

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
TELEPHONE AND TDD (415) 904-5200

Th 11

Staff: RS-SF
Staff Report: February 15, 1997
Hearing Date: March 12, 1997
Commission Action:

STAFF RECOMMENDATION FOR RESCISSION OF CEASE & DESIST ORDER

CEASE AND DESIST ORDER: CCC-96-CD-01

DATE ORDER ISSUED: March 13, 1996

RELATED VIOLATION FILE: V-4-95-038

PERSON SUBJECT TO THE ORDER: Southern Pacific Transportation Company (SPT Co.)
c/o Paula Amanda, Assistant General Attorney
1 Market Plaza, 8th Floor,
San Francisco, CA 94105

AGENT / ATTORNEY: Paul Minault
120 Montgomery Street, Suite 2290
San Francisco, CA 94105

**DESCRIPTION AND LOCATION OF
PROPERTY SUBJECT TO THE ORDER:** A strip of Santa Barbara County owned land
immediately adjacent to a parking area owned by SPT
Co.. The parking area is situated off an unnamed paved
turnout road, approximately 175 feet long, running west
off West Ocean Avenue. The parking area is about one
mile south of the Surf Ocean Beach Park, in Santa
Barbara County. (Exhibit #1)

**ACTIVITY PROHIBITED BY THE
ORDER:** The order prohibits SPT Co. from maintaining in a
closed and/or locked condition a gated vehicular
barricade that SPT Co. erected on the above referenced
property. The order also requires SPT Co. to apply for a
coastal development permit requesting authorization to
retain or remove the gate.

SUBSTANTIVE FILE DOCUMENTS: Executive Director's Cease and Desist Order No. ED-95-CD-01
Executive Director's Cease and Desist Order No. ED-95-CD-02

I. SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission rescind Commission Cease and Desist Order No. CCC-96-CD-01 because SPT Co. and Santa Barbara County's agreements to keep the gate open, eliminates the need for the subject order.

II. MOTION:

Staff recommends adoption of the following motion:

I move that the Commission rescind Cease and Desist Order No. CCC-96-CD-01.

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present and voting is necessary to pass the motion.

III. PROPOSED FINDINGS:

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

A. Commission Rescission Authority

The Commission has legal authority to modify or rescind a cease and desist order pursuant to section 13188(b) of the California Code of Regulations (Title 14). Section 13188(b) provides:

The commission, after public hearing may rescind or modify a cease and desist order that it has issued. A proceeding for such a purpose may be commenced by (1) any person to whom the cease and desist order is directed, (2) the executive director or (3) any two members of the commission. Upon receipt of a request pursuant to this subsection (b) for rescission or modification of a cease and desist order issued by the Commission, a hearing on the request shall be held at the next regularly scheduled meeting or as soon thereafter as is practicable after notice to all persons subject to the order or whom the executive director otherwise has reason to believe would be interested in the matter.

B. Alleged Violation of Description

The alleged violation consists of a development, as defined in the Coastal Act section 30106, including, but not limited to, the unpermitted construction, erection and/or placement, on August 7, 1995, of a locked gate that blocked vehicular access to a parking area that provided support parking for recreational beach users. SPT Co. performed this development activity without the benefit of an approved Coastal Development Permit as required by Coastal Act section 30600.

C. Background

On March 13, 1996 the Commission, by a vote of 11-0, issued Cease and Desist Order No. CCC-96-CD-01 to SPT Co.. The events that led to the issuance of this order included two Executive Director's Cease and Desist Orders. The Executive Director's orders were preceded by a telephone call from a confidential informant to Commission staff on August 8, 1995, who stated that SPT Co. had constructed the subject gate that day. This was the first occasion on which Commission staff was informed of the alleged violation. CCC-96-CD-01 ordered SPT Co. to comply with the following:

A. Refrain from engaging in or maintaining at the property any development activity without first obtaining from the Commission a coastal development permit (CDP) which authorizes such activity. Specifically, until such time as the administrative procedures specified in paragraphs b) and c) below are completed, SPT Co. shall maintain the gate in an unlocked condition;

B. Within 90 days of issuance of this order, i.e. by June 12, 1996, SPT Co. shall submit to the Coastal Commission a CDP application requesting either: 1) after-the-fact Commission authorization to retain the gate, or 2) Commission authorization to remove the unpermitted development. This deadline may be extended by the Executive Director for good cause. An extension request must be in writing to the Executive Director and received by Commission staff at least 10 days prior to the expiration of the subject deadline.

C. Submit, within 30 days of action by the Commission to deny a request to retain the development, a Coastal Development Permit application requesting authorization to remove the unpermitted development.

D. Fully comply with the terms and condition of any of the above required CDP(s) as approved by the Commission.

(Exhibit #2)

On May 21, 1996, Paul Minault, attorney for SPT Co., requested in a letter to Commission staff to hold the Cease and Desist Order in abeyance and extend the June 12, 1996, deadline to file for a CDP for the gate to November 21, 1996. SPT Co. requested this extension to allow Santa Barbara County time to complete the purchase of the parking area along with the gate and begin the permitting requirements for the associated improvements. Commission staff granted SPT Co.'s extension request.

On November 12, 1996, Paul Minault, on behalf of SPT Co., requested an extension until May 21, 1997. Minault indicated that the County purchase of the parking lot was still pending and that the County was pursuing funding to create an at-grade pedestrian crossing as part of the their plans to upgrade the Surf railroad station. **(Exhibit #3)**

D. Current Status

In a telephone conversation with Commission staff on January 6, 1997, Erich Brown, Project Manager of the General Services Department, Santa Barbara County, stated that the County was preparing a Coastal Development Permit application for certain improvements as part of a new Amtrak Station at Surf. The improvements are:

1) Parking area and gate: The parking area will be lighted and accommodate parking for 40 cars (2 handicapped-accessible stalls included) and 1 bus. The subject gate will be retained for security purposes during the night hours or may be removed if the County finds it infeasible to operate.

2) At-grade pedestrian crossing and two restroom facilities: The crossing consists of a flat concrete pedestrian surface 10 ft. wide and 100 ft. long, which will be electronically alarmed with auditory and visual warning devices.

3) Boarding platform: The train boarding platform consists of a cast concrete surface 16 ft. wide and 800 ft. long and is 8 inches above the top of the main railroad track. The platform will be lighted and shall accommodate five canopy structures with benches. The platform will be accessed by a concrete ramp from the parking area.

On November 12, 1996, Joan Cardellino, Public Access Program Manager for California State Coastal Conservancy, sent a letter to Erich Brown, Project Manager, General Services Department, County of Santa Barbara, stating that the Conservancy staff were preparing to recommend that the Conservancy Board approve a grant of \$80,000 to the County, to help fund the at-grade railroad crossing and the restroom facility as part of the improvements at Surf Station. (On February 13, 1997, Karen Rust, staff member of the Coastal Conservancy telephoned Commission staff and stated that the Conservancy staff were preparing a staff report, recommending to the Conservancy Board for approval of the grant of \$80,000 to the County. According to Rust, the report will be presented at the next meeting of the Conservancy Board scheduled for March 27, 1997.)

On December 17, 1996, the Santa Barbara County Board of Supervisors awarded to the General Services Department of Santa Barbara County, a challenge grant of \$120,000 for the pedestrian crossing at Surf Station, as part of the funding program from the County's Coastal Resource Enhancement Fund (CREF).

As a result of the facts that: 1) Santa Barbara County and SPT Co. are engaged in negotiations for the sale of the parking lot at Surf and 2) the County is actively preparing a permit request that will include the gate to the parking lot, Commission staff proposed to make a recommendation to the Commission for the rescission of the Cease and Desist Order No. CCC-96-CD-01. In letters to SPT Co. and the County dated January 16 and 17, 1997, respectively, Commission staff stated that this recommendation was contingent on obtaining an agreement between the Commission, SPT Co. and the County of Santa Barbara as follows:

SPT Co.

1. Until such time as either the County's development plans are implemented or, in the alternative, the Commission grants in some other manner a permit for the gate, SPT Co. will keep the gate in an open, unlocked condition.

2. SPT Co. will refrain from engaging in or maintaining at the property any development activity without obtaining from the Commission a CDP which authorizes such activity.

By confirmation dated January 30, 1997 SPT Co. agreed to the conditions. **(Exhibit #4)**

Santa Barbara County

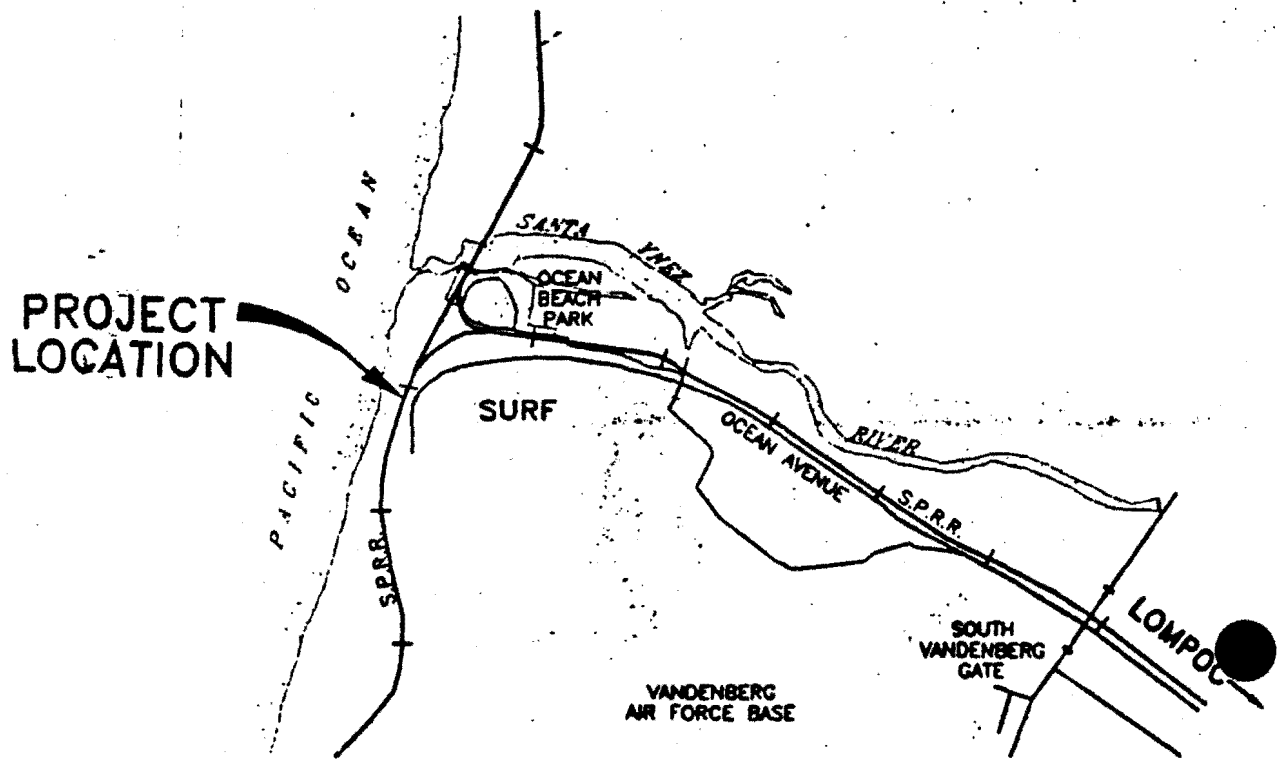
1. If it wishes to retain the gate the County agrees to apply for a CDP for the gate, as part of the overall permit application for the parking lot (with the restrooms), the 800 ft. long platform and the pedestrian crossing.
2. Until such time as either the above-described development plans are implemented or, in the alternative, the Commission grants in some other manner a permit for the gate, the County will keep the gate in an open, unlocked condition.
3. The County will refrain from engaging in or maintaining at the property any development activity without obtaining from the Commission a CDP which authorizes such activity.

By confirmation dated January 27, 1997, Santa Barbara County agreed to the conditions. **(Exhibit #5)**

On February 7, 1997, Paul Minault, attorney for SPT Co., sent a letter to Erich Brown authorizing Santa Barbara County to apply to the California Coastal Commission for a coastal development permit for the improvements at the parking area at Surf. **(Exhibit #6)**

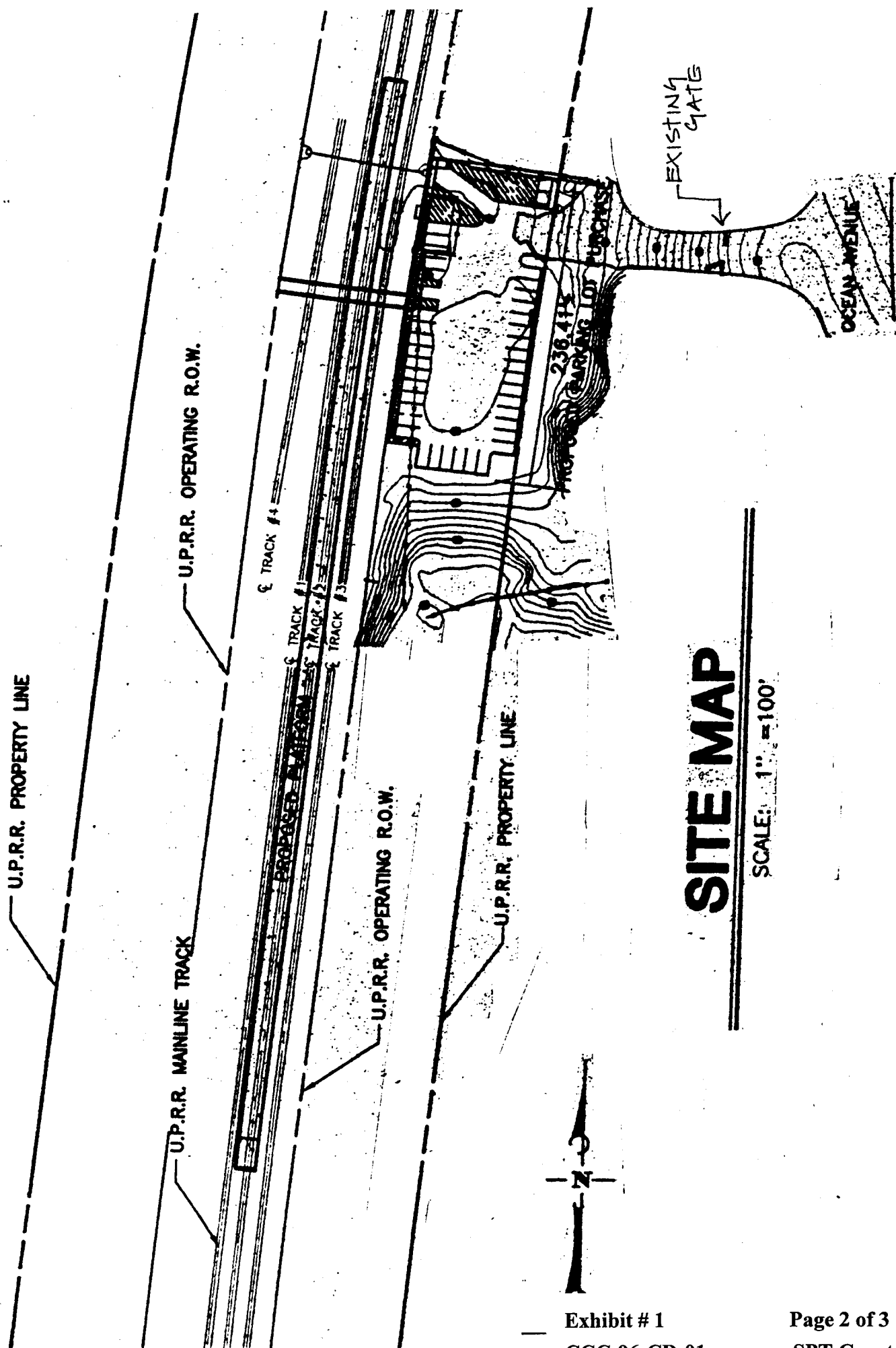
E. Conclusion

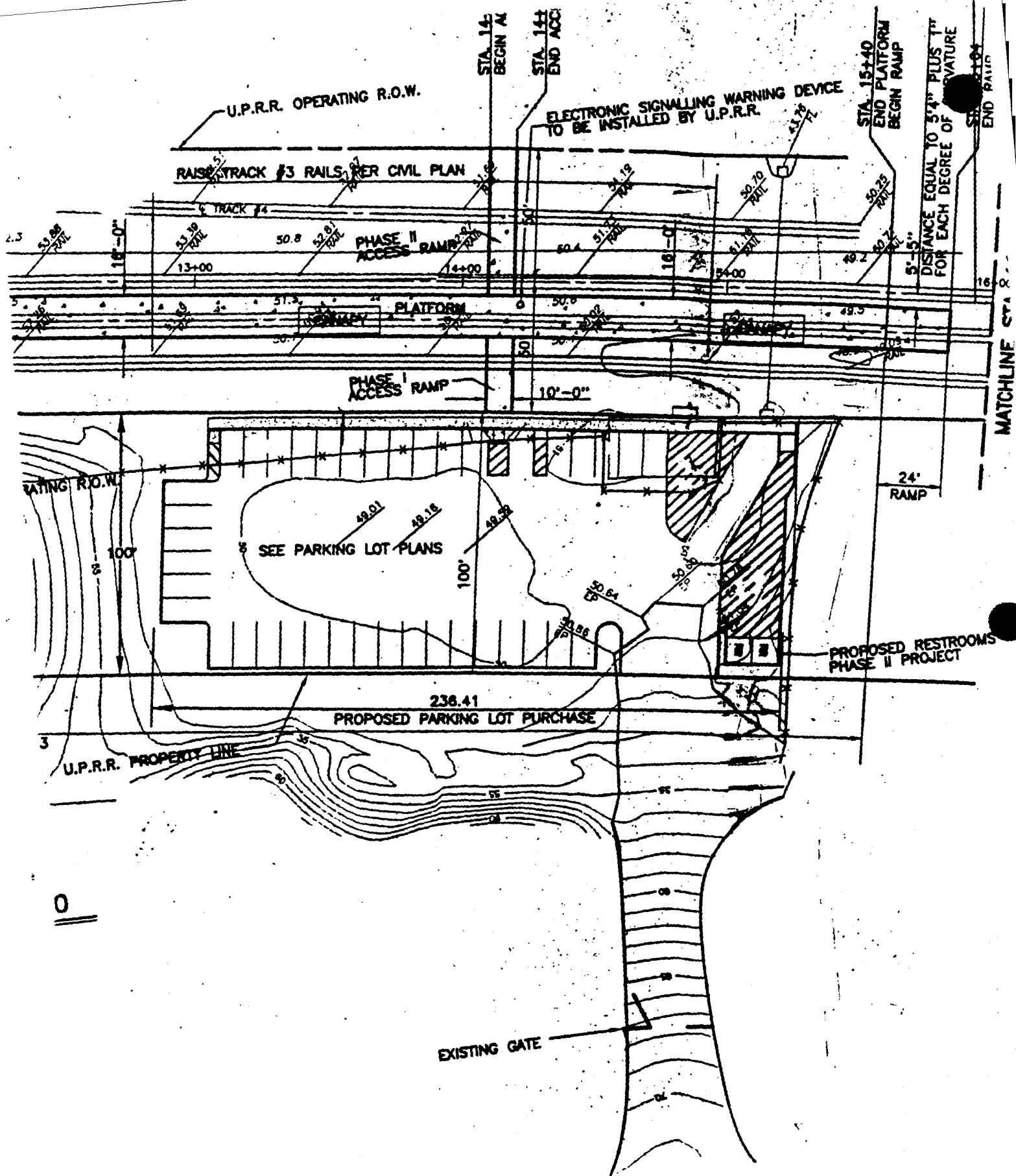
Since SPT Co., and the County have formally agreed in writing to keep the gate open, and the County is applying for a CDP to permit the gate as part of an improvement plan for the Surf Station, the Commission finds that rescission of the subject Cease and Desist Order is appropriate.



VICINITY MAP

N.T.S.





CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

VOICE AND TDD (415) 904-5200

March 20, 1996

Paul Minault, Esq.
120 Montgomery Street, Suite 2290
San Francisco, California 94104

Subject: Commission Cease and Desist Order No. CCC-96-CD-01 (SPTCo)

Date Issued: March 13, 1996

Dear Mr. Minault:

On March 13, 1996, by a vote of 11 in favor and none opposed, the California Coastal Commission issued permanent Cease and Desist Order No. CCC-96-CD-01 to SPTCo, as follows:

CEASE AND DESIST ORDER

Pursuant to its authority under California Public Resources Code section 30810, the California Coastal Commission hereby orders SPTCo, all its agents, and any other persons acting in concert with any of the foregoing to cease and desist from: (1) engaging in any further development at the property without first obtaining from the Commission a combined consistency certification and coastal development permit (CDP) which authorizes such activity; and (2) continuing to maintain any development at the property that violates the California Coastal Act. Accordingly, all persons subject to this order shall fully comply with paragraphs A, B, C and D as follows:

A. Refrain from engaging in or maintaining at the property any development activity without first obtaining from the Commission both a consistency certification and CDP which authorizes such activity. Specifically, until such time as the administrative procedures specified in paragraphs B and C below are completed, SPTCo shall maintain the gate in an unlocked condition.

B. Within 90 days of issuance of this order, i.e. by June 12, 1996, SPTCo shall submit to the Coastal Commission a combined consistency certification and CDP application requesting either: 1) after-the-fact Commission authorization to retain the gate; or 2) Commission authorization to remove the unpermitted development. This deadline may be extended by the Executive Director for good cause. An extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

C. Submit, within 30 days of action by the Commission to deny a request to retain the development, a combined consistency certification and CDP application requesting authorization to remove the unpermitted development.

III. DESCRIPTION OF ACTIVITY

The activity that is the subject of this order includes but is not limited to the unpermitted placement, construction and/or erection, on August 7, 1995, of a fence and locked gate that blocks access to the above described parking area and consequently the Pacific Ocean.

IV. FINDINGS

A. By letter dated November 7, 1994, E. P. Reilly, Vice President and Chief Engineer, Southern Pacific Lines (SPTCo's parent company), informed Lompoc Mayor Joyce Howerton, regarding access to the beach at Surf, that "Southern Pacific is terminating public access across its property to the beach forthwith by fencing the entrance road into the subject property" (Exhibit 2).

B. On August 7, 1995, Jim Raives of the Coastal Commission's Federal Consistency staff, was contacted by telephone by a confidential informant who stated that SPTCo had constructed the subject gate and fence that day. Later that day, Mr. Raives contacted by telephone Gregg Mohr, County of Santa Barbara Planning and Development Department staff member, who confirmed the statements of the informant.

C. By telephone conversation on August 25, 1995, Nancy Cave, Coastal Commission Statewide Enforcement Program Supervisor, and John Bowers, Coastal Commission Staff Counsel, discussed the gate's construction with Paula Amanda, Counsel with SPTCo. Ms. Cave and Mr. Bowers informed Ms. Amanda that the gate constitutes development under the Coastal Act, is located in the Commission's retained permit jurisdiction and requires Commission permit authorization. They also asked Ms. Amanda to put in writing SPTCo's position with respect to the gate and to confirm in detail SPTCo's legal ownership of the property on which the gate is located.

D. By telephone conversation on August 31, 1995, Paul Minault, an attorney representing SPTCo, stated to Mr. Raives that SPTCo was unwilling to unlock and open the gate unless and until the Commission issued a cease and desist order directing it to do so.

E. On September 1, 1995, Adrienne Klein, Coastal Commission Statewide Enforcement Program staff, delivered to SPTCo, via Mr. Minault, a notice stating that:

(1) the subject activity constitutes development which is in violation of the Coastal Act because it is not authorized by a coastal development permit;

(2) a coastal development permit application must be submitted to the Coastal Commission by September 15, 1995; and

(3) failure to immediately stop the described activity, by agreeing by September 7, 1995, to unlock the gate and retain it in an open position until consideration by the Commission of an after-the-fact coastal development permit application, might result in the issuance of a cease and desist order, the violation of which could result in civil fines (Exhibit 3).

F. By letter dated September 7, 1995, Mr. Minault informed Ms. Klein that SPTCo will make a good faith effort to submit an after-the-fact coastal development permit application by September 15, 1995, but is not willing to unlock the gate and retain it in an open position for the time being (Exhibit 4).

G. On September 7, 1995, Mark Cappelli, of the Coastal Commission's South Central Coast Area staff, conducted a site visit at the subject property during which he personally observed that the subject gate was still locked and in a closed position, precluding public access.

H. On September 7, 1995, Peter Douglas, Executive Director of the Coastal Commission, issued to SPTCo, via Mr. Minault, Cease and Desist Order No. ED-95-CD-01 prohibiting SPTCo from engaging in any development activities, as defined pursuant to California Public Resources Code section 30106, such as erecting a fence and gate and thereby blocking public access to and from the beach without first obtaining a coastal development permit authorizing such activity (Exhibit 5, without exhibits).

I. In the course of a telephone conversation on December 6, 1995, Mr. Minault responded to an inquiry of Ms. Klein by stating that SPTCo would not maintain the gate in an open and unlocked position after the December 7, 1995, expiration of Order No. ED-95-CD-01 unless the Executive Director were to issue another order.

V. COMPLIANCE OBLIGATION

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists.

VI. APPEAL

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

VII. NOTICE OF INTENT TO COMMENCE CEASE AND DESIST ORDER PROCEEDING BEFORE THE COASTAL COMMISSION

SPTCo is hereby notified of my decision to commence a proceeding pursuant to which the Commission may issue a Cease and Desist Order (PRC section 30810) prohibiting SPTCo from engaging in any development activity or otherwise inhibiting public access to the Pacific Ocean at Surf unless and until the Commission grants a CDP authorizing such activity.

In accordance with section 13181 of the Commission's regulations (Title 14, Division 5.5, CCR), you have the opportunity to respond to the staff's violation allegations as set forth in this notice by completing the enclosed Statement of Defense Form. The completed Statement of Defense Form must be received by this office no later than January 5, 1995. Should you have any questions regarding this matter, please contact Adrienne Klein at (415) 904-5295.

Executed at San Francisco, California on December 15, 1995.


PETER DOUGLAS
EXECUTIVE DIRECTOR
CALIFORNIA COASTAL COMMISSION

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

VOICE AND TDD (415) 904-5200

Staff: AK-SF
Staff Report: February 29, 1996
Hearing Date: March 13, 1996
CCC Action: Approved 11-0

ADOPTED FINDINGS FOR CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-96-CD-01

ALLEGED VIOLATOR: Southern Pacific Transportation Company (SPTCo)
c/o Paula Amanda, Assistant General Attorney
1 Market Plaza, 8th Floor
San Francisco, California 94105

ATTORNEY: Paul Minault, Esq.
120 Montgomery Street, Suite 2290
San Francisco, California, 94104

PROPERTY: The gate is located on Vandenberg Air Force Base property located between the Highway 246 road easement and the SPTCo railroad right-of-way, a privately owned enclave within Vandenberg Air Force Base (identified by APN 095-050-02) (Exhibit 1).

DESCRIPTION OF ACTIVITY: The activity that is the subject of this order includes but is not limited to the unpermitted placement, construction and/or erection, on August 7, 1995, of a locked gate that blocks access to the above described parking area and consequently access to the Pacific Ocean.

SUBSTANTIVE FILE DOCUMENTS: Executive Director's Cease and Desist Order No. ED-95-CD-01
Executive Director's Cease and Desist Order No. ED-95-CD-02
Consistency Determination No. CD-12-94 (U.S. Air Force)

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission issue a permanent cease and desist order requiring SPTCo to cease and desist from engaging in or maintaining on the property any activity constituting development under the Coastal Act, including activity described above, unless and until: 1) SPTCo obtains a coastal development permit authorizing such activity; and 2) the Commission concurs in SPTCo's consistency certification.

Staff Note: This alleged violation consists of, but is not limited to, the unpermitted placement, construction and/or erection, on August 7, 1995, of a locked gate that blocks access to the above described parking area and consequently the Pacific Ocean, in conflict with Coastal Act section 30600.

SPTCo indicates that it is willing to submit a coastal development permit (CDP) application to seek after-the-fact authorization to erect the gate and then retain it in a closed and locked position. However, because the site of the gate is on federal lands, SPTCo, a private company, must obtain authorization from the U.S. Air Force to erect the gate and retain it in a locked position. Pursuant to Public Resources Code (PRC) § 30601.5 and 14 California Code of Regulations (CCR) § 13057.5(b), this authorization is a CDP application filing requirement. Pursuant to § 307(c)(3)(A) of the federal Coastal Zone Management Act (CZMA) (16 U.S.C. § 1456(c)(3)(A)), the U.S. Air Force cannot issue such authorization unless the Coastal Commission concurs in a consistency certification by SPTCo that the proposed development will not have adverse impacts on coastal resources. The federal Office of Ocean and Coastal Resources Management (OCRM) recently determined that SPTCo must submit a consistency certification to the Coastal Commission for this agency's review. Staff intends to present to the Commission for its concurrent review both the consistency certification and the CDP application.

The Executive Director has issued two temporary cease and desist orders to ensure that the gate remains open, not obstructing access and recreational opportunity previously available, while SPTCo has attempted to file a combined after-the-fact consistency certification and CDP application. The Executive Director now believes a permanent cease and desist order is necessary to ensure the continued availability of public access and recreational opportunities until SPTCo is able to file a combined after-the-fact consistency certification and CDP application and the Coastal Commission is able to render a decision, a process which is expected to take some time considering interagency efforts to negotiate a solution which satisfies the varied interests of public access and public safety.

I. MOTION

Staff recommends adoption of the following motion:

I move that the Commission issue Cease and Desist Order No. CCC-96-CD-01 as proposed by staff.

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present and voting is necessary to pass the motion.

II. PROPOSED FINDINGS

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

A. Background of the Alleged Violation

1. By letter dated November 7, 1994, E. P. Reilly, Vice President and Chief Engineer, Southern Pacific Lines (SPTCo's parent company), informed Lompoc Mayor Joyce Howerton, regarding access to the beach at Surf, that "Southern Pacific is terminating public access across its property to the beach forthwith by fencing the entrance road into the subject property" (Exhibit 2).
2. On August 7, 1995, Jim Raives of the Coastal Commission's Federal Consistency staff, was contacted by telephone by a confidential informant who stated that SPTCo had constructed the subject gate that day. Later that day, Mr. Raives contacted by telephone Gregg Mohr, County of Santa Barbara Planning and Development Department staff member, who confirmed the statements of the informant.
3. By telephone conversation on August 25, 1995, Nancy Cave, Coastal Commission Statewide Enforcement Program Supervisor, and John Bowers, Coastal Commission Staff Counsel, discussed the gate's construction with Paula Amanda, Counsel with SPTCo. Ms. Cave and Mr. Bowers informed Ms. Amanda that the gate constitutes development under the Coastal Act, is located in the Commission's retained permit jurisdiction and requires Commission permit authorization. They also asked Ms. Amanda to put in writing SPTCo's position with respect to the gate and to confirm in detail SPTCo's legal ownership of the property on which the gate is located.
4. By telephone conversation on August 31, 1995, Paul Minault, an attorney representing SPTCo, stated to Mr. Raives that SPTCo was unwilling to unlock and open the gate unless and until the Commission issued a cease and desist order directing it to do so.
5. On September 1, 1995, Adrienne Klein, Coastal Commission Statewide Enforcement Program staff, delivered to SPTCo, via Mr. Minault, a notice stating that:
 - (1) the subject activity constitutes development which is in violation of the Coastal Act because it is not authorized by a coastal development permit;
 - (2) a coastal development permit application must be submitted to the Coastal Commission by September 15, 1995; and
 - (3) failure to immediately stop the described activity, by agreeing by September 7, 1995, to unlock the gate and retain it in an open position until consideration by the Commission of an after-the-fact coastal development permit application, might result in the issuance of a cease and desist order, the violation of which could result in civil fines (Exhibit 3).
6. By letter dated September 7, 1995, Mr. Minault informed Ms. Klein that SPTCo would make a good faith effort to submit an after-the-fact coastal development permit application by September 15, 1995, but was not willing to unlock the gate and retain it in an open position for the time being (Exhibit 4).

7. On September 7, 1995, Mark Cappelli, Coastal Commission South Central Coast Area staff, conducted a site visit at the subject property during which he personally observed that the subject gate was still locked and in a closed position, precluding public access.

8. On September 7, 1995, Peter Douglas, Executive Director of the Coastal Commission, issued to SPTCo, via Mr. Minault, Cease and Desist Order No. ED-95-CD-01 prohibiting SPTCo from engaging in any development activities, as defined pursuant to PRC § 30106, such as erecting a fence and gate and thereby blocking public access to and from the beach without first obtaining a CDP authorizing such activity (Exhibit 5, without attachments).

9. By letter dated October 10, 1995, Mr. Douglas informed SPTCo and the U.S. Air Force that Commission staff believed that SPTCo's construction of the gate was an activity that "could be reasonably expected to affect the coastal zone (15 C.F.R. § 930.54(c))." That notice was also sent to OCRM (Exhibit 6).

10. In the course of a telephone conversation on December 6, 1995, Mr. Minault responded to an inquiry of Ms. Klein by stating that SPTCo would not maintain the gate in an open and unlocked position after the December 7, 1995, expiration of Order No. ED-95-CD-01 unless the Executive Director were to issue another order.

11. On December 15, 1995, Mr. Douglas issued to SPTCo, via Mr. Minault, Cease and Desist Order No. ED-95-CD-02 prohibiting SPTCo from engaging in any development activities, as defined pursuant to PRC § 30106, such as erecting a fence and gate and thereby blocking public access to and from the beach without first obtaining a CDP authorizing such activity (Exhibit 7, without attachments).

12. By letter dated January 22, 1996, Jeffrey Benoit, Director, Office of Ocean and Coastal Resource Management, informed Mr. Douglas that OCRM had determined that SPTCo's construction of a gate "can reasonably be determined to affect public access." As such, OCRM required SPTCo to prepare a consistency certification pursuant to 15 C.F.R. Part 930, Subpart D, for the Commission's subsequent review (Exhibit 8).

B. Staff Allegations

The staff alleges the following:

1. On August 7, 1995, SPTCo erected a gate on federal property that blocks access to the above described parking area and consequently the Pacific Ocean, without first informing the Coastal Commission or the U.S. Air Force of its intent to do so.

2. The above described activities constitute development pursuant to Coastal Act section 30106 and have been conducted without benefit of a coastal development permit or Coastal Commission concurrence of a consistency certification; this unpermitted development is in violation of PRC section 30600; and in order to resolve this Coastal Act violation, SPTCo must obtain after-the-fact Commission authorization to retain the unpermitted development in accordance with an approved CDP.

3. SPTCo has neither obtained after-the-fact Commission authorization of the unpermitted development nor removed the unpermitted development, in order to restore the site to its pre-development condition.

C. Alleged Violator's Defense (Exhibit 9 with attachments) and Staff's Rebuttal to Defense

Global Rebuttal. Under PRC § 30810, the only grounds which must exist for the Commission to have the statutory authority to issue a cease and desist order are that a person has undertaken "any activity that (1) requires a permit from the commission without securing a permit..." In this matter such grounds clearly exist,¹ as evidenced by the fact that SPTCo does not dispute them. Every defense SPTCo has interposed pertains not to the relevant issue of the existence or not of grounds specified by the statute for issuance by the Commission of a cease and desist order, but rather to the issue of whether SPTCo's activities are or are not consistent with the policies of the Coastal Act. The Commission will entertain such issues when SPTCo submits a combined consistency certification and coastal development permit application for its activity. However, in the present context SPTCo's arguments are simply not relevant. Notwithstanding this fact, the staff has prepared the following responses to SPTCo's arguments for the information of the Commission and of the interested public. The issues raised in the following discussion may not include all the issues the Commission will consider when it reviews the subject development's consistency with the Chapter 3 policies of the Coastal Act.

1. **Defense:** SPTCo admits the facts set forth in Findings A, C, D, E, F, H and I of Cease and Desist Order No. ED-95-CD-02 (Exhibit 7). SPTCo has no knowledge of the facts set forth in Findings B and D or the Order because they involve communications between Commission staff.

¹ In addressing whether an activity requires a permit under the Coastal Act, the Commission staff believes that it is appropriate to rely on the judicial guidance provided in *Southern Pacific Transportation Co. v. Cal. Coastal Comm'n*, 520 F.Supp. 800 (1981), which resolved a previous challenge by SPTCo to the Commission's jurisdiction under the CZMA. The court looked to whether the activity at issue in that case fell within the definition of "development" contained in section 30106 of the CCMP. (*Id.*, at 803-804.) That section defines "development" to include, among other activities, the "construction, demolition, or alteration...of any structure, including any facility of any ... public ... utility." (The CCMP does not define the term "public utility." However, the applicant is a "railroad corporation," a "common carrier," and thus a "public utility" within the meaning of those terms as they are defined, respectively, in sections 230, 211(a), and 216(a) of the CPUC, and thus may reasonably be considered to be a "public utility" for the purposes of section 30106 of the CCMP.) On the basis of a finding that the activity at issue in the case before it constituted "demolition ... of [a] structure ... of [a] public ... utility," and that such activity would affect "several ... land use options" in California's coastal zone, the court held that the activity was subject to the consistency review requirements of the CZMA.

Similarly, the activity that is the subject of the Commission's present decision to conduct an "unlisted activity" review under the CZMA involves the "construction...of [a] structure [a gate] ... of [a] public ... utility" on federal land within the California's coastal zone. The expressly acknowledged purpose of the structure is to preclude the public from crossing the applicant's property to gain access to the coastal zone and engage in the various recreational opportunities that the coastal zone affords. The applicant's activity inhibits, and thus affects, a clearly established use of California's coastal zone.

SPTCo does not deny any of the facts set forth in the findings of Cease and Desist Order No. ED-95-CD-02.

Rebuttal: None.

2. Defense: SPTCo does not believe "a crossing at this location is necessary because adequate access [to the Pacific Ocean] exists nearby." SPTCo acknowledges that access to Ocean Beach County Park is intermittently blocked when the Santa Ynez River floods. Hence, and notwithstanding other arguments to follow that explain SPTCo's position that it should be allowed to block the current accessway, SPTCo believes at a maximum it would only be appropriate for the Commission to require it to provide public access across the tracks at Surf when beach access at Ocean Beach County Park is inaccessible.

Rebuttal: Commission staff is aware that there is another public accessway at Ocean Beach County park, located approximately 3/4 of a mile north of the former railroad station at Surf. That park consists of large parking area, a playground, and an access trail to the beach that crosses under the railroad tracks at the Santa Ynez River railroad bridge. Although this other beach access route allows the public to reach the same shoreline as the "Surf Station" accessway, the Surf accessway is an important accessway for several reasons.

First, this accessway is a very popular route for those people living in the local community. In 1994, when the Air Force proposed a similar closure of this access route through submittal to the Coastal Commission of a consistency determination, to which the Commission objected, the Commission received contact from literally thousands of nearby residents opposed to the closure (Consistency Determination No. CD-12-94, not attached). Specifically, the Commission received petitions containing approximately 2,400 names and approximately 30 letters from concerned citizens opposed to the closure. Additionally, many of these people also telephoned the Commission staff to state their concerns.

Second, the access at Surf provides an alternative means to reach Ocean Beach. A second accessway is necessary because the primary accessway is adjacent to the Santa Ynez River and its access road is subject to flooding. According to the Santa Barbara County Parks Department, that road usually floods at least once a year and stays flooded from anywhere between three weeks and three months (personal communication between James Raives, Federal Consistency staff, Coastal Commission and Jeff Stone, Deputy Director for Santa Barbara County Parks, North County, on October 10, 1995). Also, the accessway provides access to the southern part of Ocean Beach, which the public has used for surf fishing and which might otherwise be inaccessible to fishermen lugging heavy equipment.

Considering this information, the Commission staff believes that the erection of the subject gate clearly affects public access resources of the coastal zone, and that access to the beach at Surf is, at a minimum, necessary on an intermittent basis, if not all year long.

3. Defense: SPTCo states that it is commonly recognized that grade crossings are a public safety concern. In fact, "the Federal Railroad Administration has set a goal of closing 25% of the nation's grade crossings by the turn of the century." SPTCo asserts that the "public use of [its] Surf property to cross the tracks is unsafe, as indicated by two serious accidents at this location."

SPTCo has been sued two times by individuals who were injured and/or killed while crossing the tracks at Surf. In the first instance, even though the courts found that SPTCo was not liable, which judgment was upheld on appeal, it incurred \$100,000 of unreimbursed defense costs. In the second instance, the matter is still in litigation. SPTCo faces allegations, in part, that it failed to comply with:

(a) California Public Utility Code (CPUC) Section 1201 which states that "[n]o public road, highway, or street shall be constructed across the track of any railroad corporation at grade ... without having first secured the permission of the [Public Utilities] commission (PUC);" and

(b) CPUC Section 1202 which grants the PUC "the exclusive power: (a) [t]o determine and prescribe the manner, including the particular point of crossing and the terms of installation, operation, maintenance, use, and protection of each crossing ... of a street by a railroad or visa versa."

Rebuttal: Commission staff recognizes that the reason SPTCo constructed the gate is to protect public safety and lessen its liability risk. Commission staff is sensitive to this issue. In fact, PRC 30210 allows for access limitations in recognition of the need to protect public safety. However, it is through the federal consistency and permit review processes that the Commission can weigh the competing concerns of public access and public safety against the policies of the Coastal Act that mandate the maximization of coastal public access. Through these processes, the Commission will evaluate the legitimacy of the public safety issue and alternative mechanisms that may protect public safety while maintaining public access and recreational resources and determine whether liability risks to SPTCo and the public outweigh the impacts of closing an accessway. Therefore, the resolution of the conflict between public access and public safety will be accomplished through an analysis of the consistency of the subject development with the Coastal Act and California Coastal Management Program (CCMP).

4. Defense: SPTCo asserts that "the mere convenience this access provides is insufficient to outweigh [the stated] safety considerations." In other words, it argues that this accessway is a "shortcut" across SPTCo tracks that is only necessary "during periods when the road to the county park is flooded" and that "there seems to be little reason why these people could not walk in from the legal public access way at the county park and enjoy the beach in the process." SPTCo further asserts that it has been informed by County staff "that this beach sees little use by sunbathers, swimmers and typical beach users because of the harsh environment there, including high winds, strong currents, large waves, and frigid waters" and that "it appeals more to walkers, horse riders, fishermen and other active recreationalists."

Rebuttal: The determination of how popular the beach accessway at Surf may be is subjective. The conflicting concerns of SPTCo and the Commission, minimizing the risk of liability as opposed to preserving maximum public access, necessarily polarize the two entities' interpretation of how much use constitutes a use so popular that to eliminate it would or would not impact the public. As stated earlier, the Coastal Commission's permit and consistency review processes will enable it to fully consider and evaluate these concerns.

5. Defense: SPTCo believes that "the proper way to create a crossing at this location is by application to the PUC, not by a Commission cease and desist order." SPTCo supports this assertion by stating that "in California there is only one way that the public may lawfully obtain the right to cross over a railroad track, and that is by following the mandated statutory procedure ... [which] requires the public agency proposing the crossing to submit an application to the PUC, which then determines whether the public convenience and necessity require the proposed crossing to be built, what sort of safety devices are required, whether a grade separation is necessary, and whether the railroad must pay some portion of the construction and maintenance costs of the crossing." SPTCo believes it is not within the jurisdiction of the Coastal Commission to "forc[e] SPTCo to continue to provide public access" in the absence of PUC authorization to do so. SPTCo asserts that the PUC has jurisdiction over pedestrian railroad crossings even though CPUC section 1201 does not specifically reference pedestrian crossings. SPTCo cites the PUC's routine practice of interpreting this section as encompassing pedestrian access. SPTCo has researched case history on this matter and found "no judicial or administrative decision in which any public agency has contested the PUC's decades-long jurisdiction over pedestrian crossings" and "numerous decisions in which the PUC has exercised its authority to grant or abolish pedestrian crossings."

Rebuttal: Again, Commission staff of course agrees that the local government and community should seek PUC authorization to construct an above grade crossing at Surf. Such ability is beside the point of the Coastal Commission's duty under the Coastal Act to preserve existing public access pursuant to PRC section 30211.

6. Defense: SPTCo states that "neither the County nor any other local agency has made any effort to obtain PUC approval for an authorized pedestrian crossing at this location, even though the County agreed to do so. SPTCo states that in 1972 it conditionally agreed to re-open the access way which it had recently blocked due to mounting public safety concerns, because at that time the County made a commitment to SPTCo that it would undertake to construct an overpass. Currently, neither the County nor the community has applied to the PUC to construct such an overpass, inaction which SPTCo regards as illustrative of the fact that this is in fact not a popular crossing.

Rebuttal: The Commission staff does not agree that the County's failure to apply to the PUC to construct an accessway at Surf is relevant to the question of whether preservation of the existing informal accessway is a result that is required or authorized under the regulatory standards of the Coastal Act. There are a multitude of potential reasons why the County has not proceeded to make such an application to the PUC, among them the need to expend a limited sum of public funds to a range of competing public interests. The County's alleged inaction is not necessarily an indication that the accessway is not popular or necessary.

7. Defense: SPTCo states that "public agencies have not made a concerted effort to provide public access to Ocean Beach County Park during periods of flooding." Historically, the County has received permission from the Army Corps of Engineers (Corps) to remove the sandbar that causes the Santa Ynez River to flood thereby blocking the Ocean Beach County Park access way. More recently, the County applied to the Corps to raise the level of the road above the flood level. The Corps declined to grant a permit to enable the County to raise the road to a height adequate to enable year round access. Further, the County "obtained the impression that the U.S.

h & Wildlife Service and the Ca. Dept. of Fish & Game would oppose permits for future annual removals of the sand bar." Further, the County does not wish to incur the expense of reapplying to the Corps for a sand bar removal permit and "has taken no further action to obtain a permit or otherwise to provide access to Ocean Beach County Park during periods when the access road to the park is flooded." In short, SPTCo does not believe it is appropriate for at grade beach access to be required across its property in the face of local inaction to maintain access at Ocean Beach County Park. Further, SPTCo states that this local inaction reiterates its earlier conclusion that this beach is not as popular as the Coastal Commission has previously asserted.

Rebuttal: The Commission staff does not agree that the Corps' "failure" to authorize the County to construct the road access to Ocean Beach County Park at an elevation high enough to enable year round access to this beach even during periods of flooding is an indication that Ocean Beach access is not in high demand. In fact, the cited problems resulting in temporary blockage of access due to flooding underscores the Commission's concern that alternative access at Surf remain available.

8. **Defense:** SPTCo asserts that "the public can not acquire rights by prescription or implication to use the property of a public utility which is already dedicated to public use." SPTCo cites Civil Code Section 1007 ("[n]o possession by any person ... of any ... easement ... dedicated to a public use by a public utility ... shall ever ripen into any ... interest ... against the owner") to clarify that "no private party may obtain prescriptive rights to the lands of a regulated public utility such as SPTCo." SPTCo identifies two California Supreme Court and Court of Appeal decisions [*Southern Pacific Co. v. Hyatt*, 132 Cal. 240, 241-242 (1901) and *Breidert v. Southern Pac. Co.*, 272 Cal. App. 2d 398 (1969)], which "have held that 'railroads are esteemed as public highways, constructed for the advantage of the public'" and that "the public can obtain prescriptive rights to a railroad crossing only when a railroad has first taken some affirmative action to create a private crossing, or the PUC to create a public one." SPTCo argues that Commission staff's interpretation that "the public may by prescription or implication independently acquire the right to cross a railroad track, by contrast, would undermine the statutory scheme for PUC review of crossing applications set forth in the CPUC and the State's orderly management of railroads and railroad crossings."

Rebuttal: It is not at all clear that the public crossing of the tracks at this location constitutes "illegal trespass" of the applicant's property. It is well settled under California law that such historic use can support a finding that an area has been dedicated by implication to the public for that use. (*Gion v. City of Santa Cruz*, 2 Cal.3d 29 (1970); *County of Los Angeles v. Berk*, 26 Cal.3d 201 (1980).) Section 30211 of the Coastal Act obligates the Commission to protect from interference "the public's right of access to the sea" across areas that may be subject to such an implied dedication.

SPTCo cites Civil Code § 1007 in support of its position that the public cannot acquire through implied dedication the right to use property owned by a public utility. By its express terms, section 1007 concerns title that one person may acquire in the property of another "by prescription." Under California law there is a clear distinction between rights that are acquired through an implied dedication and those that are acquired "by prescription." (*Gion, supra*, 2 Cal.3d at 39; see generally 4 Witkin, *Summary of California Law*, "Real Property," §§ 130

(implied dedication) and 462 (citing Civil Code § 1007) - 469 (easement by prescription).) Furthermore, by its terms section 1007 applies to "possession [of real property] by any *person, firm, or corporation....*" (Emphasis added.) Notably absent from the language of section 1007 is any reference to the *public*. When the Legislature intends to impose limitations on the ability of the public to acquire through implied dedication rights in real property owned by another, it refers specifically to the *public* as the subject of its concern. (Civil Code §§ 1009(b), (f).) As noted, section 1007 omits any reference to the public. For both of these reasons, Civil Code § 1007 has no applicability to this matter.

SPTCo also argues that its property cannot be the subject of a finding of an implied dedication, citing the case of *Breidert v. Southern Pac. Co.*, 272 Cal.App.2d 398 (1969) as authority for this proposition. SPTCo's reliance on the *Breidert* case is misplaced for two independently sufficient reasons.

First, the holding of *Breidert* SPTCo relies upon is no longer good authority, and has not been for 25 years. In 1971, two years after *Breidert* was decided, the California Legislature added section 1202.3 to the CPUC. In subsection "(b)" of that provision the Legislature expressly acknowledged the possibility that "a road or highway over [a] railroad right-of-way" could be the subject of an "implied dedication ... to public use, based on public use in the manner and for the time required by law" Thus, CPUC § 1202.3(b) represents a clear and unambiguous legislative repudiation of the contrary holding of *Breidert* upon which SPTCo relies.

Second, in its decision the court in *Breidert* placed heavy reliance on the fact the railroad crossing involved in that case was subject to regulation by the PUC pursuant to CPUC §§ 1201 and 1202, which apply to the "construction" of any "public road, highway, or street" across "the track of any railroad corporation" The informal pedestrian use that is involved in the present matter cannot conceivably be characterized as constituting a "public road, highway, or street," nor does such use involve anything that has been "constructed." Because the use involved in this matter is demonstrably *not* included among the activities to which the language of CPUC §§ 1201 and 1202, construed in light of its plain meaning, makes such sections applicable,² such use is clearly distinguishable from the facts on the basis of which the court in *Breidert* reached its conclusion.

In conclusion, the staff believes that the public crossing of SPTCo's right-of-way at Surf may under California law have given rise to implied dedication, and thus the public may have a right

² SPTCo concedes this point as evidenced by its reliance on a "General Order" of the PUC which suggests that that Commission has regulatory authority of unspecified origin over the grant of an "easement, license, or permit" for "crossings of railroads ... by ... footpaths" SPTCo suggests that the source of this authority is CPUC § 1201. Even assuming that this ascription by the applicant could be reconciled with the language of section 1201, a dubious proposition at best, the use involved in this matter would still not be subject to regulation by the PUC because, as SPTCo itself readily acknowledges, such use is not and has never been the subject of an "easement, license, or permit" granted by the applicant.

Staff acknowledges the numerous examples cited by SPTCo of administrative proceedings in which the PUC has exercised jurisdiction over pedestrian railroad crossings. However, as noted in the text, each and every such example is distinguishable from the informal public use that is involved at Surf because each such instance involved the "construction" of a formal pedestrian crossing.

to cross the tracks at this location. Therefore, the public crossing of the right-of-way, which provides access to the shoreline, is a resource of the California coastal zone protected by the Coastal Act.

9. **Defense:** In conclusion, SPTCo argues that the county's failure to apply to the PUC to construct an above grade crossing at Surf "should be subject to agency review and permitting, not SPTCo's control of illegal use of its property."

Rebuttal: The Commission agrees that the crossing is subject to PUC review. However, the Commission has not determined whether the crossing is legal. SPTCo and the Commission have herein presented numerous issues which need to be analyzed in the context of a combined consistency and permit hearing before the Commission. At that time, the Commission will consider the potential impacts on coastal access and recreational opportunities, among others, as defined by the Chapter 3 policies of the Coastal Act and the CCMP, of the gate's construction.

D. Compliance Obligation

Pursuant to Coastal Act section 30821.6, SPTCo's failure to comply with the terms of this order shall result in the imposition by a court of law of civil fines of up to \$6,000 per day for each day in which the violation persists. The amount of penalty shall be determined reasonably proportionate to the damage suffered as a consequence of the violation, described in brief below.

The Commission finds that the subject gate is adversely affecting, and, so as long as it remains in place, will continue to adversely affect, public access and recreational opportunity within the coastal zone. Since the public comes to Ocean Beach to fish, surf, and swim, the area provides a coastal recreational resource. The gate affects these resources by blocking access to the parking area which is adjacent to the beginning of the informal vertical accessway leading to this shoreline. The result of the gate is to discourage the public from crossing the railroad tracks to reach the beach. People park their cars at this parking area, cross the railroad tracks, and follow an existing, established trail through the dunes down to the beach. Since, other than this parking lot, there are no additional places to park in the immediate vicinity of this access trail, the gate inhibits the use of this public access way. Highway 246, by which cars may reach the subject parking area, has a wide shoulder but it is posted with "No parking" signs. Highway 246 also dead ends at US Air Force property which has a locked gate and is also posted with "No parking" signs (personal communication between Jim Raives and John Gunderson, U.S. Air Force, on February 16, 1996).

In northern Santa Barbara County, access to the shoreline is very limited. The Commission has historically been very concerned about any activity that reduces the amount of public access in this region. This beach is one of only three public beaches along the 64-mile stretch of northern Santa Barbara County. Most of the coast in this area is within three large land holdings, Vandenberg Air Force Base, Bixby Ranch, and Hollister Ranch, each of which restricts the public's ability to access the shoreline.

IV. CEASE AND DESIST ORDER

Staff recommends that the Commission issue the following cease and desist order:

CEASE AND DESIST ORDER

Pursuant to its authority under California Public Resources Code section 30810, the California Coastal Commission hereby orders SPTCo, all its agents, and any other persons acting in concert with any of the foregoing to cease and desist from: (1) engaging in any further development at the property without first obtaining from the Commission both a concurrence in a consistency certification and a coastal development permit (CDP) which authorizes such activity; and (2) continuing to maintain any development at the property that violates the California Coastal Act. Accordingly, all persons subject to this order shall fully comply with paragraphs A, B, C and D as follows:

A. Refrain from engaging in or maintaining at the property any development activity without first obtaining from the Commission both a concurrence in a consistency certification and a CDP which authorizes such activity. Specifically, until such time as the administrative procedures specified in paragraphs B and C below are completed, SPTCo shall maintain the gate in an unlocked condition.

B. Within 90 days of issuance of this order, i.e. by June 12, 1996, SPTCo shall submit to the Coastal Commission a combined consistency certification and CDP application requesting either: 1) after-the-fact Commission authorization to retain the gate; or 2) Commission authorization to remove the unpermitted development. This deadline may be extended by the Executive Director for good cause. An extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

C. Submit, within 30 days of action by the Commission to deny a request to retain the development, a combined consistency certification and CDP application requesting authorization to remove the unpermitted development.

D. Fully comply with the terms and conditions of any of the above required CDP(s) as approved by the Commission.

IDENTIFICATION OF PROPERTY

The gate is located on Vandenberg Air Force Base property located between the Highway 246 road easement and the SPTCo railroad right-of-way (identified by APN 095-050-02) which is a privately owned enclave within Vandenberg Air Force Base.

DESCRIPTION OF ACTIVITY

The activity that is the subject of this order includes, but is not limited to, the unpermitted placement, construction and/or erection, on August 7, 1995, of a locked gate that blocks access to the above described parking area and consequently the Pacific Ocean.

TERM

This order shall remain in effect permanently unless and until rescinded by the Commission.

FINDINGS

This order is issued on the basis of the findings adopted by the Commission on March 13, 1996, as set forth in the attached document entitled "Adopted Findings."

COMPLIANCE OBLIGATION

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists.

APPEAL

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

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-6200



March 12, 1996

TO: Coastal Commissioners and Interested Parties

FR: Peter Douglas

Ralph Faust

Nancy Cave *NC*

Adrienne Klein *AK*

RE: ADDENDUM TO CEASE AND DESIST ORDER NO. CCC-96-CD-01
(Hearing date March 13, 1996, Item 13)

I. Summary

On March 6, 1996, Commission staff was informed by the U.S. Air Force of different ownership information regarding the property on which the unpermitted gate is located. According to the U.S. Air Force they do not own the property on which the gate is located.

II. Explanation

Commission staff prepared its recommendation on Cease and Desist Order No. CCC-96-CD-01 based on conversations with both SPTCo and the U.S. Air Force staff and/or representatives who stated that the unpermitted gate is located on U.S. Air Force property. As such, the cease and desist order was drafted to require SPTCo to submit a combined consistency certification and a coastal development permit application to the Coastal Commission.

Since October, 1995, SPTCo, the U.S. Air Force and Commission staff have undertaken steps to facilitate the submittal of a combined consistency certification and coastal development permit application by SPTCo. Commission staff informed SPTCo that, as part of its coastal development permit application, it would have to include U.S. Air Force authorization to construct the gate, as the U.S. Air Force was understood to be the underlying property owner. Subsequently, the U.S. Air Force conducted an on-site survey and reviewed Base Planning Maps. As a result of this research the U.S. Air Force determined, contrary to a previous determination by them, that the gate is located on SPTCo property. This determination is summarized in an U.S. Air Force internal memorandum dated March 5, 1996, to Col. Garcia from Chief of Real Property Lowene R. Clemente (attached).

If the U.S. Air Force's determination is verified, then it shall be unnecessary for SPTCo to submit a combined consistency certification and coastal development permit application: SPTCo shall only be required to submit a coastal development permit application.

Therefore, subject to future verification of the U.S. Air Force's latest finding as to the ownership status of the subject property, all references in the staff report on Cease and Desist Order No. CCC-96-CD-01 to the requirement that SPTCo submit a combined consistency certification and coastal development permit application shall in fact mean that SPTCo only has to submit a coastal development permit application.

The following property description shall supersede the property description in the staff report and proposed order:

PROPERTY:

The gate is located on SPTCo property (identified by APN 095-050-02) which is a privately owned enclave within Vandenberg Air Force Base. The gate is constructed across the entrance to a parking lot located next to the west end of Highway 246 (Exhibit 1).

LAW OFFICES OF PAUL M. MINAULT
120 MONTGOMERY STREET
SUITE 2290
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE (415) 397-6152

November 12, 1996

FAX (415) 788-5768

Nancy Cave
Supervisor, Statewide Enforcement
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Dear Ms. Cave:

SPTCo Surf Site: Santa Barbara County

This follows our phone conversation today, as well as my letter to the Commission of May 21, 1996 and the Commission's response of June 13, 1996 regarding the Commission's Cease and Desist Order No. CCC-96-CD-01 ("the Order") to Southern Pacific Transportation Company ("SPTCo") regarding the gate that SPTCo installed at this site. The Order requires SPTCo, by June 12, 1996, to obtain a permit for the construction or removal of the gate. By your letter of June 13, 1996, this deadline was extended to November 21, 1996.

Santa Barbara County is currently in negotiations with SPTCo to purchase this site for an Amtrack station parking lot. The County has also applied to the Coastal Conservancy and the Coastal Resources Enhancement Fund for funding for an electronically-protected pedestrian crossing of SPTCo's tracks at this site to facilitate coastal access.

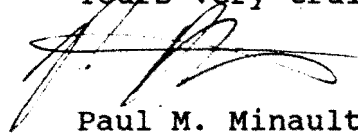
Because these processes will require additional time, SPTCo requests that the November 21, 1996 deadline be held in abeyance until the County completes the purchase of the parking lot and the permitting for the Amtrack station. During this period, SPTCo will not attempt to close or lock the gate. If this matter is not resolved within a further six months, or by May 21, 1996, I will contact you to review this matter further.

LAW OFFICES OF PAUL M. MINAULT

Nancy Cave
November 12, 1996
Page 2

Please do not hesitate to call me with any questions
regarding this matter.

Yours very truly,



Paul M. Minault

cc: Paula Amanda, Esq.
Charles E. Gambel II, Southern Pacific Real Estate
Enterprises
Erich Brown, Santa Barbara County General Services Dept.

CALIFORNIA COASTAL COMMISSION

FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
OFFICE AND TDD (415) 904-5200

January 16, 1997

SENT BY CERTIFIED MAIL ARTICLE NO. Z 778 711 974

Paul Minault Esq.
120 Montgomery Street, Ste. 2290
San Francisco, CA 94104

P.M.M.

JAN 21 1997

Re: Cease and Desist Order No. CCC-96-CD-01

Dear Mr. Minault:

For some time now Southern Pacific Transportation Co. (SPT Co.) has been engaged in negotiations with Santa Barbara County for the sale to the County of the parking lot at Surf. We have recently become aware of the County's plans for improvements at the Surf site, to be implemented subsequent to the said sale. These improvements, as we understand them, include a pedestrian crossing funded in part by the State Coastal Conservancy.

The formulation of these plans has caused us to reassess the need for keeping in place the Cease and Desist Order (No. CCC-96-CD-01) dated March 13, 1996 issued by the Commission against SPT Co.. Pursuant to 14 CCR § 13188(b), the Commission staff is prepared to institute a proceeding for the rescission of the subject CDO, provided the following understandings are reached between the Commission and the County and SPT Co., respectively:

1. Until such time as either the above-mentioned development plans are implemented or, in the alternative, the Commission grants in some other manner a permit for the fence and the gate, SPT Co. will keep the gate in an open, unlocked condition.
2. SPT Co. will refrain from engaging in or maintaining at the property any development activity without obtaining from the Commission a CDP which authorizes such activity.

If in agreement with the above please sign this letter in the space provided and return it to me in the enclosed envelope before January 28, 1997 so that the staff report can be prepared before the mailing deadline for the Commission meeting in March, 1997, at Carmel.

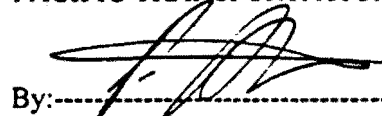
If you have any further questions you can reach me at (415) 904-5295.

Sincerely,



Ravi Subramanian
Coastal Program Analyst
Statewide Enforcement

SEEN AND AGREED TO BY SOUTHERN
PACIFIC TRANSPORTATION CO.



By: _____
Paul Minault
Attorney
For Southern Pacific Transportation Co.

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-6200



January 17, 1997

SENT BY CERTIFIED MAIL ARTICLE NO. Z 778 712 026

Erich Brown
Project Manager,
County of Santa Barbara General Services Department, Facilities Services
1100 Anacapa Street,
Lompoc, CA 93101

Re: Cease and Desist Order No. CCC-96-CD-01 against SPT Co.

Dear Mr. Brown:

For some time now Santa Barbara County has been engaged in negotiations with Southern Pacific Transportation Co. (SPT Co.) for the sale to the County of the parking lot at Surf. We have recently become aware of the County's plans for improvements at the Surf site, to be implemented subsequent to the said sale. These improvements, as we understand them, include a pedestrian crossing funded in part by the State Coastal Conservancy.

The formulation of these plans has caused us to reassess the need for keeping in place the Cease and Desist Order (No. CCC-96-CD-01) dated March 13, 1996 issued by the Commission against SPT Co.. Pursuant to 14 CCR § 13188(b), the Commission staff is prepared to institute a proceeding for the rescission of the subject CDO, provided the following understandings are reached between the Commission and the County and SPT Co., respectively:

1. If it wishes to retain the fence and gate the County agrees to apply for a CDP for the gate, as part of the overall permit application for the parking lot (with the restrooms), the 800 ft. long platform and the pedestrian crossing.
2. Until such time as either the above-described development plans are implemented or, in the alternative, the Commission grants in some other manner a permit for the fence and the gate, the County will keep the gate in an open, unlocked condition.
3. The County will refrain from engaging in or maintaining at the property any development activity without obtaining from the Commission a CDP which authorizes such activity.

If in agreement with the above please sign this letter in the space provided and return it to me in the enclosed envelope before January 28, 1997 so that the staff report can be prepared before the mailing deadline for the Commission meeting in March, 1997, at Carmel.

If you have any further questions you can reach me at (415) 904-5295.

Sincerely,

Ravi Subramanian
Coastal Program Analyst
Statewide Enforcement

SEEN AND AGREED TO BY COUNTY
OF SANTA BARBARA

By _____

Erich Brown, Project Manager
General Services Department,
County of Santa Barbara

LAW OFFICES OF PAUL M. MINAULT
120 MONTGOMERY STREET
SUITE 2290
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE (415) 387-6152

FAX (415) 788-5152

February 7, 1997

Erich Brown
Santa Barbara County Department of General Services
Facilities Services Division
1100 Anacapa Street, Courthouse Annex
Santa Barbara, CA 93101

Dear Erich:

SPTCo Former Surf Depot Site

This letter follows our recent phone conversation regarding this site. On behalf of Southern Pacific Transportation Company ("SPTCo"), this letter authorizes Santa Barbara County to apply to the Coastal Commission for a coastal development permit to construct an Amtrack platform, pedestrian crossing, parking lot, and related improvements and facilities at the site of SPTCo's former Surf depot.

Please do not hesitate to call me with any questions regarding this authorization.

Sincerely yours,



Paul Minault

cc: Paula Amanda, Esq.

