STATE OF CALIFORNIA – THE RESOURCES AGENCY GRAY DAVIS, *Governor*

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-02

RELATED VIOLATION FILE: V-4-SBC-98-050

PROPERTY LOCATION: 1603 Posilipo Lane
Montecito, Santa Barbara County, CA 93108
APN 007-372-01 **(Exhibit 1)**

PROPERTY DESCRIPTION: The property is a .39-acre shoreline parcel off Posilipo Lane in the Montecito area of Santa Barbara County. The property has 106 feet of ocean frontage. There is a single-family residence on the parcel.

PROPERTY OWNERS: Stanley Harfenist and Jean Lippka Harfenist, Trustees of the Harfenist Family Trust

VIOLATION DESCRIPTION: Refusal to extinguish a "Revocation of Offer to Dedicate."

SUBSTANTIVE FILE DOCUMENTS: Coastal development permit file No. 166-13

I. SUMMARY

The subject violation consists of 1) the recordation by the Roths, predecessors in interest to the Harfenists, of a "Revocation of Offer to Dedicate" and 2) the Harfenists' stated unwillingness to extinguish or nullify the revocation. The Logginses, original permittees and predecessors in interest to both the Harfenists and the Roths, recorded the Offer to Dedicate lateral access (OTD) to satisfy the terms of a coastal development permit previously issued by the Commission.

Commission staff requested that the Harfenists execute a document that would rescind or extinguish the Revocation. Mr. Harfenist told staff that he was unwilling to do so. Accordingly, staff sent a letter notifying the Harfenists 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 to resolve the subject Coastal Act violation.

The proposed order would require the Harfenists 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 1603 Posilipo Lane, Montecito, Santa Barbara County, that is inconsistent with any permit previously issued by the Commission. The order would direct the Harfenists to execute and record a document that would 1) cancel completely the effect of the Revocation of Offer to Dedicate; 2) restore the affected offer of dedication to the status it had prior to the recordation of the Revocation; and 3) unconditionally waive, on behalf of themselves and all successors in interest and assigns, any and all claims that the offer to dedicate was rescinded or unacceptable at any time since its recordation on December 12, 1979.

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-02 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 12, 1978, the South Central Coast Regional Commission granted Coastal Development Permit (CDP) No. 166-13 to applicants Kenneth and Eva Loggins **(Exhibit 2)**. The permit authorized the demolition of a slab from a previously removed residence and the construction of a two-story single-family residence and detached garage with studio on the applicants' oceanfront property in Santa Barbara County, at 1603 Posilipo Lane in Montecito. Special Condition 1 of CDP No. 166-13 required that prior to issuance of the permit, the applicants record an offer to dedicate an easement for lateral public access along the beach extending from the mean high tide line to the seawall.

On December 12, 1979, the Logginses recorded as Instrument No. 79-58241 an Offer to Dedicate an easement for public access **(Exhibit 3)**, as required by Special Condition 1. The recorded offer was to run with the land, binding successors and assigns of the landowner. The offer also was to be irrevocable for a period of twenty-one years from the date of recordation. CDP no. 166-13 was duly issued.

Some time between December 1979 and January 1994, title to the property at 1603 Posilipo Lane formerly owned by Kenneth and Eva Loggins was transferred to Jesse and Patricia N. Roth. In March 1994, title to the Posilipo Lane property was transferred to Stanley Harfenist and Jean Lippka Harfenist, trustees of the Harfenist Family Trust **(Exhibit 4)**.

B. Background

In the spring of 1998, the Santa Barbara County Planning and Development Department was preparing to recommend to the County Board of Supervisors that the County accept seventy-two recorded offers to dedicate public access easements. These included the offer affecting the property at 1603 Posilipo Lane. In the course of preparing its recommendation, planning staff conducted title searches for the affected properties. A title search revealed that on December 8, 1987, Jesse Roth and Patricia N. Roth, then owners of the property at 1603 Posilipo, recorded as Instrument No. 1987-089922 a "Revocation of Offer to Dedicate" **(Exhibit 5)**. Citing the U.S. Supreme Court's decision in *Nollan v. Coastal Commission*, issued on June 26, 1987, the Revocation states that the permit condition requiring the offer to dedicate was imposed in violation of law because it "does not meet the legal test of serving to reduce or eliminate adverse effects of the proposed use which effects by themselves could have justified denial of the permit." Therefore, the Revocation states, the offer recorded by the Logginses "shall have no further force and effect."

In September 1998, after the County notified affected landowners of its planned acceptance of the offers of dedication, Greg Mohr of the County planning staff received a telephone call on behalf of the Harfenists from a private land use agent. Mohr discussed with the agent the County's position that the Roths' recordation of the Revocation was improper. Mohr believes that the agent proceeded to advise the Harfenists of the County's position.

On October 6, 1998, the County Board of Supervisors held a public hearing at which the Board was expected to adopt the proposed resolution accepting the seventy-two offers of dedication. While a number of the affected landowners publicly contested the Board's acceptance of the offers either by appearing or by submitting a written response, the Harfenists did not register any protest. At the conclusion of the hearing the Board adopted a resolution accepting forty-six of the offers of dedication, including that affecting the Harfenists' property.

On November 4, 1998, Commission staff sent a letter to the Harfenists requesting their cooperation in undoing the Revocation **(Exhibit 6)**. To spare the Harfenists the expense of document preparation and recordation, staff offered to prepare a recordable document that would extinguish or nullify the Roths' revocation, send it to the Harfenists for their review and execution, and submit the document to the Santa Barbara County Recorder's Office for recordation.

In a telephone conversation on November 20, 1998, Stanley Harfenist informed Mary Travis of Commission Enforcement staff that he was unwilling to extinguish the Revocation. Travis advised Harfenist that in light of his decision the Commission intended to pursue appropriate enforcement action.

On November 24, 1998, Commission staff sent to the Harfenists via certified and regular mail a Notice of Intent to commence Cease and Desist Order proceedings and a Statement of Defense form **(Exhibit 7)**. Commission staff received the Harfenists' Statement of Defense on January 8, 1999 **(Exhibit 8)**.

C. Staff Allegations

The staff alleges the following:

1. Stanley Harfenist, as Trustee, and Jean Lippka Harfenist, as Trustee, of the Harfenist Family Trust, are the co-owners of the property located at 1603 Posilipo Lane, Montecito, Santa Barbara County, CA 93108, APN 007-372-01. The property is within the coastal zone of Santa Barbara County.

2. On December 8, 1987, Jesse Roth and Patricia N. Roth, the Harfenists' predecessors in interest in the property, executed and recorded a Revocation of Offer to Dedicate.

3. The Roths, as successors in interest to the original permittees of CDP No. 166-13, were subject to and bound by the terms and conditions of that permit to the same extent as said original permittees. Similarly, the Harfenists, in their capacity as co-trustees, and as successors in interest to said original permittees, are subject to and bound by the terms and conditions of that permit to the same extent as said original permittees.

4. Special Condition 1 of CDP No. 166-13 required the original permittees, the Roths' and the Harfenists' predecessors in interest, to record an Offer to Dedicate an easement for lateral public access and recreational use (OTD). The predecessor permittees 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 permittees accepted the benefits of the permit by constructing the improvements authorized thereby.

5. By recording the Revocation, the Roths attempted to undo the mitigation required by the Commission as a condition of approval of CDP No. 166-13. By refusing to extinguish or nullify the Revocation, the Harfenists have ratified the Roths' action and adopted it as their own.

6. The recorded Revocation constitutes an ongoing violation of the terms of CDP No. 166-13. 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, the Harfenists must execute and record a document that would 1) cancel completely the effect of the Revocation of Offer to Dedicate; 2) restore the affected offer of dedication to the status it had prior to the recordation of the 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 December 12, 1979.

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

On January 8, 1999, the Harfenists, through attorney Anthony C. Fischer, submitted their statement of defense **(Exhibit 8)**.

1. The *Nollan* decision invalidated the permit condition.

The Harfenists base their unwillingness to extinguish the Revocation on *Nollan*. They state that the offer of dedication was withdrawn "when the United States Supreme Court made its ruling regarding the invalidity of permit conditions for the reasons stated in the Opinion referenced in the Withdrawl [*sic*]." The Harfenists argue that the *Nollan* decision provided the Roths with the ability to, in effect, challenge Special Condition 1 of CDP 166-13 by revoking the recorded offer to dedicate access. The Harfenists deny that the Commission had the authority to impose the permit condition, and they assert that the condition, "which violates the Constitution, was a nullity because it was in excess of the authority of the Commission."

Commission response

The Harfenists' interpretation of the legal effect of the *Nollan* decision upon persons in the position of the Roths is in error.

The Logginses had the ability and the opportunity to file a legal challenge contesting Special Condition 1 of CDP No. 166-13 at the time it was imposed by the Commission. Any such legal challenge would have had to have been made pursuant to the terms and within the timeframe specified by Section 30801 of the Coastal Act. That section states:

> Any aggrieved person shall have a right to judicial review of any decision or action of the commission by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure, *within 60 days after the decision or action has become final.* (Emphasis added.)

However, the Logginses did not file such a legal challenge. They accepted the permit as granted by the Commission, met all necessary conditions of approval including the recordation of the irrevocable offer of dedication in compliance with Special Condition 1, and performed the development authorized by the permit. A permittee who, like the Logginses, fails to challenge a permit condition within the appropriate limitations period loses the ability to challenge it later. (*California Coastal Commission v. Superior Court* (1989) 212 Cal.App.3d 1488.) A permittee's successors in interest, like the Roths and the Harfenists, are subject to this legal incapacity to the same extent as the permittee. (*Ojavan Investors, Inc. v. California Coastal Commission* (1997) 54 Cal.App. 4th 373.)

Furthermore, under California land use law, once a permittee has acquiesced in and accepted the benefits of a permit approval, he or she is deemed to have waived his or her right to challenge any requirement associated with that approval. (*County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510-11.)

Thus, once a permittee acquiesces in a permit and accepts its benefits, the burdens of the permit run with the land and bind both the permittee and all successors in interest. As successors in interest to the original permittees, the Roths were bound, and the Harfenists are also bound, by Special Condition 1 of CDP No. 166-13.

Finally, in section 13166 of its administrative regulations, the Commission has provided a procedure by which permittees may seek amendments to previously approved permits. Under section 13166, a permittee may not unilaterally change the terms of a previously issued permit. The permittee must file with the Commission an application for an amendment to the permit. It is significant that neither the Roths nor the Harfenists have availed themselves of this procedure.

The above-cited authorities conclusively refute the Harfenists' suggestion that the *Nollan* decision gave rise to a new legal justification for revoking the recorded OTD. *Nollan* did not establish a new limitations period within which all coastal development permittees who had previously acquiesced in and accepted the benefits of their permits could now challenge the terms or conditions of those permits. Nor did it establish an opportunity for permittees or their successors in interest to revoke either their or their predecessors' acquiescence in and acceptance of the benefits of the respective permit. For these reasons the Harfenists' reliance on the *Nollan* decision is completely misplaced.

2. Actions to accept the offer and to challenge the Revocation are untimely and unauthorized.

The Harfenists contend that governmental actions to accept the offer to dedicate lateral easement or to challenge the Revocation of Offer to Dedicate 1) were not timely, 2) were or are barred by the doctrine of estoppel and by failure to comply with applicable statutes of limitations, and 3) are "beyond the power of the governmental agencies involved."

Commission response

With respect to the County's resolution to accept the offer to dedicate a public access easement, the only time constraint that applies to the County's action to accept this or any other offer is the offer's expiration date. That date is set by the terms of the offer. The subject offer of dedication is, by its terms, "irrevocable for a period of 21 years, such period to run from the date of recordation of this offer." The date of recordation was December 12, 1979; thus the offer's expiration date was December 12, 2000. There is no other criterion, no statutory time limit, by which the County's action to accept the offer on behalf of the public may be deemed "timely" or otherwise.

The Commission also finds that the County's action to accept the offer, far from being "beyond its power," was in fact the foreseeable consequence of the offer's recordation. As stated in the recorded offer to dedicate, the permittees offered "an easement for public access to the local government in whose jurisdiction the real property lies. . . ." The offer further states, "The People of the State of California shall accept this offer through the local government. . . ." The Commission again notes that the offer of dedication was a firm, irrevocable offer, recorded in compliance with a conditional requirement of a permit that the permittees did not challenge within the appropriate limitations period. By accepting the offer, the County is merely implementing the condition.

With respect to this agency's action to "challenge" the Revocation and enforce the subject offer, the Commission is not barred from action by any failure to act within any applicable statutes of limitations. Although it is true that a substantial period of time has elapsed since the Roths' recordation in 1987 of the Revocation, the Commission was not in a position to know of the revocation at the time it occurred. The Commission has no evidence, nor have the Harfenists provided any evidence, that the Roths affirmatively notified the Commission of their action. Commission staff did not become aware of the Revocation until notified by the County, which discovered the Revocation in April 1998 through a title search on the subject property.

It is appropriate and legal for the Commission to take an enforcement action for the purposes of rectifying a violation of the Coastal Act. The Roths undertook and the Harfenists have ratified and adopted as their own an action that constitutes a clear violation of the subject permit. It is entirely appropriate for the Commission to issue a cease and desist order pursuant to section 30810 of the Coastal Act to halt the ongoing nature of the subject violation and require that the violative action be rectified. Civil Code section 3490 provides that "no lapse of time can legalize a public nuisance. . . ." The Court of Appeal has described the actions of public agencies administering contemporary environmental legislation as representing an exercise by the state of its traditional authority to abate nuisances. (*CREED v. California Coastal Zone Conservation Commission* (1974) 43 Cal.App.2d 306, 317-19.) Thus, the statute of limitations does not run in the case of an action to rectify an ongoing violation of the Coastal Act.

Nor is the Commission estopped from challenging the Revocation that the Roths recorded and the Harfenists have ratified and adopted as their own. The doctrine of estoppel is applied against the government only where justice and right require it, and it will not be applied if to do so would result in effectively nullifying a strong rule of policy adopted for the benefit of the public. (*County of San Diego v. Cal.Water etc. Co.* (1947) 30 Cal.2d 817, 829-30; Accord: *Lentz v. McMahon,* (1989) 49 Cal.3d at 399.) The public access policies are among the strongest mandates within Chapter 3 of the Coastal Act. The subject violation is an attempt to undo a mitigation measure the Commission determined to be necessary in order for the development

authorized by CDP 166-13 to be found consistent with those policies. Therefore, the Commission maintains that application of the doctrine of estoppel in the present case would effectively nullify those policies.

Finally, the Commission notes that in their Statement of Defense the Harfenists fail to specify the reasons why they believe the Commission's action to seek rectification of the subject violation of the Coastal Act to be "beyond its powers." To the contrary, this enforcement action against the Harfenists is well within the Commission's statutory authority as provided by section 30810 of the Coastal Act.

The Commission finds that the Roths' recordation of the subject Revocation of Offer to Dedicate, and the Harfenists' ratification and adoption of that action as their own, constitute clear violations of the terms and conditions of previously issued CDP 166-13. By issuing a cease and desist order to enforce the terms of its permit, the Commission is acting within its statutory authority as provided by section 30810(a) of the Coastal Act. Its action is not barred by estoppel, limitations, or any other applicable principle of law.

3. The Commission's enforcement action is a violation of property rights and a waste of time.

In conclusion, the Harfenists assert that "this entire process is a violation of property rights, a waste of governmental time, energy and funds." They allege that the Commission has not shown that its actions are in the public interest or serve the public welfare.

Commission response

In the above statement, the Harfenists essentially repeat their argument that the *Nollan* decision 1) provides a legal justification for their refusal to restore the OTD to its pre-revocation condition, and 2) precludes the Commission from issuing the proposed cease and desist order. For the reasons hereinabove discussed in sections **D**(1) and (2), the Commission's action to enforce the terms of its permit does not in any way violate the Harfenists' property rights.

To the extent that the Harfenists contend that the Commission's actions are contrary to the public interest, the Commission addresses that subject in Section **E** below.

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, including that affecting the Harfenists' property.

By recording the subject Revocation of Offer to Dedicate, the Roths attempted to undo the mitigation required by the Commission as a condition of approval to CDP 166-13 to which they, as successors in interest to the original permittees, were subject. Meanwhile the Roths continued to enjoy the benefits of that permit, namely the single-family residence the permit constructed under that permit. Although the Board voted to accept the access easement at 1603 Posilipo Lane, the Revocation creates a cloud on the offer to dedicate. By failing to extinguish the

Revocation, the Harfenists are continuing to violate the terms of CDP No. 166-13. They are repudiating the measure the Commission determined to be necessary in order to find the residence authorized by the permit consistent with the Chapter 3 policies of the Coastal Act.

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 Stanley Harfenist and Jean Lippka Harfenist, Trustees of the Harfenist Family 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 1603 Posilipo Lane, Montecito, Santa Barbara County, 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, allowing for extensions of the deadline by the Executive Director for good cause, submit for review and approval of the Executive Director a legal document that shall:

(1) Cancel completely the effect of the Revocation 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 December 12, 1979.

C. Within 10 days of Executive Director approval, submit evidence of recordation of the approved legal document.

Persons subject to the Order

Stanley Harfenist; Jean Lippka Harfenist; and their agents.

Identification of the Property

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

1603 Posilipo Lane, Montecito, Santa Barbara County, CA 93108. APN 007-372-01.

Description of Unpermitted Activity

Refusal to extinguish a "Revocation of Offer to Dedicate," recorded on December 8, 1987 as Instrument No. 1987-089922.

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. 166-13.
3. Irrevocable Offer to Dedicate, recorded December 12, 1979 as Instrument No. 79-58241.
4. Grant deed recorded March 1994; TRW REDI property data for subject property.
5. Revocation of Offer to Dedicate, recorded December 8, 1987 as Instrument No. 1987-089922.
6. Letter dated November 4, 1998, from Commission staff to Harfenists.
7. Notice of Intent to commence Cease and Desist Order proceedings, dated November 24, 1998; enclosed copy of CDP No. 166-13.
8. Alleged violators' Statement of Defense, received January 8, 1999.

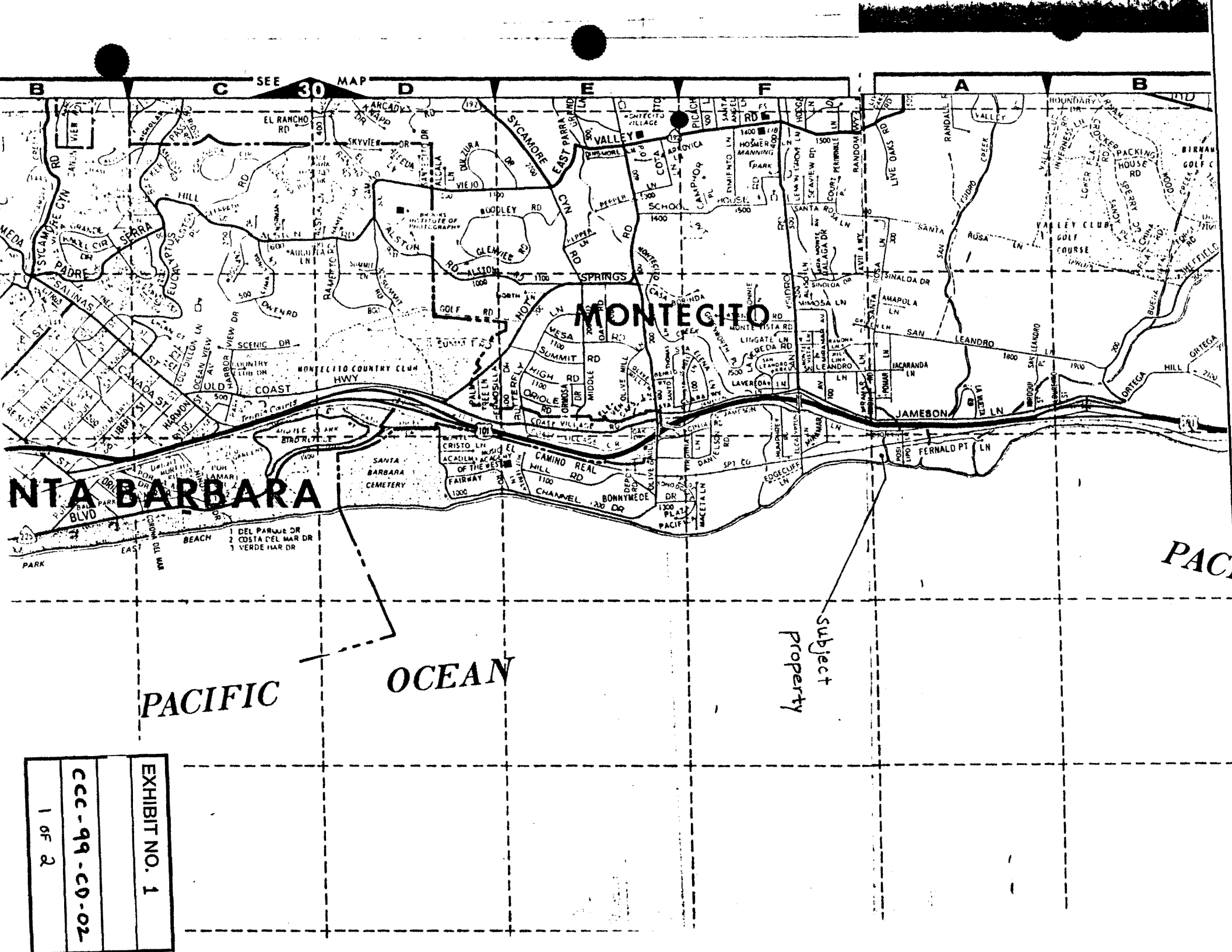

EXHIBIT NO. 1

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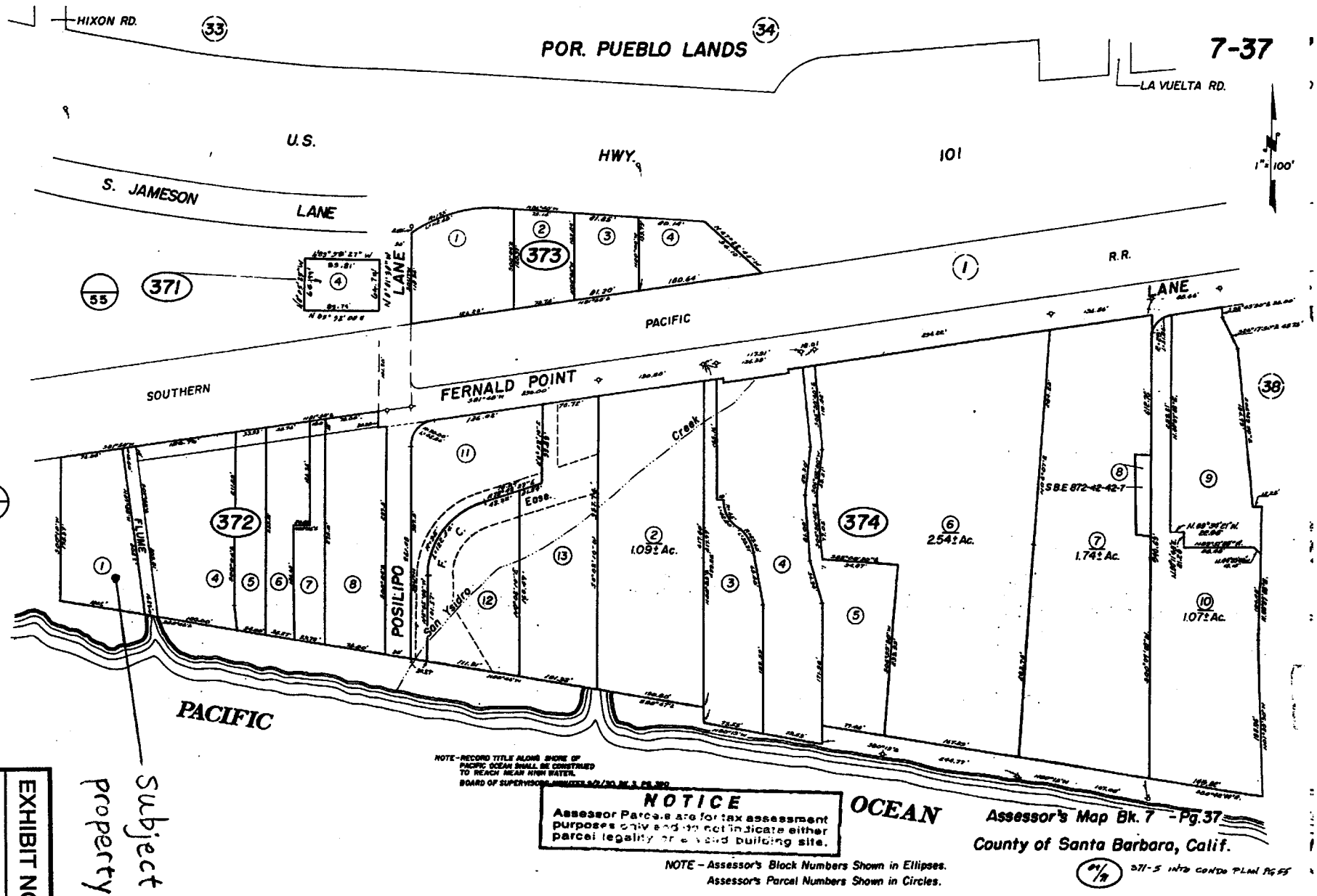

EXHIBIT NO. 1

CCC-99-CD-02

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STATE OF CALIFORNIA — EDMUND G. BROWN JR., Governor

California Coastal Commission
SOUTH CENTRAL COAST REGIONAL COMMISSION
1224 COAST VILLAGE CIRCLE, SUITE 3G
SANTA BARBARA, CALIFORNIA 93108
(805) 969-5828

COASTAL DEVELOPMENT PERMIT

On May 12, 1978, by a vote of 8 to 0 (2 absent), the California Coastal Commission granted to KENNETH & EVA LOGGINS Permit # 166-13, subject to the conditions set forth below, for development consisting of Demolish slab from previously removed residence and construct a 2-story single family dwelling and detached garage with studio.

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

The development is within the coastal zone in Santa Barbara County at 1608 Posilipo Lane (APN 7-372-01) Montecito.

After public hearing held on May 12, 1978, 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 12, 1978.

Carl Hetrick
Executive Director

The undersigned permittee acknowledges receipt of the California Coastal Commission Permit # 166-13, and fully understands its contents, including all conditions imposed. (Please return one signed copy to the South Central Coa upon receipt of same, the permit card will be mailed to you to po

Date Permittee

EXHIBIT NO. 2

CCC-99-CD-02

1 OF 2

Permit # 166-13, 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 the issuance of a coastal permit the applicant shall record with the County of Santa Barbara an offer to dedicate an easement for lateral public access along the beach in a manner approved by the Executive Director of the Regional Commission. The width of this offer shall be from the mean high tide line to the sea wall along the beach.

PM/ms

The complete Permit Fee of $_____ must be submitted to the Commission. You have previously submitted $_____. PLEASE ENCLOSE THE REMAINDER ($ -0-) WITH YOUR SIGNED COPY OF THE PERMIT FORM.

Carl Hetrick

CARL C. HET
Executive D

EXHIBIT NO. 2

CCC-99-CD-02

2 OF 2

79-58241

RECORDATION REQUESTED BY AND MAIL TO:

California Coastal Commission
SOUTH CENTRAL COAST REGIONAL COMMISSION
735 STATE STREET
BALBOA BUILDING, SUITE 612
SANTA BARBARA, CA 93101

DEC 12 2 01 PM '79

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

OFFER TO DEDICATE

I. WHEREAS EVA AND KENNETH LOGGINS is/are the record owner(s) of real property located at 1603 Posilipo Lane, Montecito and more specifically described in Exhibit A, which is attached hereto and incorporated by reference; and

II. WHEREAS, the South Central Coast Regional Commission is acting on behalf of the People of the State of California; and

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

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the Owner(s) applied to the Commission for a coastal development permit for a development on the real property described above; and

V. WHEREAS, a Coastal Development Permit No. 166-13 was granted on May 12, 1978 by the Commission in accordance with the Staff Recommendation on the permit application, which is attached hereto as Exhibit B and incorporated by reference, and subject to the following condition:

Prior to the issuance of a coastal permit, the applicant shall record with the County of Santa Barbara an offer to dedicate an easement for lateral public access along the beach in a manner approved by the Executive Director of the Regional Commission. The width of this offer shall be from the mean high tide line to the sea wall along the beach

RECEIVED
DEC 17 1979
CALIFORNIA
COASTAL
COMMISSION
SOUTH CENTRAL COAST REGION

VI. WHEREAS, the real property described above is located between the first public road and the shoreline; and

VII. WHEREAS, under the policies of Section 30210 through 30212 of the California Coastal Act of 1976, public access to the shorel the coast is to be maximized and in all new development pro

EXHIBIT NO. 3
CCC-99-CD-02
1 OF 9

between the first public road and the shoreline 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 provisions of Section 30210 through 30212 and that a permit could not therefore have been granted.

NOW, THEREFORE, in consideration of the granting of Permit No. 166-13 to the Owner(s) by the Commission, the Owner(s) hereby offer to dedicate an easement for public access to the local government in whose jurisdiction the real property lies, any other public agency of the State of California, or a private association approved by the Commission. Said easement is more particularly described in Exhibit C, which is attached hereto and incorporated by reference.

This offer to dedicate shall run with the land, and be binding upon the Owner(s), his/their heirs, assigns or successors in interest. The People of the State of California shall accept this offer through the local government, any public agency, or a private association approved by the Commission or its successor in interest, whichever accepts the offer first. This offer shall be irrevocable for a period of 21 years, such period to run from the date of recordation of this offer.

This offer of dedication is made subject to the condition that the first offeree to accept the offer may not abandon the public access easement granted by such acceptance; provided, however, that if said offeree should at any time determine that it cannot or will not use said easement said offeree shall grant the easement to the local government, any other public agency or a private association approved by the Commission or its successor in interest. Once granted to the original offeree, the public access easement shall run with the land and shall be binding on the grantor(s), their heirs, successors, and assigns.

EXHIBIT NO. 3

CCC-99-CD-02

2 OF 9

79-58241

DATED 12-11-79

SIGNED: Kenneth Joggins & Sally A. Joggins

OWNER

Eva Joggins & Sally A. Joggins

OWNER

STATE OF CALIFORNIA

COUNTY OF

On _____, before the undersigned, a Notary Public in and for said State personally appeared _____, known to me to be the person(s) whose names are subscribed to the within instrument, and acknowledged that they executed the same.

_____

Notary Public in and for said County and State

EXHIBIT NO. 3

CCC-99-CD-02

3 OF 9

79-58241

(Attorney in Fact – Individual)

TITLE INSURANCE AND TRUST
A TICOR COMPANY

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.

On December 11, 1979 before me, the undersigned, a Notary Public in and for said State, personally appeared GILBERT N. SEGEL known to me to be the person whose name is subscribed to the within instrument, as the Attorney in fact of KENNETH L. LOGGINS, and acknowledged to me that he subscribed the name of Kenneth L. Loggins thereto as principal and his own name as Attorney in fact.

WITNESS my hand and official seal.

Signature

(This area for official notarial seal)

EXHIBIT NO. 3

CCC-99-CD-02

4 OF 9

79-58241

TO 1947 CA (8-74)

(Attorney in Fact – Individual)

TITLE INSURANCE AND TRUST
A TICOR COMPANY

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.

On December 11, 1978 before me, the undersigned, a Notary Public in and for said State, personally appeared GILBERT N. SEGEL,
known to me to be the person whose name is subscribed to the within instrument, as the Attorney in fact of Eva Loggins
and acknowledged to me that he subscribed the name of Eva Loggins thereto as principal and his own name as Attorney in fact.
WITNESS my hand and official seal.

Signature

STAPLE HERE

9200 Sunset Blvd., [illegible] Los Angeles, CA 90069

(This area for official notarial seal)

EXHIBIT NO. 3

CCC-99-CD-02

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79-58241

This is to certify that the offer to dedicate an interest in real property made by the Offer to Dedicate Easement dated December 11, 1979 from Eva and Kenneth Loggins to the People of the State of California, is hereby acknowledged by the undersigned officer on behalf of the South Central Coast Regional Commission pursuant to authority conferred by the Commission when it granted Permit No. 166-13 on May 12, 1978 and that the Commission consents to recordation thereof by its duly authorized officer.

Dated: December 12, 1979

Carl C. Hetrick
Executive Director

South Central Coast Regional Commission

STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

On December 12, 1979, before the undersigned, a Notary Public in and for said State personally appeared Carl C. Hetrick known to me to be the Executive Director of the South Central Coast Regional Commission and known to me to be the person who executed the within instrument on behalf of said Commission, acknowledged to me to be the same.

Witness my hand and official seal.

OFFICIAL SEAL
Cecile Marie McQuilliams
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SANTA BARBARA COUNTY
My Commission Expires September 25, 1981

Cecile Marie McQuilliams
Notary Public in and for said County and State

EXHIBIT NO. 3

CCC-99-CD-02

6 OF 9

77 57401

79-58241

DESCRIPTION
Exhibit "A"

PARCEL ONE:

THAT PORTION OF LOT 4 OF MATANZA PROPERTY, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 30 OF MAPS AND SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE TRACT OF LAND CONVEYED TO RICHARD SYKES BY DEED RECORDED FEBRUARY 8, 1905, IN BOOK 96, PAGE 263 OF DEEDS, THENCE IN AN EASTERLY DIRECTION ALONG THE SOUTH LINE OF SAID TRACT (SAID SOUTH LINE BEING ALSO DESCRIBED AS THE SEASHORE) 106.0 FEET, MORE OR LESS, TO THE WEST SIDE OF A CEMENT FLUME; THENCE NORTH 7 58' WEST ALONG THE WEST SIDE OF SAID FLUME 205 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY, THENCE SOUTH 81 50' WEST 76.24 FEET, MORE OR LESS, TO THE WEST LINE OF SAID TRACT OF LAND AS AFORESAID CONVEYED TO SYKES BY THE DEED HEREINBEFORE REFERRED TO; THENCE SOUTH 0 10' WEST 175.37 FEET TO THE POINT OF BEGINNING.

EXCEPT ALL THE PETROLEUM, NAPHTHA, ASPHALTUM, MALTHA, GAS AND ALL MINERALS AND MINERAL DEPOSIT SITUATED ON OR UNDER SAID PREMISES OR ANY PART THEREOF.

PARCEL TWO:

A RIGHT OF WAY FOR ALL THE USES AND PURPOSES OF A PRIVATE ROAD OVER AND ALONG THE 30 FOOT STRIP OF LAND EXTENDING FROM THE COUNTY ROAD KNOWN AS THE COAST HIGHWAY IN A SOUTHERLY DIRECTION TO THE SEASHORE, AND DESCRIBED IN THAT CERTAIN DEED FROM RICHARD SYKES AND FANNY SYKES TO IDA KAY SWIFT, DATED JANUARY 4, 1906, AND RECORDED IN BOOK 113, PAGE 153 OF DEEDS, RECORDS OF SAID COUNTY.

PARCEL THREE:

AN EASEMENT FOR INGRESS AND EGRESS ALONG A RIGHT OF WAY 18 FEET IN WIDTH EXTENDING FROM THE EAST LINE OF PARCEL ONE ABOVE DESCRIBED, IN AN EASTERLY DIRECTION ALONG THE SOUTH BOUNDARY LINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY TO CONNECT WITH SAID 30 FOOT PRIVATE ROAD HEREIN BEFORE MENTIONED.

EXHIBIT NO. 3
CCC-99-CD-02
7 OF 9

EXHIBIT B

79-58241

166-13 KENNETH & EVA LOGGINS, 9200 Sunset Blvd., Suite 1000, Los Angeles, CA. 90069
LOCATION: 1603 Posilipo Lane (APN 7-372-01) Montecito, County of Santa Barbara
PROJECT: Demolish slab from previously removed residence and construct a 2-story single family dwelling and detached garage with studio.

Lot size:	19,800 sq. ft.
Building coverage:	3108 sq. ft.
Lot coverage:	4608 sq. ft.
Gross structural area:	5807 sq. ft.
Height:	31 ft, average finished grade
Zoning:	R-1
G.P.	Residential
Water:	Montecito County Water District
Sewer:	Montecito Sanitary District

This project, as conditioned, will raise no substantial coastal issues and will be in conformity with the Coastal Act of 1976.
CONDITION:
1. Prior to the issuance of a coastal permit the applicant shall record with the County of Santa Barbara an offer to dedicate an easement for lateral public access along the beach in a manner approved by the Executive Director of the Regional Commission. The width of this offer shall be from the mean high tide line to the sea wall along the beach.
PM/rp

EXHIBIT NO. 3
CCC-99-CD-02
8 OF 9

79-58241

EXHIBIT C

II. SPECIAL CONDITIONS.

1. Prior to the issuance of a coastal permit the applicant shall record with the County of Santa Barbara an offer to dedicate an easement for lateral public access along the beach in a manner approved by the Executive Director of the Regional Commission. The width of this offer shall be from the mean high tide line to the sea wall along the beach.

RECORDING REQUESTED BY
CHICAGO TITLE COMPANY
AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO:

Mr. and Mrs. Stanley Harfenist

2230 Century Hill
Los Angeles, Ca. 90067

94-021740
Recorded
Official Records
County of
Santa Barbara
Kenneth A Pettit
Recorder
8:00am 14-Mar-94

Rec Fee	6.00
DOC	2090.00
SUR	10.00
Total	2106.00
STIT	88 C

Order No. 940337 - SG Escrow No. 940337 - ER

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MONUMENT SURVEY - $10.00

GRANT DEED

APN: 007-372-01

The undersigned declares that the documentary transfer tax is $2090.00 and is

☒ computed on the full value of the interest or property conveyed, or is
☐ computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale.

The undersigned declares that the city/county transfer tax is N/A

The land, tenements or realty is located in ☒ unincorporated area ☐ City of

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
DANIELSON TRUST COMPANY formerly known as Western Trust Services, Trustee fbo Robert G. Harris IRA Rollover Account

hereby GRANT(S) to
STANLEY HARFENIST and JEAN LIPPKA HARFENIST as Trustees of the Harfenist Family Trust dated October 26, 1987

the following described real property in the
County of Santa Barbara, State of California:
LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE

Dated March 2, 1994

DANIELSON TRUST COMPANY
formerly known as Western Trust Services
fbo Robert G. Harris IRA Rollover Account

By: Leslie Raj-Pullen

By: Jean Mangan

STATE OF CALIFORNIA
COUNTY OF San Diego) SS.

On MARCH 3, 1994 before me,
PEGGY J. CARRICO
a Notary Public in and for said County and State, personally appeared
LESLIE RAJ-PULLEN AND
JEAN MANGAN

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

WITNESS my hand and official seal.

Peggy J. Carrico
Signature of Notary

PEGGY J. CARRICO
COMM. #1011960
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
MY COMM. EXPIRES
JANUARY 3, 1998

FOR NOTARY SEAL OR STAMP

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name Street Address City, State & Zip

DEED1-04/95/DEW

EXHIBIT NO. 4

CCC-99-CD-02

1 OF 3

LEGAL DESCRIPTION EXHIBIT

PARCEL ONE:

That portion of Lot 4 of Matanza Property, in the County of Santa Barbara, State of California, according to the map thereof recorded in Book 3, Page 30 of Maps and Surveys, in the Office of the County Recorder of said County, described as follows:

Beginning at the Southwest corner of the tract of land conveyed to Richard Sykes by deed recorded February 8, 1905 in Book 96, Page 253 of Deeds; thence in an Easterly direction along the South line of said tract (said South line being also described as the seashore) 106.0 feet, more or less, to the West side of a cement flume; thence North 7° 58' West along the West side of said flume 205 feet, more or less, to the South line of the Southern Pacific Railroad right of way; thence South 81° 50' West 76.24 feet, more or less, to the West line of said Tract of land, as aforesaid, conveyed to Sykes by the deed hereinbefore referred to; thence South 0° 10' West 175.37 feet to the point of beginning.

Except all the petroleum, naphtha, asphaltum, maltha, gas and minerals and mineral deposit situated on or under said premises or any part thereof, as reserved by Santa Barbara Trust Co. in deed recorded March 22, 1921 in Book 184, Page 460 of Deeds, in the Office of the County Recorder of said County.

PARCEL TWO:

A right of way for all the uses and purposes of a private road over and along the 30 foot strip of land extending from the County Road known as the Coast Highway in a Southerly direction to the seashore, and described in that certain deed from Richard Sykes and Fanny Sykes to Ida Kay Swift, dated January 6, 1906 and recorded in Book 113, Page 153 of Deeds, records of said County.

PARCEL THREE:

An easement for ingress and egress along a right of way 15 feet in width extending from the East line of Parcel One above described, in an Easterly direction along the South boundary line of the Southern Pacific Railroad right of way to connect with said 30 foot private road herein before mentioned.

APN#7-372-01 (ARB 18 6-E-12A)

[redacted]

EXHIBIT NO. 4

CCC-99-CD-02

2 OF 3

SUBJECT PROPERTY INFORMATION

1) Property: **1603 POSILIPO LN, SANTA BARBARA CA 93108-2912 C028**

APN:	007-372-01			Use:	SFR
County:	SANTA BARBARA, CA	Tax Rate Area:	78-012	Total Value:	$2,101,832
Census:	14.00	Prop Tax:	$21,362.58	Land Value:	$1,262,337
Map Pg:	21-A3	Delinq Tax Yr:		Imprv Value:	$839,495
New Pg:	997-A4	Exemptions:	HOMEOWNER	Assd Yr:	1997
Phone:				% Improved:	39%

Owner: **HARFENIST STANLEY & JEAN LIPPK/TR**

Mail: **1603 POSILIPO LN; SANTA BARBARA CA 93108-2912 C/O %HARFENIST FAM TR**

SALES INFORMATION

	LAST SALE	PRIOR SALE	
Transfer Date:	03/14/94	01/18/94	
Sale Price/Type:		$1,677,200	UNKNOWN
Document #:		4472	
Document Type:		TRUSTEE'S DEED	
1st TD/Type:			
Finance:			
Junior TD's:			
Lender:			

Seller:

Title Company:

Transfer Info:

IMPROVEMENTS

Bldg/Liv Area:	3,799	
# Units:		
# Bldgs:		
# Stories:	2	
$/SF:		
Yrblt/Eff:	83	
Total Rms:	8	
Bedrms:	3	
Baths(F/H):	4	1
Fireplace:	4	
Pool:		
Bsmt Area:		
Construct:		
Flooring:		
Air Cond:		
Heat Type:	FORCED AIR	
Quality:	GOOD	
Condition:	GOOD	
Style:	TUDOR	
Other Rooms:	DEN;FAMILY ROOM;DINING ROOM	

SITE INFORMATION

Improve Type:	DETACHED	Lot Size:	A0.39
Zoning:		Lot Area:	17,330
County Use:	0100	Parking:	DETACHED
Bldg Class:		Park Spaces:	2
Flood Panel:		Site Influence:	VIEW

Phys Chars: **TILE ROOF COVER;STUCCO EXTERIOR;PUBLIC WATER;PUBLIC SEWER;COVERED PATIO;RANGE OVEN;DISHWASHER;DISPOSAL;**

Legal: **TR MONTECITO BEACH**

Comments:

EXHIBIT NO. 4

CCC-99-CD-02

3 OF 3

Co./Dept. COASTAL COMMISSION	Co. S. BAR. COUNTY
Phone # (415) 904 5233	Phone # (805) 568 2080
Fax # (415) 904 5235	Fax # (805) 568 2030

KENNETH A. PETTIT
CLERK-RECORDER

SANTA BARBARA CO. CA.

1987-089922

1987 DEC -8 AM 11:08

WHEN RECORDED RETURN TO:

Jesse Roth
1603 Posilipo Lane
Montecito, California 93108

1	12/09/87	6.00 RE
2	12/08/87	1.00 RE
3	12/08/87	4.00 AD

4

REVOCATION OF OFFER TO DEDICATE

WHEREAS, the undersigned (hereinafter "OWNER") are the owners of certain real property located at 1603 Posilipo Lane, Montecito, California (hereinafter "REAL PROPERTY"), which is more specifically described in Exhibit "A," attached hereto and incorporated herein by reference; and

WHEREAS, OWNER'S predecessor in interest, Eva and Kenneth Loggins, were granted a Coastal Development Permit No. 166-13 on May 12, 1978, by the South Central Coastal Regional Coastal Commission (hereinafter "COASTAL COMMISSION") to develop the REAL PROPERTY; and

WHEREAS, one of the conditions imposed by the COASTAL COMMISSION on the granting of said Coastal Development Permit was that Eva and Kenneth Loggins were required to record with the County of Santa Barbara an offer to dedicate an easement for lateral public access along the beach, from the mean high tide line to the sea wall along the beach (hereinafter "OFFER TO DEDICATE"); and

WHEREAS, Eva and Kenneth Loggins complied with said condition by recording the OFFER TO DEDICATE on December 12, 1979, as Instrument No. 79-58241 in Santa Barbara Count Official Records; and

EXHIBIT NO. 5

CCC-99-CD-02

1 OF 4

WHEREAS, said OFFER TO DEDICATE was acknowledged by the Executive Director of the COASTAL COMMISSION, but said OFFER TO DEDICATE has not to this date been accepted by the People of the State of California, nor by the local government in whose jurisdiction the REAL PROPERTY lies, nor by any other public agency of the State of California, nor by any private association approved by the COASTAL COMMISSION; and

WHEREAS, the condition requiring said OFFER TO DEDICATE was imposed in violation of and contrary to law as stated by the Supreme Court of the United States in the case of Nollan et ex. v. California Coastal Commission, 55 U.S.L.W. 5145 (June 26, 1987), in that said condition does not meet the legal test of serving to reduce or eliminate adverse effects of the proposed use which effects by themselves could have justified denial of the permit.

NOW, THEREFORE, by reason of the foregoing, OWNER hereby revokes said OFFER TO DEDICATE. Said OFFER TO DEDICATE shall have no further force and effect.

Dated: 11/23/87

OWNER Jesse Roth

Dated: 11/23/87

OWNER Patricia N. Roth

EXHIBIT NO. 5

CCC-99-CD-02

2 OF 4

STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

On NOVEMBER 23, 1987, before the undersigned, a Notary Public in and for said State personally appeared JESSE ROTH AND PATRICIA N ROTH, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

Vera J. Cassidy

Notary Public in and for said County and State

OFFICIAL SEAL
VERA J. CASSIDY
NOTARY PUBLIC-CALIFORNIA
SANTA BARBARA COUNTY
My Commission Expires Feb. 26, 1989

EXHIBIT NO. 5

CCC-99-CD-02

3 OF 4

77 57401

79-58241

ION
"A"

ME:

ORTION OF LOT 4 OF MATANIZA PROPERTY, IN THE COUNTY OF SANTA ..., STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED ... 3, PAGE 38 OF MAPS AND SURVEYS, IN THE OFFICE OF THE COUNTY ... OF SAID COUNTY, DESCRIBED AS FOLLOWS:

...NG AT THE SOUTHWEST CORNER OF THE TRACT OF LAND CONVEYED TO ... SYKES BY DEED RECORDED FEBRUARY 8, 1965, IN BOOK 96, PAGE ... DEEDS, THENCE IN AN EASTERLY DIRECTION ALONG THE SOUTH LINE ... TRACT (SAID SOUTH LINE BEING ALSO DESCRIBED AS THE SEASHORE) ... FEET, MORE OR LESS, TO THE WEST SIDE OF A CEMENT FLUME; THENCE ... 58' WEST ALONG THE WEST SIDE OF SAID FLUME 205 FEET, MORE OR ... TO THE SOUTH LINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF ...ENCE SOUTH 81 50' WEST 76.24 FEET, MORE OR LESS, TO THE WEST ... SAID TRACT OF LAND AS AFORESAID CONVEYED TO SYKES BY THE ...EREINBEFORE REFERRED TO; THENCE SOUTH 0 10' WEST 175.37 FEET ... POINT OF BEGINNING.

... ALL THE PETROLEUM, NAPHTHA, ASPHALTUM, MALTHA, GAS AND ALL ...LS AND MINERAL DEPOSIT SITUATED ON OR UNDER SAID PREMISES ... PART THEREOF.

...O:

... WAY FOR ALL THE USES AND PURPOSES OF A PRIVATE ROAD GIVEN ... THE 30 FOOT STRIP OF LAND EXTENDING FROM THE COUNTY ROAD ... THE COAST HIGHWAY IN A SOUTHERLY DIRECTION TO THE SEASHORE, ...CRIBED IN THAT CERTAIN DEED FROM RICHARD SYKES AND FANNY ... IDA KAY SWIFT, DATED JANUARY 4, 1956, AND RECORDED IN BOOK ...GE 153 OF DEEDS, RECORDS OF SAID COUNTY.

THREE:

...MENT FOR INGRESS AND EGRESS ALONG A RIGHT OF WAY 18 FEET IN ...XTENDING FROM THE EAST LINE OF PARCEL ONE ABOVE DESCRIBED, ...ASTERLY DIRECTION ALONG THE SOUTH BOUNDARY LINE OF THE ...N PACIFIC RAILROAD RIGHT OF WAY TO CONNECT WITH SAID 30 FOOT ... ROAD HEREIN BEFORE MENTIONED.

EXHIBIT "A"

EXHIBIT NO. 5

CCC-99-CD-02

4 OF 4

STATE OF CALIFORNIA – THE RESOURCES AGENCY PETE WILSON, Governor

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

November 4, 1998

Stanley Harfenist, Trustee
Jean Lippka Harfenist, Trustee
Harfenist Family Trust
1603 Posilipo Lane
Montecito, CA 93108-2912

Subject: Illegal recordation of Revocation of Offer to Dedicate public access easement

Dear Mr. Harfenist and Ms. Harfenist:

I am writing on behalf of the California Coastal Commission regarding the recorded offer to dedicate a public access easement affecting your property at 1603 Posilipo Lane in Santa Barbara County (APN 007-372-01).

As you know, the Santa Barbara County Board of Supervisors recently voted to accept a number of recorded offers to dedicate public access throughout the County, with the intention of eventually opening them for public use. These included the offer Kenneth and Eva Loggins, the previous owners of your property, recorded on December 12, 1979 as Instrument No. 79-58241. The Logginses recorded this offer pursuant to a special condition imposed on Coastal Development Permit No. 166-13, which the Coastal Commission granted to them in 1978, and which authorized construction of the residence at 1603 Posilipo Lane that you now own.

In the course of preparing a staff recommendation for the acceptance of the outstanding offers of dedication, the Santa Barbara County Planning Department conducted title searches for the affected properties. A title search revealed that in 1987 Jesse and Patricia Roth, then owners of 1603 Posilipo, recorded as Instrument No. 1987-089922 a "Revocation of Offer to Dedicate," which stated that the offer recorded by the Logginses "shall have no further force and effect."

Greg Mohr of the County Planning Department has informed me that last September, after the County had notified affected landowners of its planned acceptance of the offers of dedication, he received a telephone call on your behalf from a private land use agent responding to the County's notice. Mr. Mohr discussed with the agent the County's position that the Roths' recordation of the "Revocation" was improper. That is the position of the Coastal Commission as well, on the grounds that the Logginses recorded their offer of dedication in compliance with a permit condition, the statute of limitations for challenging the permit condition expired long ago, and the offer was to be irrevocable for a period of twenty-one years and binding upon all successors in interest.

Mr. Mohr believes that your agent concurred with the County's view of the facts and advised you of the County's position. We appreciate that you did not contest the County's acceptance of the offer to dedicate public access easement on your property. However, the revocation your predecessors in interest recorded creates a cloud on the offer to dedicate. The revocation also constitutes a violation of the California Coastal Act.

EXHIBIT NO. 6

CCC-99-CD-02

1 OF 2

The Coastal Commission is responsible for enforcing its permit conditions. Therefore, we would like to solicit your cooperation in correcting this illegal act affecting your property and thereby removing any uncertainty about the validity of the offer of dedication. We propose that our legal staff prepare a recordable document that will extinguish or nullify the Roths' revocation. After you have reviewed and signed the document and had your signatures notarized, we will have the document recorded by the Santa Barbara County Recorder's Office. Our intent is to spare you the expense of document preparation and recordation, as you are not the parties responsible for the revocation recordation.

I hope that you will be willing to assist us in resolving this matter and enabling the County to proceed with its efforts to provide public shoreline access. Please contact me at (415) 904-5294 at your earliest convenience to discuss the matter. Thank you for your cooperation.

Sincerely,

Mary Travis

Mary Travis
Statewide Enforcement Analyst

cc: Greg Mohr, Santa Barbara County Planning Department

EXHIBIT NO. 6

CCC-99-CD-02

2 OF 2

STATE OF CALIFORNIA – THE RESOURCES AGENCY

PETE WILSON, Governo

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 121 002 780)

November 24, 1998

Stanley Harfenist, Trustee
Jean Lippka Harfenist, Trustee
Harfenist Family Trust
1603 Posilipo Lane
Montecito, CA 93108-2912

SUBJECT: Notice of Intent to commence Cease and Desist Order proceedings; Coastal Act Violation File No. V-4-SBC-98-050

Dear Mr. Harfenist and Ms. Harfenist:

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 one of your predecessors in interest 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 007-372-01) at 1603 Posilipo Lane, Montecito, Santa Barbara County. This violation consists of 1) the recordation by Jesse Roth and Patricia Roth on December 8, 1987, as Instrument No. 1987-089922, of a Revocation of Offer to Dedicate affecting your property, and 2) your November 20, 1998 statement to Commission staff that you are unwilling to extinguish or nullify the revocation.

On December 12, 1978, Kenneth Loggins and Eva Loggins, the original permittees and predecessors in interest in the property at 1603 Posilipo Lane, recorded as Instrument No. 79-58241 the irrevocable offer of dedication to which the above-described action pertains. The Logginses recorded the offer to fulfill the requirements of Special Condition 1 of Coastal Development Permit (CDP) No. 166-13, which the South Central Coast Regional Commission granted to them on May 12, 1978 (enclosed). The Logginses accepted the permit, and they constructed the project the permit authorized. 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 a letter dated November 4, 1998, Commission staff requested that you record a document that would extinguish or nullify the Roths' Revocation. In a telephone conversation on November 20, 1998, you informed Commission staff that you are unwilling to extinguish the Revocation. By failing to extinguish or nullify the Revocation, you are continuing to undo the mitigation required by the Commission as a condition of approval of CDP No. 166-13, to which you, as successors in interest to the Logginses, 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.

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A cease and desist order issued pursuant to section 30810 would require that you rescind or extinguish the recorded Revocation within a specified time frame.

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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STATE OF CALIFORNIA — EDMUND G. BROWN JR., Gover

California Coastal Commissions
SOUTH CENTRAL COAST REGIONAL COMMISSION
1224 COAST VILLAGE CIRCLE, SUITE 30
SANTA BARBARA, CALIFORNIA 93108
(805) 969-5828

COASTAL DEVELOPMENT PERMIT

On May 12, 1978, by a vote of 8 to 0, (2 absent) the California Coastal Commission granted to KENNETH & EVA LOGGINS Permit # 166-13, subject to the conditions set forth below, for development consisting of Demolish slab from previously removed residence and construct a 2-story single family dwelling and detached garage with studio.

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

The development is within the coastal zone in Santa Barbara County at 1603 Posilipo Lane (APN 7-372-01) Montecito.

move from 8 to informed no change

After public hearing held on May 12, 1978, 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 12, 1978.

Carl Hetrick

Carl C. Hetrick
Executive Director

The undersigned permittee acknowledges receipt of the California Coastal Commission Permit # 166-13, and fully understands its contents, includin imposed. (Please return one signed copy to the South Central Coa upon receipt of same, the permit card will be mailed to you to po

Date Permittee

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Permit # 166-13, 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 the issuance of a coastal permit the applicant shall record with the County of Santa Barbara an offer to dedicate an easement for lateral public access along the beach in a manner approved by the Executive Director of the Regional Commission. The width of this offer shall be from the mean high tide line to the sea wall along the beach.

PM/ms

The complete Permit Fee of $_____ must be submitted to the Commission. You have previously submitted $_____. PLEASE ENCLOSE THE REMAINDER ($ -0-) WITH YOUR SIGNED COPY OF THE PERMIT FORM.

CARL C. HE
Executive I

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STATE OF CALIFORNIA – THE RESOURCES AGENCY PETE WILSON, Governor

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 notice of intent that you admit (with specific reference to the paragraph number in such document):**

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The letter does not have numbered or itemized statements. However, the public record does confirm the existence of an offer to dedicate and a withdrawl of the offer when the United States Supreme Court made its ruling regarding the invalidity of permit conditions for the reasons stated in the Opinion referenced in the Withdrawl.

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

That the Commission had authority to require the permit condition which led to the offer to dedicate. The condition, which violates the Constitution, was a nullity because it was in excess of the authority of the Commission.

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

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

Actions of the governmental agencies to accept the easement or to challenge the withdrawl of the offer to dedicate were not timely and were/are barred by doctrines of estoppel, failure to comply with applicable statutes of limitations, and because the actions to accept and/or challenge the withdrawl of the offer to dedicate are beyond the power of the governmental agencies involved.

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

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This entire process is a violation of property rights, a waste of governmental time, energy and funds. There has been no showing that the actions you are taking are in the public interest or public welfare.

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

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Submitted by :

Anthony C. Fischer, Esq.
1811 State Street Suite C
Santa Barbara, CA 93101
Attorney for Stanley Harfenist and Jean Harfenist

Tel: 805-682-0611 Fax: 805-682-7101

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