

CALIFORNIA COASTAL COMMISSION

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Staff: MT - SF
Staff Report: Feb. 18, 1999
Hearing Date: March 10, 1999

STAFF RECOMMENDATION FOR CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-99-CD-01

RELATED VIOLATION FILE: V-4-SBC-98-049

PROPERTY LOCATION: 4635 Via Roblada
Santa Barbara, CA 93110
APN 063-150-003 (**Exhibit 1**)

PROPERTY DESCRIPTION: The property is a 22.82-acre parcel in Hope Ranch, Santa Barbara County. The property has 494 feet of ocean frontage consisting of a sandy beach below an approximately 60-foot-high bluff. A single-family residence and a guest house are situated on the property.

PROPERTY OWNERS: Ann Judson and Gregory J. Parker, (Co-) Trustee(s) of the Stanford Farms Trust¹

VIOLATION DESCRIPTION: Recordation of a "Notice of Revocation and/or Rescission of Offer to Dedicate Public Access Easement."

SUBSTANTIVE FILE DOCUMENTS: Coastal development permit file No. 306-21

I. SUMMARY

The subject violation consists of the recordation of a "Notice of Revocation and/or Rescission of Offer to Dedicate Public Access Easement." A predecessor in interest to Judson and Parker recorded the Offer to Dedicate Lateral Access (OTD) to satisfy the terms of a coastal development permit previously issued by the Commission. Judson and Parker recorded the Notice of Revocation just as the County of Santa Barbara was preparing to accept the OTD. As a result of this action, the County deferred its acceptance decision.

¹ Ann Judson, as Trustee of the Stanford Farms Trust, is the sole grantee named on the grant deed recorded October 31, 1995. However, Gregory J. Parker, in the stated capacity of Trustee of Stanford Farms Trust, executed the subject "Notice of Revocation."

Commission staff sent Judson and Parker a letter notifying them of staff's intent to commence a proceeding for the Commission to issue a Cease and Desist Order pursuant to section 30810 of the Coastal Act.

The proposed order would **require** Judson and Parker to cease and desist from 1) undertaking any future activity that is **inconsistent** with any permit previously issued by the Commission; and 2) participating further in any **way** in any activity previously undertaken with respect to 4635 Via Roblada, Santa Barbara, **that** is inconsistent with any permit previously issued by the Commission. The order would direct Judson and Parker to execute and record a document that would 1) cancel completely the effect of the Notice of Revocation and/or Rescission of Offer to Dedicate; 2) restore the affected offer of lateral access dedication to the status it had prior to the recordation of the Revocation notice; and 3) unconditionally waive, on behalf of themselves and all successors in interest and assigns, any and all claims that the offer of dedication was rescinded or unacceptable at any time since its recordation on May 27, 1982.

II. HEARING PROCEDURES

The procedure for a hearing on a proposed Cease and Desist Order is outlined in Section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8. The Cease and Desist hearing procedure is similar in most respects to the procedures that the Commission utilizes for permit and LCP matters.

For a Cease and Desist hearing the Chair shall announce the matter and request that all parties or their representatives 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, at any time before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which staff shall respond to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence according to the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13186, incorporating by reference section 13065. After the Chair closes the hearing, the Commission may ask questions as part of its deliberations on the matter, including, if any Commissioner chooses, any question 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 order, either in the form recommended by staff or as amended by the Commission. The motion, per staff recommendation or as amended by the Commission, as the case may be, if approved by a majority of the Commission, would result in issuance of the order.

III. MOTION

Staff recommends adoption of the following motion:

I move that the Commission issue Cease and Desist Order No. CCC-99-CD-01 as proposed by staff.

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present is necessary to pass the motion. Approval of the motion will result in the issuance of the Cease and Desist order set forth in Section V, contained herein.

IV. PROPOSED FINDINGS

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

A. Site History

On May 9, 1980, the South Central Coast Regional Commission granted Coastal Development Permit (CDP) No. 306-21 to applicant Francice Netcher Bushkin (**Exhibit 2**). The permit authorized the addition of a sunroom and decking to an existing 587-square-foot guest house on the applicant's oceanfront property in Santa Barbara County, at 4635 Via Roblada, in the Hope Ranch area of Santa Barbara. Special Condition 1 of CDP No. 306-21 required that prior to issuance of the permit, the applicant record an irrevocable offer to dedicate to a public agency or private association an easement for public access and recreational use extending from the mean high tide line to the toe of the bluff. The offer was to run with the land, binding successors and assigns of the applicant or landowner. The offer was also to be irrevocable for a period of twenty-one years from the time of recording.

On May 27, 1982, applicant Bushkin recorded as Instrument No. 82-21839 an Irrevocable Offer to Dedicate Public Access Easement (**Exhibit 3**), as required by Special Condition 1. CDP No. 306-21 was duly issued. Thereafter, the permittee constructed the improvements authorized by the permit.

On October 27, 1995, Francice Bushkin transferred title to the property at 4635 Via Roblada to Ann Judson, Trustee of the Stanford Farms Trust (**Exhibit 4**).

B. Background

On October 6, 1998, the Santa Barbara County Board of Supervisors held a public hearing at which the Board was expected to adopt a resolution accepting seventy-two offers to dedicate public access easements. These offers included that affecting the property at 4635 Via Roblada in Hope Ranch.

On the day of the hearing, the Board received a letter from attorney Alan D. Condren of Seed, Mackall & Cole on behalf of client Stanford Farms Trust (**Exhibit 5**). The purpose of Condren's letter was to urge the Board not to adopt the proposed resolution accepting the recorded offers of dedication. Citing the U.S. Supreme Court's decisions in the *Nollan* and *Dolan* cases, Condren stated that the County's acceptance of the offer affecting his client's property "would constitute a

taking of private property without the payment of just compensation,” and that if the County did adopt the resolution, “it will unwisely subject itself to liability from takings lawsuits by affected property owners.” The letter also urged the Board to “undertake a more thorough review and public discussion of the benefits and burdens . . . of expanding coastal access by opening the proposed easements.”

At the October 6, 1998 public hearing, the Board decided to accept forty-six offers to dedicate, but to delay action on twenty-six contested offers, including that affecting Judson and Parker’s property at 4635 Via Roblada.

By a letter dated October 16, 1998, attorney K. Andrew Kent of Seed, Mackall & Cole informed the Board of Supervisors that Stanford Farms Trust had formally “revoked and/or rescinded the offer to dedicate which had been recorded against its property” (**Exhibit 6**). Attached was a copy of a “Notice of Revocation and/or Rescission of Offer to Dedicate Public Access Easement,” executed on October 16, 1998 by Gregory J. Parker, signing as trustee for Stanford Farms Trust (**Exhibit 7**). The document was recorded in Santa Barbara County on October 16, 1998 as Instrument No. 98-080041.

At a public hearing on October 20, 1998, the Board voted to accept an additional forty outstanding offers of dedication, but to continue consideration of the offer at 4635 Via Roblada, as well as five other offers in Hope Ranch, until the November 17, 1998 hearing. At that hearing, the Board voted to postpone their decision on acceptance of the Hope Ranch offers for another year.

On November 24, 1998, Commission staff sent via certified and regular mail to Judson and Parker a Notice of Intent to commence Cease and Desist Order proceedings and a Statement of Defense form (**Exhibit 8**). At the request of attorney K. Andrew Kent, the Executive Director extended the time for submittal of the Statement of Defense form to January 19, 1999. Commission staff received Judson and Parker’s Statement of Defense on January 19, 1999 (**Exhibit 9**).

C. Staff Allegations

The staff alleges the following:

1. Ann Judson, as Trustee, and Gregory Parker, as Trustee, of the Stanford Farms Trust, are the co-owners of the property located at 4635 Via Roblada, Santa Barbara, CA 93110, APN 063-150-003. The property is within the coastal zone of Santa Barbara County.
2. On October 16, 1998, Judson and Parker executed and recorded a Notice of Revocation and/or Rescission of Offer to Dedicate Public Access Easement.
3. Judson and Parker, in their capacity as co-trustees, and as successors in interest to the original permittee of CDP No. 306-21, are subject to and bound by the terms and conditions of that permit to the same extent as said original permittee.

4. Special Condition 1 of CDP No. 306-21 required the original permittee, Judson and Parker's predecessor in interest, to record an irrevocable Offer to Dedicate an easement for lateral public access and recreational use (OTD). The predecessor permittee duly executed and recorded the OTD, which, by its terms, runs with the land, binds all successors and assigns, and is irrevocable for a period of 21 years from the date of recordation. Thereafter, the original permittee accepted the benefits of the permit by constructing the improvements authorized thereby.
5. By recording the Notice of Revocation, Judson and Parker have attempted to undo the mitigation required by the Commission as a condition of approval of CDP No. 306-21.
6. The recorded Notice of Revocation constitutes an ongoing violation of the terms of CDP No. 306-21. Activity that is inconsistent with the terms of a permit previously issued by the Commission constitutes a violation of the Coastal Act. In order to resolve this Coastal Act violation, Judson and Parker must execute and record a document that would 1) cancel completely the effect of the Notice of Revocation and/or Rescission of Offer to Dedicate; 2) restore the affected offer of dedication to the status it had prior to the recordation of the Notice of Revocation; and 3) unconditionally waive, on behalf of themselves and all successors in interest and assigns, any and all claims that the offer of dedication was rescinded or unacceptable at any time since its recordation on May 27, 1982.

D. Alleged Violator's Statement of Defense and Commission Response

On January 19, 1999, Judson and Parker, through attorney K. Andrew Kent of Seed, Mackall and Cole, submitted their statement of defense (**Exhibit 9**). The defense consists of five contentions:

1. The Notice of Revocation and/or Rescission is statutorily authorized. Under California law, any contract may be rescinded.
2. There is a sound basis for the rescission. The offer of dedication was required, and was recorded, based on the mistaken assumption that such a permit condition was lawful and constitutional.
3. The Commission exceeds its authority by commencing Cease and Desist order proceedings. The Commission may only do so to regulate development activity.
4. The Notice of Revocation poses no threat of injury to the subject property.
5. The Notice of Intent is too vague to permit an adequate response. Its description of the violation activity is also legally inadequate.

1. The Notice of Revocation is statutorily authorized.

Judson and Parker contend that the recordation by their predecessor, Francice Bushkin, of the OTD constitutes a "contract" between her and the Coastal Commission. Judson and Parker argue that under California law, any contract may be rescinded for the reasons specified in Section 1689 of the Civil Code. They cite Section 1691, which provides that to effect a rescission a party to the contract must promptly "give notice of rescission to the party as to whom he rescinds" and

"restore to the other party everything of value which he has received from him under the contract or offer to restore the same. . . ." Judson and Parker state that recordation of the Notice of Revocation complied with the requirement to provide notice. Recordation of the Notice also effectuated the rescission. Judson and Parker contend that now that the offer has been rescinded, the act cannot be undone by the recording of an additional notice. Nor can they "cease and desist" from an act that has been completed. Judson and Parker assert that the Commission's proper recourse for enforcing the offer is to seek a judicial declaration that the grounds for rescission did not exist and that the offer remains enforceable.

Commission response

The subject of this enforcement action is not the providing of notice, through recordation of a legal document, of the rescission of an offer of dedication. Rather, it is the effectuation of the rescission.

Judson and Parker draw a parallel between a governmental permit and a private contract that is subject to rescission on the grounds specified in Civil Code section 1689. However, such a parallel cannot survive critical scrutiny. Unlike a contract, a permit is essentially a license or a warrant, issued by a person in authority, that empowers the grantee to do some act that is not allowable without such authority.

A governmental permit is further distinguished from a private contract by the fact that the exclusive manner by which a term or condition of a permit may be challenged is that specified in the law that requires the permit to be obtained. In the case of the subject coastal development permit, the governing law is the Coastal Act. Pursuant to section 30801 of the Coastal Act, the exclusive method by which to challenge a term or condition of a coastal development permit is to institute within 60 days of the approval of the permit a judicial proceeding seeking an administrative writ of mandate.

Judson and Parker in effect take the position that the "contract rescission" provisions of the Civil Code provide an alternative procedure by which to challenge a term or provision of a coastal development permit to that provided by section 30801 of the Coastal Act. Judson and Parker cite no legal authority for this remarkable proposition. Not only does no such authority exist, such authority as does exist on this question (see discussion in following section) is precisely to the contrary.

A permit does resemble a contract in the sense that a party to a contract, after having enjoyed benefits of the contract, cannot unilaterally refuse to perform that party's obligations under the contract. (Civil Code section 1589.) Similarly, neither the permittee of a governmental permit nor the permittee's successor in interest can unilaterally repudiate a condition of that permit, as Judson and Parker have attempted to do, once the permittee has accepted the benefits of that permit. (*County of Imperial v. McDougal* (1977) 19 Cal. 3d 505, 510-11.)

Similar principles apply to an undertaking to amend a previously issued coastal development permit. Under the Commission's permit amendment procedures set forth in section 13166 of the Commission's regulations, a permittee may not unilaterally change the terms of a previously issued permit. The permittee must first request Commission approval of an amendment to the permit.

Since as a condition to granting CDP No. 306-21 the Commission required the permittee to record the OTD, the Commission must also agree to any purported revocation of the OTD. Neither the original permittee, Francice Bushkin, nor any successor in interest, Ann Judson or Gregory Parker, has ever requested, nor has the Commission agreed to, any such rescission.

Further, the irrevocable offer of dedication that Bushkin executed and recorded is to be binding for a period of 21 years. The recorded instrument states, "This Offer shall run with and burden the Property and all obligations, terms, conditions, and restrictions hereby imposed shall be deemed to be covenants and restrictions running with the land and shall be effective limitations on the use of the Property from the date of recordation of this document and shall bind the Grantor and all successors and assigns."

The Commission therefore finds that Judson and Parker's rescission of the offer of dedication was an illegal act that conflicts with the terms and conditions of CDP No. 306-21.

2. There is sound basis for the rescission.

Judson and Parker cite California Civil Code Section 1689(b), which permits a party to a contract to rescind under the following circumstances: (i) mistake; (ii) "[i]f the consideration for the obligation of the rescinding party becomes entirely void from any cause"; and (iii) "[i]f the contract is unlawful for causes which do not appear in its terms or conditions and the parties are not equally at fault." They claim that these grounds for rescission exist in their case, in that CDP No. 306-21 was issued and its condition satisfied under the mistaken assumptions that the condition was lawful and that the improvements could not be constructed if the applicant did not record the required offer to dedicate. The offer of dedication, they assert, "resulted from a mutual mistake regarding the constitutionality of the Permit Condition, was based on consideration that is void, and, if enforced, would effectuate an unlawful government purpose."

Judson and Parker cite the *Nollan* and *Dolan* decisions as the basis for their claim that the permit condition requiring applicant Bushkin to record an offer of dedication was unlawful. They assert that the Commission's findings in its approval of CDP No. 306-21 were not supported by a site-specific analysis of the potential impacts of the proposed development, and do not provide evidence that 1) there is an essential nexus between the required offer of dedication and the impacts of the proposed development, or 2) the required offer of dedication is proportional to the impacts of the proposed development. According to Judson and Parker, the Commission mistakenly assumed the permit condition was valid and lawful, and the applicant mistakenly assumed she needed to record the offer of dedication in order to carry out the proposed development. Judson and Parker claim that because the condition does not pass the tests of nexus and proportionality, established, respectively, by *Nollan* in 1987 and *Dolan* in 1994, it is unconstitutional. Therefore, Judson and Parker have proper grounds to rescind the offer.

Commission response

Under the circumstances of this matter, neither the *Nollan* nor the *Dolan* decision provides Judson and Parker with legally sufficient grounds, whether pursuant to California Civil Code section 1689(b) or otherwise, to rescind the OTD.

As noted in the preceding section, the Coastal Act requires applicants for permits who believe a requirement imposed by the Commission to be unlawful to file legal challenges to such requirements within sixty days of the Commission's decision.

It is well settled that the failure of a permit applicant to comply with this procedure will bar that applicant, or any successor in interest to that applicant, from challenging the requirement at a later point in time. This general proposition is well illustrated by the decision of the Court of Appeal in the case of *California Coastal Commission v. Superior Court* (1989) 212 Cal.App.3d 1488. This case involved a claim in inverse condemnation for damages allegedly suffered as a result of the plaintiff's compliance with an access dedication requirement the Commission imposed as a condition to a coastal development permit. The claim was founded on the *Nollan* decision. The court held that the claim was barred by the failure to lodge it within the time period specified by section 30801 of the Coastal Act. The Court of Appeal recently reaffirmed the necessity of complying with the procedure specified in section 30801 in *Ojavan Investors, Inc. v. California Coastal Commission* (1997) 54 Cal.App.4th 373.

Judson and Parker are further precluded from using the *Nollan* and *Dolan* decisions as justifications for their revocation of the OTD by the doctrine of waiver. That doctrine, first enunciated by the California Supreme Court in the previously-cited *McDougal* case, precludes a permittee from challenging the conditions to a permit once the permittee has accepted the permit's benefits. This principle was also reaffirmed by the Court of Appeal in the *Ojavan* decision. In the present matter, it is undisputed that Judson and Parker's predecessor in interest accepted the benefits of CDP No. 306-21 by constructing the improvements that permit authorized.

In the present case, the permittee, Judson and Parker's predecessor, did not challenge but instead accepted CDP No. 306-21, recorded the OTD in compliance with the permit, and performed the development the permit authorized. For the reasons discussed above, under these circumstances neither the original permittee nor Judson and Parker as her successors possess the legal ability to challenge the permit's access dedication requirement.

The Commission finds that it is not necessary or relevant to debate the merits or validity of the findings for CDP No. 306-21. Those findings were not challenged pursuant to section 30801 of the Act and cannot now be challenged as deficient. Nor is it necessary to speculate whether the access condition attached to that permit would have withstood a constitutional challenge in 1980, when the permit was granted, or whether a similar condition attached to a similar permit would withstand such a challenge today. To the extent that Judson and Parker's arguments attack the integrity and validity of the permit and its conditions, they are barred by the statute of limitations.

Therefore, the Commission finds that under applicable principles of California law Judson and Parker are precluded from attacking the access dedication requirement contained in the permit to which they are subject. Accordingly, the *Nollan* and *Dolan* decisions provide no legally valid justification for their rescission of the OTD that their predecessor recorded in fulfillment of that requirement.

3. The Commission exceeds its authority by commencing Cease and Desist order proceedings.

Judson and Parker state that since the recordation of a Notice of Revocation and/or Rescission does not require a permit to be issued, "the Commission apparently maintains that the Notice is an activity that is inconsistent" with CDP No. 306-21. However, in invoking Coastal Act section 30810 as providing the authority to commence cease and desist order proceedings, "the Commission has misconstrued the law."

Judson and Parker assert that the "clear intent" of section 30810(b) is to regulate "development activity" that is unpermitted or contrary to a permit. They base this assertion on that section's reference to "immediate removal of any development or material" as among the terms and conditions to which a cease and desist order may be subject. They further cite the Commission's analysis of SB 317 (Davis), the legislation that created section 30810 and granted the Commission cease and desist order authority. According to that analysis, the bill

would allow the staff or the Commission to stop development which could be causing damage to resources protected by the Coastal Act. For instance, the Executive Director or the Commission could immediately curtail the grading of a sensitive wetland. . . .

Judson and Parker contend that the Notice of Revocation cannot be construed as a development activity under section 30106, but rather "constitutes compliance with a legal obligation to give notice to the other contracting party of the fact of rescission." The inference, which the alleged violators do not explicitly state, is that the Commission is exceeding its regulatory authority by attempting to enforce what it construes as an activity that is inconsistent with a permit.

Commission response

The Commission responds that it is Judson and Parker who have misconstrued the law. Their argument rests on an insistence that certain stated examples of the use and application of cease and desist order authority in fact constitute prescriptions for and limitations on the use of that authority. A cease and desist order may require the immediate removal of development or material; the Commission may order a violator to cease grading or filling. However, section 30810(a) clearly states that the Commission's cease and desist authority is not limited to cases involving "development," as defined by 30106. Section 30810(a) provides:

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. (Emphasis added.)

The statute makes clear that the question of whether recordation of a Notice of Revocation of an irrevocable offer of dedication constitutes development as defined in 30106 is irrelevant to this enforcement proceeding. The Commission finds that Judson and Parker's rescission of the offer of dedication unquestionably constitutes an "activity" that is inconsistent with and in clear violation of the special condition to a previously issued permit. In initiating cease and desist order proceedings to restrain activity that is inconsistent with a previously issued permit, the Commission is clearly acting within the statutory authority as provided by 30810.

The Commission notes that the subject cease and desist order proceeding is not the first involving a violation of a permit term or condition. In 1992, the Commission issued Cease and Desist Order No. CCC-92-CD-01 (Bogart, et al.) to restrain the sales of property in violation of terms and conditions of previously issued CDPs. In that proceeding, the alleged violators had violated the terms of recorded conditions of approval without performing "development" as defined in Coastal Act section 30106.

4. The Notice of Revocation poses no threat of injury to the subject property.

Judson and Parker assert that under section 30810, the Commission's authority to act "derives from the threat of injury to a parcel of property within a [sic] coastal zone." They have "merely recorded the Notice," and have not "undertaken any action on the Property or affecting the use or condition of the Property." The Notice of Revocation is not a development with impact on the use or condition of the property, and there exists no threatened or actual injury, or even change, to the property. Therefore, a cease and desist order proceeding "would be inappropriate and ultra vires."

Commission response

Section 30810 authorizes the Commission to issue a cease and desist order to restrain any activity that is inconsistent with a previously issued coastal development permit. Because the activity that is the subject of the present proceeding satisfies the above-stated definition, this proceeding is an appropriate one that is indisputably within the authority granted to the Commission by section 30810. The Commission does not need to also demonstrate that the activity poses "the threat of injury" to property or has an impact on the use or condition of property.

5. The Notice of Intent is too vague, and its description of the violation activity is legally inadequate.

Judson and Parker state that the Commission's Notice of Intent (NOI) "fails to identify adequately the Commission's concerns and objectives." They assert that the NOI's description of the violation activity is legally inadequate, in that it fails to satisfy the provisions of Coastal Act section 30810 and CCR section 13187(a)(6)² as incorporated into section 13181(a).

Commission response

The NOI for this proceeding (**Exhibit 9**) is very clear and unambiguous as to the Commission's "concerns and objectives." As required by CCR Section 13187(a)(6), the NOI specifically describes the activity that has triggered this enforcement action. It also explains the basis of the Executive Director's belief that the specified activity meets the criteria of 30810(a):

This violation consists of the recordation on October 16, 1998, as Instrument No. 98-080041, of a Notice of Revocation and/or Rescission of Offer to Dedicate Public Access Easement affecting your property. . . . By recording the subject Notice of Revocation and/or Rescission, you have attempted to undo the mitigation required by the

² Judson and Parker's Statement of Defense cites section "13187(B)(6)." However, there is no such section; they clearly intended to cite 13187(a)(6) ("a description of the activity").

Commission as a condition of approval of CDP No. 306-21, to which you, as successors in interest, are subject.

Judson and Parker have undertaken activity, in the form of recording a Notice of Revocation and/or Rescission, that undoes without legal justification the mitigation required as a condition of approval of CDP No. 306-21. Any such activity constitutes a patent violation of the affected permit. Pursuant to section 30810 of the Coastal Act, the Commission has enforcement authority to issue this cease and desist order to stop an ongoing violation of a previously issued permit.

E. Impacts of alleged violation on Coastal Resources

The activity that is the subject of this enforcement action is in direct conflict with the public access policies contained in Chapter 3 of the Coastal Act.

The California Constitution, Article X, Section 4, provides:

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

In 1972, widespread public concern that development along the California coast was "excluding the right of way" to the shoreline provided the impetus for the passage of Proposition 20. Consequently, in passing the Coastal Act in 1976, the Legislature charged the Coastal Commission with protecting, maintaining, and enhancing public access opportunities to and along the coast, and enacted strong policies intended to protect the public's right of shoreline access and ensure that new development does not interfere with that right. Section 30210 of the Coastal Act provides:

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

Section 30212(a) states:

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

To carry out its mandate to protect and enhance public access, the Commission reviews coastal development permit proposals for consistency with the Chapter 3 public access policies. In approving proposals for new residential subdivision and construction, the Commission has historically ensured that the public retains its right of access to and along the shoreline while still allowing residential development to locate near the shoreline. To mitigate the impacts of new development, the Commission has required permit applicants to record an offer to dedicate

(OTD) an easement for public access to or along the shore. Over the past two decades, 1,269 OTDs have been recorded statewide in connection with coastal development permit approvals.

Recordation of an OTD constitutes only the first step in mitigating the impacts of a given residential development project. The second step occurs when a local government or suitable private non-profit entity accepts the OTD on behalf of the public. To date only about 25 percent of all recorded OTDs have been accepted.

The Commission certified a Local Coastal Program for Santa Barbara County in 1982, and the County assumed authority for issuing coastal development permits. About 99 OTDs have been recorded in the County as conditions of permit approval. However, before the recent actions of the Board of Supervisors to consider acceptance of 72 OTDs, the County had accepted only 19. In order to secure the remaining OTDs before they expired, the Board in 1995 granted to the County Planning and Development Department \$46,000 from its Coastal Resource Enhancement Fund to prepare a recommendation for acceptance of outstanding OTDs. After three years of review and preparation, County planning staff presented to the Board at its October 6, 1998 meeting a recommendation to accept 72 OTDs.

Policy 7-12 of Santa Barbara County's LCP provides that the County shall accept the lateral OTDs obtained in connection with development in Hope Ranch. Consistent with that policy, County planning staff included in their proposal six outstanding OTDs in Hope Ranch, including that affecting Judson and Parker's property.

County acceptance of this public access easement was the foreseeable and intended outcome of Special Condition 1 of CDP No. 306-21. By recording the subject Notice of Revocation, Judson and Parker have deterred the County from accepting the OTD and thereby implementing the policy of its LCP. In so doing, Judson and Parker have reputated the measure the Commission determined to be necessary in order for the residential development authorized by the permit to be found consistent with the Chapter 3 policies of the Coastal Act. Their action has postponed the County's acceptance of a much-needed shoreline access opportunity for the people of the State of California.

V. CEASE AND DESIST ORDER

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

Pursuant to its authority under Pub. Res. Code §30810, the California Coastal Commission hereby orders Ann Judson and Gregory Parker, Trustees of the Stanford Farms Trust, all their agents and any persons acting in concert with any of the foregoing to cease and desist from: 1) undertaking any future activity that is inconsistent with any permit previously issued by the Commission; and 2) participating further in any way in any activity previously undertaken with respect to 4635 Via Roblada, Santa Barbara, that is inconsistent with any permit previously issued by the Commission. Accordingly, all persons subject to this order shall fully comply with paragraphs A, B, and C, as follows:

- A. Refrain from engaging in any future activity that is inconsistent with any permit previously issued by the Commission.

- B. Within 30 days of the date of this order, or within such additional time as the Executive Director may grant for good cause, submit for review and approval of the Executive Director a legal document that shall:
- (1) Cancel completely the effect of the Notice of Revocation and/or Rescission of Offer to Dedicate.
 - (2) Restore the affected offer of dedication to the status it had prior to the recordation of the Revocation notice.
 - (3) Unconditionally waive, on behalf of themselves and all successors in interest and assigns, any and all claims that the offer of dedication was rescinded or unacceptable at any time since its recordation on May 27, 1982.
- C. Within 10 days of Executive Director approval, submit evidence of recordation of the approved legal document.

Persons subject to the Order

Ann Judson; Gregory J. Parker; and their agents.

Identification of the Property

The property that is the subject of this cease and desist order is described as follows:

4635 Via Roblada, Santa Barbara, CA 93110. APN 063-150-003.

Description of Unpermitted Activity

Recordation on October 16, 1998 as Instrument No. 98-080041 of a "Notice of Revocation and/or Rescission of Offer to Dedicate Public Access Easement."

Term of the Order

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

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 including any deadline contained in this order will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists.

Deadlines

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

Appeal

Pursuant to Pub. Res. Code §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.

EXHIBITS

1. Location of subject property.
2. CDP No. 306-21.
3. Irrevocable Offer to Dedicate, recorded May 27, 1982 as Instrument No. 82-21839.
4. Grant deed recorded October 31, 1995; TRW REDI property data for subject property.
5. Letter dated October 6, 1998, from Alan D. Condren to Santa Barbara County Board of Supervisors.
6. Letter dated October 16, 1998, from K. Andrew Kent to Santa Barbara County Board of Supervisors.
7. Notice of Revocation and/or Rescission of Offer to Dedicate Public Access Easement, recorded October 16, 1998 as Instrument No. 98-080041.
8. Notice of Intent to commence Cease and Desist Order proceedings, dated November 24, 1998; first page of enclosed Statement of Defense form; enclosed copy of findings for CDP No. 306-21.
9. Alleged violators' Statement of Defense, dated January 18, 1999.

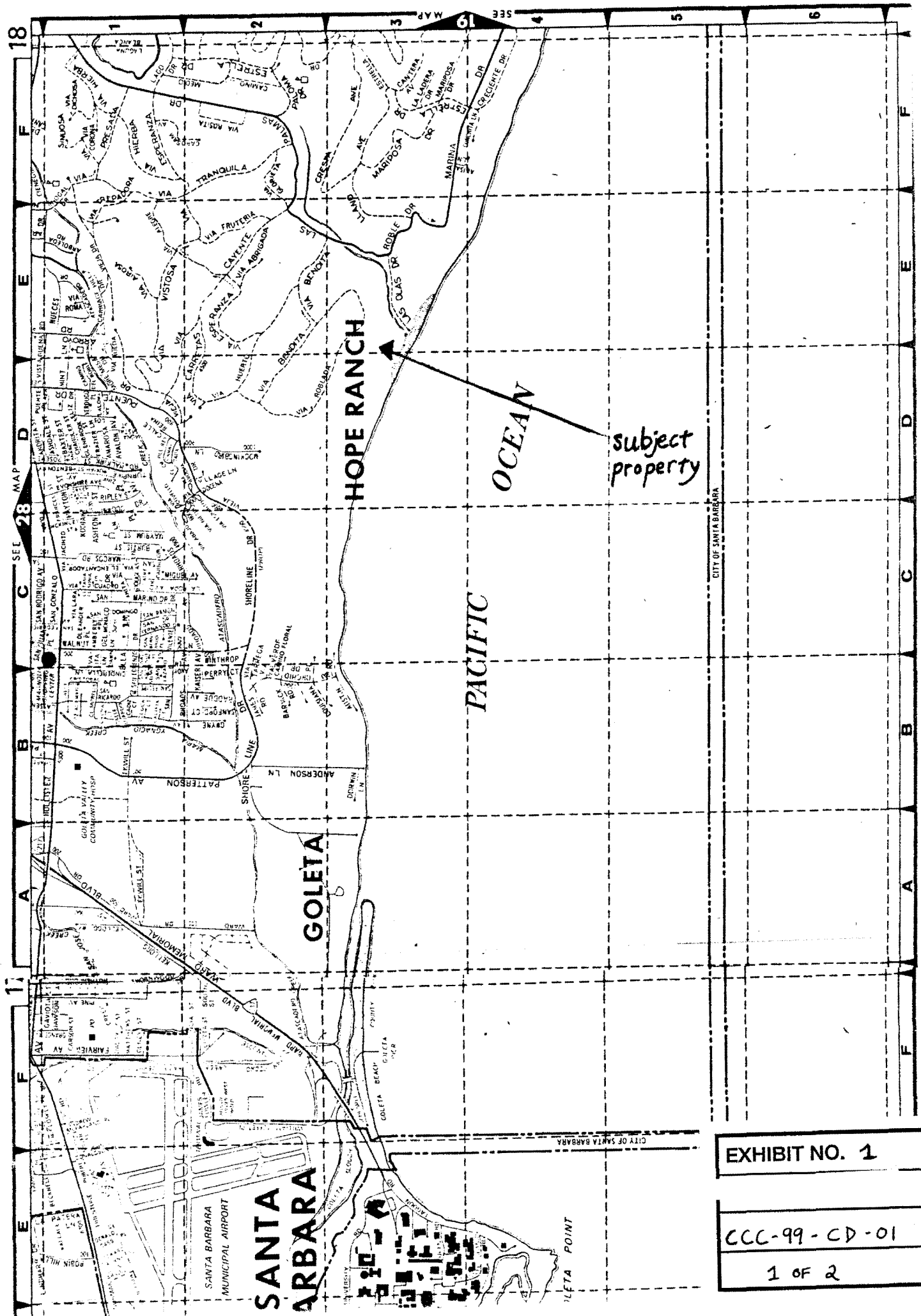


EXHIBIT NO. 1

CCC-99-CD-01

1 OF 2

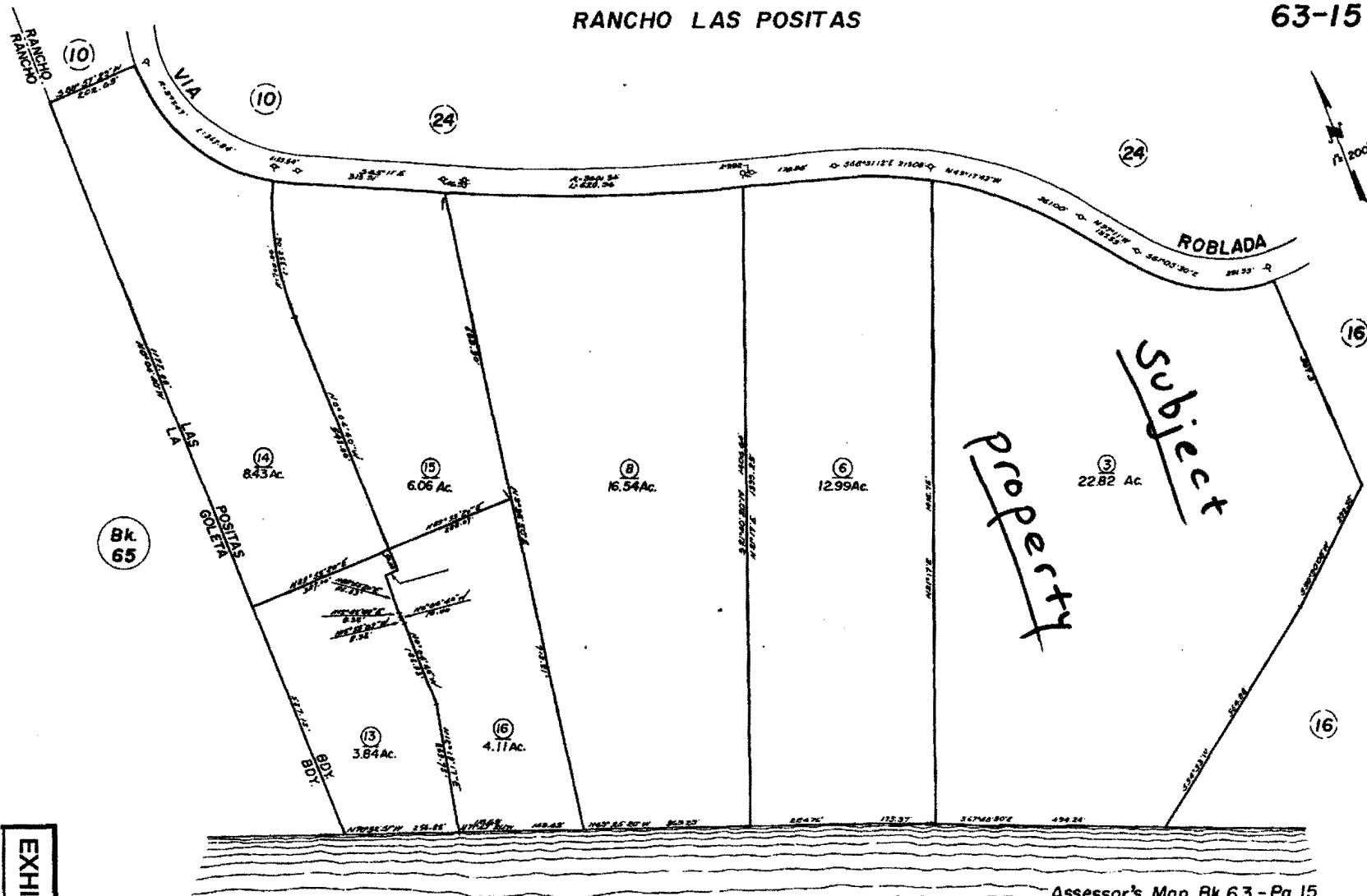


EXHIBIT NO. 1

CCC - 99 - CD - 01

2 OF 2

California Coastal Commission

SOUTH CENTRAL COAST REGIONAL COMMISSION

100 STATE STREET

BALBOA BUILDING, SUITE 612

SANTA BARBARA, CA 93101

COASTAL DEVELOPMENT PERMIT

On May 9 1980, by a vote of 10 ^{1 absent, 1 abstain} to 0, the California Coastal Commission granted to MRS. FRANCICE BUSHKIN Permit # 306-21, subject to the conditions set forth below, for development consisting of addition of sunroom and decking to existing guest house.

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

The development is within the coastal zone in Santa Barbara County at 4635 Via Roblada, Santa Barbara (APN: 63-150-03).

After public hearing held on May 9, 1980, the Commission found that, as conditioned, the proposed development 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; and 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 South Central Coast Regional Coastal Commission on May 9, 1980,

Carl C. Hetrick
Executive Director

The undersigned permittee acknowledges receipt of the California Coastal Commission Permit # 306-21, and fully understands its contents, including all conditions imposed. (Please return one signed copy to the South Central C soon as possible; upon receipt of same, the permit card will be post on project property.

EXHIBIT NO. 2**CCC-99-CD-01****1 of 4**

DATE

PERMITTEE

Permit # 306-21, is subject to the following conditions:

I. STANDARD CONDITIONS

1. Assignment of Permit This permit may not be assigned to another person except as provided in Cal. Admin. Code, Title 14, Section 13170.
2. Notice of Receipt and Acknowledgement Construction authorized by this permit shall not commence until a copy of this permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of its contents, is returned to the Commission.
3. Expiration If construction has not commenced, this permit will expire two (2) years from the date on which the Commission voted on the application. Application for extension of this permit must be made prior to the expiration date.
4. Construction All construction must occur in accord with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviations from the approved plans must be reviewed by the Commission pursuant to Cal. Admin. Code, Title 14, Sections 13164 - 13168.

II. SPECIAL CONDITIONS

1. Prior to issuance of a coastal development permit, the applicant shall record an irrevocable offer to dedicate to a public agency or to a private association approved by the Regional Commission an easement for public access and recreational use running from the mean high tide line to the toe of the bluff. Such easement shall be free of prior liens or encumbrances except tax liens. The offer shall be made in a manner and form approved in writing by the Executive Director. The offer shall be irrevocable for a period of 21 years, running from the date of recordation and 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 complete Permit Fee of \$ _____ must be submitted to the Commission. You have previously submitted \$ _____
PLEASE ENCLOSE THE REMAINDER (\$ _____) WITH YOUR SIGNATURE COPY
OF THE PERMIT FORM.

Carl C. Hetrick
CARL. C. HETRICK
Executive Director

EXHIBIT NO. 2

CCC-99-CD-01

2 OF 4

306-21

MRS. FRANCIS BUSHKIN, 4635 Via Roblada, Santa Barbara, CA. 93110.

LOCATION: 4635 Via Roblada, Santa Barbara, CA. 93110, Co. of Santa Barbara (APN: 63-150-03)

PROJECT: Addition of sunroom and decking to existing guest house.

Lot size:	24.151 acres
Building coverage:	existing (guest house) =587 sq. ft. proposed addition= 196 sq. ft. proposed deck= 374 sq. ft.
Lot coverage:	Negligible
Gross structural area(GSA)	196 sq. ft.
Buildable area of lot(BAL)	25.85 acres
Ratio of GSA TO BAL	Negligible
Height:	10' average finished grade (AFG) 12' centerline frontage road (CFR)
Zoning:	E-1 residential
G.P.	Residential

Note: The addition of the proposed improvements will result in a more intensive use of the subject property. Such an increase in the use of private property fronting the public's intertidal resources is of a type that represents a cumulative impact and burden upon the public's right to use those resources. The intent of condition 1 is to insure the public's right of access along its tide and submerged lands.

The burden imposed on the property owners by condition 1 is negligible because the beach is separated from the residence by a \pm 60 foot coastal bluff which serves to insulate beach activity from the residential environment.

A condition of vertical access is not appropriate since the frontage road to the subject lot is a private road, there is no evidence of present use as an access, there are no public parking facilities nearby, and because access to the beach from the applicant's property is virtually impossible.

This project, as conditioned, will raise no substantial coastal issues and will be in conformity with the Coastal Act of 1976.

continued

EXHIBIT NO. 2

CCC-99-CD-01

3 OF 4

306-21 continuedCONDITIONS:

1. Prior to issuance of a coastal development permit, the applicant shall record an irrevocable offer to dedicate to a public agency or to a private association approved by the Regional Commission an easement for public access and recreational use running from the mean high tide line to the toe of the bluff. Such easement shall be free of prior liens or encumbrances except tax liens. The offer shall be made in a manner and form approved in writing by the Executive Director. The offer shall be irrevocable for a period of 21 years, running from the date of recordation and shall run with the land in favor of the people of the State of California binding successors and assigns of the applicant or landowner.

DB/ch

EXHIBIT NO. 2
CCC-99-CD-01
4 OF 4

82-21839

MAY 27 3 10 PM '82

OFFICIAL RECORDS
SANTA BARBARA CO., CALIF.
HOWARD C. HENZEL
CLERK-RECORDER

Recording Requested by and
When Recorded, Mail To:
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105
Attention: Legal Department

NO FEE PER
GOV. CODE 6103

5/27/82

IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT

AND

DECLARATION OF RESTRICTIONS

THIS IRREVOCABLE OFFER AND DEDICATION OF PUBLIC ACCESS EASEMENT AND
DECLARATION OF RESTRICTIONS (hereinafter "Offer") is made this 14th day of

April, 19 82, by FRANCIE NETCHER BUSHKIN,
(hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of a fee interest of certain real
properties located in the County of SANTA BARBARA, State of
California, and described in the attached Exhibit A (hereinafter referred to
as the "Property"); and

II. WHEREAS, all of the Property is located within the coastal zone as
defined in Section 30103 of the California Public Resources Code (which code
is hereinafter referred to as the "Public Resources Code"); and

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

IV. WHEREAS, Pursuant to the Act, Grantor applied to the Commission
for a permit to undertake development as defined in the
Act within the coastal zone of SANTA BARBARA County (hereinafter
the "Permit"); and

V. WHEREAS, a coastal development permit (Permit No. 306-21)
was granted on MAY 9th 1980, by t

EXHIBIT NO. 3

CCC-99-CD-01

1 OF 10

accordance with the provision of the Staff Recommendation and Findings,

Exhibit B, attached hereto and hereby incorporated by reference, subject to

the following condition:

Prior to issuance of a coastal development permit, the applicant shall record an irrevocable offer to dedicate to a public agency or to a private association approved by the Regional Commission an easement for public access and recreational use running from the mean high tide line to the toe of the bluff. Such easement shall be free of prior liens or encumbrances except tax liens. The offer shall be made in a manner and form approved in writing by the Executive Director. The offer shall be irrevocable for a period of 21 years, running from the date of recordation and shall run with the land in favor of the people of the State of California, binding successors and assigns of the applicant or landowner.

VI. WHEREAS, the subject 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 Section 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;

EXHIBIT NO. 3

CCC-99-CD-01

2 OF 10

1 IX. WHEREAS, it is intended that this Offer is irrevocable and shall con-
 2 stitute enforceable restrictions within the meaning of Article XIII, Section 8
 3 of the California Constitution and that said Offer, when accepted, shall there-
 4 by qualify as an enforceable restriction under the provision of the California
 5 Revenue and Taxation Code, Section 402.1;

6 NOW THEREFORE, in consideration of the granting of Permit No. 306-21
 7 to the owner(s) by the Commission, the owner(s) hereby offer(s) to dedicate to
 8 the People of California an easement in perpetuity for the purposes of

9 PUBLIC ACCESS AND PASSIVE RECREATIONAL USE RUNNING
 10 FROM THE MEAN HIGH TIDE TO THE TOE OF THE BLUFF
 11 _____
 12 _____
 13 _____

14 and as specifically set forth by attached Exhibit C hereby incorporated by
 15 reference.

16 1. BENEFIT AND BURDEN. This Offer shall run with and burden the Pro-
 17 perty and all obligations, terms, conditions, and restrictions hereby imposed
 18 shall be deemed to be covenants and restrictions running with the land and
 19 shall be effective limitations on the use of the Property from the date of
 20 recordation of this document and shall bind the Grantor and all successors and
 21 assigns. This Offer shall benefit the State of California.

22 2. DECLARATION OF RESTRICTIONS. The Grantor is restricted from inter-
 23 fering with the use by the public of the area subject to the offered easement
 24 for public access. This restriction shall be effective from the time of
 25 recordation of this Offer and Declaration of Restrictions.

26 //

27 //

EXHIBIT NO. 3

CCC-99-CD-01

3 OF 10

1 3. ADDITIONAL TERMS, CONDITIONS, AND LIMITATIONS. Prior to the opening
2 of the accessway, the Grantee, in consultation with the Grantor, may record
3 additional reasonable terms, conditions, and limitations on the use of the
4 subject property in order to assure that this Offer for public access is
5 effectuated.

6 4. CONSTRUCTION OF VALIDITY. If any provision of these restrictions
7 is held to be invalid or for any reason becomes unenforceable, no other provi-
8 sion shall be thereby affected or impaired.

9 5. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions, exceptions,
10 obligations, and reservations contained in this Offer shall be binding upon
11 and inure to the benefit of the successors and assigns of both the Grantor
12 and the Grantee, whether voluntary or involuntary.

13 6. TERM. This irrevocable offer of dedication shall be binding for
14 a period of 21 years. Upon recordation of an acceptance of this Offer by the
15 Grantee, this Offer and terms, conditions, and restrictions shall have the
16 effect of a grant of access easement in gross and perpetuity that shall run
17 with the land and be binding on the parties, heirs, assigns, and successors.

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

EXHIBIT NO. 3

CCC-99-CD-01

4 OF 10

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

6
 7 Executed on this 14th day of April, at Santa Barbara
 8 _____, California.

9
 10 Dated: April 14, 1982

Signed

Francice Netcher Bushkin
 Owner

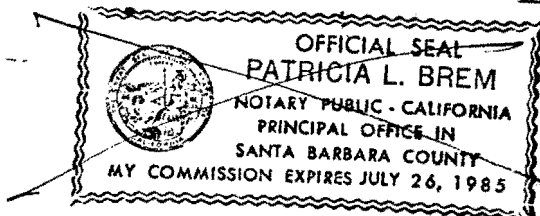
FRANCICE NETCHER BUSHKIN

Type or Print

Signed

Patricia L. Brem

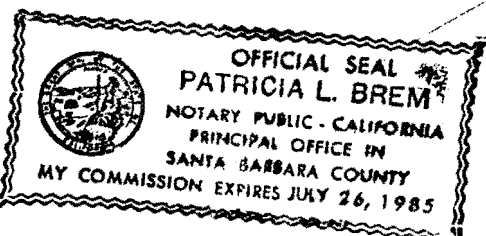
Type or Print



16 STATE OF CALIFORNIA)
 17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)
 26)
 27)
 COUNTY OF Santa Barbara) SS

19 On April 14, 1982, before me, the undersigned Notary Public,
 20 personally appeared Francice Netcher Bushkin and
 21 _____, known to me to be the persons whose names
 22 are subscribed to the foregoing instrument and acknowledged to me that they
 23 executed the same.

24 Witness my hand and official seal the day and year in this certificate
 25 first above written.



Patricia L. Brem
 Notary Public, in and for

County of Santa Barba

State of California

EXHIBIT NO. 3

CCC-99-CD-01

5 OF 10

1 This is to certify that the Offer to Dedicate set forth above dated
 2 April 14, 1982, and signed by Francice Netcher
 3 Bushkin, owner(s), is hereby acknowledged by the under-
 4 signed officer on behalf of the California Coastal Commission pursuant to
 5 authority conferred by the California Coastal Commission when it granted
 6 Coastal Development Permit No. 306-21 on, May 9, 1980
 7 and the California Coastal Commission consents to recordation thereof by its
 8 duly authorized officer.

9 Dated: April 28, 1982

Steven D. Brown
Legal Counsel
 California Coastal Commission

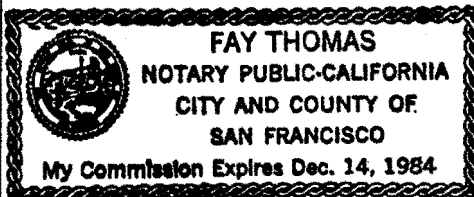
13 STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 On April 28, 1982, before the undersigned, a Notary Public in
 16 and for said State, personally appeared Steven D. Brown,
 17 Legal Counsel, known to me to be the authorized representative
 18 Title

18 of the California Coastal Commission and known to me
 19 to be the person who executed the within instrument on behalf of said Commis-
 20 sion, and acknowledged to me that such Commission executed the same.

21 Witness my hand and official seal.



Fay Thomas
 Notary Public in and for said County and State

EXHIBIT NO. 3

CCC-99-CD-01

6 OF 10

EXHIBIT A

1. Assessor's Parcel Number: 63-150-03
2. Legal Description:

PARCEL ONE:

That portion of Lot 10 of the westerly portion of the so-called Hope Ranch, in the County of Santa Barbara, State of California, according to the map thereof filed in Book 16, Page 143 of Record of Surveys in the office of the County Recorder of said County, described as follows:

Beginning at a concrete monument in the center line of Las Palmas Drive, set at Station 102 plus 12.14 as shown on Sheet No. 4 of that certain map of Santa Barbara Estates Subdivision of Hope Ranch Park recorded June 20, 1924 in Book 15, Pages 51 to 56 inclusive of Maps in the office of the County Recorder of said County; thence leaving the center line of Las Palmas Drive, north $70^{\circ}11'$ west 295.40 feet to a 2 inch brass capped monument; thence north $65^{\circ}31'$ west 560.73 feet to a point in the centerline of Via Roblada Drive, on a curve to the right whose radius is 150.00 feet and whose central angle is $91^{\circ}25'$ and whose long chord bears south $29^{\circ}33'30''$ west a distance of 214.74 feet to a point; thence south $75^{\circ}16'$ west 75.44 feet to the beginning of a curve to the left having a radius of 799.52 feet, whose central angle is $15^{\circ}30'$ and whose long chord bears south $67^{\circ}31'$ west 215.64 feet; thence southwesterly along the arc of said curve, 216.29 feet to the beginning of a reverse curve to the right having a radius of 360.19 feet, whose central angle is $35^{\circ}14'$ and whose long chord bears south $77^{\circ}23'$ west 218.03 feet; thence westerly along the arc of said curve, 221.49 feet to the northwesterly corner of the tract of land described as Parcel "A" in the deed to Investment Operating Corporation, recorded March 5, 1959 as Instrument No. 7177 in Book 1603, Page 220 of Official Records of said County, and being the true point of beginning of the tract of land hereinafter described; thence south $1^{\circ}55'30''$ east, leaving the centerline of said Via Roblada Drive and along the westerly line of said Investment Operating Corporation tract of land, 507.30 feet to an angle point therein, thence south $50^{\circ}30'08''$ west, continuing along said last mentioned westerly line, 292.56 feet to the most southerly corner thereof; thence south $54^{\circ}33'$ west 268.52 feet to a 2 inch brass capped monument; thence continuing south $54^{\circ}33'$ west 296.36 feet more or less, to a point in the mean high tide line of the Pacific Ocean on October 24, 1929; thence along said mean high tide line, north $67^{\circ}48'30''$ west 494.24 feet to the southeasterly corner of the tract of land described in the deed to Deborah S. Pelissero, a married woman, recorded February 26, 1960 as Instrument No. 6169 in Book 1718, Page 136 of Official Records of said County; thence leaving said mean high tide line and along the easterly line of said Pelissero Tract of land, north $21^{\circ}17'$ east 1416.76 feet, more or less to the northeasterly corner thereof, being a point in the centerline of Via Roblada Drive; thence southeasterly along said centerline on a curve to the right, whose radius is 860.27 feet, whose central angle is $24^{\circ}12'24''$ and whose long chord bears south $49^{\circ}17'42''$ east 361.00 feet to which a 2 inch brass capped monument bears south $52^{\circ}49'$ west, thence south $37^{\circ}11'$ east, continuing along said centerline, to the beginning of a curve to the left whose radius is 360.19 feet, whose central angle is $47^{\circ}49'$ and whose long chord bears south $61^{\circ}00'$ 291.95 feet; thence easterly along the arc of said curve, 300 feet to the true point of beginning.

EXHIBIT NO. 3

CCC-99-CD-01

7 OF 10

EXHIBIT B

306-21 MRS. FRANCIS BUSHKIN, 4635 Via Roblada, Santa Barbara, CA. 93110.
LOCATION: 4635 Via Roblada, Santa Barbara, CA. 93110, Co. of Santa Barbara (APN: 63-150-03)
PROJECT: Addition of sunroom and decking to existing guest house.

Lot size:	24.151 acres
Buidling coverage:	existing (guest house) =587 sq. ft. proposed addition= 196 sq. ft. proposed deck= 374 sq. ft.
Lot coverage:	Negligible
Gross structural area(GSA)	196 sq. ft.
Buildable area of lot(BAL)	25.85 acres
Ratio of GSA TO BAL	Negligible
Height:	10' average finished grade (AFG) 12' centerline frontage road (CFR)
Zoning:	E-1 residential
G.P.	Residential

Note: The addition of the proposed improvements will result in a more intensive use of the subject property. Such an increase in the use of private property fronting the public's intertidal resources is of a type that represents a cumulative impact and burden upon the public's right to use those resources. The intent of condition 1 is to insure the public's right of access along its tide and submerged lands.

The burden imposed on the property owners by condition 1 is negligible because the beach is separated from the residence by a \pm 60 foot coastal bluff which serves to insulate beach activity from the residential environment.

A condition of vertical access is not appropriate since the frontage road to the subject lot is a private road, there is no evidence of present use an an access, there are no public parking facilities nearby, and because access to the beach from the applicant's property is virtually impossible.

This project, as conditioned, will raise substantial coastal issues and will be in with the Coastal Act of 1976.

continued

EXHIBIT NO. 3

CCC-99-CD-01

8 OF 10

306-21 continuedCONDITIONS:

1. Prior to issuance of a coastal development permit, the applicant shall record an irrevocable offer to dedicate to a public agency or to a private association approved by the Regional Commission an easement for public access and recreational use running from the mean high tide line to the toe of the bluff. Such easement shall be free of prior liens or encumbrances except tax liens. The offer shall be made in a manner and form approved in writing by the Executive Director. The offer shall be irrevocable for a period of 21 years, running from the date of recordation and shall run with the land in favor of the people of the State of California, binding successors and assigns of the applicant or landowner.

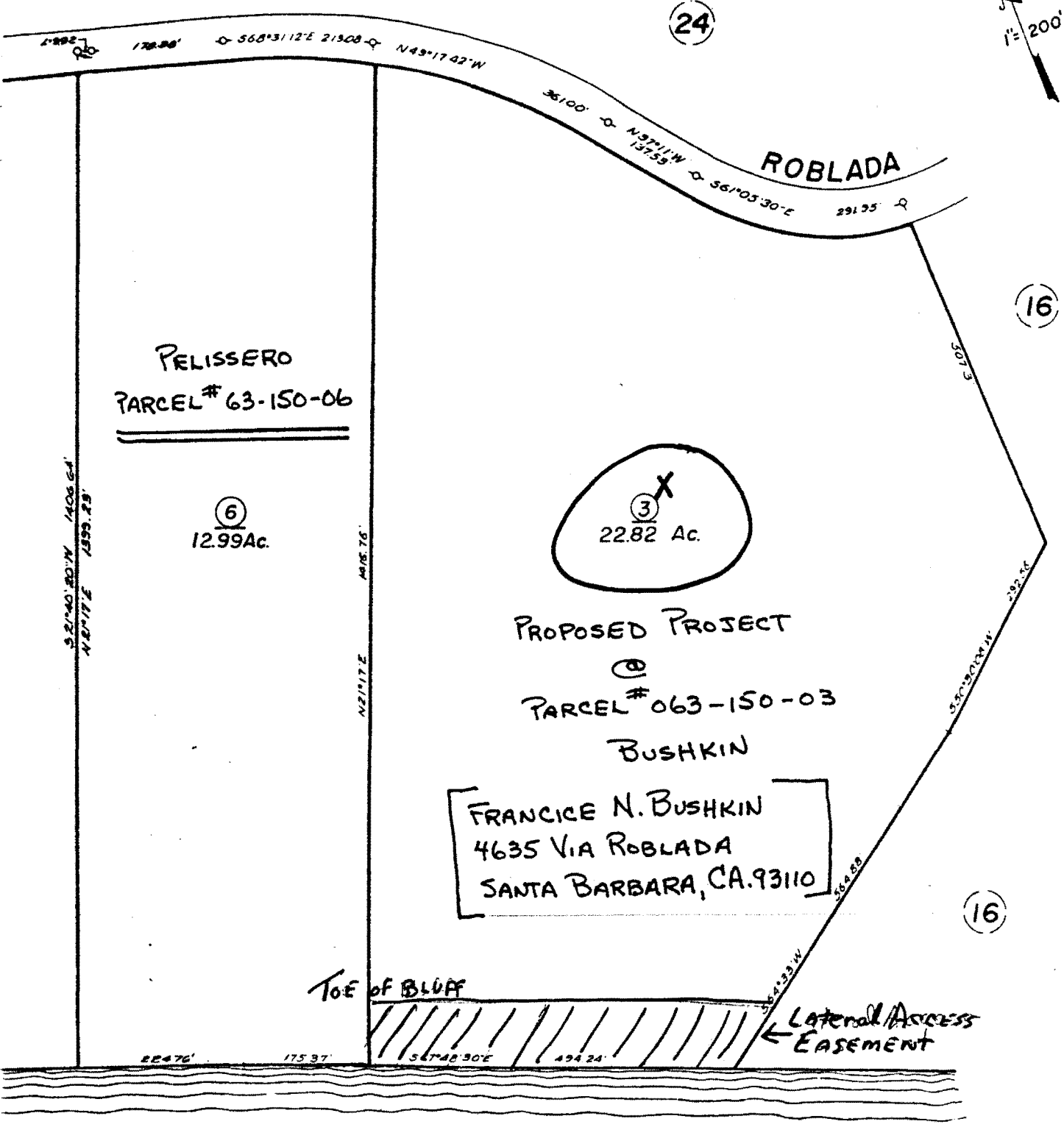
DB/ch

EXHIBIT NO. 3

CCC-99-CD-01

9 OF 10

PATTERN BOOK



TITLE ALONG SHORE OF OCEAN SHALL BE CONSTRUED MEAN HIGH WATER. SUPERVISORS MINUTES 9/2/30, BK. 3, PG. 390

OCEAN

Assessor's Map Bk. 63-1
County of Santa Barbara,

TE - Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.

11/17

EXHIBIT NO. 3
CCC-99-CD-01
10 OF 10

RECORDING COLLECTED BY
FIRST AMERICAN TITLE

Escrow No. SB-1409933-PW

WHEN RECORDED MAIL TO:

Ann Judson, Trustee
4635 Via Roblada
Santa Barbara, CA 93110

95-060710

Recorded
Official Records
County of
Santa Barbara
Kenneth A Pettit
Recorder
8:00am 31-Oct-95

Rec Fee 11.00
AU2 2.00
PCO 20.00
SUR 10.00
A.R. 43.00

FATC CC 3

MAIL TAX STATEMENTS TO:

DOCUMENTARY TRANSFER TAX 3 ON REVERSE

SAME ADDRESSEE ABOVE

Computed on the consideration or value of
TRANSFER TAX NOTED ON DEED CONVEYED; OR
OF THE PERMANENT RECORD ON the consideration or value less
liens or encumbrances remaining at time of sale.

A.P. 063-150-00, 063-160-02

Sig. of Decl. or Agent deter. tax - Firm Name

GRANT DEED

MONUMENT SURVEY-\$10.00

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

FRANCICE NETCHER BUSHKIN, a married woman as her sole and separate property

hereby GRANT(S) to

ANN JUDSON, as Trustee of the Stanford Farms Trust

the real property in the unincorporated area of the
County of Santa Barbara, State of California, described as

LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND MADE A PART HEREOF.

TRANSFER TAX NOT MADE PART
OF THE PERMANENT RECORD

Dated: October 27, 1995

STATE OF Santa Barbara
COUNTY OF California ss.

On October 27, 1995, before
me, the undersigned, personally appeared
Francice Netcher Bushkin

FRANCICE NETCHER BUSHKIN

personally known to me (or proved to me in 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 Linda J. Burns

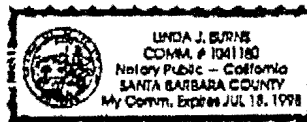


EXHIBIT NO. 4

CCC-99-CD-01

1 OF 4

EXHIBIT "A"

DESCRIPTION:

All that certain land situated in the State of California in the unincorporated area of the County of Santa Barbara, described as follows:

PARCEL ONE:

That portion of Lot 10 of the Westerly portion of the so-called Hope Ranch, in the County of Santa Barbara, State of California, according to the map thereof filed in Book 16, Page 143 of Record of Surveys, in the office of the County Recorder of said County, described as follows:

Beginning at a concrete monument in the center line of Las Palmas Drive, set at Station 102 plus 12.14 as shown on Sheet No. 4 of that certain map of Santa Barbara Estates Subdivision of Hope Ranch Park recorded June 20, 1924 in Book 15, Pages 51 to 56 inclusive of Maps, in the office of the County Recorder of said County; thence leaving the center line of Las Palmas Drive, North 70°11' West 295.40 feet to a 2 inch brass capped monument; thence North 65°31' West 560.73 feet to a point in the center line of Via Roblada Drive from which a 2 inch brass capped monument bears South 65°31' East 35.94 feet; thence Southerly along the center line of Via Roblada Drive, on a curve to the right whose radius is 150.00 feet and whose central angle is 91°25' and whose long chord bears South 29° 33'30" West a distance of 214.74 feet to a point; thence South 75°16' West 75.44 feet to the beginning of a curve to the left having a radius of 799.52 feet, whose central angle is 15°30' and whose long chord bears South 67° West 215.64 feet; thence Southwesterly along the arc of said curve 216.29 feet to the beginning of a reverse curve to the right having a radius of 360.19 feet, whose central angle is 35°14' and whose long chord bears South 77°23' West 218.03 feet; thence Westerly along the arc of said curve, 221.49 feet to the Northwestern corner of the tract of land described as Parcel "A" in the Deed to Investment Operating Corporation, recorded March 5, 1959 as Instrument No. 7177 in Book 1603, Page 220 of Official Records of said County, and being the true point of beginning of the tract of land hereinafter described; thence South 1°55'30" East, leaving the center line of said Via Roblada Drive and along the Westerly line of said Investment Operating Corporation Tract of land, 507.30 feet to an angle point therein, thence South 50°30'08" West, continuing along said last mentioned Westerly line, 292.56 feet to the most Southerly corner thereof; thence South 54°33' West 268.52 feet to a 2 inch brass capped monument thence continuing South 54°33' West 296.36 feet more or less, to a point in the mean high tide line of the Pacific Ocean on October 24, 1929; thence along said mean high tide line, North 67°48'30" West 494.24 feet to the Southeasterly corner of the tract of land described in the Deed to Deborah S. Pelissero, a Married Woman, recorded February 26, 1960 as Instrument No. 6169 in Book 1718, Page 136 of Official Records of said County; thence leaving said mean high tide line and along the Easterly line of said Pelissero Tract of land, North 21°17' East 1,416.76 feet, more or less to the Northeasterly corner thereof, being a point in the center line of Via Roblada Drive; thence
Continued...

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Southeasterly along said center line on a curve to the right, whose radius is 860.27 feet, whose central angle is $24^{\circ}13'24''$, and whose long chord bears South $49^{\circ}17'42''$ East 361.00 feet to a point from which a 2 inch brass capped monument bears South $52^{\circ}49'$ West 30.00 feet; thence South $37^{\circ}11'$ East, continuing along said center line, 137.53 feet to the beginning of a curve to the left whose radius is 360.19 feet, whose central angle is $47^{\circ}49'$ and whose long chord bears South $61^{\circ}05'30''$ East 291.95 feet; thence Easterly along the arc of said curve, 300.60 feet to the true point of beginning.

PARCEL TWO:

That portion of Lot 10 of the Westerly portion of the so-called Hope Ranch, in the County of Santa Barbara, State of California, according to the map thereof filed in Book 16, Page 143 of Record of Surveys, in the office of the County Recorder of said County, described as follows:

Beginning at a concrete monument set at Station 105 plus 48.70 in the center line of Las Palmas Drive as shown on Sheet No. 4 of that certain map of Santa Barbara Estates Subdivision of Hope Ranch Park, recorded with the County Recorder of Santa Barbara County on June 20, 1924, in Map Book 15, at Pages 51 to 56, inclusive, thence with the center line of Las Palmas Drive South $17^{\circ}29'$ East, a distance of 121.10 feet to a concrete monument set at the intersection of the center lines of Las Palmas and Las Olas Drive; thence leaving the center line of Las Palmas Drive, along the center line of Las Olas Drive South $77^{\circ}01'$ West a distance of 457.16 feet to a concrete monument set at Station 4 plus 77.72; thence leaving the centerline of Las Olas Drive and continuing South $77^{\circ}01'$ West, a distance of 150.00 feet to a concrete monument and a point hereinafter to be referred to as point "X" of said point being at the Southeasterly corner of that certain parcel of land designated "Parcel 1", conveyed to Investment Operating Corporation by a Deed recorded with said Recorder in Official Records Book 668, at Page 480; thence along the Southerly boundary of said parcel of land the following courses and distances: North $57^{\circ}31'$ West, a distance of 138.35 feet, North $83^{\circ}28'$ West, a distance of 113.20 feet, South $61^{\circ}43'$ West, a distance of 89.20 feet, North $85^{\circ}17'$ West a distance of 80.80 feet, North $57^{\circ}42'$ West, a distance of 86.77 feet, South $67^{\circ}28'$ West, a distance of 185.32 feet and South $44^{\circ}00'$ West, a distance of 50.82 feet to the true point of beginning of the following described tract of land; thence continuing South $44^{\circ}00'$ West, a distance of 104.43 feet; thence North $49^{\circ}30'$ West, a distance of 59.36 feet; thence South $67^{\circ}13'15''$ West, a distance of 201.22 feet to the most Westerly corner of Parcel "3" of said parcel of land conveyed to Investment Operation Corporation; thence continuing along the boundary of said parcel of land, North $50^{\circ}30'10''$ East, a distance of 292.56 feet; thence continuing along the Westerly boundary of said parcel of land, North $1^{\circ}55'30''$ West, a distance of 507.30 feet to the center line of Via Roblada whose right of way is sixty feet in width being thirty feet along each side of the following described center line: thence along the arc of a curve concave to the North, from a tangent which bears South $85^{\circ}00'$ East whose radius is 360.19 feet and whose central angle is $11^{\circ}57'12''$, a distance of 75.14 feet; thence leaving the center line of Via Roblada, South $1^{\circ}55'30''$ East, a distance of 580.22 feet to the true point of beginning.

EXCEPTING FROM Parcels One and Two any portion of said land formed by accretion by the Pacific Ocean, which was not formed by the deposit of alluvium from natural causes and by imperceptible degrees.

EXHIBIT NO. 4

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SUBJECT PROPERTY INFORMATION

1) Property: 4635 VIA ROBLADA , SANTA BARBARA CA 93110-2327 C041

APN: 063-150-03

County: SANTA BARBARA, CA

Census: 30.02

Map Pg: 18-D3

New Pg: 995-A3

Phone:

Owner: JUDSON ANN/TR

Mail: 4635 VIA ROBLADA; SANTA BARBARA CA 93110-2327

Use: SFR

Total Value: \$8,588,400

Land Value: \$7,976,400

Imprv Value: \$612,000

Assd Yr: 1997

% Improved: 7%

SALES INFORMATION

LAST SALE

Transfer Date: 10/31/95

Sale Price/Type:

Document #:

Document Type:

1st TD/Type:

Finance:

Junior TD's:

Lender:

Seller:

Title Company:

Transfer Info:

PRIOR SALE

06/23/71

19173

QUIT CLAIM DEED

IMPROVEMENTS

Bldg/Liv Area: 6,257

Units:

Bldgs:

Stories:

\$/SF:

Yrblt/Eff: 31 31

Total Rms: 10

Bedrms: 5

Baths(F/H): 5 1

Fireplace: 2

Pool:

Bsmt Area:

Construct:

Flooring:

Air Cond:

Heat Type: HEATED

Quality:

Condition:

Style:

Other Rooms:

SITE INFORMATION

Improve Type:

Zoning: 25EX1

County Use: 0100

Bldg Class:

Flood Panel:

Lot Size: A22.82

Lot Area: 994,039

Parking:

Park Spaces:

Site Influence:

Phys Chars:

Legal: HOPE RANCH MAP 1

Comments:

EXHIBIT NO. 4

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SEED, MACKALL & COLE LLP
COUNSELLORS AT LAW

1332 ANACAPA STREET, SUITE 200
SANTA BARBARA, CALIFORNIA 93101
POST OFFICE BOX 2578
SANTA BARBARA, CALIFORNIA 93120

TELEPHONE: (805) 963-0669
FACSIMILE: (805) 962-1404

HARRIS W. SEED, RETIRED

ALAN D. CONDREN

October 6, 1998

Members of the Board of Supervisors
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101

Re: 4635 Via Roblada/Offer to Dedicate Lateral Access
Easement

Dear Supervisors:

We represent Stanford Farms Trust, the owner of the property located at 4635 Via Roblada, in Hope Ranch. The property is Assessor's Parcel No. 63-150-03. An offer to dedicate a coastal access easement has been recorded against the property. That offer is included as item no. 43 on Exhibit A to the Resolution before the Board for acceptance of the offers to dedicate.

Stanford Farms objects to the proposed resolution, and urges that it not be adopted. We feel the proposed resolution represents a hasty decision that has been made without adequate discussion and consideration of the costs and benefits of the coastal access easements, the impact on the private property owners, and the legality of any action to accept the offers.

History Regarding Stanford Farms' Property.

The offer on Stanford Farms' Via Roblada property was recorded in May 1982. It had been a condition required by the Coastal Commission in order for the prior property owner to obtain a development permit for the addition of a sun room and a deck to the existing guest house. The sun room added a mere 196 square feet of ground level floor space, and the deck another 374 feet of ground level floor space. The guest house is located on the far side of the property from the bluffs. Neither before nor after these minor additions were constructed has any part of the guest house been visible to users of coastal land below the bluffs.

As the Board knows, although there were other conditions placed on the development permit for the additions to the house, the Coastal Commission, as part of its general pol:

NATURE SAVER™ FAX MEMO 01616		Date	10/19/98	# of Pages	7
To	DEBORAH SOVE		From	BREG MCHEE	
cc	C. R. Co. VAD				

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expanding coastal access, required that the prior property owner make an offer to dedicate to the public a lateral access easement against the property. The offer is irrevocable for 21 years following its recording date. It will not expire until May 27, 2003.

Acceptance Of The Offer Will Effect An Unconstitutional Taking Of Private Property Without Just Compensation.

We believe the County's acceptance of the offer on our client's Via Roblada property would constitute a taking of private property without the payment of just compensation, as is required by both the United States and California Constitutions. Thus, if the County adopts its resolution, it will unwisely subject itself to liability from takings lawsuits by affected property owners.

A. Summary of Current Takings Law

Recent decisions of the United States Supreme Court and California Supreme Court have made it increasingly difficult for governmental entities to successfully defend takings claims, especially where the government physically "invades" private property, as occurs when an easement or other property interest must be dedicated to the public. For example, the United States Supreme Court, in Nollan v. California Coastal Comm'n. (1987) 483 U.S. 825, invalidated a California Coastal Commission requirement that a Ventura County beachfront landowner dedicate a lateral public access easement across the back portion of its property, in order for the owner to obtain a permit to replace a bungalow with a two-story house. This holding effectively overruled a governmental requirement that was almost identical to the requirement imposed on our client's Via Roblada property, resulting in the offer to dedicate.

Under Nollan, courts in takings lawsuits now are required to examine the relationship between a regulation and the specific development to which it applies. In so doing, they must invalidate a regulation unless they find an "essential nexus" between the regulation and the development. The lateral access easement in Nollan was held not to have a sufficient nexus to the development's adverse effects, which the Coastal Commission had identified as obstruction of ocean views available to users of a public road fronting the property.

In its later decision, Dolan v. City of Tigard (1994) 114 S.Ct. 2309, the U.S. Supreme Court elaborated on the "essential nexus" standard. It held that the burden in a takings case is on the governmental entity to prove that the "nature and extent" of a development condition is "roughly proportionate" to

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Member of the Board of Supervisors

October 6, 1998

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the "nature and extent" of any adverse impact from the development. 114 S.Ct. at 2319-20.

The property owner in Dolan had sought a permit to construct a second building on its parcel that would nearly double its retail space. In exchange for the building permit, the City required the property owner to dedicate one portion of its parcel, adjoining the floodplain, to a "Greenway System" aimed at relieving stress on the City's storm drainage system, and another, 15-foot strip of land, adjacent to the floodplain, for a pathway for pedestrians and bicycles. Addressing the property owner's challenge to the dedication requirements, the Supreme Court held that the requirements had effected an unconstitutional taking because the burden the new building would cause was not roughly proportionate to the burden placed on the property owner through the dedications.

The California state courts have adopted an equally stringent approach toward governmental exactions. See, e.g., Ehrlich v. City of Culver City (1996) 12 Cal.4th 854, 885; City of Hollister v. McCullough (1994) 26 Cal.App.4th 289, 298 (evidence demonstrated that exaction was a taking aimed more at promoting general municipal objectives than at mitigating any particular burdens associated with the development); Sunside Colony, Ltd. v. California Coastal Comm'n (1991) 226 Cal.App.3d 1260, 1268 (holding taking had occurred, as evidence failed to specifically show "this revetment will cause erosion at this beach.") (emphasis in original).

B. The County's Action to Accept the Via Roblada Offer Will Not Satisfy Takings Law.

Under the Nollan and Dolan tests, the County cannot justify the exaction of an easement on our client's Via Roblada property. To satisfy those tests, the County cannot rely on the generalized findings now included in the draft Coastal Access Implementation Plan regarding the detrimental effect of development on use of the beaches. It must instead come forward with facts specific to our client's Via Roblada property and the particular development that was allowed on it (i.e., the sun room and deck).

It is clear from the record that a site-specific analysis has never been performed in connection with the development that was permitted on the Via Roblada property. It is equally clear that, under any review of the effects of that development, and the County's exaction of a lateral access easement, the Nollan and Dolan tests could not be satisfied.

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Member of the Board of Supervisors

October 6, 1998

County of Santa Barbara

Nollan test

For example, the easement that would be opened on our client's Via Roblada property is a lateral access condition. Its purpose, as stated in the development permit, is "to insure the public's right of access along its tide and submerged lands" and mitigate the burden from the development on the public's use of those coastal resources. To justify this condition under Nollan's "type" test, the County would have to present evidence that the construction of the sun room and deck on the property has impaired the public's lateral access to the beach or its use and enjoyment of the beach.

The improvements on the Via Roblada property, however, are not even close to being visible from the beach. Nor is there any realistic possibility that the use of these improvements could be heard from the beach. They are simply too far away from the beach for that to be the case.

Just as clear is the fact that the improvements on the Via Roblada property have not added to the usage, or likely usage of either the bluff-top property or the beach. No additional sleeping quarters were added, only a small sun room and deck.

It is notable that the permit requirement held invalid in Nollan was very similar to what is at stake in the present case. But in the case of our client, the improvements undertaken are even more limited. We think it quite certain the County's acceptance and opening of the easement on our client's property would fail to pass constitutional muster if subjected to the Nollan test.

Dolan test

The County appears no more capable of satisfying Dolan's "proportionality" test. The burden placed on our client from the County's opening of the easement would be substantial. Like the conditions that were unlawful in Nollan and Dolan, the easement on the Via Roblada property would allow the public to physically invade a portion of our client's property, and deprive our client of the right to control who uses that portion. It could not be more clear from the courts' takings decisions that governmental regulations which physically invade property are much more likely to be held an unconstitutional taking than other regulations, such as limitations on use. See Ehrlich, 12 Cal.4th 854, 875 ("There is no question that the takings clause is specially protective of property against physical occupat' invasion") (emphasis in original).

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Not only is the public access easement a physical invasion; it also is an invasion that would continue in perpetuity. And, unlike exactions that are aimed at improving infrastructure like street and parkland dedications, the proposed public access easements will not return any benefit to the owner of the Via Roblada property.

The County's Action To Accept The Easements
Would Be Unlawful For Other Reasons

We have discussed takings law as it applies to the County's proposed actions. We wish to advise the Board, as well, that we believe there are a number of other reasons why the County's action would not be legally valid. For instance, we believe the proposed opening of the easement on our client's Via Roblada property would violate the substantive due process and equal protection provisions of the United States and California Constitutions. It appears from the County's Coastal Access Implementation Plan and other documents in the record that the proposed action has the illegitimate purpose of acquiring property rights for the public without paying just compensation, treating our client unequally by making it, rather than the public at large, bear the cost of the County's acquisition of coastal access easements.

In fact, one cannot help but draw this conclusion from the fact that an overarching strategy was developed to acquire public access rights as a quid-pro-quo for any discretionary construction activity of the beachfront homeowners--regardless of the likely impact of any specific activity. For this reason, we think the County's land use plan on this issue, in particular the County's Coastal Access Implementation Plan, is suspect on its face, as violative of the substantive due process and equal protection clauses.

Even if we analyzed the offer and proposed acceptance of the easement under standard contract principles, we think the conclusion is the same. The County has required the Via Roblada property to dedicate an easement, even though it was not entitled to do so. The "contract" entered between the County and the property owner therefore is not lawful and not enforceable, or at the very least, was based on a mistaken assumption about the right to require this exaction.

The Notice of Exemption Would
Not Satisfy the CEOA Statute

The proposed Notice of Exemption declares there to be possibility of significant effects from the acceptance of public access easements. We believe this conclusion to be

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SEED, MACKALL & COLE LLP

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October 6, 1998

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error and in violation of the California Environmental Quality Act ("CEQA").

The County's own records describe the Hope Ranch beach area as unique in its remoteness and its sparse usage. The area is said to have a rural, North County feel, quite distinct from other, heavily used beaches in the South County. The very purpose of the public access easements is to facilitate and expand the public's usage of this beach. Notably, public usage will not be limited to just lateral access, but will include recreation on this beach. If the County achieves its coastal access goals then, the public's gravitation to, and use of, this unique stretch of coastline could be dramatic.

The potential environmental effects of the coastal access easements have yet to be reviewed. The potential for significant effects on Hope Ranch beach is clear. These effects, and possible mitigation measures, should be properly reviewed and presented to the Board for consideration.

There Are Strong Reasons For Rejecting
The Proposal, Or At Least Deferring It

We think the plan to accept the coastal access easements is unwise. The plan attempts to cobble together a coastal access trail, but the parcels on which the offers to dedicate are recorded are not all contiguous. Many parcels have no such offer. As to those parcels, if the County attempted in the future to exact such an offer in exchange for a development permit, it is likely that the act would be invalid under current takings law. It also is likely that several, if not all, of the property owners whose property is now subject to an offer of dedication could successfully challenge the County's actions. The County can ill afford to embark on a plan that will likely never be complete and may well subject it to significant inverse condemnation liability.

In addition, the County has not taken adequate account of the adverse consequences from the proposed action. If the easements are opened, and public access expanded to formerly private property, property values for the beachfront homeowners will decline. Of course, property tax revenues will decline as well. Not only that, but also the public's use of the private coastal property will lead to potential liability for the homeowners. This is especially true in areas abutting eroding bluffs. The County has not adequately addressed how to protect the homeowners from the potential liability. The County has not adequately addressed how it would police the use of the easements when there is a patchwork of other private property a

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SEED, MACKALL & COLE LLP

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October 6, 1998

County of Santa Barbara

coast that have not been offered for dedication and will not be subject to easements.

The Proposed Action Is Being Taken Too Hastily

The offers to dedicate that have been placed on the agenda are not set to expire soon. In the case of our client, the offer will not expire for several years. There is no reason for the Board to feel compelled to act on the proposed resolution immediately. But there are many reasons, as we discussed above, for the County to undertake a more thorough review and public discussion of the benefits and burdens to the public, the property owners, the constituents of the Board, of expanding coastal access by opening the proposed easements. At the very least, the options for limiting or mitigating the easements have not been explored.

In conclusion, on behalf of our client, we urge the Board not to adopt the proposed resolution for acceptance of the coastal access easements. If the Board chooses not to reject the proposal outright, then at a minimum it should defer its vote pending further review and public comment.

Very truly yours,

SEED, MACKALL & COLE LLP

By

Alan D. Condren

ADC/mm

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SEED, MACKALL & COLE LLP
COUNSELLORS AT LAW

1332 ANACAPA STREET, SUITE 200
SANTA BARBARA, CALIFORNIA 93101
POST OFFICE BOX 2578
SANTA BARBARA, CALIFORNIA 93120

TELEPHONE: (805) 963-0669
FACSIMILE: (805) 962-1404

HARRIS W. SEED, RETIRED

K. ANDREW KENT

October 16, 1998

BY HAND

Members of the Board of Supervisors
County of Santa Barbara
105 East Anapamu Street, 4th Floor
Santa Barbara, CA 93101

Re: 4635 Via Roblada/Offer to Dedicate Public
Access Easement
Agenda Item No. 9 of October 20, 1998
Board Meeting

Dear Supervisors:

This follows up on our letter to you dated October 6, 1998. As mentioned previously, we represent Stanford Farms Trust, the owner of the property located at 4635 Via Roblada, in Hope Ranch. The property is Assessor's Parcel No. 63-150-03. An offer to dedicate a lateral public access easement was recorded against the property. This offer is included as Item No. 21 on Exhibit A to the proposed Resolution of Acceptance of Offers to Dedicate Public Access Easements, on your agenda for the October 20, 1998 Board meeting.

Our October 6, 1998 letter sets forth the reasons why Stanford Farms Trust objects to the proposed resolution. We write today in order to apprise the Board and County Counsel of the fact that Stanford Farms Trust has formally revoked and/or rescinded the offer to dedicate which had been recorded against its property. A copy of the "Notice of Revocation and/or Rescission of Offer to Dedicate Public Access Easement," which it has recorded in the County Clerk's office, is enclosed for your reference.

California law authorizes the revocation or rescission of offers to dedicate, including purportedly "irrevocable" offers. This rule is no different when the offeror has, as County Counsel contends, accepted the benefits of a permit issued in exchange for the offer to dedicate--if the benefit is illusory condition unconstitutional and violative of public po

NATURE SAVER™ FAX MEMO 01616		Date 10/19/98	# of Pages 6
To DEBORAH BOVE	From GREG MOHR		
Cc/Dpt. COUNTY COMMISSION	Co. S.B. Co. P&D		
Phone (415) 904 5233	Phone (805) 568 2080		
Fax (415) 904 5235	Fax (805) 568 2030		

EXHIBIT NO. 6
CCC-99-CD-01
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20140

Members of the Board
of Supervisors

-2-

October 16, 1998

We have yet to hear any explanation of how the exaction of a public access easement on the property of Stanford Farms Trust satisfies the requirements of the Nollan and Dolan cases, or even California's Ehrlich decision, much less a convincing explanation. The reason is clear: the exaction is unlawful, the supposed benefit to the property owner illusory.

Even if we assumed, for the sake of argument, that the property owner has received a nominal benefit, that fact would not preclude rescission under California law. Rescission is an equitable remedy. If a dispute regarding the property owner's right to rescind were adjudicated by a court, that court would have discretion to "do justice" in its final decision, by taking into account the alleged nominal benefit to the property owner, and adjusting or conditioning its judgment appropriately.

Thank you for taking our objections into consideration.

Sincerely yours,

SEED, MACKALL & COLE LLP

By


K. Andrew Kent

KAK/jk
encl.

cc: Shane Stark, County Counsel (w/encl.)

EXHIBIT NO. 6

CCC-99-CD-01

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RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

OCT 16 1998

98-080041

Seed, Mackall & Cole LLP
Attn: K. Andrew Kent
1332 Anacapa Street, Suite 200
Post Office Box 2578
Santa Barbara, CA 93120

CONFORMED COPY HAS NOT BEEN
COMPARED WITH ORIGINAL
KENNETH A. PETTIT
SANTA BARBARA CO. CLERK-RECORDER-ASSESSOR

(Space above this line for Recorder's use only)

**NOTICE OF REVOCATION AND/OR RESCISSION OF OFFER TO DEDICATE
PUBLIC ACCESS EASEMENT**

APN 63-150-03

THIS NOTICE OF REVOCATION AND/OR RESCISSION OF OFFER TO DEDICATE PUBLIC ACCESS EASEMENT ("Notice") is given by Stanford Farms Trust, the owner ("Owner") of that certain real property located at 4635 Via Roblada, Santa Barbara, California, as more particularly described on the attached Exhibit A, which is incorporated herein by this reference (the "Property"), based on the following facts:

WHEREAS, on May 9, 1980, the California Coastal Commission approved Coastal Development Permit No. 306-21 (the "Permit"), authorizing the addition of a sun room and deck to the existing guest house on the Property; and

WHEREAS, the Permit included a condition (the "Permit Condition") requiring that an easement in perpetuity for public access and passive recreational use on the Property, running from the mean high tide line to the toe of the bluff, be offered for dedication to the County of Santa Barbara, despite the absence of any connection or relationship between the Permit and existing or historic public access and/or recreational use, if any, on the Property; and

WHEREAS, on May 27, 1982, a document entitled "Irrevocable Offer to Dedicate Public Access Easement and Declaration of Restrictions" was recorded as Document No. 82-21839 in the Official Records of the County of Santa Barbara ("Offer to Dedicate"), which document purports to comply with the Permit Condition; and

WHEREAS, in 1987, the United States Supreme Court issued its decision in Nollan v. California Coastal Commission, which held unconstitutional the imposition by the California Coastal Commission of public beach access conditions on permits for construction of single family homes absent the existence of an essential nexus between the new construction and the public access and/or use rights sought by the government; and

WHEREAS, in 1994, the United States Supreme Court issued its decision in Dolan v. City of Tigard, which further clarified its decision in Nollan by holding that the governmental entity seeking to impose a development condition has the burden of proving that the "nature and extent" of any adverse impact from

EXHIBIT NO. 7

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EXHIBIT A

That portion of Lot 10 of the westerly portion of the so-called Hope Ranch, in the County of Santa Barbara, State of California, according to the map thereof filed in Book 16, Page 143 of Record of Surveys in the office of the County Recorder of said County, described as follows:

Beginning at a concrete monument in the center line of Las Palmas Drive, set at Station 102 plus 12.14 as shown on Sheet No. 4 of that certain map of Santa Barbara Estates Subdivision of Hope Ranch Park recorded June 20, 1924 in Book 15, Pages 51 to 56 inclusive of Maps in the office of the County Recorder of said County; thence leaving the center line of Las Palmas Drive, north 70°11' west 295.40 feet to a 2 inch brass capped monument; thence north 65°31' West 560.73 feet to a point in the centerline of Via Roblada Drive, on a curve to the right whose radius is 150.00 feet and whose central angle is 91°25' and whose long chord bears south 29°33' 30" west a distance of 214.74 feet to a point; thence south 75°16' west 75.44 feet to the beginning of a curve to the left having a radius of 799.52 feet, whose central angle is 15°30' and whose long chord bears south 67°31' west 215.64 feet; thence southwesterly along the arc of said curve 216.29 feet to the beginning of a reverse curve to the right having a radius of 360.19 feet, whose central angle is 35°14' and whose long chord bears south 77°23' 218.03 feet; thence westerly along the arc of said curve, 221.49 feet to the northwesterly corner of the tract of land described as Parcel "A" in the deed to Investment Operating Corporation, recorded March 5, 1959 as Instrument No. 7177 in Book 1603, Page 220 of Official Records of said County, and being the true point of beginning of the tract of land hereinafter described; thence south 1°55'30" east, leaving the centerline of said Via Roblada Drive and along the westerly line of said Investment Operating Corporation tract of land, 507.30 feet to an angle point therein, thence south 50°30'08" west, continuing along said last mentioned westerly line 292.56 feet to the most southerly corner thereof; thence south 54°33' west 268.52 feet to a 2 inch brass capped monument; thence continuing south 54°33' west 296.36 feet more or less, to a point in the mean high tide line of the Pacific Ocean on October 24, 1929; thence along said mean high tide line, north 67°48'30" west 494.24 feet to the southeasterly corner of the tract of land described in the deed to Deborah S. Pelissero, a married woman, recorded February 26, 1960 as Instrument No. 6169 in Book 1718, Page 136 of Official Records of said County; thence leaving said mean high tide line and along the easterly line of said Pelissero Tract of land, north 21°17' east 1416.76 feet, more or less to the northeasterly corner thereof, being a point in the centerline of Via Roblada Drive; thence southeasterly along said centerline on a curve to the right, whose radius is 860.27 feet, whose central angle is 24°13'24" and whose long chord bears south 49°17'42" east 361.00 feet from which a 2 inch brass capped monument bears south

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EXHIBIT A
cont'd

from which a 2 inch brass capped monument bears south 52°49' west 30.00 feet; thence south 37°11' east, continuing along said centerline, 137.53 feet to the beginning of a curve to the left whose radius is 360.19 feet, whose central angle is 47°49' and whose long chord bears south 61°05'30" east 291.95 feet; thence easterly along the arc of said curve, 300.60 feet to the true point of beginning.

APN 63-150-03

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CALIFORNIA COASTAL COMMISSION

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

**REGULAR AND CERTIFIED MAIL** (Article No. P 121 002 779)

November 24, 1998

Ann Judson, Trustee
Gregory J. Parker, Trustee
Stanford Farms Trust
4635 Via Roblada
Santa Barbara, CA 93110-2327

SUBJECT: Notice of Intent to commence Cease and Desist Order proceedings;
Coastal Act Violation File No. V-4-SBC-98-049

Dear Ms. Judson and Mr. Parker:

This letter is to notify you of the intent of the California Coastal Commission to commence Cease and Desist Order proceedings as a consequence of an action by you that the Executive Director of the Commission has determined constitutes a violation of the terms of a coastal development permit issued for your property (APN 063-150-03) at 4635 Via Roblada, Santa Barbara. This violation consists of the recordation on October 16, 1998, as Instrument No. 98-080041, of a Notice of Revocation and/or Rescission of Offer to Dedicate Public Access Easement affecting your property. You recorded this Notice of Revocation and/or Rescission as the Santa Barbara County Board of Supervisors was preparing to accept the offer of dedication, along with several others, on behalf of the public.

On May 27, 1982, Francice Netcher Bushkin, your predecessor in interest in the property at 4635 Via Roblada, recorded as Instrument No. 82-21839 the irrevocable offer of dedication to which the above-described action pertains. Ms. Bushkin recorded the offer to fulfill the requirements of Special Condition 1 of Coastal Development Permit (CDP) No. 306-21, which the South Central Coast Regional Commission granted to her on May 9, 1980 (enclosed). Ms. Bushkin accepted the permit, and she constructed the project the permit authorized. As required by the terms of Special Condition 1, the offer of dedication, by its terms, runs with the land, binds all successors and assigns, and is irrevocable for a period of twenty-one years from the time of recording.

By recording the subject Notice of Revocation and/or Rescission, you have attempted to undo the mitigation required by the Commission as a condition of approval of CDP No. 306-21, to which you, as successors in interest, are subject.

Pursuant to California Public Resources Code section 30810, the Commission has the authority to issue an order directing any person to cease and desist if the Commission, after public hearing, determines that such person has engaged in "any activity that...is inconsistent with any permit previously issued by the commission...."

Therefore, by this letter, Commission staff is notifying you of its intent to commence a proceeding to recommend that the Commission issue a Cease and Desist Order pursuant to section 30810. A cease and desist order issued pursuant to section 30810 would require that you rescind or extinguish your recorded Notice of Revocation and/or Rescission within a specified time frame.

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You should also be aware that, in addition to its authority to issue cease and desist orders, the Coastal Act authorizes the Commission to initiate legal action to seek injunctive relief and civil penalties in response to any violation of the Coastal Act or of any permit or order issued under the authority of the Act. Pursuant to section 30820(a)(2) of the Coastal Act, the Commission may seek civil penalties of up to \$30,000 for any violation of the Coastal Act or of any permit issued under its authority. Under section 30820(b), any person who knowingly and intentionally violates the Coastal Act or any permit issued under its authority may be subject to a penalty of up to \$15,000 per day. Additionally, section 30821.6(a) of the Coastal Act authorizes the Commission to seek a penalty of up to \$6,000 per day for any violation of a cease and desist order.

In accordance with the Commission's regulations, you have the opportunity to respond to the staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. California Code of Regulations section 13181(a) requires the return of a completed Notice of Defense form. **The completed Statement of Defense form must be received by this office no later than January 4, 1999.** Should you have any questions, please contact Mary Travis at (415) 904-5294. If you change your position on this issue and decide to rescind or extinguish the Notice of Rescission, please contact Ms. Travis so that we may postpone formal enforcement action.

Sincerely,



James W. Burns
Chief Deputy Director

Enclosures

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CALIFORNIA COASTAL COMMISSION

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

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the executive director or a notice of intent to initiate cease and desist order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it no later than **January 4, 1999**, to the Commission's enforcement staff at the following address:

Mary Travis, Legal Division,
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

If you have any questions, please contact Mary Travis at (415) 904-5294.

1. Facts or allegations contained in the cease and desist order or the you admit (with specific reference to the paragraph number in such

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306-21

MRS. FRANCIS BUSHKIN, 4635 Via Roblada, Santa Barbara, CA. 93110.

LOCATION: 4635 Via Roblada, Santa Barbara, CA. 93110, Co. of Santa Barbara (APN: 63-150-03)

PROJECT: Addition of sunroom and decking to existing guest house.

Lot size:	24.151 acres
Buidling coverage:	existing (guest house) =587 sq. ft. proposed addition= 196 sq. ft. proposed deck= 374 sq. ft.
Lot coverage:	Negligible
Gross structural area(GSA)	196 sq. ft.
Buildable area of lot(BAL)	25.85 acres
Ratio of GSA TO BAL	Negligible
Height:	10' average finished grade (AFG) 12' centerline frontage road (CFR)
Zoning:	E-1 residential
G.P.	Residential

Note: The addition of the proposed improvements will result in a more intensive use of the subject property. Such an increase in the use of private property fronting the public's intertidal resources is of a type that represents a cumulative impact and burden upon the public's right to use those resources. The intent of condition 1 is to insure the public's right of access along its tide and submerged lands.

The burden imposed on the property owners by condition 1 is negligible because the beach is separated from the residence by a \pm 60 foot coastal bluff which serves to insulate beach activity from the residential environment.

A condition of vertical access is not appropriate since the frontage road to the subject lot is a private road, there is no evidence of present use an an access, there are no public parking facilities nearby, and because access to the beach from the applicant's property is virtually impossible.

This project, as conditioned, will raise no substantial coastal issues and will be in conformity with the Coastal Act of 1976.

continued

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306-21 continuedCONDITIONS:

1. Prior to issuance of a coastal development permit, the applicant shall record an irrevocable offer to dedicate to a public agency or to a private association approved by the Regional Commission an easement for public access and recreational use running from the mean high tide line to the toe of the bluff. Such easement shall be free of prior liens or encumbrances except tax liens. The offer shall be made in a manner and form approved in writing by the Executive Director. The offer shall be irrevocable for a period of 21 years, running from the date of recordation and shall run with the land in favor of the people of the State of California, binding successors and assigns of the applicant or landowner.

DB/ch

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SEED, MACKALL & COLE LLP
COUNSELLORS AT LAW

1332 ANACAPA STREET, SUITE 200
SANTA BARBARA, CALIFORNIA 93101
POST OFFICE BOX 2578
SANTA BARBARA, CALIFORNIA 93120

TELEPHONE: (805) 963-0669
FACSIMILE: (805) 962-1404

HARRIS W. SEED, RETIRED

K. ANDREW KENT

January 18, 1999

BY FEDERAL EXPRESS NO.: 7916 7228 2461
AND FACSIMILE TO: (415) 904-5235

Ms. Mary Travis
Legal Division
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, California 94105-2219

Re: Notice of Intent to Commence Cease and Desist Order
proceedings;
Your "Coastal Act Violation" File No.: V-4-SBC-98-049

Dear Ms. Travis:

This is the Statement of Defense of Stanford Farms Trust ("Trust"), in response to James W. Burns' letter of November 24, 1998, notifying the Trust of the California Coastal Commission's ("Commission") intent to commence Cease and Desist Order proceedings under Section 30810 of the California Public Resources Code ("Notice of Intent").

By way of introductory comments, the Notice of Intent suggests that the Trust has undertaken an activity "inconsistent with [a] permit previously issued by the [C]ommission." The Trust's purported "inconsistent activity," according to the Notice of Intent, was the recordation, on October 16, 1998, of a Notice of Revocation and/or Rescission of Offer to Dedicate Public Access Easement (the "Notice").

This description is legally inadequate. It fails to satisfy the provisions of the Coastal Act, Sections 30106 and 30810, and of the regulations, Sections 13181(a) and 13187(B)(6).

For instance, from the Notice of Intent, it is unclear what the Commission's concerns are and whether there even exists a disputed issue that would make Cease and Desist Order proceedings appropriate. If the Commission seeks written confirmation from the Trust that a permit condition is enforceable and not subject to rescission, then it has exceeded its authority under the California Coastal Act, and invaded the territory of the courts. On the other hand, if the Commission seeks to address some other, more legitimate concern, the Trust is willing to discuss and attempt to address the Commission's concerns, so long

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would not be inconsistent with the Trust's pursuit of its rescission claim in court. For these reasons, we feel the Commission should not commence Cease and Desist Order proceedings against the Trust. It should instead initiate an informal meeting with the Trust's representatives in order to identify and attempt to resolve voluntarily the Commission's concerns.

FACTUAL BACKGROUND

On May 9, 1980, the Commission issued a Coastal Development Permit, No. 306-21 (the "Permit"), to the Trust's predecessor-in-interest, Francis Bushkin ("Bushkin"), authorizing the addition of a sun room and deck to the existing guest house located on the property commonly known as 4635 Via Roblada, Santa Barbara, California (the "Property"). According to the Permit, the existing guest house totalled 587 square feet, whereas the total lot size was approximately 994,039 square feet. The sun room and deck were to add a mere 196 square feet and 374 square feet, respectively, to the existing guest house.

In considering Bushkin's request for the Permit, the Commission generally determined that the proposed sun room and deck would result in a "more intensive use" of the Property. The Commission further generally stated that such use, occurring within the coastal zone, would contribute to "a cumulative impact and burden upon the public's right to use" the coastal zone's resources. To the Trust's knowledge, the Commission's findings were not, and could not have been, supported by a site-specific analysis of the potential effects, if any, of Bushkin's proposed improvements.

Based on these conclusory findings, the Commission determined that it would issue the Permit to Bushkin only if she recorded against the Property an irrevocable offer to grant a lateral access easement to the public, running across the coastal side of the Property (the "Offer"). In imposing this condition (the "Permit Condition"), the Commission made additional findings that the burden imposed on the Property by the Offer "is negligible because the beach is separated from the residence by a \pm 60 foot coastal bluff which serves to insulate beach activity from the residential environment."

Again, the Commission made this finding without supporting evidence. Its conclusion, in any event, was contradictory. According to the Commission, the sun room and deck would burden the public's use of the beach; but the public's increased use of the beach (after accepting and opening the easement) supposedly would have only a negligible effect on Bushkin's enjoyment of the Property. Even apart from this contradiction, the Commission's findings were based on a mistaken assumption that the proposed development was sufficiently proportionate to the proposed property to be taken for public access to the beach. In fact, the combined total square footage of the sun room and deck comprised no more than .0006 percent of the total area of the

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Property. By contrast, the land taken for the public access easement totalled nearly 7.8 percent of the Property.

The Commission issued the Permit, and the sun room and deck were built. In May 1982, Bushkin recorded the Offer against the Property, as required by the Permit Condition. In 1987, the United States Supreme Court issued its decision in Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987), holding that the Commission's requirement that a homeowner offer to dedicate its property in order to receive a coastal development permit constituted an unconstitutional taking of property in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

The Offer was not accepted before the Nollan decision, and to this day has not been accepted. On October 16, 1998, the Offer was revoked and rescinded by the Trust, and Notice thereof recorded with the County of Santa Barbara.

THE NOTICE IS STATUTORILY AUTHORIZED

Under California law, any contract may be rescinded for the reasons specified in Section 1689 of the Civil Code. In addition, Section 1691 of the Civil Code requires the rescinding party to give prompt notice that rescission has occurred:

Subject to Section 1693,¹ to effect a rescission a party to the contract must, promptly upon discovering the facts which entitle him to rescind if he is free from duress, menace, undue influence or disability and is aware of his right to rescind:

(a) Give notice of rescission to the party as to whom he rescinds; and

(b) Restore to the other party everything of value which he has received from him under the contract or offer to restore the same upon condition that the other party do likewise, unless the latter is unable or positively refuses to do so. (Emphasis added.)

The Trust's recording of the Notice with the Santa Barbara County Recorder complied with this statutory requirement.

It also effectuated the rescission. Now that the Offer has been rescinded, the act cannot be undone by the recording of an additional notice, as the Commission apparently intends to order

¹With respect to a delayed notice of rescission, § 1693 states that "[w]hen relief based upon rescission is claimed in an action or proceeding, such relief shall not be denied because giving notice of rescission unless such delay substantially prejudicial to the other party."

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Ms. Mary Travis

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the Trust to do. Nor can the Trust "Cease and Desist" from an act that has already been completed.

If the Commission wishes to enforce the Offer notwithstanding the rescission, then its proper recourse is to seek a judicial declaration that the grounds for rescission did not exist, and that the Offer remains enforceable.

THERE IS A SOUND BASIS FOR THE TRUST'S RESCISSION

The Trust's rescission of the Offer was founded on United States Supreme Court precedent, and the express provisions of California Civil Code Section 1689(b). That Section permits a party to a contract to rescind under the following circumstances: (i) mistake (subsection (b)(1)); (ii) "[i]f the consideration for the obligation of the rescinding party becomes entirely void from any cause (subsection (b)(4))"; and (iii) "[i]f the contract is unlawful for causes which do not appear in its terms or conditions and the parties are not equally at fault (subsection (b)(5))."

These grounds exist in the Trust's case. For, the Permit was issued and its conditions satisfied under the mistaken assumption that the Permit Condition was lawful and that the improvements could not be constructed without accepting the Offer.

Under Nollan v. California Coastal Comm'n (1987) 483 U.S. 825, 841-42, and Dolan v. City of Tigard (1994) 114 S.Ct. 2309, a governmental exaction, such as the Permit Condition, must have an "essential nexus" with the impact of the proposed development, lest it violate the United States Constitution's takings clause.

The Permit Condition has no such nexus. The improvements that were permitted (the sun room and deck), in square footage, compromised no more than .0006 percent of the Property. The total take exacted by the Permit Condition constituted, in square footage, 7.8 percent of the Property--or 1300 times the area of the improvements. There is no nexus or proportionality between the development and the Permit Condition.

The Offer resulted from a mutual mistake regarding the constitutionality of the Permit Condition, was based on consideration that is void, and, if enforced, would effectuate an unlawful governmental purpose. The Trust had proper grounds to rescind the Offer.

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THE COMMISSION WILL EXCEED ITS AUTHORITY BY COMMENCING CEASE AND DESIST ORDER PROCEEDINGS

Section 30810(a) of the California Public Resources Code provides as follows:

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 a 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.

Because the Trust's recording of the Notice does not require a permit to be issued, the Commission apparently maintains that the Notice is an activity that is inconsistent with the Permit. The Commission has misconstrued the law.

The clear intent of Section 30810(b) is to regulate "development activity" that is unpermitted or contrary to a permit.² That fact is abundantly clear from the legislative history for Section 30810. For instance, the Commission's own analysis supporting the adoption of Section 30810 explained:

[The bill] would allow the staff or the Commission to stop development which could be causing damage to resources protected by the Coastal Act. For instance, the Executive Director or the Commission could immediately curtail the grading of a sensitive wetland or other environmentally sensitive area, thus saving sensitive resources until other legal or regulatory action could be taken.

1991 Analysis of California Coastal Commission of Santa Barbara SB 317 (emphasis added) (copy attached hereto as Exhibit A). See also April 19, 1991 letter from Brian Baird, Legislative Liaison of California Coastal Commission, to Senator Ed Davis (making identical statement) (copy attached hereto as Exhibit B).

By no stretch of the imagination could the Notice be construed as a development activity under the meaning of the statute. The term "development" is in fact defined under Public Resources Code § 30106 as:

²It is no coincidence that Section 30810(b) provides, "[t]he 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." (emphasis added.)

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the placement or erection [on land, in or under water] 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, 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, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

The recording of the Notice simply does not fall within this definition.

Rather than being a development activity, the Notice constitutes compliance with a legal obligation to give notice to the other contracting party of the fact of rescission.

THE NOTICE POSES NO THREAT OF INJURY TO THE PROPERTY

Under Section 30810, the Commission's authority to act derives from the threat of injury to a parcel of property within a coastal zone. The Trust, however, has merely recorded the Notice in the Santa Barbara County Recorder's office. It has not undertaken any action on the Property or affecting the use or condition of the Property. Nor does it intend to do so in conflict with the Permit Condition. Under such circumstances, the Commission cannot meaningfully dispute that the Notice is not a development impacting the use or condition of the Property. Nor can it dispute that there exists no threatened or actual injury--or even change for that matter--to the Property.

Given the total absence of any activity that could impact the coastal zone, a Cease and Desist Order proceeding would be inappropriate and ultra vires. For that reason, the Commission should not proceed with Cease and Desist proceedings against the Trust.

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Ms. Mary Travis

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January 18, 1999

THE NOTICE OF INTENT IS TOO VAGUE TO PERMIT AN ADEQUATE RESPONSE
BY THE TRUST

The Notice of Intent fails to identify adequately the Commission's concerns and objectives. As a result, the Trust cannot determine whether a true dispute exists.

Now that the Offer has been rescinded, it cannot be revived in the manner suggested in the Notice of Intent. Rather, under Public Resources Code Section 30810, the Commission's Cease and Desist authority can be directed only to construction within the coastal zone. Thus, if the Commission's real concern is that the improvements (the sun room and deck) are unpermitted now that the Offer has been rescinded, it must give clear and adequate notice of that fact. In that event, the Trust would be in a position to take whatever responsive action would be appropriate under the law.

CONCLUSION

For all of the foregoing reasons, we feel the Commission should not commence Cease and Desist Order proceedings against the Trust. In any event, we would be happy to meet with the Commission's staff in an attempt to resolve the Commission's concerns and avoid the necessity of formal proceedings.

Very truly yours,

SEED, MACKALL & COLE LLP

By


K. Andrew Kent

KAK/mm

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ANALYSIS

NT	AUTHOR Senator Davis	BILL NUMBER SB 317
RED BY California Coastal Commission	RELATED BILLS SB 283 & SB 284	DATE LAST AMENDED
SUMMARY AND ISSUES		

31. provide cease and desist authority for developments in violation of the California Coastal Act.

SUMMARY/BACKGROUND

This bill would authorize the Executive Director or the California Coastal Commission to issue cease and desist orders if it is determined that any person or governmental agency has undertaken, or is threatening to undertake, any activity that may require a permit from the Commission without securing a permit or that may be inconsistent with any permit previously issued by the Commission.

It would allow the staff or the Commission to stop development which could be causing damage to resources protected by the Coastal Act. For instance, the Executive Director or the Commission could immediately curtail the grading of a sensitive wetland or other environmentally sensitive area, thus saving these sensitive resources until other legal or regulatory action could be taken.

In 1988 Senator Davis carried legislation to give the Commission cease and desist authority, but the bill was vetoed by Governor Deukmejian. Senator Davis has reintroduced this cease and desist bill because he believes that this authority is necessary to adequately enforce the provisions of the Coastal Act and to provide a deterrent against future violations.

COMMENTS

The Commission supported adding this authority to the Coastal Act in the Rosenthal and Davis bills previously passed by the legislature and vetoed by Governor Deukmejian. The authority to issue cease and desist orders was given to the San Francisco Bay Conservation and Development Commission and the Regional Water Quality Control Boards pursuant to legislation passed by the legislature and signed by Governor Deukmejian.

SB 238 would create part of a strengthened enforcement program that the staff endorses. The staff has worked with Senator Davis on this issue to refine technical details in the bill and the staff believes that the legislation continues to be necessary and warranted. The staff is recommending a "Support" position.

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STAFF RECOMMENDED POSITION Support	DATE March 4, 1991
COMMISSION APPROVED POSITION	COMMISSION HEARING DATE March 14, 1991

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CALIFORNIA COASTAL COMMISSION

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



April 19, 1991

The Honorable Ed Davis
Member of the Senate
State Capital, Room 5052
Sacramento, Ca. 95814

Dear Senator Davis:

At its March 14, 1991 meeting, the California Coastal Commission voted to support your SB 317. SB 317 would give the Commission the authority to issue cease and desist orders if it is determined that any person or governmental agency has undertaken, or is threatening to undertake, any activity that may require a permit from the Commission without securing a permit or that may be inconsistent with any permit previously issued by the Commission.

It would allow the staff of the Commission to stop development which could be causing damage to resources protected by the Coastal Act. For instance, the Executive Director or the Commission could immediately curtail the grading of a sensitive wetland or other environmentally sensitive area, thus saving these sensitive resources until other legal or regulatory action could be taken. The Commission believes that this measure is necessary and warranted and appreciates your efforts in this important area of coastal protection.

Please contact me if you have any questions about the Commission position or need further information.

Sincerely,

Brian E. Baird,
Legislative Liaison

cc: Senate Natural Resource and Wildlife Committee

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