22, 1944 IN BOOK 21052 PAGE 100, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE 100 FOOT STRIP OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION OF RANCHO TOPANGA MALIBU SEQUIT, AS PER PATENT RECORDED IN BOOK 1 PAGES 407, ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; CONVEYED TO JOHN T. BOND, BY DEED RECORDED IN BOOK 24379 PAGE 137, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF 100 FOOT STRIP OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385 OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE NORTHEASTERLY CORNER OF PARCEL 2 OF THE LAND CONVEYED TO JOHN T. BOND; THENCE ALONG THE SOUTHERLY LINE OF SAID 100 FOOT STRIP; NORTH 87 DEGREES 40 MINUTES 30 SECONDS WEST 45.69 FEET; THENCE SOUTH 68 DEGREES 58 MINUTES 12 SECONDS EAST 62.36 FEET TO THE EASTERLY BOUNDARY OF SAID PARCEL 2; THENCE ALONG SAID EASTERLY LINE, NORTH 31 DEGREES 28 MINUTES 05 SECONDS WEST 24.06 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT ANY PORTION OF SAID LAND WHICH AT ANY TIME WAS TIDE OR SUBMERGED LAND AND BECAME UPLAND BY OTHER THAN FROM NATURAL CAUSES.

87- 028221

9

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

TO: STATE COMMISSION

FROM: JANET TULK, DIRECTOR, PERMIT APPEALS

SUBJECT: REQUEST FOR AMENDMENT TO PERMIT GRANTED WITH CONDITIONS TO JOHN BENTON BY SOUTH COAST REGIONAL COMMISSION (NO. 220-80)

Procedures

In the case of permits issued by the Regional Commission or Commission under the Coastal Act of 1976, the Commission's Regulations (Section 13166) permit applicants to request amendments if it finds that the revised development is consistent with the Coastal Act. The staff recommends that the Commission hold a public hearing on the request, and after closing the public hearing, vote on it.

1. Project History/Amendment Request. On January 16, 1980, the South Coast Regional Commission granted a permit for construction of a single family residence on a five acre parcel on Pacific Coast Highway in Malibu (Exhibit 1). This approval was subject to several conditions, including design restrictions and a requirement that the applicant dedicate easements to provide both vertical and lateral accessways for public use. The applicant appealed this decision to the State Commission, challenging the appropriateness of the conditions requiring the provision of public access and the design limitations on his project. The Commission found that no substantial issue had been raised by the appeal. Since that time, the applicant has been challenging that decision through the judicial process. The Regional Commission's permit decision was upheld by the Los Angeles County Superior Court and is currently pending on appeal before the District Court of Appeal.

The applicant is now requesting an amendment to change the design of the residential structure and to modify the access conditions, deleting the vertical access requirement and expanding the width of the lateral accessway, including construction of an accessway over the headland on the site Attachment 2. The applicant contends that the recent purchase of two State beaches within the vicinity of the project site negates the need to provide vertical access over the subject parcel Attachment 2.

In September 1980, because of litigation currently pending on the subject application, which may be negated by the consideration of the proposed amendment, the State Commission, a party in that litigation, agreed to assume direct review of the subject amendment request. The Commission determined that because of the time limits imposed by the judicial process, an expedited review was crucial to avoiding unnecessary litigation.

STAFF RECOMMENDATION

87- 028221

The staff recommends that the Commission adopt the following resolution:

I. Approval With Conditions

The Commission hereby grants an amendment for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the amended development will be in conformity with the provisions of Chapter 3 of the California Coastal Act.

EXHIBIT B

11/18-20/80

10

of 1976, is located between the sea and the nearest public road and, as conditioned, will be in conformity with the public access and public recreation policies of Chapter 3, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Conditions

This amendment is subject to the following conditions:

1. Public Access. Prior to issuance of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement shall extend from the mean high tide line to the base of the bluff for the width of the project site and shall include an easement area, conforming to the plans attached in Exhibit 2, over the headland on the site for pedestrian access and viewing. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

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

2. Accessway Improvements. Prior to issuance of the permit, the applicant shall submit plans, for the review and approval in writing of the Executive Director, showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with the approved plans shall be completed prior to occupancy of the residence approved herein.

3. Revised Plans. The applicant shall submit revised plans, for the review and approval in writing of the Executive Director, showing that the proposed wall is sited so as not to interfere with public views from Pacific Coast Highway. All construction shall be in conformance with the plans submitted with this amendment request and as modified through this condition.

III. Findings and Declarations

The Commission finds and declares as follows:

87-028221

1. Project Description and Amendment. The applicant proposes to construct a single family residence on a 5 acre parcel adjacent to Encinal Beach. The parcel gently slopes down from Pacific Coast Highway to the top of a 125 ft. bluff above the beach. The house as originally approved was 6652 sq. ft. and also included a garage, tennis court and swimming pool. The proposed amendment includes reducing the size of the residence to approximately 1500 sq. ft., resiting the tennis court and constructing a security wall along the Pacific Coast Highway boundary (Exhibit 2).

2. Public Views. Section 30251 of the Coastal Act provides:

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.

Public views of the ocean are currently provided from Pacific Coast Highway across the project site. The parcel slopes down from Pacific Coast Highway to the bluff top. The location proposed for the house is 40 ft. below the level of Pacific Coast Highway and, as proposed, the house will not restrict public views. However, the six foot wall proposed by the applicant in this amendment would interfere with views from the highway to the sea. However, since the parcel slopes downward towards the sea full security could be assured by placing the wall fence slightly downhill from the highway. As conditioned, the project will incorporate this redesign to assure protection of the public views. The Commission can, therefore, find that as conditioned, the amended project is consistent with Section 30251 of the Coastal Act.

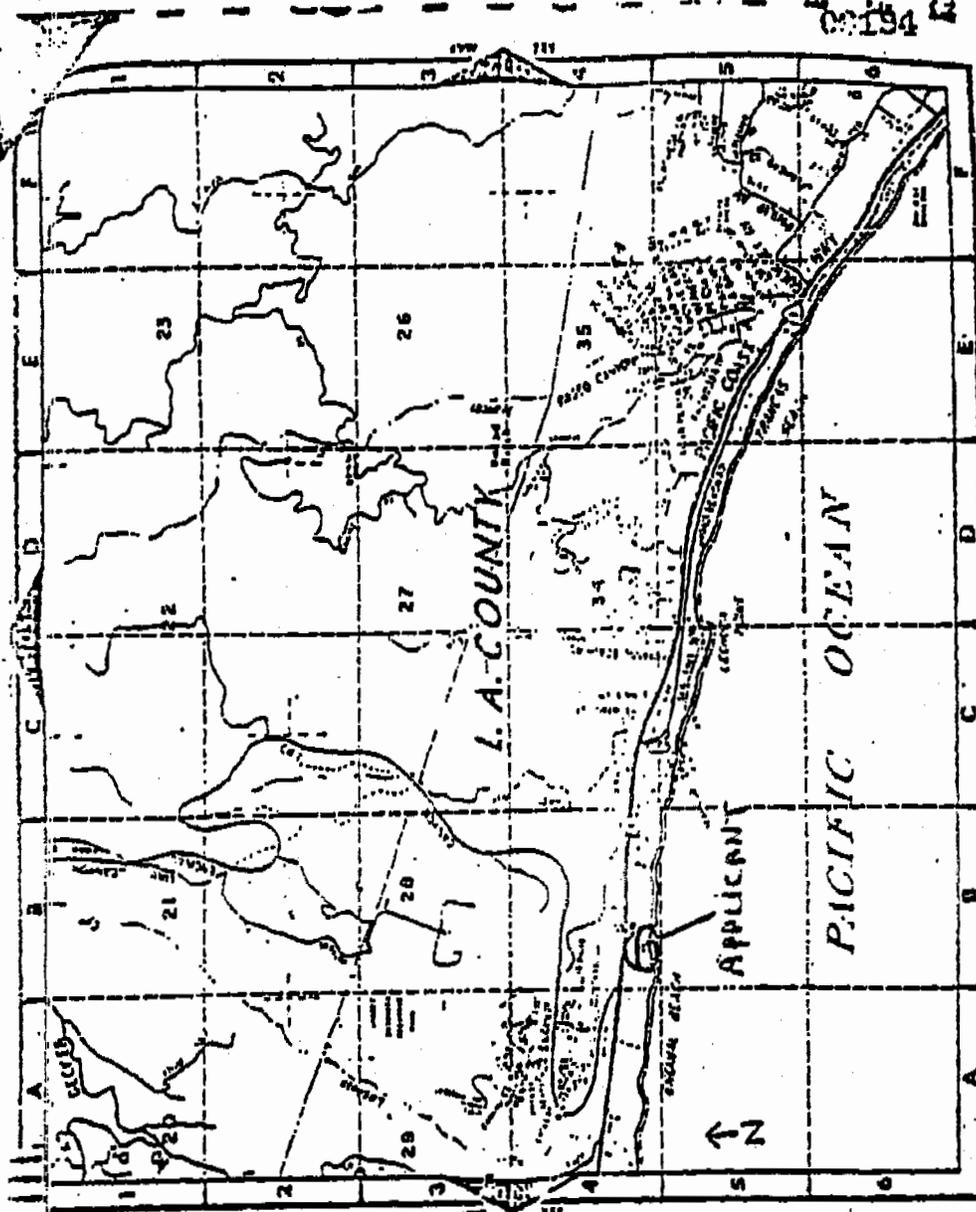
1. Public Access. Section 30212 of the Coastal Act provides that:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

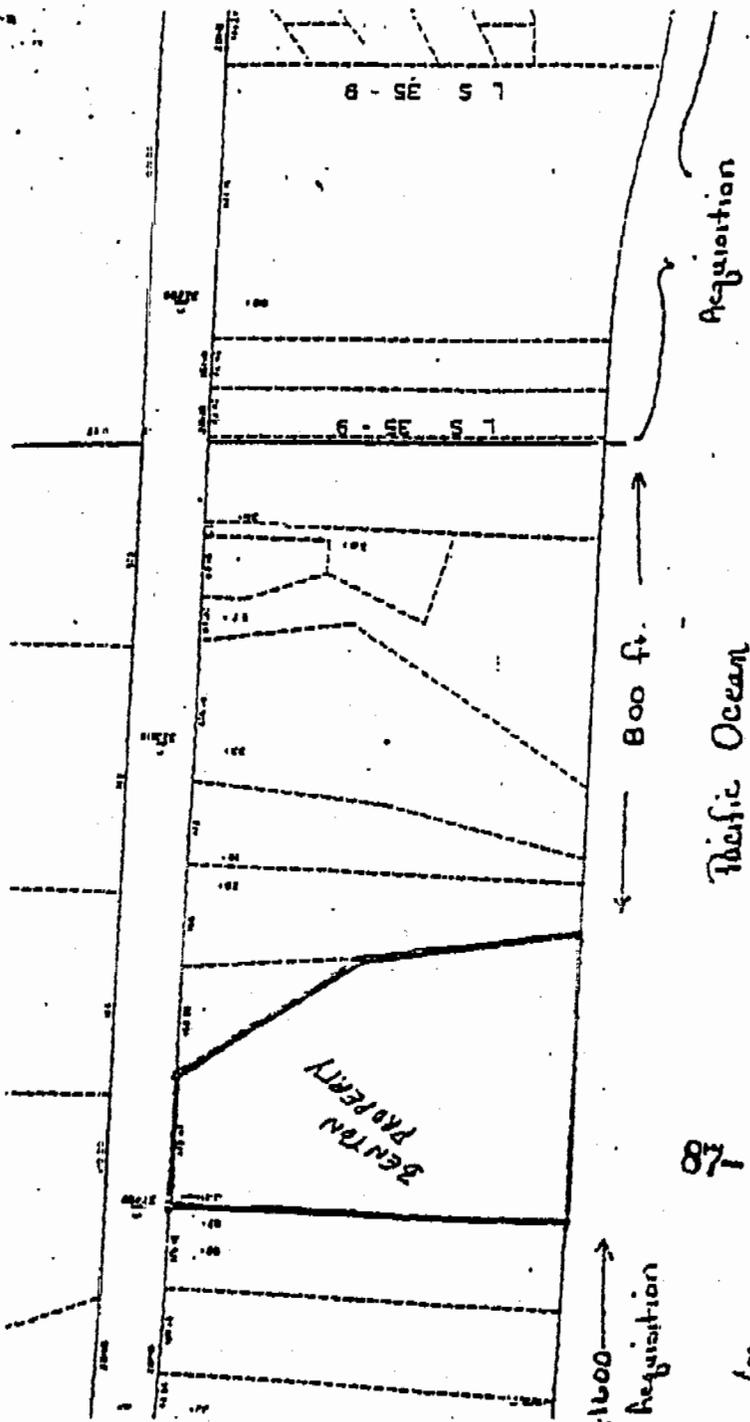
Both the South Coast Regional Commission and the State Commission have long been concerned about the restrictions on public access to the State tidelands along the 17-miles of coast in Malibu. The area was subdivided many years ago into primarily single-family lots with no provision of public amenities, resulting in the continuing presumption of public tidelands for private use in this critical area close to the large urban population of Los Angeles.

The proposed project site is a bluff top lot adjacent to the shoreline in Malibu. A headland exists on the site pitting out into the water blocking lateral access. At the time the permit was originally granted, no vertical access existed to the shoreline on either side of the headland. In granting this permit the Regional Commission required the applicant to dedicate a 15 ft. wide lateral access easement and a vertical accessway to the shoreline. Subsequent to this decision, the state purchased El Matado and El Pescador beaches thereby providing vertical access both up coast and down coast of the headland (Exhibit J). However, the inability to pass around the headland would remain an impediment to determining that adequate public access exists on the parcel. The applicant proposes to eliminate this access impediment by enlarging the lateral access way to include the entire sandy beach, and to improve and dedicate an easement for public access and viewing across the headland. Since vertical access is available to the beaches adjacent to the site and because continuous lateral public access will be provided the Commission finds that this project can be approved without a dedication of vertical access. The Commission concludes that as conditioned to require the dedication and provision of lateral access, the project is consistent with Sections 30210-30212 of the Coastal Act.

87- 028221



87-028221 Attachment 1
 of EXHIBIT B



87- 028221

Attachments
of EXHIBIT B

EXHIBIT C

10

Prior to the issuance of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute a record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement shall extend from the mean high tide line and shall include an easement area, conforming to the plans attached in Exhibit E, over the headland on the site for pedestrian access and viewing. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

87- 028221

MARIO C. QUIROS • Land Surveyor

22249 PACIFIC COAST HWY.
MALIBU, CALIFORNIA 90265
488-8022

April 6, 1981

Description of lateral access easement as shown on map No. 948-7-C(1),
issue dated April 6, 1981.(NOTE: This description is to supersede the one dated March 26,
1981. The descriptions for lateral recreational easements for
westerly and easterly beaches remain as written on March 26, 1981.)Lateral Access EasementAn easement for lateral access easement over that portion
of the Rancho Topanga Malibu Sequit in the County of Los Angeles,
State of California, as confirmed to Matthew Keller by Patent
recorded in Book 1, pages 407 et seq of Patents, records of said
county, described as follows:

Beginning at Highway Engineer's center line Station 298 + 67.32 at
the westerly extremity of that certain center line course described
as "South 87° 40' 30" East 2044.20 feet" in deed for 80 foot strip
of land from T.R. Cadwalader, et al, to the State of California,
recorded in Book 15228 page 342 of Official Records of said county,
said center line course having a bearing of South 37° 16' 24" East
for the purposes of this description; thence South 2° 43' 36" West
40.00 feet to the southerly line of said 30 foot strip of land, at
the beginning of a curve concave to the north, having a radius of
10040 feet; thence westerly along the arc of said curve being the
southerly line of said 30 foot strip of land a distance of 12.26
feet; thence leaving said southerly line South 2° 48' 12" West
551.04 feet; thence South 76° 56' 09" East 69.98 feet; thence North
81° 23' 04" East 100.13 feet; thence South 53° 55' 04" East 74.83
feet to the true point of beginning; thence North 53° 14' 57" East
14.14 feet; thence South 81° 45' 03" East 82.18 feet; thence South
8° 14' 57" West 10.00 feet to a point that is distant South 81° 45'
03" East 92.18 feet from the true point of beginning; thence North
81° 45' 03" West 78.56 feet; thence South 53° 14' 57" West 17.57
feet to a point distant South 2° 44' 22" West 12.48 feet from the
true point of beginning; thence North 2° 44' 22" East 12.48 feet
to the true point of beginning.

87- 028221

BY: *Mario C. Quiros*EXHIBIT D
Page 1

MARIO C. QUIROS • Land Surveyor

P.O. BOX 186

March 26, 1981

22248 PACIFIC COAST HWY.
MALIBU, CALIFORNIA 90263
486-8823

Legal description of "Lateral Easements" as shown on enclosed map No. 948-7-C(1), issue dated March 26, 1981.

NOTE: Bearings for enclosed map and following legal descriptions are based on Zone 7 of the State of California Coordinate System.

Lateral Recreational Easement, Westerly Beach:

An easement for lateral recreational easement over that portion of the Rancho Topanga Malibu Sequit in the County of Los Angeles, State of California, as confirmed to Matthew Keller by Patent recorded in Book 1, pages 407 et seq. of Patents, records of said county, described as follows:

Beginning at Highway Engineer's center line, Station 298 + 67.32 at the westerly extremity of that certain center line course described as "South 87° 40' 30" East 2044.20 feet" in deed for 80 foot strip of land from T.R. Cadwalader, et al, to the State of California, recorded in Book 15228, page 342 of Official Records of said county, said center line course having a bearing of South 87° 16' 24" East for the purposes of this description; thence South 2° 43' 35" West 40.00 feet to the southerly line of said 80 foot strip of land at the beginning of a curve concave to the north having a radius of 10040 feet; thence westerly along the arc of said curve being the southerly line of said 80 foot strip of land, a distance of 12.26 feet; thence leaving said southerly line, South 2° 48' 12" West 551.04 feet to the true point of beginning; thence South 76° 56' 09" East 69.98 feet; thence North 81° 23' 04" East 100.13 feet; thence South 53° 55' 04" East 74.83 feet; thence South 2° 44' 22" West to the ordinary high tide line of the Pacific Ocean; thence westerly along said ordinary high tide line to an intersection with a line bearing South 2° 48' 12" West from the true point of beginning; thence North 2° 48' 12" East to the true point of beginning.

87- 028221

EXHIBIT D

PAGE 2

MARIO C. QUIROS • Land Surveyor

22249 PACIFIC COAST HWY.
MALIBU, CALIFORNIA 90265
456-8022

March 26, 1981

Page 3 cont'd. (948-7-C(1), issue dated March 26, 1981)

Lateral Recreational Easement, Easterly Beach:

An easement for lateral recreational easement over that portion of the Rancho Topanga Malibu Sequit in the County of Los Angeles, State of California, as confirmed to Matthew Keller by Patents recorded in Book 1, pages 407 et seq. of Patents, records of said county, described as follows:

Beginning at Highway Engineer's center line, Station 298 + 67.32 at the westerly extremity of that certain center line course described as "South 87° 40' 30" East 2044.20 feet" in deed for 80 foot strip of land from T.R. Cadwalader, et al, to the State of California, recorded in Book 15228 page 342 of Official Records of said county, said center line course having a bearing of South 87° 16' 24" East for the purposes of this description; thence South 2° 43' 36" West 40.00 feet to the southerly line of said 80 foot strip of land, at the beginning of a curve concave to the north having a radius of 10040 feet; thence westerly along the arc of said curve being the southerly line of said 80 foot strip of land, a distance of 12.26 feet; thence leaving said southerly line, South 2° 48' 12" West 551.04 feet; thence South 76° 56' 09" East 69.98 feet; thence North 81° 23' 04" East 100.13 feet; thence South 53° 55' 04" East 74.33 feet; thence South 31° 45' 03" East 92.18 feet; to the true point of beginning; thence North 3° 14' 57" East 10.00 feet; thence South 32° 42' 33" East 101.18 feet; to the westerly line of the parcel described in deed from Marblehead Land Company to Raymond W. Roessler and wife, recorded in Book 20706 page 289 of Official Records of said county; thence South 6° 02' 54" East along said westerly line to the ordinary high tide line of the Pacific Ocean; thence westerly along said ordinary high tide line to an intersection with a line bearing South 32° 58' 20" West from the true point of beginning; thence North 32° 58' 20" East to the true point of beginning.

BY: *Mario C. Quiros*

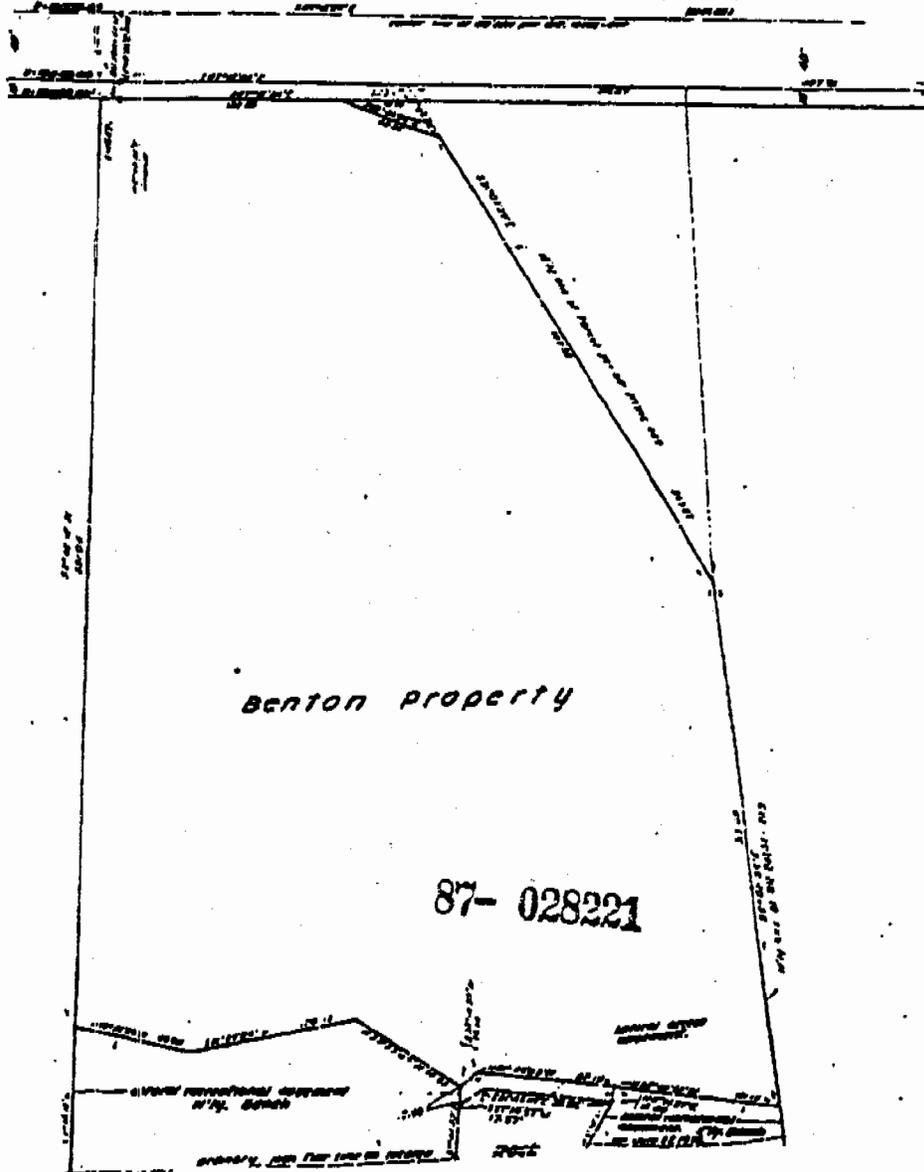
87- 028221

EXHIBIT D

PAGE 3

PACIFIC COAST HIGHWAY

18



NOTES.

BOUNDARY MARKS BY THIS SURVEY ARE TO BE MAINTAINED PERMANENTLY.

Pacific

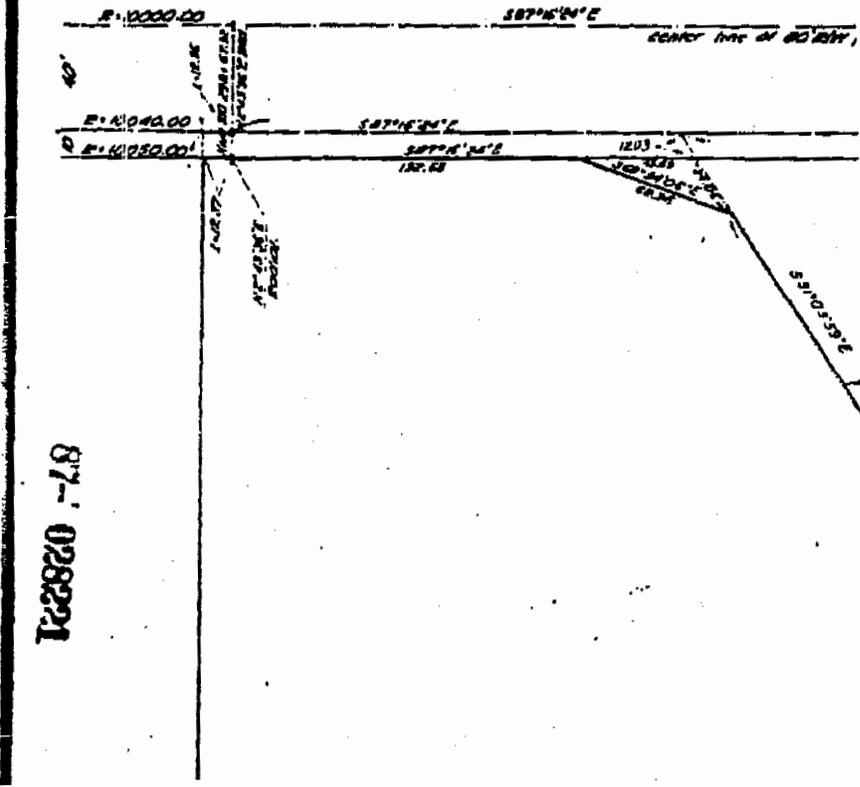
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Surveyed for J. John H. Gentry,
 by **FRANK C. OLIVER,**
 L.S. 3100
 1954
 15 FT

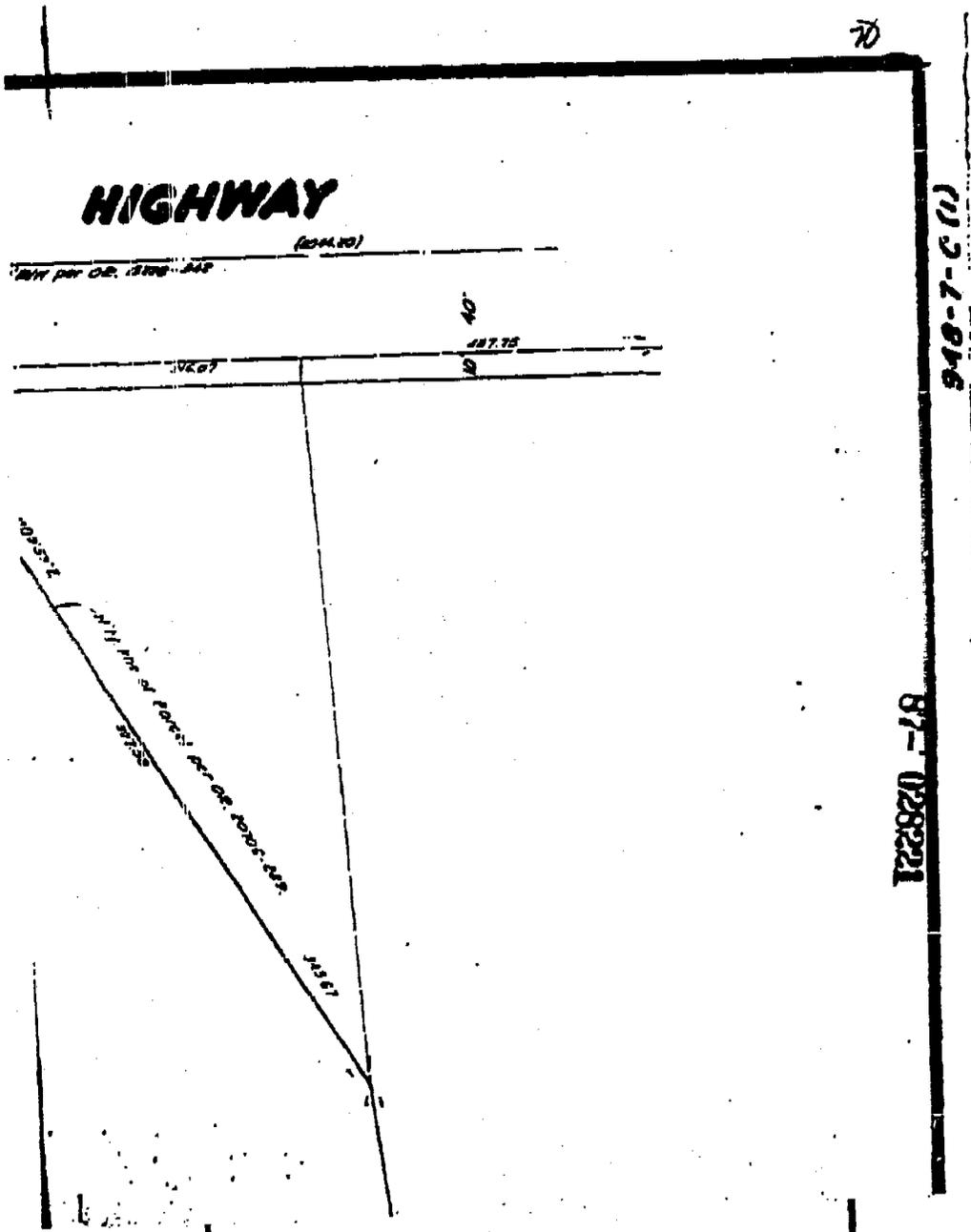
**MAP TO ACCOMPANY
 LEGAL DESCRIPTION
 OF LATERAL EASEMENTS
 IN BENTON PROPERTY AT
 3000 PACIFIC COAST HWY.**

79

PACIFIC COAST



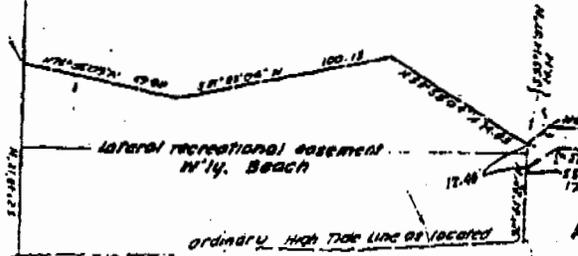
87-028221





Benton Prop

87-028221,



NOTES.

Bearings shown on this map are for the State Plane System Zone 7.

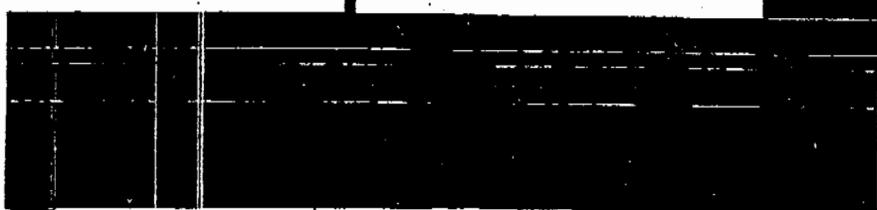
Pacific

Compiled for
by: MDP10
C.C. Smith
02248
M.D.P. Co.
Albany, N.Y.

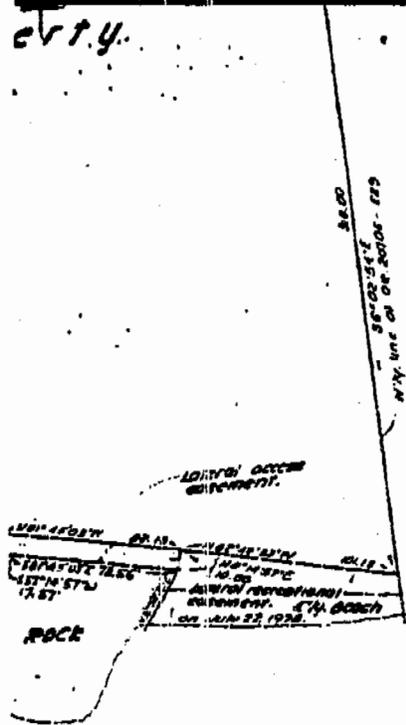
Moore

21

Exhibit



erty.



87- 028221

27

John H. Benton.
 18 C. Quirós.
 1971 AP 27-48
 18 Pacific Coast Hwy
 Malibu, CA 90265
 (818) 488-8011.
 C. Quirós

**MAP TO ACCOMPANY
 LEGAL DESCRIPTION
 OF LATERAL EASEMENTS
 IN BENTON PROPERTY AT
 32320 PACIFIC COAST HWY.
 MALIBU
 LOS ANGELES COUNTY, CAL.
 SCALE 1"=40' MARCH, 1981
 ISSUE: APRIL 6, 1981**

948-7-C(1)

"E"

87-' 028221

23

(Retyped for legibility.)

81019 1154275

R

108

TITLE INSURANCE AND TRUST COMPANY

DESCRIPTION:

PARCEL 1:

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

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF BEGINNING BEING DISTANT SOUTH 2 DEGREES 19 MINUTES, 30 SECONDS WEST 40 FEET AND SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 112.74 FEET FROM ENGINEER'S CENTER LINE STATION 293 PLUS 67.32 AT THE WESTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE DESCRIBED IN SAID DEED AS SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 2044.20 FEET. SAID POINT BEING ALSO IN THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO LOUISA D'ANDELOT CARPENTER, RECORDED JUNE 22, 1944 AS INSTRUMENT NO. 606, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 87 DEGREES 40 MINUTES 30 SECONDS WEST 112.74 FEET ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY, WITH A RADIUS OF 10040 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, 12.26 FEET; THENCE SOUTH 2 DEGREES 24 MINUTES 06 SECONDS WEST TO A POINT IN THE ORDINARY HIGH TIDE LINE OF THE PACIFIC [O]CEAN; THENCE EASTERLY ALONG SAID TIDE LINE TO THE INTERSECTION OF SAID TIDE LINES AND THAT LINE WHICH BEARS SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 2 DEGREES 19 MINUTES 30 SECONDS EAST ALONG THE WESTERLY LINE OF SAID CARPENTER PARCEL AND ITS PROLONGATION TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF THE 100 FOOT STRIP OF LAND DESCRIBED IN DEED FROM MARBLEHEAD LAND COMPANY, TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385, OFFICIAL RECORDS OF LOS ANGELES COUNTY.

ALSO EXCEPTING THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER SAID LANDS, AND EVERY PART THEREOF, BUT WITHOUT SURFACE RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED AUGUST 15, 1944 IN BOOK 21198 PAGE 122, OFFICIAL RECORDS.

ALSO EXCEPT ANY PORTION OF SAID LAND, WHICH AT ANY TIME WAS TIDE OR SUBMERGED LAND AND BECAME UPLAND BY OTHER THAN FROM NATURAL CAUSES.

PARCEL 2:

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

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T.R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, IN THE

Exhibit A

Exhibit 6

CCC-05-CD-13 and CCC-05-RO-09

(Revell) Page 23 of 24

34

TITLE INSURANCE AND TRUST COMPANY

OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF BEGINNING BEING DISTANT SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST 40 FEET AND SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 112.74 FEET FROM ENGINEER'S CENTER LINE STATION 298 PLUS 67.32 AT THE WESTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE DESCRIBED IN SAID DEED AS SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 2044.20 FEET; THENCE SOUTH 87 DEGREES 40 MINUTES 30 SECONDS EAST 58.94 FEET ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP TO THE NORTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO RAYMOND W. ROESSLER AND WIFE, RECORDED IN BOOK 20706 PAGE 289, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL, SOUTH 31 DEGREES 28 MINUTES 05 SECONDS EAST 343.67 FEET; THENCE SOUTH 6 DEGREES 27 MINUTES 00 SECONDS EAST TO A POINT IN THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN; THENCE WESTERLY ALONG SAID TIDE LINE TO THE INTERSECTION OF SAID TIDE LINE AND THAT LINE WHICH BEARS SOUTH 2 DEGREES 19 MINUTES 30 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 2 DEGREES 19 MINUTES 30 SECONDS EAST TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER SAID LANDS AND EVERY PART THEREOF, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED JUNE 22, 1944 IN BOOK 21052 PAGE 100, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE 100 FOOT STRIP OF LAND DESCRIBED IN A DEED FROM MARBLEHEAD LAND COMPANY, TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION OF RANCHO TOPANGA MALIBU SEQUIT, AS PER PATENT RECORDED IN BOOK 1 PAGES 407, ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; CONVEYED TO JOHN T. BOND, BY DEED RECORDED IN BOOK 24379 PAGE 137, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF 100 FOOT STRIP OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 385 OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE NORTHEASTERLY CORNER OF PARCEL 2 OF THE LAND CONVEYED TO JOHN T. BOND; THENCE ALONG THE SOUTHERLY LINE OF SAID 100 FOOT STRIP; NORTH 87 DEGREES 40 MINUTES 30 SECONDS WEST 45.69 FEET; THENCE SOUTH 68 DEGREES 58 MINUTES 12 SECONDS EAST 62.36 FEET TO THE EASTERLY BOUNDARY OF SAID PARCEL 2; THENCE ALONG SAID EASTERLY LINE, NORTH 31 DEGREES 28 MINUTES 05 SECONDS WEST 24.06 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT ANY PORTION OF SAID LAND WHICH AT ANY TIME WAS TIDE OR SUBMERGED LAND AND BECOME UPLAND BY OTHER THAN FROM NATURAL CAUSES.

87- 028221



LEAD SHEET

02 219/101

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
9:01 AM SEP 18 2002

SPACE ABOVE THIS LINE FOR RECORDERS USE

TITLE(S)

FEE

D.T.T.

FREE BB

5

CODE

20

CODE

19

CODE

9

Assessor's Identification Number (AIN)

To Be Completed By Examiner OR Title Company In Black Ink

Number of Parcels Shown

Exhibit 7

CCC-05-CD-13 and CCC-05-RO-09

(Revell) Page 1 of 6

THIS FORM IS NOT TO BE DUPLICATED

02 2191101

2

1 RECORDING REQUESTED BY:

2
3 WHEN RECORDED MAIL TO:
4 CALIFORNIA COASTAL COMMISSION
5 45 FREMONT STREET, SUITE 2000
6 SAN FRANCISCO, CA 94105-2219
7 ATTN: LEGAL DIVISION
8

9
10
11 **CERTIFICATE OF ACCEPTANCE**
12

13
14
15 THIS DOCUMENT IS BEING RE-RECORDED
16 TO INCLUDE THE NOTARY ACKNOWLEDGEMENT PAGE
17 WHICH WAS OMITTED FROM THE ORIGINAL RECORDING
18
19
20
21
22
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02 2191101

~~02-2191101~~

RECORDING REQUESTED BY
WHEN RECORDED MAIL TO

NAME *California Coastal Commission*

MAILING ADDRESS *45 Fremont Street
Suite 2000*

CITY, STATE ZIP CODE *San Francisco, CA
94105*

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
~~9:01 AM JUL 23 2002~~

SPACE ABOVE THIS LINE FOR RECORDERS USE

TITLE(S)

FEE

D.T.T.

~~FEE~~ **BB**

3

CODE

20

CODE

19

CODE

9

CODE

24

Assessor's Identification Number (AIN)

To Be Completed By Examiner OR Title Company In Black Ink

Number of Parcels Shown

Exhibit 7

CCC-05-CD-13 and CCC-05-RO-09

(Revell) Page 3 of 6

THIS FORM IS NOT TO BE DUPLICATED

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
Attention: Legal Division

RECEIVED ~~02 17 2002~~

JUL 10 2002

CALIFORNIA
COASTAL COMMISSION

02 2191101

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDERS USE

NO TAX DUE -0-
SLC No. AD 426
CCC Permit No. A-220-80

A.P.N. 4473-014-009
32340 Pacific Coast HWY

CERTIFICATE OF ACCEPTANCE
Government Code 27281

This is to certify that the State of California, acting by and through the California State Lands Commission, a Public Agency of the State of California, hereby accepts any and all right, title and interest in real property conveyed by the Offer to Dedicate Public Access Easement, dated November 12, 1986, recorded January 8, 1987, as Instrument No. 87-028221, Official Records of Los Angeles County, from John H. Benton to the State of California.

The interest in real property conveyed by the offer is accepted in trust for the people of the State. Acceptance is made of that interest which can be legally conveyed and is not intended to define boundaries or accept interests or rights in lands which are already the property of the State or people of California.

This Acceptance and consent to recording of the Acceptance is executed by and on behalf of the State of California by the California State Lands Commission, acting pursuant to law, as approved and authorized by its Calendar/Minute Item No. C 17 of its public meeting on June 18, 2002, by its duly authorized undersigned officer.

California State Lands Commission

Dated: July 1, 2002

By: Paul D. Thayer
Paul D. Thayer
Executive Officer

ACKNOWLEDGMENT BY CALIFORNIA COASTAL COMMISSION

This is to certify that the California State Lands Commission is a public agency acceptable to the Executive Director of the California Coastal Commission to be Grantee under the Offer to Dedicate referenced above.

Dated: July 10, 2002

By: John Bowers
John Bowers, Sr

02 2191101 02 1742058

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

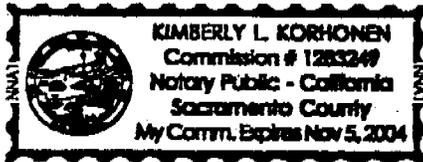
County of SACRAMENTO

ss.

On July 1, 2002, before me, Kimberly L. Korhonen, Notary Public

personally appeared Paul D. Thayer

- personally known to me
proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kimberly Korhonen
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Certificate of Acceptance - JOHN H. BENTON
D.D.S. 4473-014-009 32340 PACIFIC COAST HIGHWAY
Document Date: June 18, 2002 Number of Pages: 1

Signer(s) Other Than Named Above: JOHN BOWERS

Capacity(ies) Claimed by Signer

- Signer's Name: Paul D. Thayer
Individual
Corporate Officer - Title(s):
Partner - Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other: Executive Officer

Signer Is Representing: CA STATE LANDS COMMISSION

RIGHT THUMBPRINT OF SIGNER
Top of thumb here



6

STATE OF CALIFORNIA

02 2191101

COUNTY OF SAN FRANCISCO

On September 10, 2002, before me, Patricia Sexton, a Notary Public, personally appeared John Bowers, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature

Patricia Sexton



The Land & Water Company

March 21, 2005

Mr. Patrick Veesart
California Coastal Commission
89 So. California St., #200
Ventura, CA 93001
Via US Mail and Facsimile 805-641-1732 / Ph 805-585-1800

Re: Coastal Commission Notice of Violation V-4-03-047 Dated 3/1/2005; 32340 Pacific Coast Highway, Malibu; APN 4473-014-009; (Revell Property); Coastal Commission Permit Files No. 10-20-77-2107 & Appeal No. A-220-80.

Dear Mr. Veesart:

Thank you for taking time out of your schedule on March 16, 2005 to make the above referenced files available for my review. I also thank you for the copies of aerial photos you provided me taken in 2004, 2002, 2001, 1993, 1986 & 1976. If more aerials become available or you find any other photos that can assist us in our investigation of this matter I would appreciate a call from your office so that I can obtain copies. As you know I was in the Coastal Commission office in February of 2004 and Steve Hudson indicated to me that the referenced files were missing or mis-placed. I explained to Mr. Hudson that my client was purchasing the property and that it was very important to have all the available records on the property from both the City of Malibu and the Coastal Commission before closing escrow. The coastal files were never located and Mr. Revell purchased the property in May of 2004 without having the benefit of reviewing these important documents.

Subsequent to my review of your coastal archive documents I met with Mr. Revell and his attorney, Mr. Alan Block, on 3/16/2005 to discuss the status of my research and to discuss the next steps of our investigation. Mr. Block has indicated that he feels a timely response to your violation letter dated 3/1/2005 can be completed within the next 30 days. During this time period please feel free to contact me with any questions. I have enclosed a copy of my Agent Authorization form for your files.

18822 Beach Blvd.
Suite 209
Huntington Beach, CA 92646

714-965-1622
FAX: 714-965-1692

RECEIVED

MAR 24 2005

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Exhibit 8
CCC-05-CD-13 and CCC-05-RO-09
(Revell) Page 1 of 2

Mr. Patrick Veersart
California Coastal Commission
March 21, 2005
Page two

Sincerely,
The Land & Water Company



Lynn J. Heacox
LJH:jt:revell.61

Cc:

Mr. Graeme Revell Fax 818-888-2866
Alan Block, Esq. Fax 310-552-1850

LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

ALAN ROBERT BLOCK
OF COUNSEL
MICHAEL N. FRIEDMAN

1901 AVENUE OF THE STARS, SUITE 470
LOS ANGELES, CALIFORNIA 90067-6006
E-MAIL alanblock@pacbell.net
TELEPHONE (310) 552-3336
TELEFAX (310) 552-1850

April 29, 2005

RECEIVED

MAY 3 2005

COASTAL COMMISSION
SOUTHERN CENTRAL COAST DISTRICT

California Coastal Commission
Southern Central Coast Area Office
89 South California Street, Suite 200
Ventura, California 93001

Attention: Mr. N. Patrick Veasart, Southern California Enforcement Team Leader

Re: Violation No. V-4-03-047

Property Address: 32340 Pacific Coast Highway, Malibu, CA

Alleged Unpermitted Development: Removal of native bluff-top vegetation, landscaping, wooden stairs, locked gate, and fence on bluff/headland and, non-compliance with Special Condition No. 2 of CDP No. A-220-80 involving failure to construct required public accessway improvements across the bluff/head.

Dear Mr. Veasart:

As you know, this office, along with Mr. Lynn Heacox, represent Mr. and Mrs. Graham Revell ("my clients") with regard to the above alleged violation. I am in receipt of your letters, dated March 1, 2005, and April 19, 2005, and appreciate the opportunity to respond to the allegations contained in said correspondence.

Applicable Facts

My clients purchased the 32340 Pacific Coast Highway property ("subject property") on or about May 13, 2004. While in escrow to purchase the property my clients received a copy of a preliminary title report.

The preliminary title report evidenced that a former owner of the subject property, John H. Benton, recorded an Irrevocable Offer To Dedicate a lateral access easement against the property on or about May 4, 1982, as document no. 82-557828 recorded in the office of the Los Angeles County Recorder. The Irrevocable Offer To Dedicate had attached to it

California Coastal Commission
Re: Violation No-4-03-347 (32340 Pacific Coast Highway, Malibu)
April 29, 2005

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three exhibits: The complete legal description of the property (Exhibit A), a copy of a memorandum from Janet Tulk, Director, Permit Appeals, to the Coastal Commission re: CDP No. A-220-80 (Exhibit B), and the legal description of the lateral access easement (Exhibit C). The memorandum from Ms. Tulk attached to the Irrevocable Offer To Dedicate as Exhibit B referenced Staff Recommended conditions relating to public access and accessway improvements.

Although the condition relating to public access in the Irrevocable Offer To Dedicate stated that the easement "shall extend from the mean high tide line to the base of the bluff for the width of the project site, and shall include, an easement area, conforming to plans attached as Exhibit 2, over the headland on the site for pedestrian access and viewing," the plans referenced as "Exhibit 2" in the recorded Irrevocable Offer To Dedicate were not attached to or included in the recorded document itself. Neither did the Irrevocable Offer To Dedicate interpret the term "headland" and/or include an exhibit delineating the "headland(s)" location on the property.

The preliminary title report also evidenced the recordation of an Amended Irrevocable Offer To Dedicate, document no. 37-028221 as recorded in the office of the Los Angeles County Recorder, on January 8, 1987. The amended offer to dedicate merely corrected an erroneous legal description as contained in document no. 82-557828, and did not contain either a copy of the "plans referenced as Exhibit 2 in the Irrevocable Offer To Dedicate (document no. 82-557828) or a description of the referenced "headland" or exhibit delineating it's location on the property.

My clients thereafter, while still in escrow, retained the services of former Coastal Commission staff member Lynn Heacox to investigate the Commission's approval in CDP No. A-220-80, particularly the access conditions of said approval and whether the same had been satisfied. In or about January and February 2004 Mr. Heacox requested the applicable files from the Commission's Ventura office for CDP No. A-220-80 and was advised that they would be ordered from the Commission's archives. Later in February 2004, on at least two separate occasions, Mr. Heacox was advised by Commission staff members that the files had been "lost or misplaced" and were not available for review. Mr. Heacox requested to be advised if the files were located. Although Mr. Heacox requested to be called if the file had been located and was available for review, he was not. A copy of the Declaration of Lynn

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April 29, 2005

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J. Heacox, dated April 20, 2005 confirming the above is attached hereto as **Exhibit 1** and hereby incorporated by reference.

Mr. and Mrs. Revell closed escrow on their purchase of the subject property in May 2004 without being able to obtain a copy of the "plans attached as Exhibit 2" to the Irrevocable Offer To Dedicate and/or a determination as to the description of the referenced "headland" or exhibit delineating it's location on the property, despite their reasonable attempts to obtain the same.

My clients only became aware that the files on CDP No. A-220-80 had been located subsequent to their receipt of your correspondence, dated March 1, 2005, wherein you alleged the outstanding violations of the Coastal Act. Only within the last few weeks has Mr. Heacox and this office had an opportunity to review the files for CDP No. A-220-80.

Alleged Coastal Violations

In it's correspondence, the Commission is alleging the following violations of the Coastal Act: 1) Removal of native bluff-top vegetation, 2) landscaping, 3) construction of wooden stairs, 4) locked gate, and fence on bluff/headland, 5) non-compliance with Special Condition No. 2 of CDP No. A-220-80 involving failure to construct required public accessway improvements across the bluff/head.

Our review of the files on CDP No. A-220-80 reveal the following relating to the alleged violations of the Coastal Act and/or CDP No. A-220-80:

Removal of native bluff-top vegetation and landscaping

CDP No. A-220-80 was approved with only three special conditions relating to 1) public access, 2) accessway improvements and 3) revised plans. There was no special landscaping condition that restricted the former property owner(s) from removing native vegetation as part of it's landscaping of the property.

Public Resources Code Section 30610 provides in relevant part as follows:

California Coastal Commission

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April 29, 2005

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“Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development in the following areas:

(a) Improvements to single-family residences; provided, however, that the commission shall specify, by regulation, those classes of development which provide a risk of adverse environmental effect and shall require a coastal development permit be obtained pursuant to this chapter.”

Title 14 California Code of Regulations Section 13250 relevantly provides guidance as to which classes of development involve a risk of adverse environmental affects pursuant to Public Resources Code Section 30610(a):

“1. Improvements to a single family residence on a beach wetland or seaward of the mean high tide line . . .

2. Any significant alterations of landforms including removal or placement of vegetation, on a beach, wetland, sand dune, or within 50-ft. of the edge of a coastal bluff. . . .”

In the situation at hand old aerial photographs of the bluff-top as found in the Commission’s files evidence that the bluff-top had been severely disturbed by continued use. Although it appears that a former owner of the property planted grass on the bluff-top sometime between the years 1987 and 2002, the mere planting of grass on a severely degraded bluff-top, by a former owner of the property, can hardly be considered a *significant alteration of a landform*. Particularly, when there is no special condition in the Commission’s approval restricting the same.

Wooden Stairs

The Commission’s files on CDP No. A-220-80 specifically evidence that the wooden stairs allegedly constructed in violation of either the Coastal Act and/or CDP No. A-220-80 existed on the site prior to the Commission’s approval of said CDP and was clearly known to the Commission at that time.

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The reporter's transcript for the original Commission hearing on John Benton's proposed single family residence on the subject property, in CDP No. P-77-2107, held on January 5, 1978, before the Coastal Commission's former South Coast Regional Commission, clearly evidences the existence of the wooden stairs. Former staff member Karl Hinderer, in making the staff presentation on the CDP application, and describing slides being shown before Regional Commission states in the reporter's transcript as follows: "the trail comes down here and then immediately goes down this *set of stairs*, right here, to this pocket beach". The applicant's representative, Sherman Stacey, further states in the reporter's transcript as follows: "[F]or the people who live there, for whom it provides a very minimal amount of traffic, *the stairway which goes down to the beach constitutes little more than a ladder type of stairway to reach from the top of the bluff down to the bottom and is not much of a physical structure in and of itself*". A copy of the applicable pages of the Reporter's Transcript for CDP No. P-77-2107 is attached hereto as **Exhibit 2** and hereby incorporated by reference.

Locked gate and fence on bluff/headland

This office has not been able to obtain any information as to whether the allegedly offending "locked gate" and "fence" on the bluff/headland were existing with the stairway when it was originally constructed. Said improvements were clearly existing when my clients purchased the subject property in May 2004. Perhaps the Commission has additional aerial photographs which would assist this office in determining when said improvements were erected.

Non-compliance with Special Condition No. 2 of CDP No. A-220-80 involving failure to construct required public accessway improvements across the bluff/head.

With regard to the non-compliance with Special Condition 2 of CDP No. A-220-80, involving the failure to construct the required public accessway improvements across the bluff/headland, my client was only made aware of the actual requirement when the files were made available to him subsequent to his receipt of your March 1, 2005 correspondence. As stated above, prior to that time he was advised through his agent, Lynn Heacox, that the subject files for CDP No. A-220-80 had been "lost or misplaced" despite his reasonable attempts to locate the same and review said plans. The fact is, only upon Mr. Revells

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received of your correspondence of March 1, 2005, was he aware that the "headland" referenced in the Irrevocable Offer To Dedicate was the extending bluff-top which you refer to in both violation letters as the "headland/bluff-top".

As soon as my clients were able to obtain a copy of the construction plans, referenced as "Exhibit 2" in the Irrevocable Offer To Dedicate, they retained the engineering firm of Bedrock Engineering to determine whether the stairway could be build as approved by the Commission. As evidenced in the attached correspondence from Bedrock Engineering, dated April 13, 2005, the approved stairway does not meet the minimum requirements of the Uniform Building Code ("UBC") in several material respects. The UBC deficiencies, include, but are not necessarily limited to, the following:

1. The vertical drop between what we now know as the headland and the beach below is twenty-three (23) feet. The approved plans for the stairs shows a vertical drop of only fourteen (14) feet.

2. The angle of the approved stairway, rise and run, is too steep and exceeds the requirements of the UBC.

3. A vertical drop of more than twelve (12) feet requires a four (4) foot deep mid landing point pursuant to the UBC. Such a landing point is not provided in the Commission's approved plans.

4. A coastal engineering report and subsurface report should be completed to determine the maximum degree of change in the breach profile.

5. The approved spacing between the guardrails exceeds the UBC safety requirements.

6. Since the approved plans did not include structural calculations, it is not known whether the approved stairs comply with all UBC requirements.

7. The Commission's approved plan for the stairway does not include detailing of the anchoring method proposed. The UBC requires that anchoring must be founded into

California Coastal Commission

Re: Violation No-4-03-347 (32340 Pacific Coast Highway, Malibu)

April 29 , 2005

Page 7

bedrock to resist tidal activity and changes in the beach profile. Geotechnical information is not included to determine design parameters. Fixed concrete caisson into bedrock may be required at both the upper and lower ends of the stairs.

8. The headland is undermined by a large sea cave which may affect the structural integrity of the approved stairway. Presently, it is not known whether sufficient rock material exists to anchor a concrete caisson at the upper extreme of the approved stairway.

A copy of Bedrock Engineering's letter report, dated April 13, 2005, is attached hereto as **Exhibit 3** and hereby incorporated by reference.

The underlying CDP No. A-220-80 was approved in 1980. My clients purchased the property in May 2004, approximately twenty-four (24) years after the project was approved in CDP No. A-220-80. Special Condition 2 of the Commission's approval in CDP No. A-220-80 provides that "improvement of this accessway in accordance with the approved plans shall be completed prior to the occupancy of the residence approved herein".

The County of Los Angeles accepted an application for building permit for the residence in February 1983. The building permit was signed off by Los Angeles County Building and Safety in September 1987. A copy of the Los Angeles County Application For Building Permit is attached hereto as **Exhibit 4** and hereby incorporated by reference. Pursuant to the Commission's approval in CDP No. A-220-80, construction of the improved accessway should have been completed on or before September 1987. Apparently, it was not.

When my clients purchased the subject property they had no information regarding whether the accessway improvements had ever been constructed. They obviously knew that accessway improvements on the site did not exist outside of the wooden stairway, but had no way to reasonably determine whether the required accessway improvements had been constructed prior to completion of the proposed residence (as required by the approved CDP) and later destroyed by natural disaster or otherwise. That clearly seemed a more likely scenario than the accessway improvements never having been constructed.

Exhibit 11

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(Revell) Page 7 of 38

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It is clear that the State Lands Commission recorded a Certificate of Acceptance of the Amended Irrevocable Offer To Dedicate on July 23, 2003, as document no. 02-1713058 in the records of the Office of the Los Angeles County Recorder. The Certificate of Acceptance providing that the State Lands Commission "accepts all right, title, and interest in real property conveyed by the Offer to Dedicate Public Access Easement, dated November 12, 1987, as instrument no. 87-328221, Official Records of Los Angeles County, from John M. Benton to the State of California".

Public Resources Code §30212(3) relevantly and specifically provides as follows:

"Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway".

Although the State Lands Commission's Certificate of Acceptance provides that said agency accepts all right, title, and interest in real property", the Certificate of Acceptance is silent as to whether the agency agreed to accept responsibility for maintenance and liability of the accessway. It is further unknown, that even if the State Lands Commission agreed to accept responsibility for maintenance and liability of the accessway, whether it also agreed to accept the responsibility for the maintenance and liability of the accessway improvement when, and if, constructed. This is an issue which this office will pursue with the State Lands Commission in the immediate future.

The State Lands Commission acceptance of responsibility for maintenance and liability of the subject real property for lateral access purposes is clearly distinguishable from its acceptance of responsibility for maintenance and liability of the accessway improvements. Particularly under the facts of this case, wherein the stairway as approved by the Commission approximately 25 years ago does not meet the requirements of the UBC.

The Commission is threatening to initiate litigation against my clients (because they purchased the subject property) to build a stairway that both legally, and technically, cannot be build, and, even if built, would not provide public access. Neither my clients, or this office, believe that the Commission can compel the Revells to build a stairway different than what was approved in CDP No. A-220-80. The Revells are not applicants with a CDP

California Coastal Commission
Re: Violation No-4-03-347 (32340 Pacific Coast Highway, Malibu)
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pending before the Commission wherein the Commission could reasonably condition its approval on the applicants constructing accessway improvements, different than what was previously approved in CDP No. A-220-80, consistent with the requirements of the UBC.

My clients have numerous questions which must be answered. First and foremost, can the Commission legally compel them to build accessway improvements which are not substantially identical to those approved in CDP No. A-220-80? If the answer is in the affirmative, which as I stated above, this office presently does not believe to be the law, are my clients the appropriate party responsible for paying the substantial additional cost of bringing the accessway improvements into compliance with the current requirements of the UBC? If my clients are not responsible to bear the additional cost of bringing the accessway improvements into compliance with the UBC, who is? Who is the responsible party to perform the numerous studies that will be required in order to determine whether revised plans for the accessway improvements can even be constructed? Does the State Lands Commission have any responsibility to bring the accessway improvements into compliance with the UBC because of their acceptance of the offer to dedicate? Does the State Lands Commission intend to assume responsibility for the maintenance and liability of the accessway and the accessway improvements? These are questions which my clients are entitled to have answered prior to their making final commitments in response to the Commission's violation letters.

Applicable Law

Although it is my clients desire to work with the Commission to resolve the alleged violations in good faith, in a spirit of amicable cooperation, there are several reasons why my clients believe that the Commission cannot subject them to civil penalties and mandatory injunctive relief for actions of past owners of the subject property.

The Revells Did Not Perform or Undertake Development on the Subject Property

Actions for civil penalties are governed by Public Resources Code §30820. Whether an alleged violation is the result of oversight or knowing and intentional conduct, a threshold showing must be made that a person has performed or undertaken development activities in violation of a CDP or the Coastal Act. The statute relevantly provides:

California Coastal Commission

Re: Violation No-4-03-347 (32340 Pacific Coast Highway, Malibu)

April 29, 2005

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“(a) Any person who violates any provision of this division may be civilly liable in accordance with this subdivision as follows: [¶] (1) Civil liability may be imposed by the superior court . . . on any person who performs or undertakes development that is in violation of this division or that is inconsistent with any coastal development permit previously issued by the commission . . . in an amount that shall not exceed thirty thousand dollars (\$30,000) and shall not be less than five hundred dollars (\$500) ...

(b) Any person who performs or undertakes development that is in violation of this division or that is inconsistent with any coastal development permit previously issued by the commission . . . when the person intentionally and knowingly performs or undertakes the development . . . may, in addition to any other penalties, be civilly liable in accordance with this subdivision. Civil liability may be imposed by the superior court . . . for a violation as specified in this subdivision in an amount which shall not be less than one thousand dollars (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.”

My clients purchased the subject property as it presently exists, and had no knowledge of the alleged violations. The mere purchase of real property under the Coastal Act does not qualify as “development” as used in Public Resources Code §30820. Clearly the definition of the term “Development,” as defined in Public Resources Code §30106, does not include the purchase of property.

There is no legal basis to hold the Revells vicariously liable for a possible violation of the Coastal Act committed by a former owner or occupant of the subject property.

Any Commission Action Would Be Barred by the Statute of Limitations

Public Resources Code §30805.5 relevantly provides as follows:

“[a]ny action . . . to recover civil fines or penalties . . . shall be commenced not later than three years from the date on which the cause of action . . . is known or should have been known.”

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In 1987, Public Resources Code §30805.5 only allowed for a one (1) year statute of limitations to enforce violations of the Coastal Act. The statute was amended in 1993 to allow a three (3) years statute of limitations.

Whereas my clients did not have knowledge of any of the alleged Coastal Act violations until they received the Commission correspondence, dated March 1, 2005, they contend that the Commission knew or should have known about the alleged violation relating to the non-compliance with Special Condition No. 2 of CDP No. A-220-80 when it investigated a violation on the property in 1987 at approximately the same time construction of the approved residence was being completed.

The Commission's files on CDP No. A-220-80 confirm that in April 1987 an Initial Violation Report was made by a neighboring property owner alleging that a former owner of the property constructed a ten (10) foot high chain link fence, approximately forty (40) feet long, with barbed wire on top, extending from Pacific Coast Highway to the bluff. Although the violation refers to the address 32354 Pacific Coast Highway, the subject property was known both as 32340 and/or 32354 Pacific Coastal Highway prior to construction of the existing residence. Although there is no reference to the disposition of the violation, a violation number of V-5-MAL-37-125 was assigned to the violation report. A copy of the Initial Violation Report, dated April 6, 1987, is attached hereto as **Exhibit 5** and hereby incorporated by reference.

The statute of limitations argument is particularly compelling where, as here, the Commission "lost or misplaced" the files regarding CDP No. A-220-80, and the Commission seeks to impose civil liability and a mandatory injunction against a bona fide purchaser, who has performed no development on the property, 25 years after the Commission's approval, almost 18 years after completion of the residence.

California Coastal Commission

Re: Violation No-4-03-347 (32340 Pacific Coast Highway, Malibu)

April 29, 2005

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Conclusion

As stated above, my clients desire to work with the Commission in an amicable manner in order to resolve the alleged violations. They contend that numerous issues must be resolved, as referenced above, prior to their making a firm decision as to how to proceed. The Revells look to the Commission staff in providing some guidance in responding to the questions asked.

We look forward to your assistance in this matter.

Thank you for your anticipated courtesy and cooperation.

Respectfully Submitted,

**LAW OFFICES OF
ALAN ROBERT BLOCK**
A Professional Corporation

ALAN ROBERT BLOCK

ARB:dm
enclosures

cc: Mr. and Mrs. Graham Revell
Mr. Lynn Heacox

DECLARATION OF LYNN J. HEACOX

I LYNN J. HEACOX, declare and say:

1. I am a permit expediter by profession and the owner of the Land and Water Company, located at 18822 Beach Boulevard, Suite 209, Huntington Beach, California 92648. I have personal knowledge of the facts set forth in this declaration and if called to testify as a witness at the hearing of this matter I could and would testify competently thereto.

2. At all times relevant hereto, I was employed by Mr. Graham Revell, the owner of the real property located at 32340 Pacific Coast Highway, Malibu, California ("subject property"). Mr. Revell and his wife purchased the subject property, consisting of an existing single family residence and appurtenant structures, on or about May 5, 2004.

3. While Mr. Revell was in escrow to purchase the subject property, he retained my services to perform a "due diligence" investigation of prior approvals the subject property had received from the California Coastal Commission. Particularly, Mr. Revell requested that I review the applicable files in the Coastal Commission's office regarding Coastal Development Permit ("CDP") No. 220-80, approved by the Commission on or about September 17, 1980.

4. Mr. Revell advised me that a preliminary title report issued for the property revealed that an offer to dedicate lateral access had been recorded against the property, which referenced "an easement area, conforming to the plans attached as Exhibit 2, over the headland on the site for pedestrian access and viewing". Mr. Revell advised me that the recorded offer to dedicate did not contain "plans attached an Exhibit 2," and specifically requested that I review the applicable files in the Coastal Commission's office to determine what an easement "over the headland on the site" consisted of and what the Exhibit 2 plans revealed.

5. I requested the applicable files from the Coastal Commission's Ventura office in January or February 2004 and was advised that they would have to be ordered from the Commission's archives. I was thereafter advised by a Coastal Commission staff member, in or about February 2004, that the subject files for CDP No. 220-80 had been lost or misplaced for a long period of time. Subsequent to February 2004, prior to Mr. Revell's purchase of the subject property, I again requested to review any available files in the Commission's offices to determine "what had previously been approved, and what Exhibit 2 consisted of," and was once again advised that any and all files had been lost or misplaced.

6. I thereafter advised Mr. Revell that the applicable files had been lost or misplaced and there was nothing available in the Coastal Commission's office to review.

I swear under the penalty of perjury that the foregoing facts are true and correct to the best of my knowledge.

Executed this 20th day of April 2005, in Huntington Beach, California.

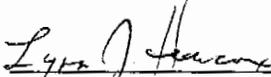

LYNN J. HEACOX

EXHIBIT 2

1 PERMIT APPLICATION NUMBER: P-10-20-77-2107
2 APPLICANT : John J. Benton
3 HEARING DATE : January 5, 1978 00128
4 LOCATION OF HEARING : Torrance City Council Chambers
5 3031 Torrance Boulevard
6 Torrance, California
7 REPORTED BY : Marilyn L. Mayer
8 TRANSCRIBED BY : Marilyn L. Mayer
9 DATE TRANSCRIBED : March 15, 1978

11 MR. MELVIN L. NUTTER, VICE CHAIRMAN, SOUTH COAST
12 REGIONAL COMMISSION: The next item is 2107, I believe.

13 MR. MELVIN J. CARPENTER, EXECUTIVE DIRECTOR, SOUTH
14 COAST REGIONAL COMMISSION: P-2107 is a request for a single-
15 family dwelling, servant's quarters, swimming pool and an unlit
16 tennis court, on Pacific Coast Highway, in Encinal Beach area.

17 I think the main point here is this is located in such
18 an area that there is sort of a jut coming out on the beach and
19 there are two beaches, so to speak, in this area. This is on an
20 exceedingly large parcel. A single-family on 5 acres, if I
21 remember correctly. The problems insured with it, they want to
22 have a fence around it or a wall. We looked at that and made
23 certain recommendations to the applicant. He could still have the
24 wall and have it reduced down to sort of what we call a hidden
25 wall, be down below the elevation of Pacific Coast Highway, there-
26 fore, not blocking any public view. There is an existing pathway
27 on one side of the property, that comes down already to this beach,
28 and would continue to open the beach up to the public, which then

1 here. And looking out across the parcel it gently slopes down
2 toward the Pacific. These are the existing structures. One here
3 and one immediately adjacent to the site, across a small canyon
4 here.

00130

5 This is looking out down toward the lot, turning to the
6 right. This is the property line. There is a grove of trees
7 along it, going down from Pacific Coast Highway, to the bluff top.
8 This is the canyon, immediately adjacent to Pacific Coast Highway,
9 which is here. This is the adjacent property here. There is this
10 canyon that extends down along the property line. This is the
11 existing trail going down to the beach, down the canyon, already
12 constructed, and in use.

13 This is the headland that divides the beach below the
14 bluff. It is a 125 foot bluff here and this headland divides the
15 beach. It is virtually impossible to go around this headland.
16 The trail comes down here and then immediately goes down this set
17 of stairs, right here, to this pocket beach, and this pocket beach
18 over here, would be cut off completely, from access. Even at low
19 tide, it appears that there is no possibility of getting around
20 this headland. I've been there 3 times and one time it was at low
21 tide and it would not be possible, without swimming, to get around
22 this headland, even at low tide.

23 This is looking to the west up the pocket beach that the
24 trail exists now. In other words, from the previous picture
25 turning to the right, looking up, this is the front of -- part of
26 the front of the property, extending along this pocket beach up
27 here.

28 MS. RUTH GALANTER, COMMISSIONER, SOUTH COAST REGIONAL

1 COMMISSIONER: On t^hat last -- well, you can st^o me on this slide.
2 Where is the property that we are talking about in relation to
3 that whole beach? 00131

4 MR. HINDERER: We are on the property right here, and
5 we go down approximately to here.

6 COMMISSIONER GALANTER: So, it is moreorless adjacent
7 to the existing access to the...

8 MR. HINDERER: This beach here...

9 MS. GALANTER: That's the one that has the access.

10 MR. HINDERER: That's the one that has the access to it.
11 The access already goes down to the point that divides this beach
12 from the pocket beach to the east.

13 MS. GALANTER: Right. What I want to know is where the
14 access is in relation to the subject property.

15 MR. HINDERER: It is on the property. This headland is
16 completely on the property. Both pocket beaches are on the
17 property and the access goes down completely on this property.

18 MS. GALANTER: That's what I wanted.

19 MR. HINDERER: And this is the bluff...

20 CHAIRMAN NUTTER: Question. Did you say both pocket
21 beaches are part of the property?

22 MR. HINDERER: Yes, both pocket beaches are on this
23 property.

24 CHAIRMAN NUTTER: So, the comment on the staff summary
25 about distance from mean high tide line being a hundred yards
26 refers to what?

27 MR. HINDERER: That refers to the site for the location
28 of the house. The house is adjacent to the beach. This is the

1 of the in li fe system for acquiring public access. ⁰⁰¹⁴⁹ Because
2 Mr. Stacey has raised that several times, as an alternative to
3 requiring of the individual developments. Is anybody raising that
4 at the state level?

5 COMMISSIONER FAY: With absolutely no enthusiasm at all.
6 It's been a fiasco. The problems of Sea Ranch, which go back some
7 11 years now, in a vain attempt to do something about getting
8 access through that 10 miles of coastline, for the public, the
9 regional commission proposed that as an in lieu interim measure.
10 The State Commission adopted it. They are taking the donations.
11 No one knows what they are going to do with the money. We are
12 hoping that we all eventually be able to return it to the
13 applicants, plus the interest that it gains while it is in escrow,
14 but it's clear that if access has to be purchased, there never be
15 enough money from that system to purchase the access.

16 COMMISSIONER ERICKSON: That's an interesting thing,
17 that you just said though, if access has to be purchased ipso facto
18 the only other choice is to acquire it through one means or another

19 COMMISSIONER FAY: Well, there are other measures, and
20 they may involve some purchase, but that one is not going to work,
21 by itself.

22 Certified by:

23 *Marilyn L. Mayer*
24 Marilyn L. Mayer
25 Hearing Secretary
26 South Coast Regional Commission

26 Typed: March 16, 1978

27
28

EXHIBIT 3

Exhibit 11
CCC-05-CD-13 and CCC-05-RO-09
(Revell) Page 20 of 38

BEDROCK ENGINEERING
8241 Gladys Avenue
Huntington Beach, CA 92646
(714) 375-0877

April 13, 2005

To: Lynn Heacox / The Land & Water Company
From: Bedrock Engineering
Re: Coastal Commission Stairway Proposed for Construction at 32340 Pacific Coast Highway; Coastal Permit No. A 220-80

BACKGROUND:

You recently provided me a copy of the above referenced conceptual plans. The plans were prepared by The Frank Lloyd Wright Foundation and dated 2/19/1982. The plans had been stamped approved by the California Coastal Commission on 8/15/1986. I have received no additional information pertaining to approvals by Los Angeles County or the City of Malibu. You indicated to me that the plans appeared to be incomplete and you requested that I review them for adequacy.

STAIR PLANS:

The plans consist of a simple conceptual drawing of two descending stairways down a bluff headland. One stairway will descend down the east side of the headland and the other will descend down the west. A site visit was completed on 4/07/2005 to study the site and determine the suitability of the plans for submittal to the City of Malibu for plan check. The topographical plans and measurements I made on site indicate that the vertical distance between the top of the headland and the sand/rock outcrops below is approximately 23'. The stairway is proposed to be constructed of pre-manufactured steel equal to Stairco 100 lbs. / sq. ft. live load. The overall width of each stairway is 4' with hand rails proposed on each side of the steps. Each stairway will be attached at the top and bottom to a 4' x 4' x 1' reinforced concrete landing.

BUILDING CODE REQUIREMENTS:

The proposed stairs must comply with all requirements of the current building code of public safety. There are no exceptions in the code for stairs constructed on private property. There are several problems with the stairs approved by the California Coastal Commission that should be corrected before submittal to the City of Malibu as follows;

1. Vertical Drop - The vertical drop between the top of the headland and the beach below is approximately 23'. The stair proposed by the Commission drops 14'. The stair would terminate 9' above the beach below. The length of the stair must be extended to terminate at the sand / rock below.
2. Angle of Stairway (Rise and Run) - The angle of the stairway is too steep and exceeds code requirements. The rise of each step cannot exceed 7" and the run cannot be less than 11". The angle of the stairs must be corrected to comply with code (UBC Section 1003.3.3.3).

3. Mid-Point Landings on Stair - A vertical drop in elevation of more than 12' requires a four foot deep mid point landing. To accomplish this task the length of the stair must be extended to comply with code (UBC Section 1003.3.3.6).
4. Beach Profile - A coastal engineering report and subsurface investigation should be completed to determine the maximum degree of change in the beach profile. The proposed stairs should be lengthened as necessary to ensure that the stair terminates at the low beach profile.
5. Guard Rails - The spacing between the guardrails exceeds safety requirements. The spacing must be reduced to comply with code (UBC Section 509.3).
6. Structural Integrity - The stair plan did not include structural calculations. It is not clear if Stairco complies with code. Additional structural information must be provided.
7. Anchoring - The proposed stair plan does not show in detail the anchoring method proposed. All anchoring must be founded into bedrock to resist tidal activity and changes in the beach profile. Geotechnical information is not available to determine design parameters. In most cases a concrete caisson fixed into bedrock at both the upper and lower ends of the stair should be sufficient. Additional structural details should depict the method of attaching the stair to the concrete caissons.
8. Sea Cave - The headland has been undermined by a large sea cave. This usually occurs when the underlying bedrock is fractured and exposed to ocean and tidal activity. It is recommended that before any caissons are constructed, the stability of the headland should be thoroughly investigated. It is not clear if sufficient rock material exists to anchor a concrete caisson at the upper extreme of the stair.

CONCLUSION:

The stair plans should not be submitted to the City of Malibu for plan check until the results of a geotechnical investigation and coastal engineering investigation is completed. Upon the completion of these studies a structural engineer can complete the design of the stair plan suitable for submittal to the City of Malibu for review.

It has been a pleasure to be of assistance. If you have further questions please call.

Very Truly Yours,



Mark Wilson P.E.



EXHIBIT 4

SPEC COPY

APPLICATION FOR BUILDING PERMIT

CITY OF LOS ANGELES

BUILDING SAFETY

FOR APPLICANT TO FILL IN

BUILDING ADDRESS: 32340 PCH
 LOCALITY: Malibu
 NEAREST CROSS ST.:
 ASSESSOR MAP BOOK: 126-021
 MAP NO.:
 PARCEL:
 USE ZONE: R-A-1
 SPECIAL CONDITIONS: CC 20436
 DISTRICT: 9.2
 TYPE CONST.: P-1-h
 FIRE ZONE: IV
 PROCESSED BY: 218
 STATISTICAL CLASSIFICATION:
 CLASS NO.: 01
 DWELL. UNITS: 1
 APT. CONDO:

BULK DRNG ADDRESS: 32340 Pacific Coast Hwy
 CITY: Malibu ZIP: 90265
 SIZE OF LOT: 6 ACRES
 BLOCK:
 LOT NO:
 OWNER: John H. Benton No. 456-3711
 ADDRESS: 3343 Rumbula Pacifico
 CITY: Malibu CA ZIP: 90265
 ARCHITECT OR ENGINEER: Frank L. ...
 ADDRESS: ...
 CONTRACTOR: ...
 ADDRESS:
 CITY: ...
 SQ FT: 4000
 NO OF STORES: 1
 NO OF FAMILIES: 1
 CHECK ONE: NEW ADD ALTER REPAIR DEMOL

SEWER MAP BK. PG.
 VALUATION: 1,500,000
 FINAL DATE: 9-2-87
 FINAL BY: [Signature]
 VALIDATION: 134880
 134880
 1223-81

EXISTING BLDG. NO. 456-3711
 APPLICANT (PRINT): John H. Benton
 ADDRESS: 3343 Rumbula Pacifico, Malibu 90265
 LOCALITY:
 ADDRESS:
 CITY:
 YARD: 20
 INVY: 0
 TOTAL SETBACK FROM FRONT: 20
 EXIST. WIDTH: 100
 PERMITS: 1348.80
 Permit Fee: 1393.50
 License Fee: 10.50
 Investigation Fee:
 Total Fee: 1404.00

RECORD FOR CONCORD
 SIGNATURE
 11-2-80

FOR EXPLANATORY LANGUAGE

WORKERS' COMPENSATION DECLARATION
 I hereby affirm that I have a certificate of consent to self insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C.).
 Policy No. 27752 Company: ...

Certified copy is filed with the county building inspection department.
 Date: 2/19/83
 APPLICANT: John H. Benton
 CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE
 [This section need not be completed if the permit is for one hundred dollars (\$100) or less.]

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Act.
 Date: 2/19/83
 APPLICANT: John H. Benton
 NOTICE TO APPLICANT: If, after making this Certificate of Exemption, you should become subject to the Workers' Compensation provisions of the Labor Code, you must comply with such provisions or this permit shall be deemed revoked.

LICENSED CONTRACTORS DECLARATION
 I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.
 License Number: _____ Lic. Class: _____
 Contractor: _____ Date: _____
 I am exempt from the licensing requirements as I am a licensed architect or a registered professional engineer acting in my professional capacity (Section 7051, Business and Professions Code).

Lic. or Reg. No.: _____ Date: _____
 OWNER-BUILDER DECLARATION
 I hereby affirm that I am exempt from the Contractor's license law for the following reason [Section 7001.5, Business and Professions Code]:
 I, as owner of the property, or my employees with wages as their sole compensation, will do the work and the structure is not intended or offered for sale [Section 7044, Business and Professions Code].
 I, as owner of the property, am exclusively contracting with licensed contractor to construct the project [Section 7044, Business and Professions Code].

CONSTRUCTION LENDING AGENCY
 I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).
 Lender's Name: _____
 Lender's Address: _____
 I certify that I have read this application and state that the above information is correct. I agree to comply with all County ordinances and State laws relating to building construction and hereby authorize representatives of this County to enter upon the above-manifested property for inspection purposes.
 Signature of Applicant or Agent: [Signature] 2/18/83

EXHIBIT 5

Exhibit 11
CCC-05-CD-13 and CCC-05-RO-09
(Revell) Page 25 of 38

V-5-MAL-87-125

FORM #1

INITIAL VIOLATION REPORT

Violation Number (permit number if available)

Violation Location 32354 PCH Malibu - S. side of property

Date of Report 4/9/87

Reported By Goller (Nathan) (213) 777-4895

Name 1901 Av. of the Stars
Address

Citizen Staff Member
Telephone In Person
Written

Owner John Benton Phone: _____

Owner's Address 32354 PCH

Contractor or Person Doing Work _____

Report taken by Bill

Description of Violation
(What did the reporting person see that led them to suspect there was a violation in progress?)

S. side of property App. 10'
creating a 10' Chain link fence
with barbed wire on top. About
40' long now. From bluff on up
to PCH.

State Dept Parks & Rec.

DISPOSITION

Violation Confirmed? Yes No

LAW OFFICES
ALAN ROBERT BLOCK
A PROFESSIONAL CORPORATION
1901 AVENUE OF THE STARS, SUITE 470
LOS ANGELES, CALIFORNIA 90067-6006
TELEPHONE (310) 552-3336
TELEFAX (310) 552-1850

ALAN ROBERT BLOCK
JUSTIN MICHAEL BLOCK

OF COUNSEL
MICHAEL N. FRIEDMAN

RECEIVED

AUG 01 2005

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT
alan@blocklaw.net

July 29, 2005

RECEIVED

AUG 01 2005

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
Southern Central Coast Area Office
89 South California Street, Suite 200
Ventura, California 93001

Attention: Mr. N. Patrick Veersart, Southern California Enforcement Team Leader

Re: Violation No. V-4-03-047

Property Address: 32340 Pacific Coast Highway, Malibu, CA

Alleged Unpermitted Development: Removal of native bluff-top vegetation, landscaping, wooden stairs, locked gate, and fence on bluff/headland and, non-compliance with Special Condition No. 2 of CDP No. A-220-80 involving failure to construct required public accessway improvements across the bluff/head.

Dear Mr. Veersart:

I am in receipt of your letter dated July 21, 2005, in reply to my correspondence dated April 29, 2005.

Based on statements contained in your recent correspondence, I find it necessary to clarify my clients position with regard to the issue of the Irrevocable Offer To Dedicate a lateral access easement against the property as recorded by the former owner John H. Benton on or about May 4, 1982.

Contrary to the assertion as found in the second paragraph of the first page of your correspondence "that the Revells were aware of the lateral access easement and requirement to build accessway improvements (stairs), as conditioned by CDP No. A-220-80 prior to their purchase of the property located at 32340 Pacific Coast Highway in the City of Malibu," that is not the case. As stated in my correspondence, and as reiterated above, the Revells *were aware* that their was an Irrevocable Offer To Dedicate a lateral access easement recorded

California Coastal Commission
Re: Violation No-4-03-347 (32340 Pacific Coast Highway, Malibu)
July 29 , 2005

Page 2

against the property in May 1982. The map described as "Exhibit 2," in the recorded offer to dedicate, allegedly delineating the location, scope, and plans for construction of the easement, was not recorded with the document, and the Revells *were not* aware of it's contents.

The Revells, thereafter, prior to their purchase of the property in early 2004, retained former Coastal Commission Staff Analyst Lynn Heacox of the Land & Water company to investigate the issue and the scope of the Commission's approval in CDP No. A-220-80. Mr. Heacox ordered the applicable files for CDP No. A-220-80 with the Commission's Ventura Office staff and was later advised that the file could not be located. As such, Mr. Heacox was unable to provide the Revells with any information regarding the Commission's approval of CDP No. A-220-80, and specifically the lateral access requirement other than as contained in the recorded document itself, despite their reasonable attempt to ascertain the same. Mr. Heacox reviewed the recorded document, and he, himself, as a former Commission staff analysis, was not sure of the location and/or scope of the proposed easement and accessway improvements.

When the file was located earlier this year, substantially after the Revells purchase of the property, the Reveils were advised by Mr. Heacox that their was no way to ascertain whether the accessway was constructed prior to the construction of the approved residence over 23 years ago and subsequently washed out to sea. Consequently, the Revells can not agree with your assertion as found in paragraph 3 on the first page of your letter that "these improvements were not completed prior to the occupancy of the residence." At present, the Revels do not know whether or not the accessway improvements were ever constructed.

With regard to the removal of native bluff-top vegetation and landscaping, as referenced in the third paragraph on page 3 of your correspondence, as stated in our earlier correspondence, old aerial photographs of the bluff-top as found in the Commission's files evidence that the bluff-top had been severely disturbed by continued use. Although a former owner of the property may have planted grass on the bluff-top between the years 1987 and 2002, the mere planting of grass on a severely degraded bluff-top, by a former owner of the property, can hardly be considered a *significant alteration of a landform*. Particularly, when there is no special condition in the Commission's approval restricting the same.

California Coastal Commission

Re: Violation No-4-03-347 (32340 Pacific Coast Highway, Malibu)

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Page 3

With regard to the wooden stairs as referenced on page 5 of your correspondence, the copy of the photograph attached to your correspondence does not in the least evidence that the wooden stairs presently existing on the property are not the same stairs as those which existed on the site in 1977. The reporter's transcript for the original Commission hearing on Mr. Benton's proposed single family residence on the subject property, in CDP No. P-77-2107, as attached to our earlier correspondence as Exhibit 2, clearly evidences the existence of the wooden stairs to the beach.

With regard to the State Lands Commission review, although the State Lands Commission accepted the Offer To Dedicate in 2003 and now holds the lateral public access across the subject property, as referenced in the first full paragraph of page 6 of your correspondence, this office has not reviewed any documentation that has evidenced that the State Lands Commission has agreed to maintain accessway improvements and/or be liable for any injury that occurs as a result of usage of the accessway improvements. To this effect, this office forwarded correspondence to the State Lands Commission, Curtis Fossum, Esq., on May 3, 2005, in order to determine the scope of the State Lands Commission's acceptance of the offer to dedicate and whether said agency had agreed to be responsible for maintenance of the accessway improvements and liability for injury as a result of the usage of said accessway improvements. In addition, if the stairway had been constructed, will the State Lands Commission accept responsibility to rebuild the same. As of this date, this office has not received a response to it's inquiry. A copy of this offices letter to Curtis Fossum, Esq., of the State Lands Commission, dated May 3, 2005, is attached hereto and hereby incorporated hereto by reference.

Contrary to the allegations as contained in your correspondence relating to the applicable Statue of Limitations, as found on page 6 of your correspondence, it clearly appears from the dates of the issuance and final date referenced in the building permits, that the residence would have been under construction at the time of the open violation on the property, and as such, the Commission staff should have had notice of the construction of the residence, without prior construction of the accessway improvements, if in fact they had not been approved.

With regard to the non-compliance with Special Condition 2 of CDP No. A-220-80, as referenced in the second full paragraph on page 7 of your correspondence, as soon as my

California Coastal Commission
Re: Violation No-4-03-347 (32340 Pacific Coast Highway, Malibu)
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clients were able to obtain a copy of the construction plans, referenced as "Exhibit 2" in the Irrevocable Offer To Dedicate, they retained the engineering firm of Bedrock Engineering to determine whether the stairway could be built as approved by the Commission. As evidenced in the correspondence from Bedrock Engineering, dated April 13, 2005, attached as Exhibit 3 in our earlier correspondence, the approved stairway does not meet the minimum requirements of the Uniform Building Code ("UBC").

Although I do not know whether "conditions have changed" on the property since 1980, I vigorously believe that stairs to be used by the public in order to gain access to a bluff top 23 feet above the existing beach, would have to meet the minimum requirements of the UBC. The UBC design deficiencies of the proposed stairway improvements were substantial, not minor, and the upgrading of the improvements, if they were not previously constructed, would be the responsibility of the State Lands Commission, if their acceptance of the accessway does include maintenance of the accessway improvements and liability for injury stemming from their use.

Further Section 4.29 of the City of Malibu LCP specifically provides that "[N]o permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access." There is no question but that the Commission approved accessway improvements were not reviewed and or approved by a structural engineer.

Should it be determined that the original accessway improvements were not previously constructed, and that the Commission is not otherwise estopped from demanding that the Revells construct the same, the Revells contend, that at most, they would only be responsible for the construction of the originally approved accessway improvements, and only then once the State Lands Commission agrees to pay the costs of bringing the improvements up to the minimum requirements of the UBC, obtains all necessary permits from the City of Malibu and other applicable agencies, and further agrees to be responsible for their maintenance and liability for injury resulting from their use.

The Commission is threatening to initiate litigation against the Revells, a non-applicant, good faith purchaser of the subject property, to build a stairway which may have been previously built and washed out to sea, and even if not, both legally, and technically,

California Coastal Commission

Re: Violation No-4-03-347 (32340 Pacific Coast Highway, Malibu)

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cannot be built pursuant to the approved plans , and, even if it could be built, would not provide access to the public.

As stated in my earlier correspondence, my clients have numerous questions which must be answered, including, but not limited to:

Were the accessway improvements previously constructed?

If it is determined that the accessway improvements have not been constructed, can the Commission legally compel the Revells to build accessway improvements which are not substantially identical to those approved in CDP No. A-220-80?

If it is determined that the Commission can legally require a non-applicant to substantially revise previously approved plans (in order to bring them into compliance with the requirements of the UBC), has the State Lands Commission (or other applicable agency) agreed to accept responsibility for maintenance of the accessway improvements and liability for any resulting injury from their use?

If the State Lands Commission has agreed to accept responsibility for maintenance of the improvements and liability for resulting injury for their use, who is the responsible party to pay the substantial costs associated with the necessary architectural, structural and civil engineering, and construction costs which will be undoubtedly associated with bringing said accessway improvements into compliance with the minimum requirements of the UBC?

In our correspondence to the State Lands Commission we specifically requested that the State Lands Commission respond to our concerns and the questions posed in our correspondence. To this date we have not received any response from the State Lands Commission.

We respectfully request that the Commission agree to delay taking any action on this matter until a response is forthcoming from the State Lands Commission regarding the questions posed.

California Coastal Commission

Re: Violation No-4-03-347 (32340 Pacific Coast Highway, Malibu)

July 29 , 2005

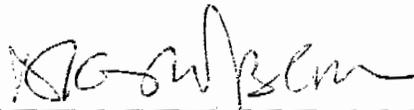
Page 6

Naturally, should you have any questions, please telephone me at your earliest convenience.

Thank you for your anticipated courtesy and cooperation.

Respectfully Submitted,

**LAW OFFICES OF
ALAN ROBERT BLOCK**
A Professional Corporation



ALAN ROBERT BLOCK

ARB:dm
enclosures

cc: Mr. and Mrs. Graham Revell
Mr. Lynn Heacox

LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

ALAN ROBERT BLOCK

OF COUNSEL
MICHAEL N. FRIEDMAN

1901 AVENUE OF THE STARS, SUITE 470
LOS ANGELES, CALIFORNIA 90067-6006

E-MAIL alanblock@pacbell.net
TELEPHONE (310) 552-3336
TELEFAX (310) 552-1850

May 3, 2005

Curtis Fossum, Esq.
California State Lands Commission
100 Howe Ave Suite 100 South
Sacramento, CA 95825-8202

**Re: 323340 Pacific Coast Highway, Malibu, CA
Acceptance of Dedication Doc # 02-1713058**

Dear Mr. Fossum:

As you know from our conversation last week, this office represents Mr. and Mrs. Graham Revell ("my clients") with regard to the above captioned property, as well as the State Lands Commission's Acceptance of Dedication of the previously offered dedication of lateral access.

My clients seek to obtain information from the State Lands Commission regarding the extent of its acceptance of the dedication, as well as confirmation that the California State Lands Commission accepts responsibility and liability of the accessway, pursuant to Public Resource Code §30212(3).

My clients purchased the 32340 Pacific Coast Highway property ("subject property") on or about May 13, 2004. While in escrow to purchase the property my clients received a copy of a preliminary title report.

The preliminary title report evidenced that a former owner of the subject property, John H. Benton, recorded an Irrevocable Offer To Dedicate a lateral access easement against the property on or about May 4, 1982, as document no. 82-557828 recorded in the office of the Los Angeles County Recorder. The Irrevocable Offer To Dedicate had three exhibits attached to it: The complete legal description of the property (Exhibit A), a copy of a memorandum from Janet Tulk, Director, Permit Appeals, to the Coastal Commission

Curtis Fossum, Esq.

Re: Acceptance of Dedication Doc # 02-1713058 (323340 Pacific Coast Highway, Malibu)

May 3, 2005

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re: CDP No. A-220-80 (Exhibit B), and the legal description of the lateral access easement (Exhibit C). The memorandum from Ms. Tulk attached to the Irrevocable Offer To Dedicate as Exhibit B referenced Staff Recommended conditions relating to public access and accessway improvements.

Although the condition relating to public access in the Irrevocable Offer To Dedicate stated that the easement "shall extend from the mean high tide line to the base of the bluff for the width of the project site, and shall include, an easement area, conforming to plans attached as Exhibit 2, over the headland on the site for pedestrian access and viewing", the plans referenced as "Exhibit 2" in the recorded Irrevocable Offer To Dedicate were not attached to or included in the recorded document itself. Neither did the Irrevocable Offer To Dedicate interpret the term "headland" and/or include an exhibit delineating the "headland(s)" location on the property.

The preliminary title report also evidenced the recordation of an Amended Irrevocable Offer To Dedicate, document no. 87-028221 as recorded in the office of the Los Angeles County Recorder, on January 8, 1987. The amended offer to dedicate merely corrected an erroneous legal description as contained in document no. 82-557828, and did not contain either a copy of the "plans referenced as Exhibit 2 in the Irrevocable Offer To Dedicate (document no. 82-557828) or a description of the referenced "headland" or exhibit delineating it's location on the property.

My clients thereafter, while still in escrow, retained the services of former Coastal Commission staff member Lynn Heacox to investigate the Coastal Commission's approval in CDP No. A-220-80, particularly the access conditions of said approval and whether the same had been satisfied. In or about January and February 2004 Mr. Heacox requested the applicable files from the Coastal Commission's Ventura office for CDP No. A-220-80 and was advised that they would be ordered from the Coastal Commission's archives. Later in February 2004, on at least two separate occasions, Mr. Heacox was advised by Coastal Commission staff members that the files had been "lost or misplaced" and were not available for review. Mr. Heacox requested to be advised if the files were located. Although Mr. Heacox requested to be called if the file had been located and was available for review, he was not.

Mr. and Mrs. Revell closed escrow on their purchase of the subject property in May 2004 without being able to obtain a copy of the "plans attached as Exhibit 2" to the

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Irrevocable Offer To Dedicate and/or a determination as to the description of the referenced "headland" or exhibit delineating its location on the property, despite their reasonable attempts to obtain the same.

Because Coastal Commission file CDP No. A-220-80 was only recently located, my clients only recently became aware of the actual terms of the accessway condition. Said condition, Special Condition No. 2, not only required an offer to dedicate lateral access across the beach to the public, but moreover, the actual construction of accessway improvements consisting of a stairway up to and down from the bluff/head that exists on the site. A copy of CDP No. A-220-80 is attached hereto as **Exhibit 1** and hereby incorporated by reference. A copy of the Coastal Commission's approved plans, referenced as "Exhibit 2" in the Irrevocable Offer To Dedicate, are attached hereto as **Exhibit 2** and hereby incorporated by reference.

It appears that the accessway improvements were never constructed although Special Condition No. 2 specifically required that the improvements be completed prior to occupancy of the residence. County of Los Angeles Building and Safety files evidence that the house was completed in or about 1987.

Upon their receipt of the construction plans the Revells retained Bedrock Engineering to review the same. As evidenced in the attached correspondence from Bedrock Engineering, dated April 13, 2005, the approved stairway does not meet the minimum requirements of the Uniform Building Code ("UBC") in several material respects. The UBC deficiencies, include, but are not necessarily limited to, the following:

1. The vertical drop between what we now know as the headland and the beach below is twenty-three (23) feet. The approved plans for the stairs shows a vertical drop of only fourteen (14) feet.
2. The angle of the approved stairway, rise and run, is too steep and exceeds the requirements of the UBC.
3. A vertical drop of more than twelve (12) feet requires a four (4) foot deep mid landing point pursuant to the UBC. Such a landing point is not

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provided in the Commission's approved plans.

4. A coastal engineering report and subsurface report should be completed to determine the maximum degree of change in the breach profile.
5. The approved spacing between the guardrails exceeds the UBC safety requirements.
6. Since the approved plans did not include structural calculations, it is not known whether the approved stairs comply with all UBC requirements.
7. The Coastal Commission's approved plan for the stairway does not include detailing of the anchoring method proposed. The UBC requires that anchoring must be founded into bedrock to resist tidal activity and changes in the beach profile. Geotechnical information is not included to determine design parameters. Fixed concrete caisson into bedrock may be required at both the upper and lower ends of the stairs.
8. The headland is undermined by a large sea cave which may affect the structural integrity of the approved stairway. Presently, it is not known whether sufficient rock material exists to anchor a concrete caisson at the upper extreme of the approved stairway.

A copy of Bedrock Engineering's letter report, dated April 13, 2005, is attached hereto as **Exhibit 3** and hereby incorporated by reference.

The State Lands Commission recorded Certificate of Acceptance of the Amended Irrevocable Offer To Dedicate on July 23, 2003, as document no. 02-1713058 in the records of the Office of the Los Angeles County Recorder. The Certificate of Acceptance provides that the State Lands Commission "accepts all right, title, and interest in real property conveyed by the Offer to Dedicate Public Access Easement, dated November 12,

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May 3, 2005

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1987, as instrument no. 87-328221, Official Records of Los Angeles County, from John M. Benton to the State of California".

Public Resources Code §30212(3) relevantly and specifically provides as follows:

"Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway".

Although the State Lands Commission's Certificate of Acceptance provides that the agency accepts all right, title, and interest in real property", the Certificate of Acceptance is silent as to whether the agency agreed to accept responsibility for maintenance and liability of the accessway. It is further unknown, that even if the State Lands Commission agreed to accept responsibility for maintenance and liability of the accessway, does the Certificate of Acceptance also assume responsibility for the maintenance and liability of the accessway improvements, when, and if, constructed. If so, would it therefore also include the actual costs for bringing the construction plans for the accessway improvements into compliance with the requirements of the UBC, as well as the difference in actual construction costs of the accessway improvements as approved by the Coastal Commission in 1980 to the present requirements of the UBC?

The State Lands Commissions acceptance of responsibility for maintenance and liability of the subject real property for lateral access purposes is clearly distinguishable from it's acceptance of responsibility for maintenance and liability of the accessway improvements. Particularly under the facts of this case, wherein the stairway as approved by the Commission approximately 25 years ago does not meet the requirements of the UBC.

My clients were good faith purchasers of the property without notice of the actual conditions of CDP No. A-220-80. The Coastal Commission cannot compel the Revells to build a stairway different than what was approved in CDP No. A-220-80. We also know that the approved stairway cannot be legally constructed because it does not meet the minimum requirements of the UBC. The purpose of this letter is to determine

Curtis Fossum, Esq.

Re: Acceptance of Dedication Doc # 02-1713058 (323340 Pacific Coast Highway, Malibu)
May 3, 2005

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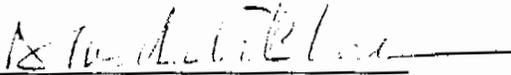
whether the State Lands Commission by the recordation of its Certificate of Acceptance agreed to accept responsibility for maintenance and liability of not only the beach accessway, but moreover, the accessway improvements and/or construction of the same.

My clients look to the State Lands Commission in providing some guidance in responding to the questions posed in order that they can determine how best to proceed.

Thank you for your anticipated courtesy and cooperation in responding to this correspondence.

Very truly yours,

**LAW OFFICES OF
ALAN ROBERT BLOCK**
A Professional Corporation



ALAN ROBERT BLOCK

ARB:dm
enclosures

cc: Mr. and Mrs. Graham Revell
Mr. Lynn Heacox

LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

1901 AVENUE OF THE STARS, SUITE 470
LOS ANGELES, CALIFORNIA 90067-6006
TELEPHONE (310) 552-3336
TELEFAX (310) 552-1850

ALAN ROBERT BLOCK
JUSTIN MICHAEL BLOCK

OF COUNSEL
MICHAEL N. FRIEDMAN

E-MAIL
alan@blocklaw.net

September 28, 2005

Ms. Christine Chestnut
Statewide Enforcement Analyst
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Violation No. V-4-03-047 (Revell)
Statement of Defense

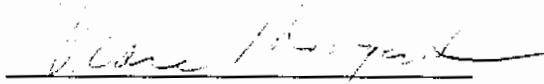
Dear Ms. Chestnut:

Enclosed herein please find Mr. and Mrs. Revell's Statement of Defense with exhibits attached thereto relative to the above-referenced Violation.

If you have any questions, please contact Alan Block.

Respectfully Submitted,

LAW OFFICES OF
ALAN ROBERT BLOCK
A Professional Corporation


Diane Morgenstern, Secretary to
ALAN ROBERT BLOCK

DM/
enclosures

VIOLATION NO. V-4-03-047 (REVELL)

STATEMENT OF DEFENSE FORM

1. Facts or allegations contained in the cease and desist order and restoration order notice of intent that you admit (with specific reference to the paragraph number in such document):

Mr. and Mrs. Revell ("Revell") do not admit any of the allegations, as alleged in the cease and desist order and restoration order notice of intent, regarding alleged violations of CDP No. A-220-80 or the Coastal Act on the subject property.

The Revells' purchased the subject property on May 13, 2004. The Revells vigorously contend that they were good faith purchasers who have not performed any development on the property, including but not limited to, the construction of a locked gate, wooden stairs, removal of native bluff-top vegetation, and/or landscaping on the property.

Further, as previously stated in correspondence submitted to the Commission's South Central Coast District Office, dated April 29, 2005 and July 29, 2005, respectively attached hereto as **Exhibits 1 and 2**, the Revells contend that, prior to their purchase of the subject property, they did not receive adequate notice of the dedicated public access. While Special Condition Nos. 1 and 2 of CDP No. A-220-80 required recordation of the documents, the documents recorded did not include a copy of the approved access improvement plans. Without viewing the improvement plans it was impossible for the Revells to reasonably understand the extent of the required public access proposed accessway improvements.

The Revells, prior to their purchase of the subject property, as part of their due diligence, retained Lynn Heacox, a former staff planner for the Coastal Commission, to investigate the extent of the offer to dedicate. Mr. Heacox was thereafter advised by Commission staff that permit files for the subject CDP had been lost and were not available for review. Only subsequent to receiving the Notice of Violation, as contained in the Commission's letter, dated March 1, 2005, were the Revells able to obtain a copy of the improvement plans and realize the extent of the Special Condition.

2. Facts or allegations contained in the cease and desist order and restoration order notice of intent that you deny (with specific reference to the paragraph number in such document):

Since only paragraphs in that portion of the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings, entitled "Restoration Order", as found on page 7 are numbered, the Revell's respond as follows.

The Revells deny that the previous construction of a locked gate, wooden stairs, removal of native bluff-top vegetation, and/or landscaping on the property has obstructed public access. Further, the Revells contend that the wooden stairs were constructed prior to the approval of

CDP No. A-220-80, and that there was no landscaping condition in the approved CDP which prevented the former owners of the property to plant grass on a severely degraded bluff-top.

The accessway improvements were required to be constructed approximately 20 years prior to the Revells' purchase of the subject property. Clearly the improvements could have been constructed years ago and subsequently destroyed and washed out to sea.

Upon obtaining a copy of the approved plans for the access improvements (after March 1, 2005) the Revells' agent, Mr. Heacox, met with officials of the City of Malibu Department of Building & Safety and was advised that the City of Malibu would not issue a building permit for the proposed improvements because of their gross failure to meet the minimum requirements of Uniform Building Code ("UBC").

Further, although the State Lands Commission recorded a Certificate of Acceptance of the amended Irrevocable Offer to Dedicate on July 23, 2003, which document provided that the State Lands Commission "accepts all right, title, and interest in the real property", the acceptance did not provide that said agency agreed to accept responsibility for maintenance and liability of the accessway and/or its proposed improvements.

Public Resources Code Section 30212(3) specifically provides as follows:

"Dedicated accessway "shall not be opened to the public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway".

On May 3, 2005, the Revells, through my office, forwarded correspondence to the State Lands Commission requesting clarification as to whether said agency, by its certificate of acceptance, has agreed to accept responsibility for both the accessway and accessway improvements. As of this date, the Revells have not received a response to their inquiry. A copy of this office's correspondence to the State Lands Commission is attached hereto as **Exhibit 3** and hereby incorporated by reference.

As such, until the State Lands Commission has evidenced its agreement to assume responsibility and liability for both the accessway and accessway improvements, neither the Revells, nor any other party, can be properly alleged to have interfered with the public's access across the subject property.

3. Facts or allegations contained in the cease and desist order and restoration order notice of intent of which you have no personal knowledge (with specific reference to the paragraph number in such document):

The Revells have no personal knowledge as to any matter pertaining to the alleged violations.

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or copies if you can):

Please see attached Exhibits 1, 2, and 3.

5. Any other information, statement, etc., that you want to offer or make:

In that the State Lands Commission recorded their acceptance of the offer to dedicate prior to the Revell's purchase of the subject property, the Revells contend, that, at most, their obligation under the approved CDP is limited to building the improvements pursuant to the Commission's approved plans, if possible, or in the alternative, paying the estimated cost of construction of the original improvement plan.

The Revells contend that the State Lands Commission, upon its acceptance of the accessway, has the responsibility for paying the cost of bringing the improvement plans into compliance with the requirements of the UBC in light of the fact that said agency accepted the amended Irrevocable Offer to Dedicate prior to the Revell's purchase of the subject property. Further, as stated above, until such time as the State Lands Commission has agreed to be responsible for maintenance and liability of the proposed accessway and improvements, the Revells can not be validly accused of interfering and/or obstructing public access.

In addition, the Commission's files on CDP No. A-220-80 confirm that in April 1987 an Initial Violation Report was made by a neighboring property owner alleging that a former owner of the subject property constructed a ten (10) foot high chain link fence, approximately forty (40) feet long, with barbed wire on top, extending from Pacific Coast Highway to the bluff". Although the violation refers to the address 32354 Pacific Coast Highway, the subject property was previously known as both 32340 and/or 32354 Pacific Coastal Highway prior to construction of the existing residence. Although there is no reference to the disposition of the violation, a violation number of V-5-MAL-87-125 was assigned to the violation report.

Public Resources Code §30805.5 relevantly provides as follows:

"[a]ny action . . . to recover civil fines or penalties . . . shall be commenced not

later than three years from the date on which the cause of action . . . is known or should have been known.”

The Revells contend that the Commission knew or should have known about the alleged violations contained in the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings, dated September 9, 2005, in or about April 1987 at the time of it's investigation of V-5-MAL-87-125.

Nevertheless, without an admission of wrongdoing or legal liability, and solely for purposes of settlement of the pending Coastal Act violations as delineated in the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings, dated September 9, 2005, and in consideration of the Coastal Commission acknowledging and agreeing that the alleged violations have been satisfied in full, the Revells will agree to pay to the Coastal Commission, or fund designated by the Coastal Commission, the sum of Fifty Thousand Dollars (\$50,000.00), which sum the Revells estimate to be the approximate cost to construct the accessway improvement plans as originally approved by the Commission.

6. Documents, exhibits, declarations under the penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made apart of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title and enclose a copy which this completed form):

See above.

LAW OFFICE OF
ALAN ROBERT BLOCK
A Professional Corporation



ALAN ROBERT BLOCK

cc: Graham Revell
Lynn Heacox

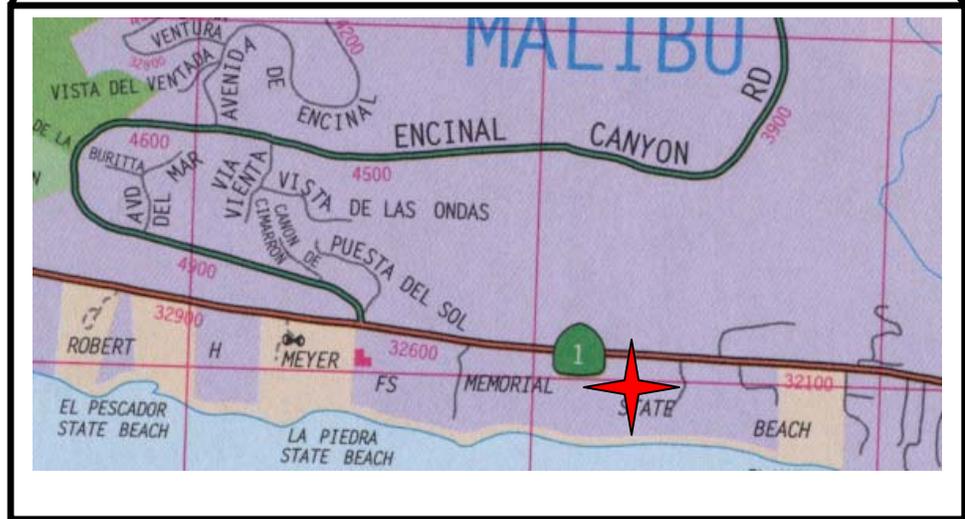
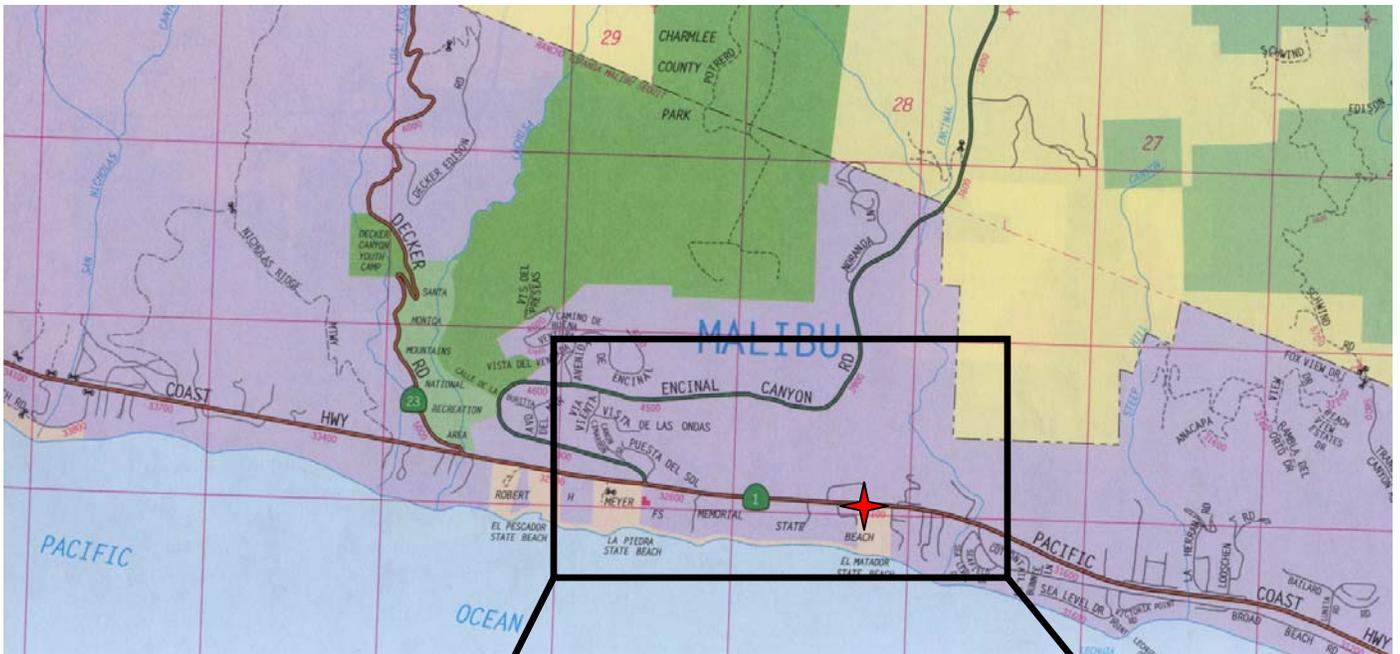


Exhibit 1: Site Map.



Exhibit 2a: 1977 photograph showing the headland and bluff.



Exhibit 2b: 2005 photograph looking southeast across the headland.

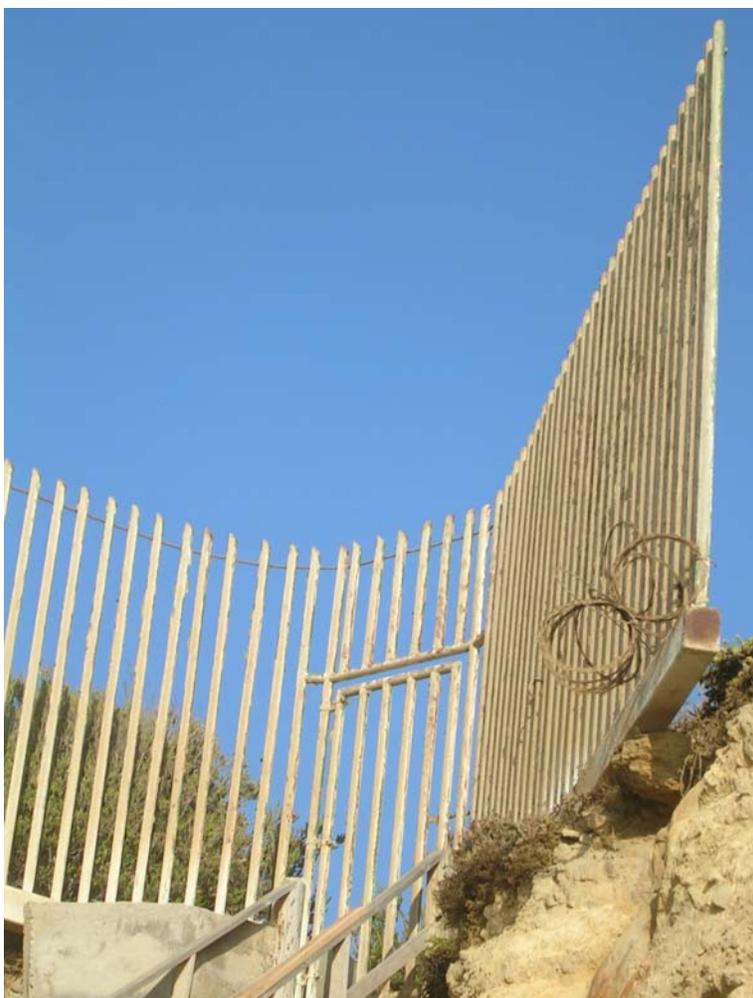


Exhibit 2c: 2005 photograph showing the locked gate, fence, razor wire, and the top portion of the stairs.

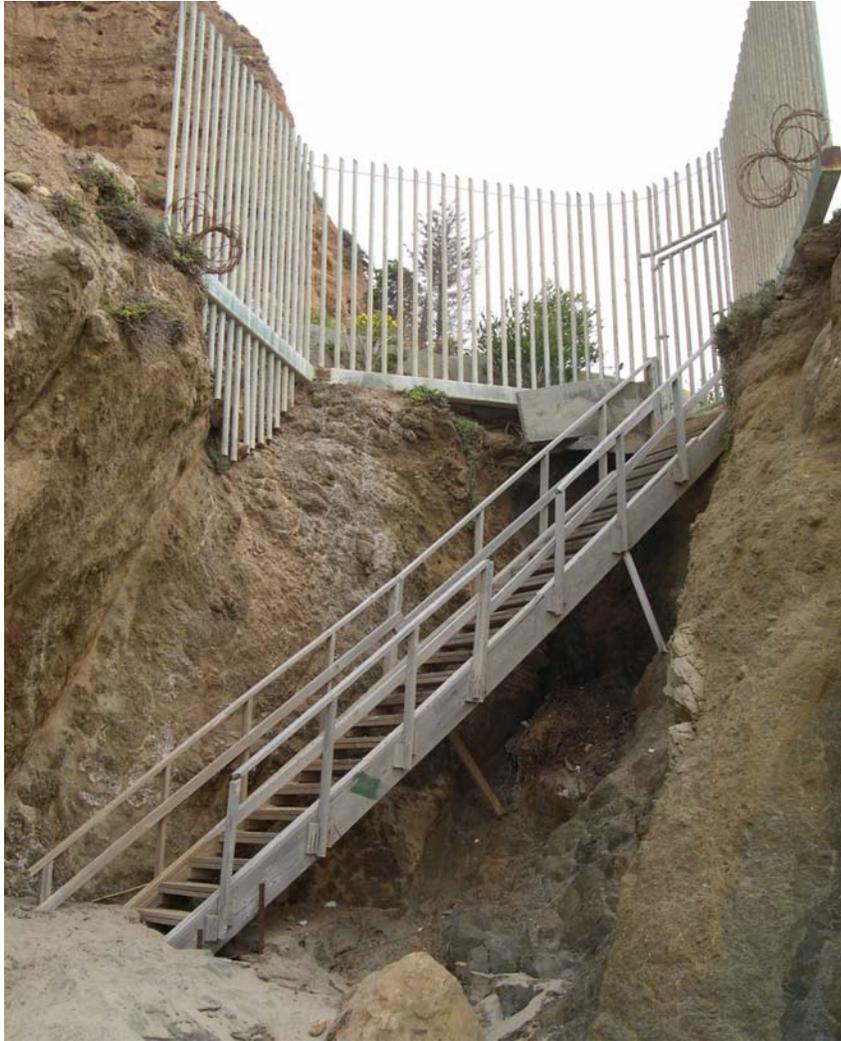


Exhibit 2d: 2005 photograph providing a view of the stairway, locked gate, fence, and razor wire.



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Exhibit 2e: 2005 aerial photograph of the Revell property and surrounding area, including coastal bluffs vegetated with coastal sage scrub.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL**

1 March 2005

Graeme and Brenda Revell
6084 John Muir Road
Hidden Hills, CA 91302-1244

Violation File Number: V-4-03-047

Property location: 32340 Pacific Coast Highway, Malibu,
Los Angeles County. APN 4473-014-009

Violation: Unpermitted development consisting of removal of native bluff-top vegetation, landscaping, wooden stairs, locked gate, and fence on bluff/headland and; non-compliance with Special Condition 2 of CDP A-220-80 involving failure to construct required public accessway improvements across the bluff/headland.

Dear Mr. And Mrs. Revell:

Our staff has confirmed that development undertaken on your property does not fully comply with the final approved plans and the terms and conditions of Coastal Development Permit A-220-80 as amended, which was issued by the Commission on November 19, 1980 for the construction of a single-family residence.

Standard Condition Four (4) of CDP A-220-80 states:

All construction must occur in accord with the proposal as set forth in the application for permit, subject to any special conditions imposed on the permit except as modified by this amendment. Any further deviations from the approved plans must be reviewed by the Commission pursuant to California Administrative Code, Title 14, Sections 13164-13168.

Special Condition One (1) of CDP A-220-80 states:

...The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement shall extend from the mean high tide line to the base of the bluff for the width of the project site and shall include an easement area, conforming to the plans attached in exhibit 2, over the headland on the site for pedestrian access and viewing....

Special Condition Two (2) of CDP A-220-80 states:

Prior to issuance of the permit, the applicant shall submit plans, for the review and approval in writing of the executive Director, showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with the approved plans shall be completed prior to occupancy of the residence approved herein.

The above-mentioned plans dated February 19, 1982, drawn by William Wesley Peters, Architect, and approved by the Executive Director on August 15, 1986, show the construction of two steel stairways on either side of the bluff/headland and a 10'-wide lateral public access across the bluff/headland. Pursuant to Special Condition 2 of CDP A-220-80, the public accessway improvements were required to be constructed by the property owner in order to provide public access from the shoreline, across the bluff/headland, and back to the shoreline, as part of the lateral access easement recorded across the base of your property. Failure to construct and maintain required accessway improvements are non-compliant activities.

Furthermore, the existing wooden stairs, locked gate and fence on the west side of the bluff/headland, and removal of native bluff-top vegetation and landscaping (lawn) on top of the bluff/headland are unpermitted development and are not in compliance with the terms and conditions of CDP A-220-80.

Please be advised that non-compliance with the terms and conditions of an approved permit and/or unpermitted development constitute a violation of the Coastal Act.

Coastal Act Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

In addition, we remind you that Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500. Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

In order to resolve this matter in a timely manner and avoid the possibility of a monetary penalty or fine, you must:

- (1) Complete the construction of the accessway improvements, consistent with approved plans dated February 19, 1982, drawn by William Wesley Peters, Architect, and remove unpermitted development consisting of the wooden stairs, gate, fence and any other deterrents to public access across the bluff/headland, by **April 15, 2005**. If additional time will be needed, please contact me immediately to discuss timing and;
- (2) Please contact me **by March 15, 2005** to discuss a resolution of the remaining unpermitted development on the site consisting of the removal of native bluff-top vegetation, the installation of the landscaping on the bluff/headland, and the restoration and re-vegetation of the site to its original condition.

As background and for your reference, a copy of Coastal Development Permit A-220-80 is enclosed with this letter. Also enclosed is a copy of CDP P-10-20-77-2107, granted by the South Coast Regional Commission on January 16, 1978. This permit was appealed to the State Commission and approved as amended (CDP A-220-80) to change the house design and modify access requirements. CDP A-220-80 was issued, subject to three Special Conditions, one of which (No. 2) required the construction of the public accessway improvements on the bluff/headland by the property owner.

Please contact me, by no later than **March 15, 2005**, to discuss how you intend to resolve this violation.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me.

Sincerely,

N. Patrick Veersart
Southern California Enforcement Team Leader

cc: Steve Hudson, Planning Supervisor, CCC
Gary Timm, District Manager, CCC
Linda Locklin, Coastal Access Manager, CCC
Gail Sumpter, Public Services Manager, City of Malibu
Shawn Nelson, State Lands Commission

Enc: Amended Coastal Development Permit A-220-80
Coastal Development Permit P-10-20-77-2107
Waiver of Legal Argument

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL

19 April 2005

Graeme and Brenda Revell
6084 John Muir Road
Hidden Hills, CA 91302-1244

Violation File Number: V-4-03-047

Property location: 32340 Pacific Coast Highway, Malibu,
Los Angeles County. APN 4473-014-009

Unpermitted Development: Unpermitted development consisting of removal of native bluff-top vegetation, landscaping, wooden stairs, locked gate, and fence on bluff/headland and; non-compliance with Special Condition 2 of CDP A-220-80 involving failure to construct required public accessway improvements across the bluff/headland.

Dear Mr. and Mrs. Revell:

We have verified that you are in receipt of our letter to you dated March 1, 2005, which informed you that: (1) Development undertaken on your property does not fully comply with the final approved plans and the terms and conditions of Coastal Development Permit A-220-80 as amended; and (2) in order to resolve this matter administratively and avoid the possibility of court-imposed fines and penalties, you must complete the construction of accessway improvements, consistent with approved plans (which I provided to Mr. Heacox), and remove unpermitted development consisting of the wooden stairs, gate, fence and any other deterrents to public access across the bluff/headland, by April 15, 2005 and contact me by March 15, 2005 to discuss a resolution of the remaining unpermitted development on the site consisting of the removal of native bluff-top vegetation, the installation of the landscaping on the bluff/headland, and the restoration and re-vegetation of the site to its original condition.

As you were previously informed, Standard Condition Four (4) of CDP A-220-80 states:

All construction must occur in accord with the proposal as set forth in the application for permit, subject to any special conditions imposed on the permit except as modified by this amendment. Any further deviations from the approved plans must be reviewed by the Commission pursuant to California Administrative Code, Title 14, Sections 13164-13168.

Special Condition One (1) of CDP A-220-80 states:

...The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved Executive Director, an easement for public

access and passive recreational use along the shoreline. Such easement shall extend from the mean high tide line to the base of the bluff for the width of the project site and shall include an easement area, conforming to the plans attached in exhibit 2, over the headland on the site for pedestrian access and viewing....

Special Condition Two (2) of CDP A-220-80 states:

Prior to issuance of the permit, the applicant shall submit plans, for the review and approval in writing of the executive Director, showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with the approved plans shall be completed prior to occupancy of the residence approved herein.

Also, as you were previously informed, non-compliance with the terms and conditions of an approved permit constitutes a violation of the Coastal Act.

The deadline for completing the construction of the accessway improvements and removal of the development located in the lateral public access easement that is impeding public access has passed. However, both Lynn Heacox and Alan Block have contacted me and have asked for additional time to complete an investigation of this matter and prepare a written response and proposal for resolution. I am in receipt of Mr. Heacox's letter dated March 21, 2005, and Mr. Block's letter dated April 18, 2005. I am granting a time extension to receive a written response and proposal for resolution by **April 29, 2005**. However, please understand that unless you propose to immediately commence construction of the accessway improvements and to remove impediments to public access from the easement, no further time extensions can be granted.

On February 11, 2004, while representing potential purchasers of the property, Mr. Heacox spoke with Richard Rojas (not Steve Hudson as was stated in Mr. Heacox's letter) and was told that the property was the subject of an investigation of a potential violation of the Coastal Act in regard to compliance with the Special Conditions of the 1980 CDP that required the provision of public access across the headland on the property.

On March 5, 2004, Mr. Heacox informed Richard Rojas that the property was in escrow, and again inquired about the status of the violation investigation. Mr. Rojas informed Mr. Heacox that, although we had not yet completed our investigation, we were still investigating compliance with the public access condition of the 1980 CDP.

As you are aware, the Offer To Dedicate (OTD) the lateral public access easement was recorded on January 8, 1987 and a copy of the staff report for CDP No. A-220-80 was recorded with that document (Exhibit B) including the Prior To Issuance Special Conditions that specifically required submittal of plans for approval of the accessway improvements (stairs) prior to issuance of the permit and completion of the accessway improvements prior to occupancy. Additionally, the State Lands Commission accepted the OTD in July of 2002 and that was also recorded.

In most cases, violations involving unauthorized development may be resolved administratively, avoiding the possibility of court-imposed fines and penalties, by removal of the unpermitted development and restoration of any damaged resources or by obtaining an amendment to your Coastal Development Permit authorizing the development after-the-fact. Removal of the

development and restoration of the site may require an amendment to your Coastal Development Permit.

In order to resolve this matter administratively, you were previously requested to construct the required accessway improvements (stairs) per the approved plans and remove the fence, gate, unpermitted wooden stairs, and any other impediments to public access located in the lateral public access easement by April 15, 2005. You were also requested to contact me by March 15, 2005 to discuss a resolution of the remaining unpermitted development on the site consisting of the removal of native bluff-top vegetation, the installation of the landscaping on the bluff/headland, and the restoration and re-vegetation of the site to its original condition.

Although we would still prefer to resolve this matter administratively, we are obligated to inform you that if such resolution is not reached in a timely manner, Coastal Act Section 30820 (a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty of up to \$30,000. In addition, to such penalty, Section 30820 (b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

Finally, I must remind you that the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

In order to resolve the violation on your property in a timely manner and avoid the possibility of any court-imposed monetary penalty or fine, Please send me your written response and proposal for resolution by no later than **April 29, 2005**. That proposal will need to include construction of the required accessway improvements, per the approved plans, and removal of all development located in the lateral public access easement that impedes public access, to be completed immediately. We will still need to discuss the removal of the unpermitted landscaping and restoration of the bluff/headland to its original condition. I suggest that we talk after I have had the chance to review your proposal.

We hope that you will choose to cooperate in resolving this violation by meeting the above mentioned deadline and agreeing to complete the above mentioned work. If you do not, we will consider pursuing additional enforcement action against you.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me.

Sincerely,

N. Patrick Veasart
Southern California Enforcement Team Leader

Cc: Alan Block, Esq.
Lynn Heacox
Lisa Haage, Chief of Enforcement
Steve Hudson, Supervisor, Planning and Regulation
Gary Timm, District Manager
Linda Locklin, Manager, Coastal Access Program

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



21 July 2005

Alan Robert Block
1901 Avenue of the Stars, Suite 470
Los Angeles, CA 90067-6006

Re: Violation No. V-4-03-047 (Revell)

Dear Mr. Block:

I am in receipt of your letter dated April 29, 2005 regarding Notices of Violation sent by Commission staff to the Revells on March 1, 2005 and April 19, 2005. Thank you for your response.

Your letter makes it apparent that the Revells were aware of the lateral public access easement and requirement to build accessway improvements (stairs), as conditioned by CDP No. A-220-80, prior to their purchase of the property located at 32340 Pacific Coast Highway in the City of Malibu (APN 4473-014-009). Indeed, the Revells retained the services of Lynn Heacox while the property was still in escrow to investigate the access conditions of A-220-80, which were made known to them by a title report.

The Revells are on notice of the contents of recorded documents, including the Amended Irrevocable Offer to Dedicate ("Amended OTD"), Document No. 87-28221, recorded January 8, 1987. This recorded document states that the Coastal Commission granted CDP A-22-80 on November 19, 1980 in accordance with the "Staff Recommendation and Findings" attached as Exhibit B and incorporated into the Amended OTD. Condition of approval #1, as set forth in Exhibit B to the Amended OTD, requires an easement for public access from the mean high tide line to the base of the bluff, including "over the headland on the site..." Condition of approval #2 requires the improvements "to provide access from the shoreline to the headland accessway and back to the shoreline" to be completed prior to the occupancy of the residence. As you know, these improvements were not completed prior to occupancy of the residence, and although years have elapsed since the residence was occupied (in approximately 1987), the improvements to provide public access over the headland have not yet been constructed as required by the recorded documents. Exhibit D to the Amended OTD contains a "Map to Accompany Legal Description of Lateral Easements in Benton Property at 32320 Pacific Coast Hwy." This map shows the location of the required easement and the headland on the property.

In your letter, you also assert that the Revells were unclear as to the location of the "headland" referred to in the permit conditions prior to their purchase of the property,

could not obtain the Coastal Commission file to verify the location, and therefore should be relieved of the requirements of Condition 2 of CDP A-220-80. While it is true that Commission staff was unable to locate the physical permit files for A-220-80 and P-77-2107 when Mr. Heacox requested them in February 2004, we were able to locate the complete files in February 2005 and we provided them to Mr. Heacox at that time. Those files contain the approved plan for the stairs that must be built in the public access easement, over the bluff/headland that divides the beach at the base of the project site.

We believe that the permit conditions and the location of the public access are quite clear from the documents recorded in the Revell's chain of title. The recorded document (the Amended OTD) indicates that the access improvements required by Condition 2 were required to be located within the easement that, pursuant to Condition 1, would extend from the mean high tide line "for the width of the project site," including "over the headland." Moreover, Condition 2 specifies that the access improvements must go "from the shoreline to the headland accessway and back to the shoreline." In addition, as stated above, Exhibit D to the Amended OTD shows the location of the easement and the headland on the property. The headland is labeled as "ROCK" and extends into the Pacific Ocean. The map also identifies the "W'ly Beach" and "E'ly Beach" to the west and east of the "ROCK", respectively. The headland on the Revells' property is fully visible. "Headland" is defined as: "a promontory extending into a large body of water" [Webster's Desk Dictionary (1993) Random House]. There is only one headland or promontory on this property.

Accordingly, we do not agree that the Revells did not have notice of the location of the access improvements required on the property. Moreover, they knew before their purchase of the property that access improvements were required over the headland. We do not agree that inability to review the approved plans for those access improvements prior to their purchase can in any way eliminate the requirement to comply with Condition 2 of the CDP. The Revells' predecessors built the development that was authorized in the permit, thereby obtaining the benefits of the permit, and the Revells are now enjoying those benefits. Both the benefits and the burdens of CDP A-220-80 run with the land and the Revells, as the current owners of the property, are obligated to build the accessway improvements required by that permit as the conditions of the permit remain applicable and enforceable.

We also think the history of CDP A-22-80 is instructive. The South Coast Regional Commission approved an application by John Benton ("Benton") for residential development on the property in Permit No. P-77-2107. The conditions of approval required a 25-foot wide lateral access easement along the beach and an easement across the property for vertical access to the beach from Pacific Coast Highway. Benton appealed the permit action to the State Coastal Commission, which determined the appeal did not raise a substantial issue and declined to hear it. Benton then challenged the vertical access condition in court. (*Benton v. Coastal Commission* (L.A. Superior Court) No. C 238 910. The Superior Court ruled that the permit condition was valid and Benton filed an appeal (No. 2d Cv. 58866). While the appeal was pending,

Benton sought to settle the litigation by proposing an amendment to the permit. In the amendment, Benton proposed to eliminate the requirement for a vertical easement because the State had recently acquired El Matador and El Pescador beaches providing vertical access both upcoast and downcoast of the headland on Benton's property. In exchange for elimination of the vertical access, Benton also proposed to expand the width of the lateral access easement from 25 feet to include the entire sandy beach, and to construct an accessway over the headland on the site. The Commission approved this amendment, and renumbered the permit A-220-80. The Commission found: "Since vertical access is available to the beaches adjacent to the site and because continuous lateral public access will be provided the Commission finds that this project can be approved without a dedication of vertical access. The Commission concludes that as conditioned to require the dedication *and provision of lateral access*, the project is consistent with Sections 30210-30212 of the Coastal Act. (Exh. B to Amended OTD, p. 3) (emphasis added). The fact that the property owner would provide the improvements needed for continuous lateral access across the site, rather than just an easement, was relied on in the Commission's approval of the project. As subsequent owners, the Revells have no basis for eliminating this permit requirement.

Additionally, as explained in the Notice of Violation, there are additional violations currently onsite including wooden stairs; gate; fence; removal of native vegetation and landscaping - some of which are actually located in, and blocking, the lateral public access easement.

Removal of Native Bluff-top Vegetation and Landscaping

Our review of aerial photographs reveals that the installation the landscaping (lawn) and clearance of native vegetation occurred sometime during or after 2001. Photographs also demonstrate that while the top of the bluff/headland was sparsely vegetated (possibly due to human activity) prior to the installation of the landscaping, native vegetation was present and was removed and replaced by an irrigated lawn. Irrigation on a coastal bluff can increase erosion and cause instability.

The removal of native vegetation, grading, and installation of a lawn are development as defined by Section **30106** of the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....

Coastal bluffs are considered to be Environmentally Sensitive Areas as defined by Section **30107.5** of the Coastal Act:

“Environmentally sensitive area” means 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.

Section **30240** of the Coastal Acts states:

(a) 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.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section **30251** of the Coastal Act 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 subordinated to the character of its setting.

Section **4.27** of the City of Malibu LCP Land Use Plan states that:

All new development located on a blufftop shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion for a projected 100 year economic life of the structure plus an added geologic stability factor of 1.5. In no case shall the setback be less than 100 feet which may be reduced to 50 feet if recommended by the City geologist and the 100 year economic life with the geologic safety factor can be met. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area to a minimum distance of 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist or Geotechnical Engineer.

Section **4.29** of the City of Malibu LCP Land Use Plan states that:

No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

Finally, as cited in your letter, Title 14 Section **13250(b)** states (in part) that:

Pursuant to Public resources Code Section 30610(a), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effects:

(2) Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas;

The landscaping on the bluff/headland is unpermitted development, located within 50 feet of the edge of a coastal bluff and in an environmentally sensitive area and therefore is not exempt from coastal permit requirements under 14, Cal. Code of Regs., section 13250(b) (and Malibu LCP Implementation Plan Chapter 13.4). The landscaping violates the policies in the Coastal Act cited above and the City of Malibu's certified LCP and requires a coastal development permit.

Wooden Stairs

We have, in our files, a 1977 photo taken onsite that shows wooden stairs in the approximate location of where they are located today (on the upcoast side of the bluff/headland). A copy of this photo is enclosed. By comparing that photo to photos taken onsite in 2004, Commission staff has determined that the wooden stairs onsite today are not the same wooden stairs in the 1977 photo. The wooden stairs onsite today were constructed sometime after 1977, are not "pre-coastal" development, and, therefore, require a coastal development permit. Furthermore, they are located in a lateral public access easement in a location that precludes construction of the steel stairs required by Special Condition No. 2 of CDP A-220-80.

As you point out in your letter, the Commission was aware of the presence of a set of wooden stairs (described as "...little more than a ladder type of stairway...") on the upcoast side of the bluff/headland at the time CDP A-220-80 was approved. However, there is no evidence in the record to indicate whether the stairs extant at that time were legally constructed or not. In any event, it is clear that the Commission required that the existing wooden stairway be replaced with steel stairs per the approved plans as required by Special Condition No. 2 of CDP A-220-80.

Locked Gate and Fence on Bluff/Headland

Our review of aerial photographs indicates that the gate and fence on the upcoast side of the bluff/headland were constructed sometime during or after 2001. (Copies of these photos are also enclosed). We have researched our permit files and have found no evidence of a coastal development permit issued or applied for this development. While the gate and fence may have been extant at the time the Revell's purchased the property, they are still unpermitted development which is, moreover, located in and blocking a public access easement. They are located within 50 feet of the edge of a

coastal bluff and within ESHA, and therefore are not exempt from coastal permit requirements.

State Lands Commission

As you point out in your letter, The State Lands Commission accepted the Offer To Dedicate in 2003 and now holds the lateral public access easement across the subject site. In general, when any repair or maintenance of the access improvements in a easement becomes necessary, the easement holder may conduct the necessary repair or maintenance activities, may enter into an agreement providing for another entity to conduct any necessary repair or maintenance activities, or may transfer the easement to another entity that will carry out these responsibilities.

Statute of Limitations

In your letter, you make the assertion that Commission staff should have known of the violation on the subject property as early as 1987 and that our ability to recover civil fines or penalties is subject to a statute of limitations which has run out. As you know, Special Condition Two (2) of CDP A-220-80 states:

Prior to issuance of the permit, the applicant shall submit plans, for the review and approval in writing of the executive Director, showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with the approved plans shall be completed prior to occupancy of the residence approved herein.

The plans for the accessway improvements were approved by the Commission on 8/15/86. The "final date" on the building permit issued by LA County Dept of Building and Safety is 9/2/87. There is nothing in the record that indicates when "occupancy" actually occurred, but it would be safe to assume that it was sometime after this final date. The plans were submitted for approval, as required, and the Coastal Commission had no reason to believe that the accessway improvements were not completed prior to occupancy, as also required.

As you mention in your letter, we did open a violation file on the subject property (V-5-87-125) on 4/9/87 for a completely different and unrelated violation - the reported construction of a fence. We no longer have a file for V-5-87-125, but the logbook indicates that the case was closed. We do not know if a site visit was made, if there was an actual violation, if the reported fence was temporary, or if the owner simply removed the fence when asked to. More relevantly, we do know that the issue was resolved and that the violation was opened approximately five months *before* the earliest date that occupancy is likely to have occurred, therefore Commission staff could not have determined non-compliance with Special Condition 2 of CDP A-220-80 at that time.

In fact, the first time we became aware of this violation was in late 2003. On November 5, 2003, we received an anonymous letter and full-page magazine advertisement of the sale of the subject property. In that ad were photos of the unpermitted landscaping, stairs, fence, and gate on the bluff/headland. In the course of investigating those violations, we also became aware of possible non-compliance with the conditions of the underlying permit and subsequently opened Violation File No. V-4-03-047. A site visit on March 11, 2004, and review of the permit files for CDP A-220-80 and P-77-2107 in February 2005 confirmed the violations and we sent a Notice of Violation to the property owner on March 1, 2005.

The unpermitted development discussed above and the failure to comply with conditions of CDP A-220-80 are ongoing violations of the Coastal Act. There is clearly no statute of limitations that prevents administrative orders by the Commission and/or injunctive relief by a court to address continuing violations of the Coastal Act. We also do not agree with your assertion that no penalties are available for a continuing violation of the Coastal Act that began more than three years ago.

Non-compliance With Special Condition 2 of CDP A-220-80

In your letter, you make the assertion that the stairs cannot be built *exactly* per the approved plans as required by Special Condition 2 of CDP A-220-80 because conditions have changed and the approved plans are not in compliance with current requirements of the Uniform Building Code (UBC). It is not surprising that conditions have changed in the years since the permit was approved. The beach is a dynamic environment, subject to seasonal change as well as long term change such as bluff retreat.

Likewise, the UBC is also subject to change and is updated regularly. It is to be expected that, given the long delay in compliance with the conditions of CDP A-220-80, adjustments to the design of the stairs would be required to adapt to changes in both the physical environment and the regulatory environment. Commission staff believes that said adjustments could be made without significant departure from the basic approved design of the stairs.

The approved plans were for pre-manufactured steel stairs, anchored to poured concrete footings (top and bottom), capable of carrying a live load equal to 100 lbs per sq. ft., with MC channel stringers and 1 1/4-inch steel tube railings. There is no reason that we can think of why stairs that meet these basic design criteria cannot be built to fit the existing physical environment and comply with current rise/run, railing, landing, etc requirements of the UBC. In addition, we do not believe that strict compliance with the UBC standards for stairs is a requirement at this location, since they are not attached to any structure, and provide public recreational access to an undeveloped portion of beachfront property.

You also assert that there is a sea cave that prevents construction of the stairs on the headland. This assertion appears to be speculative and unsupported. The

Commission's Coastal Engineer visited the site on 7/6/05 and determined that there weren't any apparent physical barriers to the construction of the stairs. Additionally the headland is apparently stable enough for the Revells to use it for their personal recreation. Thus, this is not a basis for non-compliance with CDP A-220-80.

Your clients were given a deadline to build the stairs by April 15, 2005. That deadline was extended to April 29, 2005. They have failed to meet either deadline and instead have asserted that they are not required to comply with the conditions of approval of CDP A-220-80. As explained above, we do not agree. Your clients must construct the approved stairs, generally in accordance with the approved plans. The plans are not so detailed that they foreclose modifications such as extending the length of the stairs to reach the beach, decreasing the height of the risers, increasing the height of railings, and adding a landing. If your clients wish to submit revised plans for the stairs to Commission staff, they may do so, but this is not necessary.

Therefore, we request that within 30 days of the date of this letter, the Revells begin construction of the accessway improvements and complete it within 90 days; or submit revised plans and agree to begin construction within 30 days after those plans are reviewed and approved by Commission staff; and remove the unpermitted development and allow public use of the lateral public access easement as required. Please notify me by close of business on **July 29, 2005** if your clients intend to take one of these actions to resolve this matter.

If you have any questions about this letter or previous letters, please feel free to call me at: 805.585.1800.

Sincerely,

N. Patrick Veesart
Southern California Enforcement Team leader

**cc: Lisa Haage, Chief of Enforcement
Sandy Goldberg, Staff Counsel
Tom Sinclair, District Enforcement Analyst
Christine Chestnut, Statewide Enforcement Analyst
Gary Timm, District Manager
Steve Hudson, Planning Supervisor
Linda Locklin, Coastal Access Manager
Shawn Nelson, State Lands Commission
Gail Sumpter, City of Malibu**

**Enc: 2001 aerial photograph
2002 aerial photograph
1977 site photograph of stairs
2004 site photograph of stairs**

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**VIA CERTIFIED AND REGULAR MAIL
(Article No. 7004 2510 0006 9122 7244)**

September 9, 2005

Mr. and Mrs. Graeme Revell
6084 John Muir Road
Hidden Hills, CA 91302-1244

**Subject: Notice of Intent to Record a Notice of Violation of the Coastal Act
and to Commence Cease and Desist Order and Restoration Order
Proceedings**

Violation No.: V-4-03-047

Location: 32340 Pacific Coast Highway, Malibu, Los Angeles County
APN 4473-014-009

Violation Description: Unpermitted development within a public access easement, consisting of a locked gate, fence, wooden stairs, removal of native bluff-top vegetation, and landscaping; Noncompliance with Special Conditions of the amended Coastal Development Permit No. A-220-80, involving failure to construct required public access improvements across the headland and obstructing the required public access easement.

Dear Mr. and Mrs. Revell:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for the issuance of Cease and Desist and Restoration Orders to compel: 1) removal of unpermitted development from the property; and 2) compliance with existing Coastal Development Permit (CDP) No. A-220-80. Unpermitted development activities, consisting of a locked gate, fence, wooden stairs, removal of native bluff-top vegetation, and landscaping, were conducted on property that you own, located at 32340 Pacific Coast Highway, in Malibu, Los Angeles County ("the property"). Much of this unpermitted development lies within the public access easement required by CDP No. A-220-80. Additionally, public access improvements required under CDP No. A-220-80 are not present on the property, and public access to and over the headland has been completely obstructed, in

violation of the easement required by the existing permit and the resource protection policies of Chapter 3 of the Coastal Act.

The property is a 4.39-acre property, located on a coastal bluff, approximately .2 miles upcoast from El Matador State Beach and approximately .8 miles downcoast from El Pescador State Beach. The property contains a headland that extends from the coastal bluff, on which the gate and fence are built, blocking public access between beaches east and west of the headland. In 1978, the Commission approved CDP No. P-10-20-77-2107, sought by a previous owner for construction of a residence on the property. The Commission attached special conditions to the permit requiring the recordation of a deed restriction providing a vertical access easement to the beach from Pacific Coast Highway and a lateral access easement from the mean high tide line inland 25 feet.

The lateral access easement specifically includes access across the headland. In 1980, the previous owner sought to amend the existing permit to modify the design of the residence and to remove the vertical access condition from the 1978 permit in exchange for expanding the lateral access easement to the base of the bluff and constructing a public accessway over the headland. Since the existing permit was issued, the State had acquired El Matador Beach and El Pescador State Beaches, providing vertical access both upcoast and downcoast of the headland. Thus, the Commission approved the amendment, resulting in CDP No. A-220-80.

Special Condition 1 of CDP No. A-220-80 states in relative part:

...The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement shall extend from the mean high tide line to the base of the bluff for the width of the project site and shall include one easement area, conforming to the plans attached in Exhibit 2, over the headland on the site for pedestrian access and viewing...

The offer shall run with the land...binding successors and assigns of the applicant or landowner. (emphasis added)

The permit also has a condition to implement the property owner's proposal to construct a public accessway over the headland. Special Condition 2 of CDP No. A-220-80 states:

Prior to issuance of the permit, the applicant shall submit plans, for the review and approval in writing of the Executive Director, showing proposed improvements to provide access from the shoreline to the headland accessway and back to the shoreline. Improvement of this accessway in accordance with the approved plans shall be completed prior to occupancy of the residence approved herein.

The above-mentioned plans were submitted and received approval by the Executive Director on August 15, 1986. The plans provided for the construction of two steel staircases, anchored to

poured concrete footings (top and bottom), on either side of the headland and a ten-foot wide lateral public accessway across the top of the headland.

On June 2, 1982, the previous owner recorded an Irrevocable Offer to Dedicate (OTD), Document No. 87-28221, pursuant to Special Condition 1. The OTD incorporated the language of Special Condition 1 and stated that, but for the imposition of Special Condition 1, the development proposed under the permit would be inconsistent with Coastal Act Sections 30210 through 30212, and would not have been granted.

On January 8, 1987, an amended OTD was recorded, to provide a full and complete legal description of the easement area. Both the original OTD and the amended OTD clearly stated that lateral public access was to be provided "over the headland". In addition, the amended OTD also included a metes and bounds description and maps, labeled as Exhibit D, which provided the exact location of the easement, including the location of the easement across the headland. Although the headland was called "rock" on the map, it is an easily distinguished landform, and the easement is clearly visible across it.

The OTD was accepted by the State Lands Commission on July 10, 2002. However, we note that currently, the lack of the access improvements which are required under the existing permit, as well as the presence of a locked gate and fence with barbed wire within the easement area preclude the public from accessing the headland and utilizing the headland access easement. Continuous public access is obstructed, in direct violation of Special Condition 1 of the permit for this property.

As you may be aware, Coastal Act Section 30212 states, in relevant part:

Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Although your counsel has suggested that the improvements required by CDP No. A-220-80 may have been previously constructed and since destroyed, we are aware of absolutely no evidence that these improvements were constructed. Moreover, no portion of the approved construction is visible in the multi-year aerial photographs examined by Commission staff in this matter. The residence, however, was built and occupied prior to the construction of the public access improvements required by the permit, in violation of Special Condition 2 of CDP No. A-220-80. As you are aware, these elements required by Special Condition 2 are not currently in place, nor is there any evidence that the improvements were ever constructed and subsequently destroyed. Both the benefits and the burdens of a permit, including all conditions, run with the permit and apply to subsequent purchasers of the property. Moreover, in this case, the requirements of the permit were commemorated in legal restrictions applying to the property, which by their very terms specifically apply to all subsequent purchasers. In addition, these legal restrictions were validly recorded and in the chain of title and putting parties on notice prior to your purchase of the property, and therefore apply to you. Therefore, as noted below, we previously contacted you on March 1, 2005, April 19, 2005, and July 21, 2005 in order to obtain compliance with the

permit and to resolve the outstanding violations of its conditions. As noted below, this has not yet been successful, and therefore we are, sending you by this letter formal notice of proceedings under the Coastal Act.

The purpose of these enforcement proceedings is to issue a Cease and Desist Order and a Restoration Order and record a Notice of Violation. Collectively, the Cease and Desist and Restoration Orders will direct you to 1) remove the unpermitted development from the property and 2) comply with the Special Conditions of CDP No. A-220-80.

History of the Violation

On November 5, 2003 Commission staff received an anonymous report that a fence and locked gate had been erected on the property, impeding access to the headland. Subsequent review of aerial photographs confirmed the presence of such a fence and gate, and confirmed that the development at issue occurred between 2001 and 2002.

During the course of the investigation into this violation, Mr. Lynn Heacox contacted Commission staff. You, Graeme and Barbara Revell, as potential buyers of the property, had hired Mr. Heacox to obtain information about the recorded OTD, discovered during the course of a preliminary title search obtained on or about February 2004. You stated that you had obtained copies of the OTD and the amended OTD. However, you asserted that only three exhibits were attached: a complete legal description of the property, a copy of a memorandum pertaining to CDP No. A-220-80 that contained the exact language of Special Conditions 1 and 2, and the legal description of the lateral access easement. These documents provided you with notice of the OTD as well as the requirement for construction of the access improvements.

Mr. Heacox stated that you were in escrow to purchase the property, and asked to obtain the permit files for A-220-80. The files were archived and Commission staff had difficulty obtaining them. However, the files were located in February 2005 and provided to Mr. Heacox at that time, as requested. Upon review of the permit files, and in light of information obtained during a March 11, 2004 site visit, Commission staff confirmed that the access improvements were not built as required under the amended permit, and, in addition, that the locked gate, fence, landscaping, and vegetation removal were not authorized by the permit and, therefore, constituted unpermitted development. Consequently, Commission staff sent a Notice of Violation to you on March 1, 2005, for both the permit violations and for the unpermitted development.

Commission staff made numerous attempts to resolve this matter administratively, through the initial Notice of Violation dated March 1, 2005, as well as subsequent letters dated April 19, 2005, and July 21, 2005. Each letter provided ample time for you to respond and voluntarily resolve the violations. In correspondence to Commission staff, you assert that compliance should not be required because delays have led to changes in conditions on site, which in turn have led to deficiencies in the approved plans for the stairs up and down the headland identified by an engineer who you retained. Commission staff notified you that changes to address the

issues identified by your engineer may be made either during construction of the stairs, or you may submit revised plans showing the changes proposed to accommodate your concerns, prior to construction. Those concerns relate to including a landing, modification to the run and rise, and the need to make the stairs longer to adjust to changes in elevation at the base of the headland, and do not require any fundamental changes. Rather than choosing either of these options, you have indicated that you are not willing to construct the stairs. Since the attempts to resolve this were unsuccessful, as Executive Director, I have decided to commence Cease and Desist and Restoration Order proceedings, pursuant to Coastal Act Sections 30810 and 30811 in order to bring your property into compliance with the Coastal Act and with the existing CDP.

Notice of Violation

The Commission's authority to record a Notice of Violation is set forth in Section 30812 of the Coastal Act, which states the following:

(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

I am issuing this notice of intent to record a Notice of Violation because the development described above has occurred in violation of the Coastal Act at the subject property. This determination is based on observations of the site by Commission staff on March 11, 2004, on photographs of the site taken by Commission staff on March 11, 2004; review of aerial photographs; review of Commission permit history (CDP No. P-10-20-77-2107 and CDP No. A-220-80) and; review of historical photographs from the permit files.

In our letter dated March 1, 2005, we notified you of possible enforcement under the Coastal Act including the possibility of the recordation of a Notice of Violation against your property. If you object to the recordation of a Notice of Violation in this matter and wish to present evidence to the Coastal Commission at a public hearing on the issue of whether a violation has occurred, **you must respond, in writing, within 20 days of the postmarked mailing of this notification.** If, within 20 days of mailing of this notification, you fail to inform the Commission of an objection to recording a Notice of Violation, I shall record the Notice of Violation in the Los Angeles County recorder's office as provided for under Section 30812 of the Coastal Act. The Notice of Violation will become part of the chain of title of the subject property, and will be subject to review by potential buyers.

If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, to the attention of Christine Chestnut, no later than September 30, 2005. Please include the evidence

you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider.

Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Coastal Act Section 30810(a), which states the following:

If the commission, after public hearing, determines that any person or governmental agency 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 or governmental agency to cease and desist.

Section 30600(a) of the Coastal Act states that development activity in the coastal zone requires a coastal development permit (CDP) before that development can occur. "Development" is defined in Section 30106 of the Coastal Act as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreation use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... (emphasis added)

Construction of the locked gate, fence, and wooden stairs, as well as the vegetation removal, and landscaping activities conducted on the property constitute development under Section 30106 and occurred in the Coastal Zone. The cited development is therefore subject to the permit requirement of Section 30600(a). No CDP permit application was submitted for the cited development and, accordingly, no CDP was issued.

In addition to constituting unpermitted development, as noted above, the presence of the cited development within the public access easement and obstructing access from one side of the headland to the other violates CDP No. A-220-80. Furthermore, the access improvements required under Special Condition 2 of the permit are not present on the property, in violation of the permit.

Under Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material. Pursuant to Section 30810(a) and 30810(b), I am issuing this notice of intent to commence Cease and Desist Order proceedings to: 1) compel removal of unpermitted development; 2) order compliance with the requirements of CDP No. A-220-80 and; 3) prevent future unpermitted development on the property.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site under the following terms:

In addition to any other authority to order restoration, the commission... 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... the development is inconsistent with this division, and the development is causing continuing resource damage.

I have determined that the cited development meets the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development consisting of a locked gate, fence, wooden stairs, removal of native bluff-top vegetation, and landscaping has occurred on the property. Much of this development lies within a lateral public access easement, obstructing beach access from one side of the headland to the other side.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including but not limited to the following:
 - a) Section 30210 [provision of maximum access and recreational opportunities]
 - b) Section 30211 [development shall not interfere with public access],
 - c) Section 30212 [provision of public access with new development],
 - d) Section 30240 [protection of environmentally sensitive habitat areas]
 - e) Section 30251 [protection of scenic and visual qualities of coastal areas]
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted the resources listed in the previous paragraph (including access). Such impacts meet the definition of damage provided in Section 13190(b): "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." All of the impacts from the unpermitted development continue to occur at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have concluded it is necessary to commence a Restoration Order proceeding before the Commission, in accordance with Section 13196(e) of the Commission's regulations, which states the following:

Any term which the Commission may impose which requires the removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.

Accordingly, any Restoration Order that the Commission may issue in this matter will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the aforementioned unpermitted development.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Christine Chestnut, no later than September 30, 2005.**

Commission staff tentatively intends to schedule the hearings for the Cease and Desist and Restoration Orders for the Commission meeting that is scheduled for November 15-18 in Los Angeles. As always, we are more than willing to discuss a timely and amicable resolution of this matter. If you would like to discuss resolution of this matter via a Consent Order, please contact us immediately. If you have any questions regarding this letter or the enforcement case, please call Christine Chestnut at (415) 904-5200 or send correspondence to her attention at the address provided on the letterhead.

Sincerely,

PETER M. DOUGLAS

Executive Director

Enclosure Statement of Defense form

cc (without Encl): Lisa Haage, Chief of Enforcement
 Sandy Goldberg, Staff Counsel
 Pat Veasart, Southern California Enforcement Team Leader
 Steve Hudson, Supervisor, Planning and Regulation
 Alan Block, Attorney for Mr. and Mrs. Revell
 Christine Chestnut, Headquarters Enforcement Analyst