

**CALIFORNIA COASTAL COMMISSION**

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**Staff:** MT - SF  
**Staff Report:** March 25, 1999  
**Hearing Date:** April 16, 1999

**STAFF RECOMMENDATION FOR CEASE AND DESIST ORDER**

**CEASE AND DESIST ORDER:** CCC-99-CD-03

**RELATED VIOLATION FILE:** V-4-SBC-98-048

**PROPERTY LOCATION:** 3443 Padaro Lane  
Carpinteria, Santa Barbara County, CA 93013  
APN 005-400-35 (**Exhibit 1**)

**PROPERTY DESCRIPTION:** The property is a 1.13-acre beachfront parcel on Padaro Lane in Carpinteria, Santa Barbara County. A 4,272-square-foot single-family residence is situated on the property.

**PROPERTY OWNERS:** Leonard Hill, Trustee of the Hill Trust, and Ann Daniel

**VIOLATION DESCRIPTION:** Recordation of 1) a "Notice of Rescission of Offer to Dedicate Easement (Public Access)," and 2) an "Amended Notice of Rescission of Offer to Dedicate Easement (Public Access)."

**SUBSTANTIVE FILE DOCUMENTS:** Coastal development permit file No. 26-25  
Appeal file No. 97-74  
Coastal development permit file No. 141-19

**I. SUMMARY**

The subject violation consists of the recordation of 1) a "Notice of Rescission of Offer to Dedicate Easement (Public Access)," and 2) an "Amended Notice of Rescission of Offer to Dedicate Easement (Public Access)" (hereinafter "Notices of Rescission"). A predecessor in interest to Hill and Daniel recorded the Irrevocable Offer to Dedicate vertical access (OTD) to satisfy the terms of coastal development permits previously issued by the Commission. Hill and Daniel recorded the Notices of Rescission just as the County of Santa Barbara was preparing to accept the OTD.

Commission staff determined that these acts constituted violations of the CDPs pursuant to which the OTD had been recorded. Accordingly, Commission staff sent Hill and Daniel 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 Hill and Daniel 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 3443 Padaro Lane, Carpinteria, Santa Barbara County, that is inconsistent with any permit previously issued by the Commission. The order would direct Hill and Daniel to execute and record a document that would amend the "Withdrawal of Rescission Notice from Public Records" recorded on January 19, 1999, to 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 April 9, 1987.

## **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-03 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 April 11, 1974, the South Central Coast Regional Commission granted to applicant Carl D. Johnson Coastal Development Permit (CDP) No. 26-25. The permit authorized the subdivision of a 3.27-acre parcel on Padaro Lane in Santa Barbara County into four smaller parcels ranging in size from 10,400 square feet to 48,520 square feet. The staff analysis for CDP No. 26-25 (**Exhibit 2**) noted:

This parcel is a reasonably large piece of coastal frontage in an area where coastal access is difficult. At the present time there is no legally-dedicated public access between Summerland and Carpinteria, a distance of some four and one-half miles. . . .

The situation in this area is one in which, because of continued construction, public access to the public beach is being progressively curtailed. . . .

. . . . the property abuts, at one end, a public roadway and, at the other end, the mean high tide line. Because of this it could not be claimed that there was no way for the public legally to reach the landward end of the access path [existing on the property]. . . .

In sum, approval of this application as submitted would divide a three and a quarter acre parcel into four smaller lots with the presumed intention of constructing dwellings thereon. In the absence of a specific provision for beach access, this construction would further restrict public access to the public tidelands in an area where access is already extremely difficult.

In its resolution of approval for CDP No. 26-25 (**Exhibit 3**), the Regional Commission found, "The location of the subject parcel is adjacent to the high tide line in an area of severely restricted beach access. A requirement for dedication of a public access way across this parcel is a reasonable condition to secure public access to tide and submerged lands." On the basis of that finding the Commission imposed a condition requiring that the applicant offer for dedication to the County of Santa Barbara or its successor in jurisdiction a vertical easement for recreational pedestrian and bicycle access. The easement was required to be five feet wide, running from Padaro Lane to the mean high tide line, coinciding with the thirty-foot-wide "ingress and egress right-of-way" and the five-foot-wide pedestrian right-of-way delineated on the lot split map accompanying the permit application. The offer was to be a "firm continuing offer of dedication which is not rejected or vitiated by failure to accept or purported rejection for a period of 25 years," unless the County in the meantime provided beach access within 300 yards of the parcel.

On April 23, 1974, Carl D. Johnson filed with the California Coastal Zone Conservation Commission an appeal from the Regional Commission's conditional approval of CDP No. 26-25. On May 15, 1974, the State Commission found that the appeal raised no substantial issue, thereby

confirming the decision of the Regional Commission. Thereafter the Regional Commission issued CDP No. 26-25, which Johnson accepted (**Exhibit 4**).<sup>1</sup>

On September 12, 1974, Johnson filed in the Santa Barbara County Recorder's Office Map No. 11,909 (Book 13, Page 65 of Parcel Maps). The recorded map indicates a "pedestrian and walkway easement for parcels A, B, C & D" (**Exhibit 5**). However, Johnson did not make an offer of dedication to the County as required by Condition 1 of CDP No. 26-25.

On September 16, 1977, the South Central Coast Regional Commission granted to applicant Carl Johnson a subsequent permit, CDP No. 141-19, for construction of a single-family residence at 3443 Padaro Lane (APN 005-400-35), one of the four parcels created by the lot split authorized by CDP No. 26-25. Special Condition 1 of CDP No. 141-19 reiterated Condition 1 of CDP No. 26-25, requiring, in language identical to that of the earlier condition, the applicant to offer to dedicate a vertical easement for recreational access (**Exhibit 6**). Johnson accepted the permit and constructed the residence the permit authorized.<sup>2</sup>

Some time between March 1985 and August 1986, title to the property at 3443 Padaro Lane was transferred to W. Bruce Bucklew and Darleine J. Bucklew.

In 1986, Commission staff contacted the Bucklews to advise them that their residence at 3443 Padaro Lane was not in compliance with CDP No. 141-19, to which, as successors in interest to the original permittee, they were subject. In a letter dated September 15, 1986, staff informed the Bucklews that there was no record that this easement had been offered to the County for dedication as a public accessway (**Exhibit 7**).

On April 9, 1987, the Bucklews recorded as Instrument No. 1987-025967 an Irrevocable Offer to Dedicate a vertical easement for public access, in accordance with Condition 1 of CDP No. 26-25 and Special Condition 1 of CDP No. 141-19 (**Exhibit 8**). The terms of the recorded offer state that it is to run with the land, binding successors and assigns of the landowner.

In 1997, title to the property at 3443 Padaro Lane was transferred to the Hill Trust, for which Leonard Hill serves as trustee, and Ann Daniel (**Exhibit 9**).

## **B. Background**

On October 6, 1998, the Santa Barbara County Board of Supervisors held a public hearing on a recommendation by County staff that the Board adopt a resolution accepting seventy-two offers to dedicate public access easements (OTDs). These OTDs included that affecting the property at 3443 Padaro Lane.

On October 5, 1998, the day before the public hearing, attorney Steven A. Amerikaner of Hatch and Parent, on behalf of clients Leonard Hill and Ann Daniel and the Padaro Lane Homeowners

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<sup>1</sup> Section 30331 of the Coastal Act provides that the California Coastal Commission "is designated successor in interest to all remaining obligations, powers, duties, responsibilities, benefits, and interests of any sort of the California Coastal Zone Conservation Commission and of the six regional coastal zone conservation commissions established by the California Coastal Zone Conservation Act of 1972."

<sup>2</sup> Section 30305 of the Coastal Act provides that the California Coastal Commission "shall succeed to any and all obligations, powers, duties, responsibilities, benefits, or legal interests of regional coastal commissions which existed prior to July 1, 1981."

Association, submitted to the Board a letter (**Exhibit 10**). The purpose of the letter was to formally oppose the proposed resolution accepting the recorded vertical OTD on Hill and Daniel's property. Citing the U.S. Supreme Court's decisions in the *Nollan* and *Dolan* cases, Amerikaner contended that 1) the permit conditions requiring his clients' predecessors in interest to record the OTD were unlawful, "rendering the Offer to Dedicate void *ab initio*," and 2) the County's acceptance of the OTD "would constitute a 'taking' of property in violation of the Fifth and Fourteenth Amendments to the United States Constitution." The letter also contested the statement in the proposed resolution that acceptance of the seventy-two OTDs was exempt from requirements for environmental review under CEQA.

Amerikaner's letter further informed the Board that Hill and Daniel had rescinded the recorded OTD "on the grounds that the offer was secured through coercion, violates public policy, was unlawful when made, and cannot be lawfully accepted by the County." Attached to the letter was a copy of a "Notice of Rescission of Offer to Dedicate Easement (Public Access)," executed on October 4, 1998, by Leonard Hill (signing as an individual) and Ann Daniel. The document was recorded in Santa Barbara County on October 5, 1998, as Instrument No. 98-076841 (**Exhibit 11**). The document states that Hill and Daniel had rescinded the OTD on the grounds that acceptance of the offer would constitute a taking of property without payment of compensation in violation of the Fifth and Fourteenth Amendments.

At the October 6, 1998, public hearing, the Board decided to accept forty-six OTDs, but to delay action on twenty-six contested offers, including that affecting Hill and Daniel's property at 3443 Padaro Lane.

On October 19, 1998, Hill and Daniel executed an "Amended Notice of Rescission of Offer to Dedicate Public Access Easement" with respect to the vertical OTD. The document was recorded in Santa Barbara County on October 20, 1998, as Instrument No. 98-081060 (**Exhibit 12**). The Amended Notice states that the OTD "has been rescinded pursuant to California Civil Code section 1689."<sup>3</sup> The document also claims that Hill and Daniel "have learned of additional facts which provide further and additional grounds upon which the Offer to Dedicate may be rescinded." Those grounds, as stated in the document, are 1) "the consent to the Offer to Dedicate . . . was obtained by mistake," and 2) "the public interest will be prejudiced if the Offer to Dedicate is permitted to stand."

At a public hearing on October 20, 1998, the Board voted to accept an additional forty outstanding OTDs, including the vertical OTD at Hill and Daniel's Padaro Lane property.

On November 24, 1998, Commission staff sent to Hill and Daniel a Notice of Intent to commence Cease and Desist Order proceedings and a Statement of Defense form (**Exhibit 13**). At the request of attorney Steven A. Amerikaner, the Executive Director extended the time for submittal of the Statement of Defense form to January 19, 1999.

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<sup>3</sup> CCC section 1689 sets forth the grounds for rescission of a contract. In issuing Commission Cease and Desist Order CCC-99-CD-01 (Judson/Parker), the Commission found that section 1689 does not provide a procedure for challenging an OTD requirement that is an alternative to that specified in section 30801 of the Coastal Act. In making that finding, the Commission found that Judson and Parker had not cited any legal authority that would suggest otherwise. Hill and Daniel also have not cited any legal authority that would support their reliance on section 1689 as a basis for rescinding the OTD.

In January 1999, Commission staff entered into negotiations with Amerikaner to attempt to resolve administratively the Coastal Act violation case pending against Hill and Daniel. Commission staff made clear to Amerikaner that its objective in engaging in settlement negotiations with him was to restore the validity and acceptability of the OTD to the condition those properties of the OTD had prior to the recordation of the original and amended Notices of Rescission. At no time in the course of staff's settlement discussions with Amerikaner did he express any disagreement with staff's intent. Consistent with this intent, staff worked with Amerikaner to prepare a "Withdrawal of Rescission Notice from Public Records" document for his clients to execute and record.

By a letter dated January 12, 1999, Amerikaner requested on behalf of his clients an assurance that "the signing and recordation of the Withdrawal would result in termination of the current cease and desist proceedings and would constitute a complete remedy of any alleged violation of the Coastal Act" (**Exhibit 14**).

By a letter dated January 12, 1999, Nancy L. Cave, Statewide Enforcement Program Manager, informed Amerikaner that the Executive Director had agreed that the Commission would terminate cease and desist order proceedings against property owners who executed and recorded a "Withdrawal of Rescission Notice from Public Records" on or before January 19, 1999, and would not seek penalties from or pursue any further enforcement against any such property owner with respect to the recordation of a Notice of Rescission (**Exhibit 15**).

On January 19, 1999, Hill and Daniel recorded as Instrument No. 99-004237 a "Withdrawal of Rescission Notice from Public Records" (**Exhibit 16**). That day they submitted to staff the first page of a "conformed copy" of the Withdrawal document. The document states, "That certain Notice of Rescission of Offer to Dedicate . . . and that certain Amended Notice of Rescission . . . are hereby rescinded and withdrawn from the public records of Santa Barbara County." In a letter accompanying the excerpt from the Withdrawal document, Mr. Amerikaner again asked for confirmation from staff that recordation of the document constituted all that his clients needed to do to have terminated the enforcement proceeding against them (**Exhibit 17**).

In response to Amerikaner's inquiry, Cave, by a letter dated January 21, 1999, requested that Amerikaner sign on behalf of his clients a statement indicating his agreement with staff's understanding that recordation of the Withdrawal document had fully extinguished any doubt as to the validity or acceptability of the OTD, and that the legal effect of recordation of the Withdrawal was to restore the OTD to the condition it was in immediately prior to the recordation of the Notice of Rescission (**Exhibit 18**). By a letter dated January 25, 1999, Amerikaner stated his unwillingness to sign the statement (**Exhibit 19**).

On January 22, 1999, Hill and Daniel filed in U.S. District Court a First Amended Complaint against the County of Santa Barbara.<sup>4</sup> The Complaint challenges the County's action to accept the vertical OTD at 3443 Padaro Lane. Contrary to the understanding that staff thought it had reached with Amerikaner regarding the legal effect of the Withdrawal document, the Complaint in paragraph 64(f) claims, "Even if the 1987 Offer was valid when made, it has been rescinded in the manner provided by law [i.e., by the original and amended Notices of Rescission] and was not valid and in effect on October 20, 1998" (**Exhibit 20**).

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<sup>4</sup> Hill and Daniel filed the original Complaint against the County on November 24, 1998.

By a letter dated January 29, 1999, Commission staff notified Mr. Amerikaner that the cease and desist order proceeding against Hill and Daniel had been reinstated, on the grounds that their position in their litigation against the County made clear that, notwithstanding their recordation of a Withdrawal of Rescission document, the original and the amended Notices of Rescission were continuing to impair the validity and acceptability of the OTD (**Exhibit 21**). Staff gave Hill and Daniel a new deadline of February 22, 1999, to complete and submit the Statement of Defense form that had been included with the November 24, 1999, Notice of Intent.

On February 22, 1999, Amerikaner submitted on behalf of Hill and Daniel a "Special Notice of Defense" letter (**Exhibit 22**). The letter states that Hill and Daniel "have not and do not at this time submit to the jurisdiction of the Coastal Commission," and that the Commission "must first determine whether it has jurisdiction to proceed in this matter, prior to the setting of any hearing on the facts."

Hill and Daniel challenge the Commission's jurisdiction on three grounds. First, they argue that the Commission's Notice of Intent (NOI) dated January 29, 1999, fails to specify the activity that is the subject of the Commission's enforcement proceeding. Second, they contend that the January 29, 1999, NOI "fails to state a claim upon which an enforcement action may proceed," and that it suggests that the Commission is attempting to restrain their exercise of their legal rights. Third, they argue that the Commission voluntarily agreed not to initiate cease and desist order proceedings against them.

By a letter dated March 1, 1999, Cave informed Mr. Amerikaner that the proposed cease and desist order was scheduled for hearing at the Commission's April 1999 meeting (**Exhibit 23**).

### C. Staff Allegations

The staff alleges the following:

1. Leonard Hill, as Trustee of the Hill Trust, and Ann Daniel are the co-owners of the property located at 3443 Padaro Lane, Carpinteria, Santa Barbara County, CA 93013, APN 005-400-35. The property is within the coastal zone of Santa Barbara County.
2. On October 5, 1998, Hill and Daniel recorded a Notice of Rescission of Offer to Dedicate Easement (Public Access).
3. On October 20, 1998, Hill and Daniel recorded an Amended Notice of Rescission of Offer to Dedicate Easement (Public Access).
4. Hill, in his capacity as trustee, and Daniel, as successors in interest to the original permittee of CDP No. 26-25 and CDP No. 141-19, are subject to and bound by the terms and conditions of those permits to the same extent as said original permittee.
5. Condition 1 of CDP No. 26-25 and Special Condition 1 of CDP No. 141-19 required the original permittee, Hill and Daniel's predecessor in interest, to record a "firm continuing" Offer to Dedicate an easement for vertical public access and recreational use (OTD). The predecessor permittee accepted the benefits of both permits by effectuating the land subdivision and building the residence authorized by the permits.

6. On April 9, 1987, successors in interest to the original permittee (Hill and Daniel's predecessors) 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 25 years from the date of recordation.
7. By recording the Notice of Rescission and the Amended Notice of Rescission, Hill and Daniel have attempted to undo the mitigation required by the Commission as a condition of approval of CDP No. 26-25 and CDP No. 141-19.
8. The adverse effects of the original and amended Notices of Rescission on the validity and acceptability of the OTD continue to the present time, notwithstanding the intervening recordation on January 19, 1999, by Hill and Daniel of a "Withdrawal of Rescission Notice" document.
9. The original and amended Notices of Rescission constitute an ongoing violation of the terms of CDP No. 26-25 and CDP No. 141-19. 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, Hill and Daniel must execute and record a document that would amend the Withdrawal of Rescission Notice from Public Records recorded on January 19, 1999, to 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 April 9, 1987.

**D. Alleged Violators' Statement of Defense and Commission Response**

As of the date of this report, Hill and Daniel have failed to avail themselves of the opportunity provided to them under section 13181 of the Commission's regulations to submit a Statement of Defense in response to staff's allegations as set forth in the Notices of Intent to commence Cease and Desist Order proceedings dated November 24, 1998, and January 29, 1999.<sup>5</sup>

Nevertheless, in the original and amended Notices of Rescission (**Exhibits 11, 12**) the alleged violators put forth three "grounds" for their action. Staff will respond to these arguments, as well as to three arguments Hill and Daniel make with respect to staff's allegations in their letter of February 22, 1999 (**Exhibit 22**), as described in Section B above.

**1. The OTD is unlawful and unenforceable.**

In their original and amended Notices of Rescission, Hill and Daniel assert that the vertical OTD affecting their property constitutes a "taking" of their property in violation of their constitutional

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<sup>5</sup> The Statement of Defense form has six sections of information that Hill and Daniel should have provided to the Coastal Commission: 1) Facts or allegations contained in the notice of intent that the respondent admits; 2) facts or allegations contained in the notice of intent that the respondent denies; 3) facts or allegations contained in the notice of intent of which the respondent has no personal knowledge; 4) other facts that may exonerate or mitigate the respondent's possible responsibility or otherwise explain the respondent's relationship to the possible violation; 5) any other information, statement, etc. that the respondent desires to offer or make; and 6) documents, exhibits, declarations under penalty of perjury or other materials that the respondent wants to attach to the form.



rights, "in direct contravention" of the Fifth and Fourteenth Amendments to the U.S. Constitution and of the Supreme Court decisions in *Nollan* and *Dolan*. Hill and Daniel argue that there is no nexus between the development authorized by CDP Nos. 26-25 and 141-19 and "the public access rights" the OTD creates. Consequently, they imply, the permit condition requiring the OTD was unconstitutional.

### Commission response

Under the circumstances of this matter, neither the *Nollan* nor the *Dolan* decision provides Hill and Daniel with legally sufficient grounds to rescind the OTD.

The exclusive manner by which a term or condition of a permit may be challenged is the manner specified in the governing law that requires the permit to be obtained. In the case of the subject coastal development permits, the governing law is the Coastal Act. Pursuant to section 30801 of the Coastal Act<sup>6</sup>, the exclusive method by which to challenge a term or condition of a coastal development permit is to institute a judicial proceeding seeking an administrative writ of mandate within sixty days of the approval of the permit.

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 permit and its conditions at a later date, as the Court of Appeal held 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 file 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* (1994) 26 Cal.App.4<sup>th</sup> 516.

Hill and Daniel 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 *County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510-11, precludes a permittee from challenging or unilaterally repudiating 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 Hill and Daniel's predecessor in interest accepted the benefits of CDP No. 26-25 and CDP No. 141-19 by effectuating the land division and constructing the residence those permits authorized.

For the reasons discussed above, under these circumstances neither the original permittee nor Hill and Daniel as his successors possess the legal ability to challenge the permits' access dedication requirement. Therefore, the Commission finds that under applicable principles of California law Hill and Daniel are precluded from attacking the access dedication requirement contained in the permits 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.

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<sup>6</sup> The California Coastal Zone Conservation Act of 1972, pursuant to which CDP No. 26-25 was granted, provides, in section 27424, for judicial review in a manner virtually identical to that specified in section 30801.

**2. The consent to the OTD by Hill and Daniel's predecessor was given by mistake.**

The amended Notice of Rescission alleges that the Bucklews, Hill and Daniel's predecessors in interest, agreed to record the OTD by "mistake." It further alleges that the Commission obtained their consent "through duress, menace, fraud and undue influence." While Hill and Daniel offer no arguments to support these allegations, they seem to imply that the Bucklews "mistakenly" agreed to fulfill permit conditions that the Commission had imposed illegally.

**Commission response**

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. The original permittee did not challenge but accepted CDP No. 26-25 and CDP No. 141-19 and carried out the authorized development activities. 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. The burdens of that permit run with the land and bind both the permittee and all successors in interest.

As successors in interest to the original permittee, the Bucklews were bound, and Hill and Daniel also are bound, by Special Condition 1 of CDP No. 141-19 and Condition 1 of CDP No. 26-25. Therefore, rather than "mistakenly" complying with the conditions, the Bucklews acted pursuant to an understanding of their obligations that was fully accurate.

**3. The public interest will be prejudiced if the OTD is permitted to stand.**

Hill and Daniel offer no arguments to support this statement in their amended Notice of Rescission.

**Commission response**

The Commission addresses the subject of the OTD's relation to the public interest in Section E below.

**4. The January 29, 1999, Notice of Intent is too vague.**

As represented in Mr. Amerikaner's letter of February 22, 1999, Hill and Daniel argue that the Commission's Notice of Intent (NOI) dated January 29, 1999, is "too vague to permit an adequate response," and that it fails to specify the activity that is the subject of the enforcement proceeding in violation of both the Coastal Act and Hill and Daniel's rights to due process.

**Commission response**

Both the Notice of Intent (NOI) dated November 24, 1998 (**Exhibit 13**), and the NOI dated January 29, 1999 (**Exhibit 21**), are very clear and unambiguous as to the nature of the actions by Hill and Daniel that have prompted the staff of the Commission to initiate this proceeding. As

required by 14 CCR section 13181(a) (incorporating by reference section 13187(a)(6)), the NOIs specifically describe the activity that has triggered this enforcement action. The NOI of November 24, 1998, 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 5, 1998, as Instrument No. 98-076841, of a Notice of Rescission of Offer to Dedicate Easement (Public Access) affecting your property. . . .

By recording the subject Notice of Rescission, you have attempted to undo the mitigation required by the Commission as a condition of approval of CDP No. 141-19, to which you, as successors in interest, are subject.

Similarly, the NOI of January 29, 1999, sets forth the basis for the position of the Executive Director that the unlawful recordation of the Notices of Rescission continues to have an adverse effect on the validity and acceptability of the OTD and that, for this reason, the violation of the Commission's permits has not been rectified:

We acknowledge your statement in your letter that you recorded the Withdrawal of Rescission Notice Document in accordance with our agreement. . . . However, the position you are taking in the above-referenced litigation against the County makes it clear that . . . you are continuing to rely on the Rescission Document in a manner that impairs the validity and acceptability of the OTD.

**5. The January 29, 1999, NOI fails to state a claim upon which an enforcement action may proceed, and suggests that the Commission is seeking to restrain Hill and Daniel's exercise of their legal rights.**

In the letter of February 22, 1999, Hill and Daniel contend that the January 29, 1999, NOI "appears to state" that the subject activity "consists of certain legal claims asserted by the Owners in pending federal litigation." From this they conclude that the Commission has initiated this enforcement action "due to the positions taken by the Owners in the federal court litigation" so as to "attempt to restrain the Owners' exercise of their legal right to seek federal court remedies."

**Commission response**

As noted in the preceding Section D(4), the January 29, 1999, NOI clearly indicates that 1) the subject violation consists of the recordation of the Notices of Rescission, and 2) Hill and Daniel's reliance upon their purportedly "withdrawn" Notices of Rescission as the basis for a legal argument that the Notices rendered the OTD unacceptable by the County makes clear that the adverse effect of those Notices has not been undone. The fact that the context for that argument is litigation in federal court is incidental.

By recording the subject Notices of Rescission, Hill and Daniel have undertaken activity that undoes without legal justification the mitigation required as a condition of approval of CDP No. 26-25 and CDP No. 141-19. Any such activity constitutes a violation of the affected permits. Pursuant to section 30810 of the Coastal Act, the Commission has enforcement authority to issue this cease and desist order to restrain Hill and Daniel from seeking to undermine the validity of the OTD and from any actions taken in reliance on the Notices of Rescission.

**6. The Commission agreed not to initiate cease and desist order proceedings against Hill and Daniel, and should honor its part of the agreement.**

Hill and Daniel argue in the letter of February 22, 1999, that the Commission voluntarily agreed not to initiate cease and desist order proceedings against them, and that since they "fully performed their part of this agreement," the Commission is thus obligated to honor its part.

**Commission response**

The Commission has made clear that its intent in initiating this procedure has been to restore the validity and acceptability of the OTD to the status those characteristics had before the recordation of the Notices of Rescission. The staff made this intent clear in the Notice of Intent dated November 24, 1998. It also was implicit in staff's negotiations with Mr. Amerikaner, which staff carried out in reliance on Hill and Daniel's stated willingness to eliminate completely the adverse effects of the Notices on the OTD and to fully restore the OTD to its original status. The Withdrawal of Rescission Notice that Amerikaner prepared, staff approved, and Hill and Daniel executed and recorded (**Exhibit 16**) states:

That certain Notice of Rescission of Offer to Dedicate Public Access Easement . . . and that Certain Amended Notice of Rescission of Offer to Dedicate Public Access Easement executed . . . and recorded . . . with respect to the Property, are hereby withdrawn from the public records of Santa Barbara County.

Yet three days after recording this Withdrawal document, Hill and Daniel filed in Federal Court an Amended Complaint that claims that the OTD "has been rescinded" and "was not valid and in effect on October 20, 1998." Hill and Daniel assert that they have "fully performed their part" of their agreement with staff to withdraw and cancel the effects of the Notices of Rescission, but at the same time argue in litigation against the County that the Notices operated to nullify the OTD at the time the County adopted its acceptance resolution. As a result of this claim by Hill and Daniel, it is entirely appropriate for the Commission to issue a cease and desist order to halt the ongoing violation and require that the unlawful action be rectified.

**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 historically has ensured that the public retain 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.

In 1982 the Commission certified a Local Coastal Program for Santa Barbara County, and the County assumed authority for issuing coastal development permits. About ninety-nine 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 seventy-two OTDs, the County had accepted only nineteen. 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 seventy-two OTDs.

Policy 7-8 of Santa Barbara County's LCP states that the County shall provide "increased opportunities for beach access" in the Carpinteria area. To implement this policy, the LCP specifically provides that the County shall accept and open for use the vertical easements offered in connection with development at 3443 Padaro Lane. Consistent with that policy, County planning staff included in their proposal the outstanding OTD affecting Hill and Daniel's property.

County acceptance of this public access easement was the foreseeable and intended outcome of Condition 1 of CDP No. 26-25 and Special Condition 1 of CDP No. 141-19. By recording the subject Notices of Rescission, Hill and Daniel have attempted to interfere with the County's acceptance of the OTD and thereby implement the policy of its LCP. Although the Board voted to accept the vertical access easement at 3443 Padaro Lane, the Notices of Rescission create a cloud on the offer to dedicate. Through their actions Hill and Daniel have repudiated the measure the Commission determined to be necessary in order for the subdivision and the residential development authorized by the permits to be found 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 Leonard Hill, Trustee of the Hill Trust, and Ann Daniel, 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 3443 Padaro Lane, Carpinteria, 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 in any way challenges or calls into question the validity or acceptability of the OTD.
- 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 amend the Withdrawal of Rescission Notice from Public Records recorded on January 19, 1999, as Instrument No. 99-004237, to 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 April 9, 1987.
- C. Within 10 days of Executive Director approval, submit evidence of recordation of the approved legal document.

### **Persons subject to the Order**

Leonard Hill; Ann Daniel; and their agents.

### **Identification of the Property**

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

3443 Padaro Lane, Carpinteria, Santa Barbara, CA 93013. APN 005-400-35.

### **Description of Unpermitted Activity**

Recordation 1) on October 5, 1998, as Instrument No. 98-076841 of a "Notice of Rescission of Offer to Dedicate Easement (Public Access)," and 2) on October 20, 1998, as Instrument No. 98-081060 of an "Amended Notice of Rescission of Offer to Dedicate Easement (Public Access)."

### **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. Staff analysis for CDP Application No. 26-25.
3. Resolution of approval for CDP 26-25.
4. CDP No. 26-25.
5. Map No. 11,909.
6. CDP No. 141-19.
7. Letter dated September 16, 1986, from Dan Ray to Bucklews.
8. Irrevocable Offer to Dedicate, recorded April 9, 1987, as Instrument No. 1987-025967.
9. Grant deed recorded June 17, 1997; TRW REDI property data for subject property.
10. Letter dated October 5, 1998, from Steven A. Amerikaner to Santa Barbara County Board of Supervisors.
11. Notice of Rescission of Offer to Dedicate Easement (Public Access), recorded October 5, 1998, as Instrument No. 98-076841.
12. Amended Notice of Rescission of Offer to Dedicate Easement (Public Access), recorded October 20, 1998, as Instrument No. 98-081060.
13. Notice of Intent to commence Cease and Desist Order proceedings, dated November 24, 1998, and Statement of Defense form.

14. Letter dated January 12, 1999, from Steven A. Amerikaner to Nancy L. Cave.
15. Letter dated January 12, 1999, from Nancy L. Cave to Steven A. Amerikaner.
16. Withdrawal of Rescission Notice from Public Records, recorded January 19, 1999, as Instrument No. 99-004237.
17. Letter dated January 19, 1999, from Steven A. Amerikaner to Nancy L. Cave.
18. Letter dated January 21, 1999, from Nancy L. Cave to Steven A. Amerikaner.
19. Letter dated January 25, 1999, from Steven A. Amerikaner to Nancy L. Cave.
20. First Amended Complaint (excerpts), filed January 22, 1999, in U.S. District Court, Case No. 98-9453 MMM.
21. Notice of Intent to commence Cease and Desist Order proceedings, dated January 29, 1999.
22. Letter dated February 22, 1999, from Steven A. Amerikaner to Nancy L. Cave.
23. Letter dated March 1, 1999, from Nancy L. Cave to Steven A. Amerikaner.



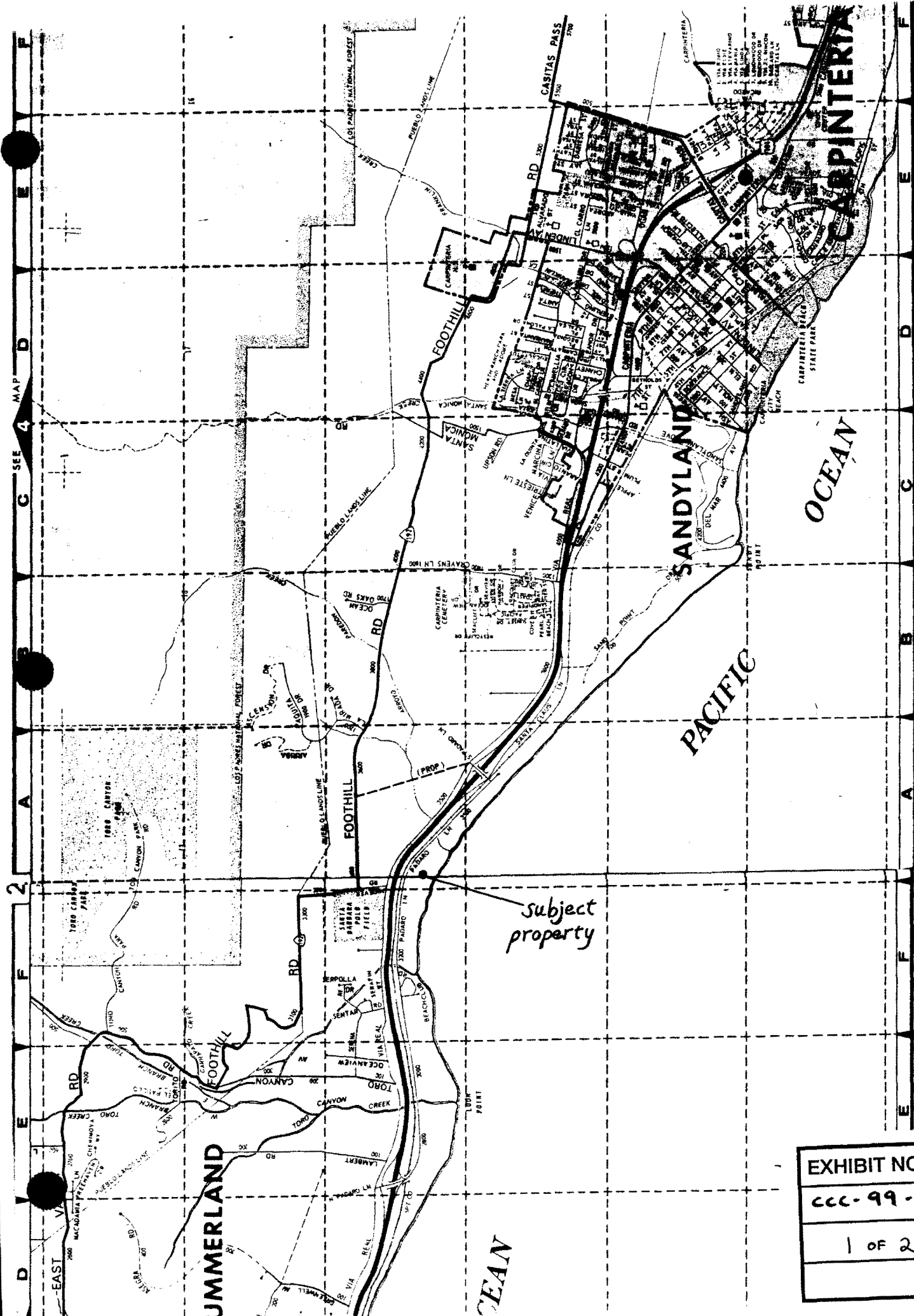
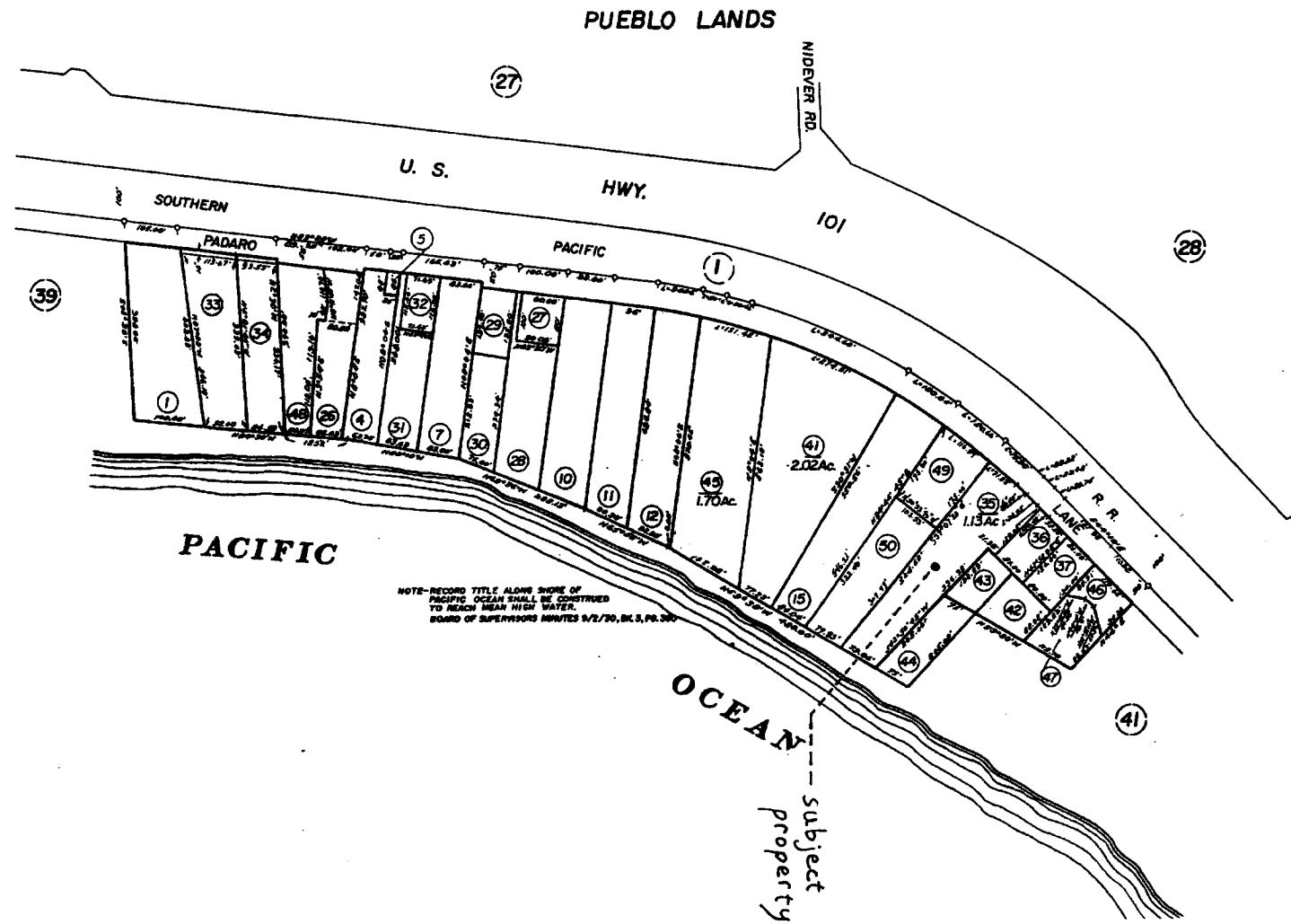


EXHIBIT NO. 1
ccc-99-cd-03
1 of 2

5-40



Assessor's Map Bk. 5 - Pg. 40  
County of Santa Barbara, Calif.

NOTE - Assessor's Black Numbers Shown in Ellipses.

(9/00)

EXHIBIT NO. 1

CCC-99-CD-03

2 of 2

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION  
SOUTH CENTRAL COAST REGION

MEETING AT *Board of Supervisors Hearing R.*  
~~PLANNING COMMISSION CHAMBERS~~  
SANTA BARBARA COUNTY OFFICE BUILDING

HEARING AGENDA - ~~MARCH 29, 1974 10:00 A.M.~~

*April 11, 1974 10:00 A.M.*

APPLICATION NO. 26-25

APPLICANT: Carl D. Johnson  
1909 State Street  
Santa Barbara, CA

LOCATION: Padaro Lane in Santa Barbara County South-East of Nidever Road

PROJECT: Divide Assessor's Parcel No. 5-040-20 into 4 lots ranging in size from 10,400 square feet to 48,520 square feet.

ANALYSIS: The purpose of this application is to split a 3.27 acre parcel into four smaller parcels ranging in size from 10,400 square feet (approximately one-quarter acre) to 48,520 square feet (somewhat more than one acre). Once approved, the lots could then be separately sold-off and built upon.

This parcel is a reasonably large piece of coastal frontage in an area where coastal access is difficult. At the present time there is no legally-dedicated public access between Summerland and Carpinteria, a distance of some four and one-half miles.

While there are a number of informal beach access routes along this stretch of coast which perhaps qualify as implied dedications under Gion vs. the City of Santa Cruz and Dietz vs. King, many of them have been recently fenced-off, posted, or both. In any case, no formal action has been taken as of yet by the County of Santa Barbara to gain legal recognition of these possible implied dedications, including the beach path which runs across the subject property.

The situation in this area is one in which, because of continued construction, public access to the public beach is being progressively curtailed.

Because the staff recommendation given below is for approval with a beach access condition, it is useful to compare the similarities and differences between this application and two others in the general vicinity which carried similar recommendations: Weller and Battistone (App. No.'s 24-12 and 24-5).

EXHIBIT NO. 2

CCC-99-CD-03

1 OF 5

In both of these earlier cases the application was for the construction of an already-designed single family residence on a single lot. Particularly in the Weller case it was contended that the granting of a public beach access would either intrude upon or force the redesign of an already planned dwelling. In the present application the Commission is asked to pass on the division of a rather large parcel of land, the houses for which have presumably yet to be designed.

In the Battistone application it appeared to be the sense of the Commission that the coastal access path was a reasonable permit condition, but the County's reluctance to accept dedication of Beach Club Road made public access to the path problematic.

The present application further differs then from Battistone, though not from Weller, in that the property abuts, at one end, a public roadway and, at the other end, the mean high tide line. Because of this it could not be claimed that there was no way for the public legally to reach the landward end of the access path.

It should be noted that the pedestrian, equestrian and bicycle access recommendation given below does not compel immediate dedication, but merely holds open that possibility for a period of 25 years. The people who presently live along Padaro Lane already have access to the beach. At its present width, the roadway will not accomodate parking for more than a minimal number of cars. It is the assumption of staff that at some future point Padaro Lane will be sufficiently widened that some additional on-street parking could be provided. This could be accomplished, for example, by replacing the existing open drainage ditch on the north side of the road with a buried culvert pipe.

It cannot be assumed that the property paralleling Padaro Lane, but on the north side of the U.S. 101, will remain undeveloped forever. At such time as that property is built-on the people who will live there will not enjoy the same ease of access to the public beach which is enjoyed by their neighbors on Padaro Lane. The distances between these properties north of the freeway and the access point recommended below are such that it is reasonable to think of walking or bicycling between the two points using either the Padaro Lane overpass or the Santa Claus Lane underpass. The recommendation given below would keep open the beach access options for the future.

In sum, approval of this application as submitted would divide a three and a quarter acre parcel into four smaller lots with the presumed intention of constructing dwellings thereon. In the absence of a specific provision for beach access, this construction would further restrict public access to the public tidelands in an area where access is already extremely difficult.

EXHIBIT NO. 2
CCC-99-CD-03
2 OF 5

RECOMMENDATION:

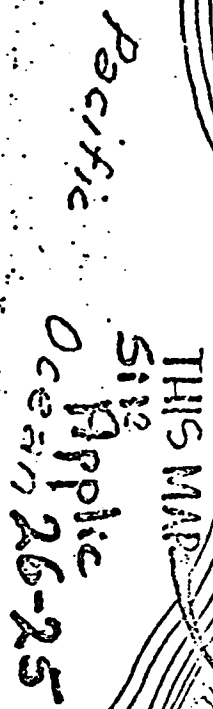
Approval with the CONDITION that the applicant shall offer for dedication to the County of Santa Barbara, or its successor in jurisdiction, for recreational pedestrian, equestrian, and bicycle access, 5 feet of the 30 foot ingress and egress right-of-way and all of the five foot pedestrian right-of-way shown on the lot split map which accompanied the application. This access shall extend from the public roadway (Padaro Lane) to the mean high tide line of the Pacific Ocean. Said offer shall be a firm offer of dedication which is not rejected or vitiated by failure to accept or purported rejection for a period of 25 years.

The offer of dedication shall be conditioned on the County of Santa Barbara, or its successor, assuming the maintenance of the beach area in question as well as the burden of public liability.

EXHIBIT NO. 2

CCC-99-CD-03

3 OF 5



3737

U.S. HWY. 101

PADARO  
LANE

S.P.R.R.

$\Delta = 0^\circ 54'$   
 $R = 185.79$   
 $L = 29.22$

$\Delta = 0^\circ 36'$   
 $R = 2814.24$   
 $L = 29.48$

$\Delta = 0^\circ 18'$   
 $R = 5679.61$   
 $L = 29.74$

$\Delta = 3^\circ 08' 42''$   
 $R = 1382.69$   
 $L = 75.90$

$S. 44^\circ 19' E. 139.58$   
 $60'$   
 $80'$

50.02

50.02

INGRESS &  
EGRESS R/W

PROPOSED DIVISION

PROPOSED DIVISION

(A)

(B)

(C)

(D)

N.  $39^\circ 07' 20'' E. 534.50$

484.48

$S. 43^\circ 51' W. 130.12$

$S. 43^\circ 51' W. 130.12$

$S. 44^\circ 19' E. 185'$

$S. 43^\circ 51' W. 262.76$

N.  $59^\circ 39' W. 186.30$

20 FT ROAD R/W

ORIGINAL  
BOUNDARY

5 FT. PED.  
R/W

Applic

26-25

EXHIB  
ccc

RESOLUTION OF APPROVAL

APPLICATION NO. 26-25

APPLICANT:

CARL D. JOHNSON  
P. O. BOX 91709  
Los Angeles, CA 90003

1. PROJECT:

Division of Assessor's Parcel No. 5-040-20 into four lots, location is on Padaro Lane, Santa Barbara County, southeast of Nidever Road; all as described in the Application.

2. SPECIFIC  
FINDINGS AND  
DETERMINATIONS:

- a. Assessor's Parcel No. 5-040-20 has portions which are subject to problems of drainage. Such drainage problems and future septic tank problems are able to be corrected through proper lot preparation and building and facility design.
- b. The location of the subject parcel is adjacent to the high tide line in an area of severely restricted beach access. A requirement for dedication of a public access way across this parcel is a reasonable condition to secure public access to tide and submerged lands.

3. TERMS AND  
CONDITIONS:

Applicant shall offer for dedication to the County of Santa Barbara or its successor in jurisdiction, for recreational pedestrian and bicycle access an easement 5' in width from Padaro Lane to the mean high tide line coinciding with the 30' ingress and egress right-of-way and the 5' pedestrian right-of-way delineated on the lot split map accompanying the Application. Said offer shall be a firm continuing offer of dedication which is not rejected or vitiated by failure to accept or purported rejection for a period of 25 years, unless the County has in the meantime provided beach access within a distance of 300 yards upcoast or downcoast of this parcel. The offer of dedication shall be conditioned on assumption by the County of Santa Barbara or its successor, of the burden of maintenance of the easement and the beach area to which access is provided, together with the burden of public liability on the easement.

EXHIBIT NO. 3

CCC-99-CD-03

1 OF 2



Resolution of Approval - Carl D. Johnson

4. The Regional Commission has determined that the project described above and as further described in the Application No. 26-25 as subject to the terms and conditions of Paragraph 3, will not have any substantial adverse environmental or ecological effect and is consistent with the findings set forth in Public Resources Code Section 27001, and with the objectives set forth in Public Resources Code Section 27302.
5. The determinations set forth in Paragraph 4 are based upon specific findings set forth in Paragraph 2, information contained in the Application, and that provided to the Commission during the public hearing on this project, and other facts relating to this project obtained by the Executive Director and set forward in the Regional Commission files, such information and facts are incorporated herein by reference.

VOTE: AYES: Commissioners Bennett, Hart, Laufer, Blake, Kidwell, Kallman  
Ghitlerman, Wright, and Wullbrandt.

NOES: Commissioner Tunnell

ABSTAIN: Chairman Terry

ABSENT: Commissioner Newdell.

EXHIBIT NO. 3
CCC-99-CD-03
2 OF 2

Pursuant to Public Resources Code Section 27400 and following, and provisions of the California Administrative Code enacted pursuant thereto, a permit is hereby issued to perform the development described in the above-cited Permit Application.

This Permit is subject to the terms and conditions of the Commission resolution approving this project, set forth on the back of this Permit Form and incorporated herein by reference, and to the following terms and conditions: SEE ATTACHED

The project shall be commenced and completed by the following dates:

(If none are stated, then at option of Permittee.)

Failure of Permittee to conform to the provisions of this Permit shall subject him to the penalties provided by Public Resources Code Sections 27500 and 27501.

This Permit is not intended to, nor shall it be interpreted to have any effect on rights and obligations under private contracts or agreement, nor is it intended to take the place of any permit to be issued by any other public body.

This Permit is assignable upon assumption of the Permittee's obligations by the Assignee.

The Permittee shall file a notice of completion of the activities authorized hereby with the Executive Director of the Regional Commission

This Permit shall not be valid until the following requirements have been met:

- 1) A copy of the Permit Form must be signed by all Permittees in the space provided below and returned to the Commission.
- 2) The complete Permit fee of \$ 250.00 must be submitted to the Commission. You have previously submitted \$ 50.00. PLEASE ENCLOSE THE REMAINDER (\$ 200.00) WITH YOUR SIGNED COPY OF THE PERMIT FORM.

3305 Conn  
9656525

*F. C. Buchter*

F. C. Buchter  
Executive Director

I/We acknowledge that I/we have received a copy of this read it and understand its contents.

S.B. 6-5-74 *α*

*Paul Johnson*

EXHIBIT NO. 4
CCC-99-CD-03
1 OF 1

PARCEL	GROSS AC.	NET AC.
A	1.288	1.127
B	0.329	0.237
C	0.331	0.239
D	0.448	0.448

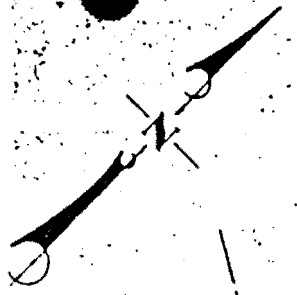
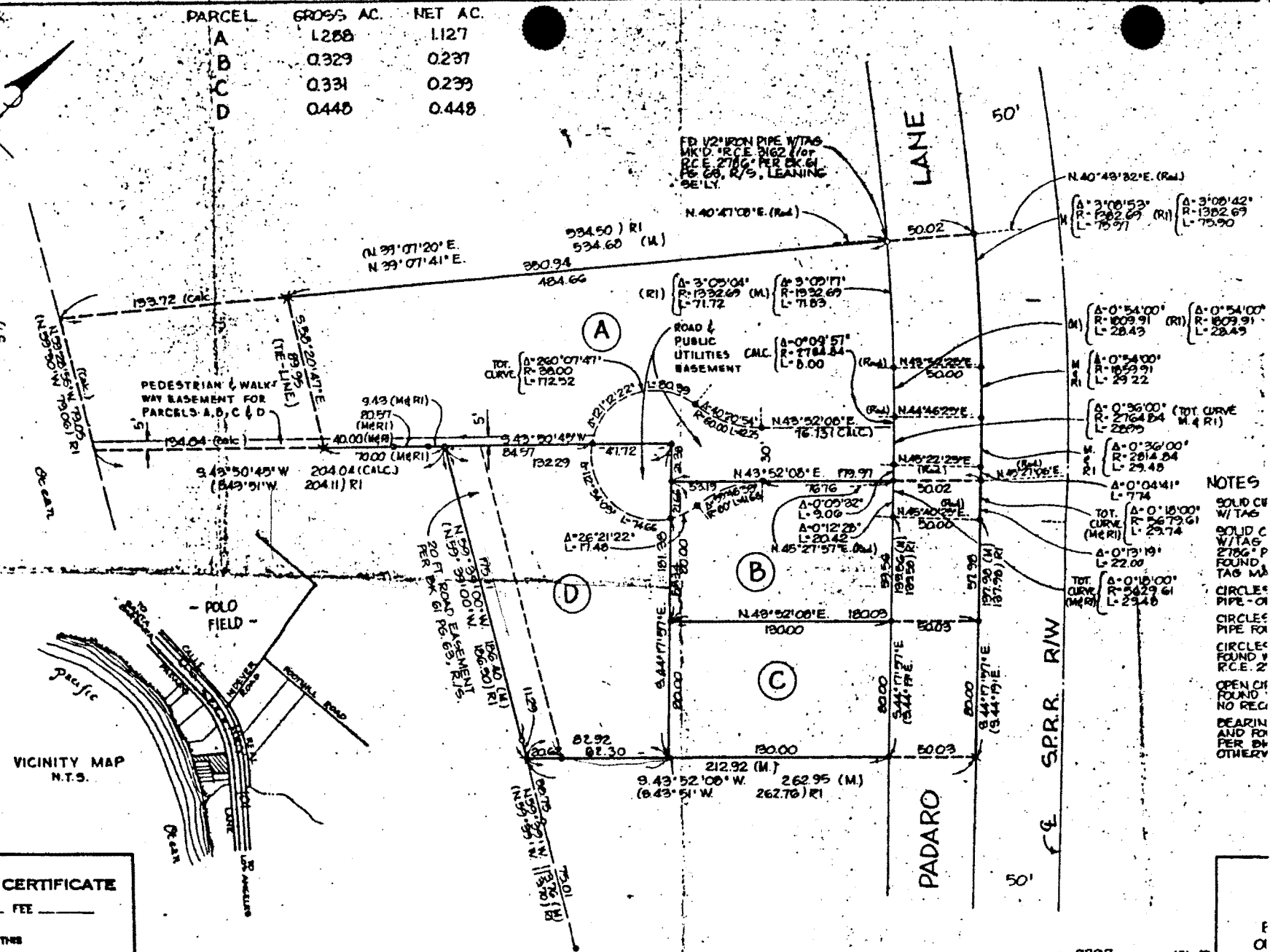


EXHIBIT NO. 5  
 CCC-99-CD-03  
 1 OF 1



NOTES  
 SOLID C/W TAG  
 SOLID C/W TAG  
 FOUND TAG MA  
 CIRCLE PIPE-01  
 CIRCLE PIPE-01  
 CIRCLE FOUND  
 CIRCLE FOUND  
 OPEN CH FOUND  
 NO REG  
 BEARING AND FOR  
 OTHERS

RECORDER'S CERTIFICATE

FILE NO. \_\_\_\_\_ FEE \_\_\_\_\_  
 FILED THIS \_\_\_\_\_  
 12TH DAY OF SEPTEMBER 1974  
 IN BOOK 13 OF  
 UNCL MAPS AT PAGE 65  
 AT THE REQUEST OF \_\_\_\_\_  
 COUNTY RECORDER

COUNTY SURVEYOR'S CERTIFICATE

THIS MAP HAS BEEN EXAMINED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 1974  
 FOR CONFORMANCE WITH THE REQUIREMENTS OF SECTION 11575 OF THE SUBDIVISION  
 MAP ACT.  
 \_\_\_\_\_ ASSISTANT COUNTY SURVEYOR  
 \_\_\_\_\_ COUNTY SURVEYOR

SURVEYOR'S CERTIFICATE

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND  
 WAS BASED UPON A FIELD SURVEY IN CONFORMANCE  
 WITH THE SUBDIVISION MAP ACT AT THE REQUEST OF  
 CARL JOHNSON ON JUNE 1974  
 I HEREBY CERTIFY THAT IT CONFORMS TO THE APPROVED TENTATIVE  
 MAP AND THE CONDITIONS OF APPROVAL THEREOF. THAT ALL PROVI-  
 SIONS OF APPLICABLE STATE LAW AND LOCAL ORDINANCES HAVE BEEN  
 COMPLIED WITH.  
 \_\_\_\_\_ NO. L.S. 3253



SCALE:  
 1" = 40'

COASTAL DEVELOPMENT PERMIT

On Sept. 16 1977, by a vote of 9 to 0, the  
California Coastal Commission granted to Carl Johnson  
Permit # 141-19, subject to the conditions set forth below, for development  
consisting of Single Family Residence

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

The development is within the coastal zone in Santa Barbara County  
at 3443 Padero Lane, Carpinteria, Co. of Santa Barbara (APN 5-400-35)

After public hearing held on Sept. 16 1977, 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

Sept. 16, 1977.

*Carl C. Hetrick*

Carl C. Hetrick  
Executive Director

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

Date

Permittee

EXHIBIT NO. 6

CC-99-CD-03

1 OF 4

Permit # 141-19, 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) Applicant shall offer for dedication to the County of Santa Barbara or its successor in jurisdiction, for recreational pedestrian and bicycle access, an easement 5' in width from Padaro Lane to the mean high tide line coinciding with the 30' ingress and egress right-of-way and the 5' pedestrian right-of-way delineated on the lot split map accompanying the Application. Said offer shall be a firm continuing offer of dedication which is not rejected or vitiated by failure to accept or purported rejection for a period of 25 years unless the County has in the meantime provided beach access within a distance of 300 yards upcoast or downcoast of this parcel. The offer of dedication shall be conditioned on assumption by the County of Santa Barbara or its successor of the burden of maintenance of the easement and the beach area to which access is provided, together with the burden of public liability on the easement.

(2) Prior to commencement of construction, applicant shall submit a septic tank report to the Executive Director of this region; all recommendations of said report regarding design of septic tank system shall be duly followed by the applicant.

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

*Carl C. Hettr*  
CARL C. HETR  
Executive Di

EXHIBIT NO. 6

CCC-49-CD-03

2 OF 4

CARL JOHNSON. 1 West Victoria St., Santa Barbara.  
 LOCATION: 3443 Padaro Lane, (APN 5-400-35) Carpinteria,  
 Co. of Santa Barbara 93013.  
 PROJECT: Single family residence.

Lot size:	49,092 sq. ft.
Building Coverage:	3,918 sq. ft.
Lot Cover:	4,784 sq. ft.
Height:	27' average finished grade
	28' centerline frontage of rd.
ZONING:	R-1
GP:	Residential
Slope drainage:	Flat
Vegetation:	Cypress

Applicant came before the Commission under Proposition 20 for a lot split (26-25). An access condition was imposed which the applicant accepted: condition was for a 5-ft. wide public easement on the eastern property boundary.

Project parcel is a beach fronting parcel; it is a long and narrow lot, approximately 534 x 79 ft.

The Commission has approved several two story houses in the general vicinity: Ralph Brown 30' (86-2); Harold Gregg 28' (70-15); Dr. Mendez 30' (99-19). The project house is not out of character with the surrounding area.

Existing vegetation (Cupressus Macrocarpa) Monterey Cypress on the northern portion of the lot precludes any public view through to the ocean

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

#### CONDITION:

- (1) Applicant shall offer for dedication to the County of Santa Barbara or its successor in jurisdiction, for recreational pedestrian and bicycle access, an easement 5' in width from Padaro Lane to the mean high tide line coinciding with the 30' ingress and egress right-of-way and the 5' pedestrian right-of-way delineated on the lot split map accompanying the Application. Said offer shall be a firm continuing offer of dedication which is not rejected or vitiated by failure to accept or purported rejection for a period of 25 years unless the County has in the meantime provided beach access within a distance of 300 yards upcoast or downcoast of this parcel. The offer of dedication shall be conditioned on assumption by the County of Santa Barbara or its successor of the burden of maintenance of the easement and the beach area to which access is provided, together with the burden of public liability on the easement.

- (2) Prior to commencement of construction, applicant septic tank report to the Executive Director of all recommendations of said report regarding des tank system shall be duly followed by the applic  
SS

EXHIBIT NO. 6
ccc-99-CD-03
3 OF 4

IDEVER RD.

U. S.

HWY.

SOUTHERN

101

PACIFIC

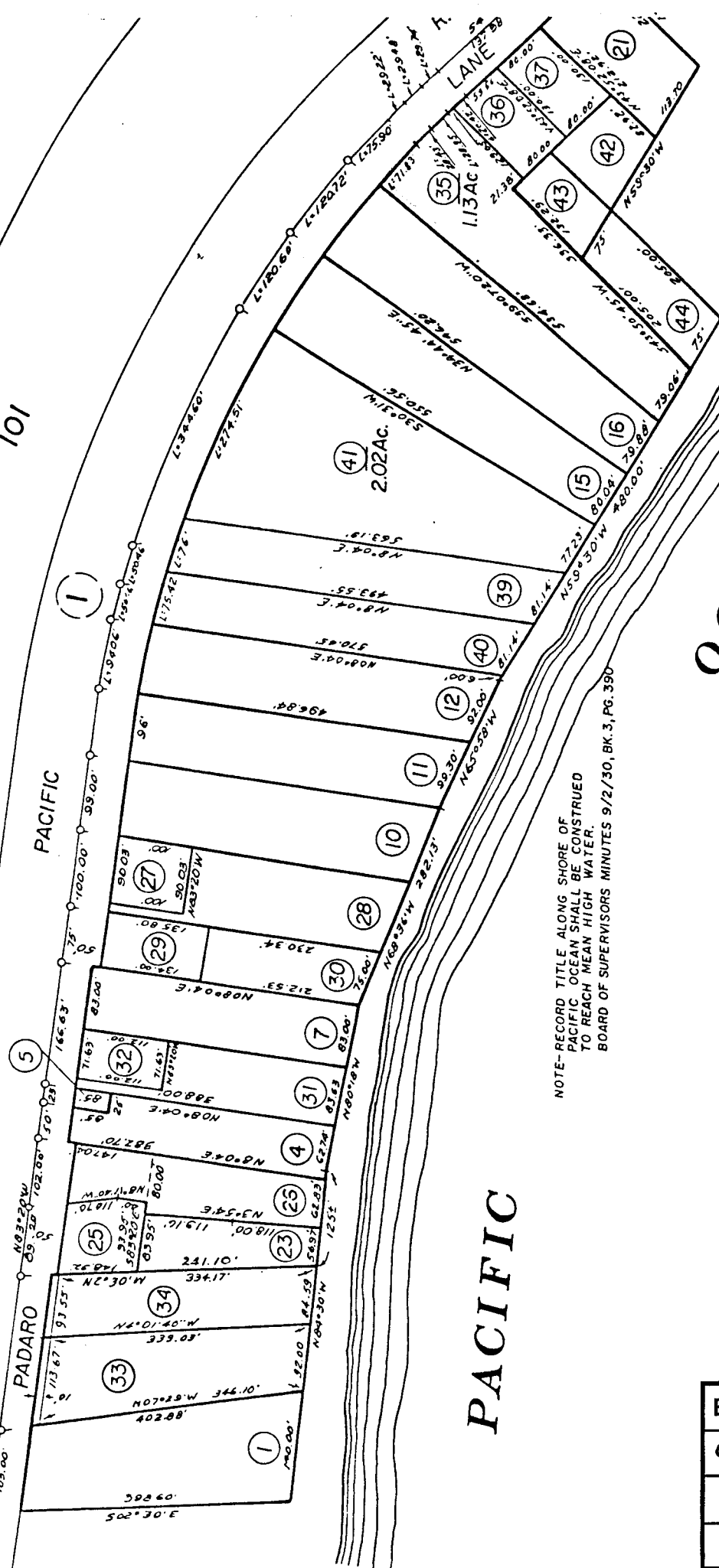
PACIFIC

OCEAN

NOTE-RECORD TITLE ALONG SHORE OF  
PACIFIC OCEAN SHALL BE CONSTRUED  
TO REACH MEAN HIGH WATER.  
BOARD OF SUPERVISORS MINUTES 9/2/30, BK. 3, PG. 390

EXHIBIT NO. 6
CCC-99-CD-03
4 OF 4

(27)



## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
925 DE LA VINA  
SANTA BARBARA, CA 93101  
(805) 963-6871

16 September 1986

RECEIVED

SEP 24 1986

CALIFORNIA  
COASTAL COMMISSION

W. Bruce and Darlene Bucklew  
3443 Padaro Lane  
Carpinteria, CA 93103

Dear Mr. and Mrs. Bucklew:

Thank you for responding to our letter dated 27 August, 1986 inquiring about the lack of compliance with the condition on your coastal development permit which requires an offer to dedicate an easement for public access. This condition was imposed as part of permit #141-19 for the construction of the residence you now own at 3443 Padaro Lane, Carpinteria.

We received the Preliminary Title Report for your property from Michel Meyer of Merrill Lynch. The report notes that there is an easement offered for dedication for the purposes of pedestrian usages (map filed in Book 61, Page 63 of Record of Surveys and Book 13, Page 65 of Parcel Maps). Aileen Loe, of our enforcement staff, has followed up on this with the County of Santa Barbara, and has found that these maps, recorded in 1974, do not meet the requirements of coastal development permit #141-19, granted in 1977.

The permit condition states that the offer to dedicate an easement (to the County) shall be for recreational, pedestrian and bicycle access and shall extend from Padaro Lane to the mean high tide line. (See attached copy of permit.) The recorded easement (1974) is for a 20 foot wide road from Padaro Lane terminating with a 5 foot wide pedestrian walkway along the last 224 feet to the mean high tide line. We have not been able to locate any record that this easement has been offered to the County for dedication as a public accessway. The permit condition remains unsatisfied, and therefore, the existing residence is not in compliance with the Commission's 1977 permit.

As indicated in our letter to you of 27 August, 1986, you are responsible for meeting the permit requirements. The necessary legal documents will be forwarded to you from our legal division in San Francisco. Please do not hesitate to contact this office if you have any further questions.

Thank you for your continued cooperation.

Sincerely,

  
Dan Ray  
Permit Chief

Enclosure  
2741A  
DR/AL/al

cc: Legal Division, San Francisco ✓

EXHIBIT NO. 7
CCC-99-CD-0
1 OF 1



KENNETH E. LIT  
CLERK  
1987-025967

SANTA BARBARA CO. CA

1987 APR -9 AM 9:00

1	4/09/87	11.00	RE
2	4/09/87	1.00	RE
3	4/09/87	9.00	AU

RECORDING REQUESTED BY

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



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192104-K.T.

9

IRREVOCABLE OFFER TO DEDICATE

I. WHEREAS, W. Bruce Bucklew and Darleine J. Bucklew are

the record owner(s), hereinafter referred to as "owner(s)", of the real  
property located in the County of Santa Barbara,

State of California, legally described as particularly set forth in  
attached Exhibit A hereby incorporated by reference and hereinafter  
referred to as the "subject property"; and Exhibit A

II. 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 coastal development  
permit approved by the Commission or local government as defined in Public  
Resources Code Section 30109 must be consistent with the policies of the Act  
set forth in Chapter 3 of Division 20 of the Public Resources Code; 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 to  
undertake development as defined in the Act within the coastal zone of the  
County of Santa Barbara, on the subject property; and

V. WHEREAS, a coastal development permit no. 141-19 was

EXHIBIT NO. 8
CCC-99-CD-03
1 OF 9

1  
2 granted on September 16, 19<sup>77</sup>~~86~~ by the Commission in accordance  
3 with the provisions of the Staff Recommendation and Findings attached hereto  
4 as Exhibit B and hereby incorporated by reference, subject to the following  
5 condition:

6 Applicant shall offer for dedication to the County of Santa  
7 Barbara or its successor in jurisdiction, for recreational pedestrian  
8 and bicycle access, an easement 5' in width from Padaro Lane to the  
9 mean high tide line coinciding with the 30' ingress and egress right-  
10 of-way and the 5' pedestrian right-of-way delineated on the lot split  
11 map accompanying the Application. Said offer shall be a firm  
12 continuing offer of dedication which is not rejected or vitiated by  
13 failure to accept or purported rejection for a period of 25 years  
14 unless the County has in the meantime provided beach access within a  
15 distance of 300 yards upcoast or downcoast of this parcel. The offer  
16 of dedication shall be conditioned on assumption by the County of  
17 Santa Barbara or its successor of the burden of maintenance of the  
18 easement and the beach area to which access is provided, together with  
19 the burden of public liability on the easement.

20 VI. WHEREAS, the subject property is a parcel located between the  
21 first public road and the shoreline; and

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

26 VIII. WHEREAS, the Commission found that but for the imposition of the above  
27 condition, the proposed development could not be found consistent with the  
public access policies of Section 30210 through 30212 of the California

EXHIBIT NO. 8

CCC-99-CD-03

2 OF 9

1 Coastal Act of 1976 and that therefore in the absence of such a condition, a  
2 permit could not have been granted;  
3  
4 NOW THEREFORE, in consideration of the granting of permit  
5 no. 141-19 to the owner(s) by the Commission, the owner(s) hereby  
6 offer(s) to dedicate to the People of California an easement in perpetuity  
7 for the purposes of Recreational pedestrian and bicycle access  
8  
9 located on the subject property an easement 5' in width from Padaro Lane  
10 to the mean high tide line coinciding with the 30' ingress and  
11 egress right of way and the 5' pedestrian right of way dedicated on and as  
12 the lot split map.  
13 specifically set forth by attached Exhibit C hereby incorporated by  
14 reference.

15 This offer of dedication shall be irrevocable for a period of  
16 <sup>five (25)</sup>  
17 ~~twenty-five~~ years, measured forward from the date of recordation, and  
18 shall be binding upon the owner(s), their heirs, assigns, or successors in  
19 interest to the subject property described above. The People of the State  
20 of California shall accept this offer through the local government in whose  
21 jurisdiction the subject property lies, or through a public agency or a  
22 private association acceptable to the Executive Director of the Commission  
23 or its successor in interest.

24 //  
25 //  
26 //  
27 //

JURY PAP  
ATE OF CAL  
D 113 (RE

JURY PAPER  
ATE OF CALIFORNIA  
D 113 (REV. 6-72)

EXHIBIT NO. 8
CCC-99-CD-03
3 OF 9

1 Acceptance of the offer is subject to a covenant which runs with  
2 the land, providing that any 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. The grant of  
6 easement once made shall run with the land and shall be binding on the  
7 owners, their heirs, and assigns.

8 Executed on this 7 day of APR 87.  
9 at Santa Barbara, California.

10  
11 Signed W Bruce Bucklew

W. Bruce Bucklew

12 Type or Print Name of Above  
13

14  
15 Signed Darleine J. Bucklew

Darleine J. Bucklew

16 Type or Print Name of Above  
17  
18  
19  
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EXHIBIT NO. 8

CCC-99-C9-03

4 OF 9

1 NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons  
2 signing on behalf of a corporation, partnership, trust, etc., please use the  
3 correct notary jurat (acknowledgment) as explained in your Notary Public Law  
4 Book.

5  
6 State of California, )

7 )SS

8 County of Santa Barbara

9 On this 9th day of April, in the year 87,

10 before me Cathie Ames, a Notary Public, personally

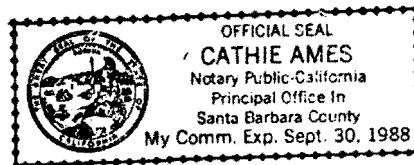
11 appeared W. Bruce Bucklew & Darlene J. Bucklew,

12 // personally known to me

13 // proved to me on the basis of satisfactory evidence

14 to be the person(s) whose name is subscribed to this instrument, and

15 acknowledged that he/she/they executed it.



20  
21  
22  
23  
24  
25  
26  
27

NOTARY PUBLIC IN AND FOR SAID COUNTY

AND STATE

EXHIBIT NO. 8

CCC-99-C9-03

5 OF 9

EXHIBIT "A"

PARCEL ONE:

PARCEL A OF PARCEL MAP NO. 11909, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA FILED IN BOOK 13, PAGE 65 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST IN AND TO ALL OF THE OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID REAL PROPERTY BELOW A DEPTH OF 500 FEET, WITHOUT THE RIGHT OF SURFACE ENTRY, AS GRANTED BY DEED TO SAND CASTLE, INC., A CORPORATION, RECORDED SEPTEMBER 19, 1960 AS INSTRUMENT NO. 29088, IN BOOK 1781, PAGE 16 OF OFFICIAL RECORDS, RECORDS OF SAID COUNTY.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR ROAD AND PUBLIC UTILITIES PURPOSES OVER THAT PORTION OF PARCEL D SHOWN AND DEFINED AS "ROAD AND PUBLIC UTILITIES EASEMENT" ON SAID PARCEL MAP 11,909.

ALSO EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST IN AND TO ALL THE OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID REAL PROPERTY BELOW A DEPTH OF 500 FEET, WITHOUT THE RIGHT OF SURFACE ENTRY, AS GRANTED BY DEED TO SAND CASTLE, INC., A CORPORATION, RECORDED SEPTEMBER 19, 1960 AS INSTRUMENT NO. 29088, IN BOOK 1781, PAGE 16 OF OFFICIAL RECORDS, RECORDS OF SAID COUNTY.

EXHIBIT NO. 8

CCC-99-CD-05

6 OF 9

CALIFORNIA COASTAL DEVELOPMENT PERMIT

EXHIBIT "B"

On Sept. 16 1977, by a vote of 9 to 0, the  
California Coastal Commission granted to Carl Johnson  
Permit # 141-19, subject to the conditions set forth below, for development  
consisting of Single Family Residence

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

The development is within the coastal zone in Santa Barbara County  
at 3443 Padero Lane, Carpinteria, Co. of Santa Barbara (APN 5-400-35)

After public hearing held on Sept. 16 1977, 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

Sept. 16, 1977.

*Carl C. Hetrick*

Carl C. Hetrick  
Executive Director

The undersigned permittee acknowledges receipt of the California Coastal Commission  
Permit # \_\_\_\_\_, and fully understands its contents, including all conditions  
imposed. (Please return one signed copy to the South Central Coastal Commission;  
upon receipt of same, the permit card will be mailed to you to post on project proper)

EXHIBIT NO. 8

CCC-99-CD-03

7 OF 9

CONDITIONS.

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) Applicant shall offer for dedication to the County of Santa Barbara or its successor in jurisdiction, for recreational pedestrian and bicycle access, an easement 5' in width from Padaro Lane to the mean high tide line coinciding with the 30' ingress and egress right-of-way and the 5' pedestrian right-of-way delineated on the lot split map accompanying the Application. Said offer shall be a firm continuing offer of dedication which is not rejected or vitiated by failure to accept or purported rejection for a period of 25 years unless the County has in the meantime provided beach access within a distance of 300 yards upcoast or downcoast of this parcel. The offer of dedication shall be conditioned on assumption by the County of Santa Barbara or its successor of the burden of maintenance of the easement and the beach area to which access is provided, together with the burden of public liability on the easement.

(2) Prior to commencement of construction, applicant shall submit a septic tank report to the Executive Director of this region; all recommendations of said report regarding design of septic tank system shall be duly followed by the applicant.

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

*Carl C. Hetrick*

CARL C. HETRICK  
Executive Director

EXHIBIT NO. 8

CCC-99-CD-03

8 OF 9



# Exhibit C

PARCEL	GROSS AC	NET AC
A	1288	1127
B	0329	0237
C	0331	0239
D	0448	0448

KENNEDY BLVD

VICINITY MAP  
NTS.

## RECORDER'S CERTIFICATE

FILE NO. 33502 FEE \$5.00

FILED THIS

OF SEPTEMBER

IN BOOK 13

RECORDED

EXHIBIT NO. 8

CCC-99-CD-03

9 OF 9

## COUNTY SURVEYOR'S CERTIFICATE

THIS MAP HAS BEEN EXAMINED THIS 12th DAY OF September 1974.  
FOR CONFORMANCE WITH THE REQUIREMENTS OF SECTION 1115 OF THE SUBDIVISION

MAP ACT

*Edward C. Scholtz*  
ASSISTANT COUNTY SURVEYOR

*NORMAN H. CALDWELL*  
COUNTY SURVEYOR

"This plat is for your aid in locating your land with reference to streets and other parcels. While this plat is believed to be correct, it is not a warranty of accuracy by reason of reliance thereon."

## SURVEYOR'S CERTIFICATE

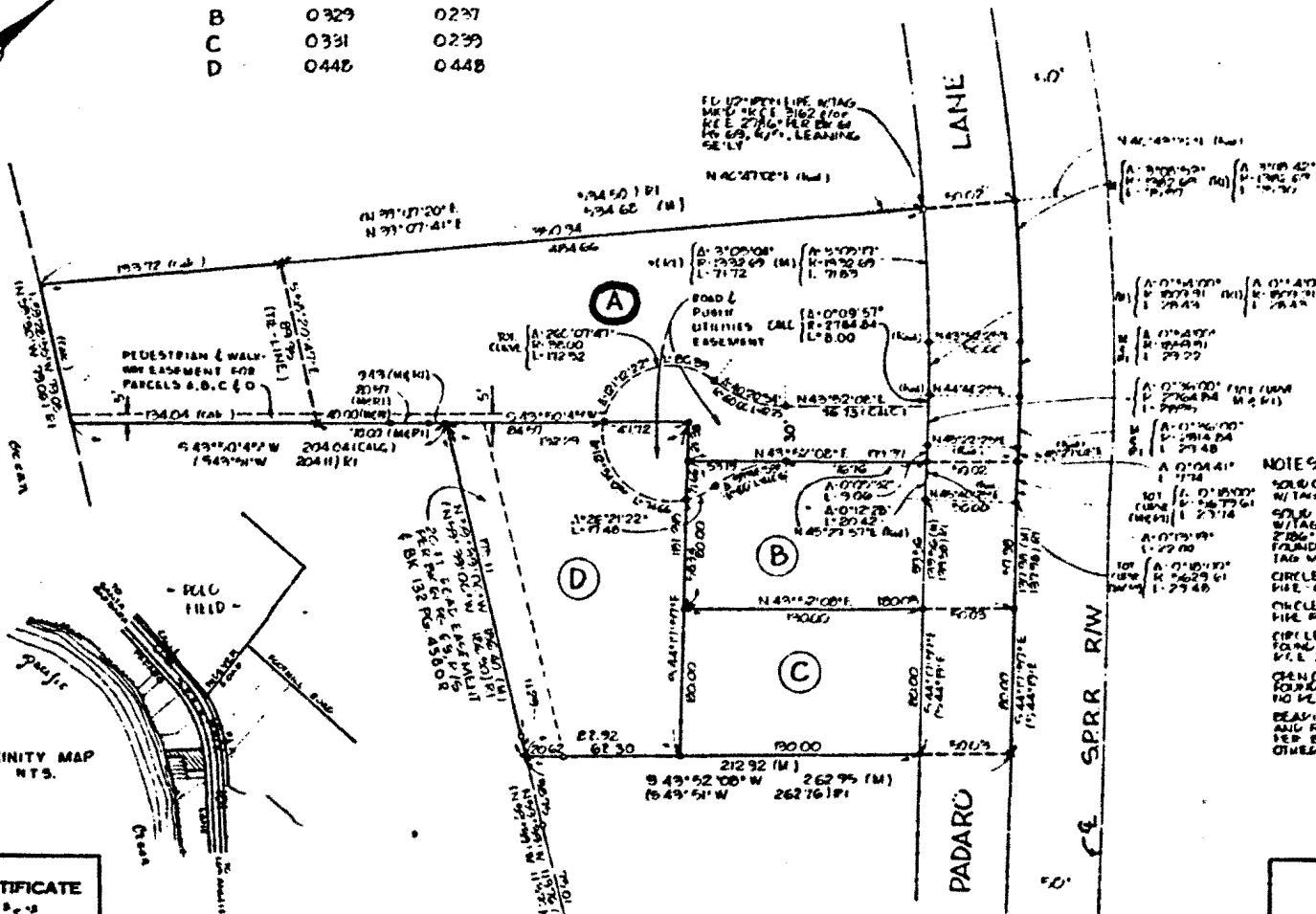
THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND  
WAS BASED UPON A FIELD SURVEY IN CONFORMANCE  
WITH THE SUBDIVISION MAP ACT AT THE REQUEST OF  
*CAPL JOHN SEAN* ON JULY 1974  
I HEREBY CERTIFY THAT IT CONFORMS TO THE APPROVED TENTATIVE  
MAP AND THE CONDITIONS OF APPROVAL THEREOF THAT ALL PRO-  
VISIONS OF APPLICABLE STATE LAW AND LOCAL ORDINANCES HAVE BEEN  
COMPLIED WITH

*Edward C. Scholtz* NO. L.S. 2253



PA  
N  
BEING  
OUTSIDE  
CITY OF  
SAN JOSE  
SANTA BART  
SCALE: 1"=40'  
RECORDED  
215 EAST VICTO  
SHEET

P:



## NOTES

- 1. SOLID CIRCLES IN  
W/ TAG MARKED
- 2. SOLID CIRCLES  
W/ TAG MARKED  
2700' PER DAY  
FOUND BE-SE  
TAG MARKED
- 3. CIRCLES THIN  
FILE OPEN, NO  
CIRCLE THIN  
FILE FOUND W/  
FILE THIN  
FOUND W/ TAG  
FILE 2700'
- 4. OPEN CIRCLES  
FOUND W/ TAG  
NO MARKED, UN-  
DETERMINED  
AND FOUND NO  
FILE ON FILE  
OTHERWISE IN

RECORDING REQUESTED BY  
CHICAGO TITLE COMPANY  
AND WHEN RECORDED MAIL TO

Leonard F. Hill  
c/o Murphy & Kress  
2401 Main St.  
Santa Monica, CA 90405

97-034511

Recorded  
Official Records  
County of  
Santa Barbara  
Kenneth A Pettit  
Recorder  
2:11pm 17-Jun-97

Rec Fee 11.00  
AU2 2.00  
SUR 10.00  
Check 23.00

PUBL CC 3

Escrow No. 970721  
Order No. 970721

SPACE ABOVE THIS LINE FOR RECORDER USE

MONUMENT SURVEY - \$10.00

## GRANT DEED

Assessor's Parcel No:  
005-400-35

THE UNDERSIGNED GRANTOR(S) DECLARE(S)  
DOCUMENTARY TRANSFER TAX IS

☒ unincorporated area ☐ City of

☒ computed on the full value of the interest or property conveyed, or

☐ computed on the full value less the value of liens or encumbrances remaining at time of sale, and

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

TRANSFER TAX NOT MADE PART  
OF THE PERMANENT RECORD

TERRY S. GROSSMAN AND KATHY S. GROSSMAN, AS CO-TRUSTEES OF THE GROSSMAN FAMILY TRUST  
OF 1996

herely GRANT(S) to  
Leonard F. Hill, Trustee of the Hill Living Trust dated December 24, 1991 as to an  
undivided 90% interest and Ann C. Daniel, a married woman as her sole and separate  
property as to an undivided 10% interest, as tenants in common

the following described real property in the  
County of Santa Barbara

CARPINTERIA  
State of California:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE

The Grossman Family Trust of 1996

Dated June 12, 1997

STATE OF CALIFORNIA NORTH CAROLINA

COUNTY OF WAKE

On JUNE 13, 1997

before me,

JUNE 17, 1997

a Notary Public in and for said County and State, personally appeared  
Terry S. Grossman and Kathy S. Grossman

TERRY S. GROSSMAN, Trustee

The Grossman Family Trust of 1996

Kathy S. Grossman, Trustee

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.

June M. Cash  
Signature of Notary

12 September 1998  
Date My Commission Expires

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

001 - 3/30/8764

EXHIBIT NO. 9

CCC-99-CD-03

1 OF 4

Page 1

Encrow No. 970721 - CP

LEGAL DESCRIPTION EXHIBIT

PARCEL ONE:

Parcel A of Parcel Map No. 11909, in the County of Santa Barbara, State of California, filed in Book 13, Page 65 of Parcel Maps, in the Office of the County Recorder of said County.

EXCEPTING therefrom an undivided 1/2 interest in and to all of the oil, gas, minerals and other hydrocarbon substances in and under said real property below a depth of 500 feet, without the right of surface entry, as granted by deed to Sand Castle, Inc., a corporation, recorded September 19, 1960 as Instrument No. 29088 in Book 1781, Page 16 of Official Records, records of said County.

PARCEL TWO:

A non-exclusive easement for road and public utilities purposes as created by deed recorded February 24, 1975 as Instrument No. 5448 in Book 2551, Page 623 of Official Records over that portion of Parcel D shown and defined as "Road and Public Utilities Easement" on said Parcel Map 11,909.

PARCEL THREE:

A non-exclusive easement for flood control and drainage purposes, described as follows:

Those portions of Parcels A and B of Parcel Map No. 12,162 filed in Book 15, Pages 3 and 4 of Parcel Maps in the Office of the Santa Barbara County Recorder, of Parcel B of Parcel Map No. 13,373 filed in Book 31, Page 33 of said Parcel Maps, and of Parcel Map No. 12,400 filed in Book 17, Page 99 of said Parcel Maps, included within a strip of land 5 feet wide lying contiguous to and Northeasterly of courses numbered 1, 3, 4 and 5 and Southeasterly of course number 2 of a line described as follows:

Beginning at a point on the Northwesternly boundary line of said Parcel B of Parcel Map No. 12,162 distant thereon South 43° 50' 45" West 5.00 feet from the most Northerly corner of said Parcel; thence

1. South 44° 21' 41" East 181.33 feet to the Northwesternly boundary line of said Parcel B of Parcel Map No. 13,373; thence
2. Along said Northwesternly line, South 43° 52' 08" West 23.00 feet; thence
3. South 65° 49' 51" East 117.60 feet to an angle point of the Westerly boundary line of said Parcel Map No. 12,400 at the Westerly terminus of the line shown as having a bearing and distant of "S 45° 02' 00" E. 47.57 feet; thence
4. Along said line, South 46° 02' 00" East 47.57 feet; thence
5. Continuing South 46° 02' 00" East 19.41 feet to the flood control easement line shown on said Parcel Map No. 12,400.

The boundary lines of said easement shall be lengthened and shortened to form a continuous strip of land 5 feet wide that terminates Easterly on said flood control easement line and terminates Westerly at the Northerly corner of said Parcel B of

DECEMBER 06, 1984

EXHIBIT NO. 9

CCC-99-CD-03

2 OF 4

Page 2

Escrow No. 970721 -CP

LEGAL DESCRIPTION EXHIBIT

Parcel Map No. 12,162, as conveyed in an instrument recorded November 30, 1990 as  
Instrument No. 90-076680 of Official Records.

DEFILED-08/08/1996

EXHIBIT NO. 9

CCC-99-CD-03

3 OF 4

T-431 P 04/04 F-998

8055696112

AMERICAN TITLE

## SUBJECT PROPERTY INFORMATION

17) Property: 3443 PADARO LN, CARPINTERIA CA 93013-1118 C006

APN: 005-400-35

Use: SFR

County: SANTA BARBARA, CA

Tax Rate Area: 59-027

Total Value: \$3,802,297

Census: 17.01

Prop Tax: \$42,095.86

Land Value: \$2,016,370

Map Pg: 21-F3

Delinq Tax Yr:

Imprv Value: \$1,785,927

New Pg: 997-H4

Exemptions:

Assd Yr: 1997

Phone:

% Improved: 46%

Owner: HILL TRUST

Mail: 2401 MAIN ST; SANTA MONICA CA 90405-3515

### SALES INFORMATION

### IMPROVEMENTS

#### LAST SALE

#### PRIOR SALE

Transfer Date: 06/17/97

06/19/87

Sale Price/Type:

\$1,650,000 FULL

Document #: 34511

45803

Document Type: GRANT DEED

GRANT DEED

1st TD/Type:

\$1,000,000 VARIABLE

Finance:

Junior TD's:

Lender:

Seller: GROSSMAN TRUST

Title Company: CHICAGO TITLE CO.

Transfer Info:

Bldg/Liv Area: 4,272

# Units:

# Bldgs:

# Stories:

\$/SF:

Yrblt/Eff:

Total Rms:

Bedrms: 5

Baths(F/H): 4

Fireplace:

Pool:

Bsmt Area:

Construct:

Flooring:

Air Cond:

Heat Type:

Quality:

Condition:

Style:

Other Rooms:

### SITE INFORMATION

Improve Type:

Lot Size: A1.13

Zoning:

Lot Area: 49,222

County Use: 0100

Parking:

Bldg Class:

Park Spaces:

Flood Panel:

Site Influence:

Phys Chars:

Legal: PARCEL MAP 13/65

Comments:

EXHIBIT NO. 9

CCC-99-CD-03

4 OF 4

STANLEY C. HATCH  
 GERALD B. PARENT  
 S. TIMOTHY BUYNACK  
 SUSAN F. PETROVICH  
 PETER N. BROWN  
 STANLEY M. RODEN  
 SCOTT S. SLATER  
 STEVEN A. AMERIKANER  
 GARY M. KVISTAD  
 CHRISTOPHER A. JACOBS  
 KEVIN J. NEESE  
 COLIN L. PEARCE  
 JEFFREY A. DINKIN  
 LORI LEWIS PERRY  
 ROBERT J. SAPERSTEIN  
 JEANNE M. MAGGALDEN  
 JOSEF D. HOUSKA  
 CRAIG A. SMITH  
 SARAH J. KNECHT  
 STEPHANIE C. OSLER  
 KIMBERLY E. ASKIN  
 BRADLEY E. LUNDGREN  
 SUSAN M. CHUBERKA  
 MERRILEE A. FELLOWS  
 DEBORAH L. MARTIN

LAW OFFICES  
**HATCH AND PARENT**

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 21 EAST CARRILLO STREET  
 SANTA BARBARA, CALIFORNIA 93101-2782  
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 300 ESPLANADE DRIVE, 18TH FLO  
 OXNARD, CALIFORNIA 93030  
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OF COUNSEL  
 JEFFERY H. SPEICH

OUR FILE # 7788.2  
 DIRECT DIAL # (805) 882-1407  
 INTERNET: SAmericaner@HatchParent.com

October 5, 1998

BY HAND

2250  
 CALL IF READY

Board of Supervisors  
 County of Santa Barbara  
 101 E. Anapamu Street  
 Santa Barbara, CA 93101

RE: Your Meeting of October 6, 1998, Agenda Item #6  
 SUBJ: 3443 Padaro Lane, APN No. 005-400-035 (Leonard Hill/Ann Daniel)

Dear Honorable Members of the Board of Supervisors:

This letter is written on behalf of Leonard Hill and Ann Daniel ("Owners"), who own a home on the property located at 3443 Padaro Lane ("Property"), and on behalf of the Padaro Lane Homeowners Association ("Association"). The purpose of the letter is to formally oppose the staff recommendation that the Board of Supervisors adopt a resolution accepting the 1987 offer to dedicate *vertical* public beach access ("Offer to Dedicate") with respect to the Property, on the following grounds:

1. Requiring Owners' predecessors-in-title to grant Santa Barbara County ("County") the Offer to Dedicate was an unlawful act rendering the Offer to Dedicate void *ab initio*. Acceptance of the Offer to Dedicate would constitute a "taking" of property in violation of the Fifth and Fourteenth Amendments to the United States Constitution as interpreted and applied by the United States Supreme Court decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994).
2. Acceptance of the Offer to Dedicate is unlawful on the basis that the County failed to accept it within a reasonable period of time, as required by California law.
3. The Offer to Dedicate has been rescinded, as authorized by California law, on the grounds that the offer was secured through coercion, violates public policy, was unlawful when made, and cannot be lawfully accepted by the County.

NATURE SAVER™ FAX MEMO 01616		Date 10/5/98	Page 27
To LINDA LOCKLIN	From GREG MOHR		
Co./Dept. COASTAL COMMISSION	Co. SB Co P&D		
Phone # (415) 904 5238	Phone # (805) 568 2080		
Fax # (415) 904 5400	Fax # (805) 568 2030		

EXHIBIT NO. 10
CCC-99-CD-03
1 OF 10

RECEIVED

OCT 05 1998

S. B. COUNTY  
 PLANNING AND DEVELOPMENT

4. Acceptance of the Offer to Dedicate is a discretionary act subject to the California Environmental Quality Act ("CEQA"). Establishing a public beach access at 3443 Padaro Lane is a "Project" subject to CEQA which will result in significant adverse environmental impacts which have not been analyzed. Postponing that analysis would violate CEQA.

### **Background**

In 1977, the then-owner of the Property -- Carl D. Johnson -- sought a coastal development permit ("CDP") for the Property in order to build a single family residence. On September 16, 1977, the Coastal Commission unanimously approved issuance of the coastal development permit (CDP No. 141-19). The Johnson CDP included, as a "Special Condition," the following:

"Applicant shall offer for dedication to the County of Santa Barbara or its successor in jurisdiction, for recreational pedestrian and bicycle access an easement 5' in width from Padaro Lane to the mean high tide line coinciding with the 30' ingress and egress right-of-way and the 5' pedestrian right-of-way delineated on the lot split map accompanying the Application. Said offer shall be a firm continuing offer of dedication which is not rejected or vitiated by failure to accept or purported rejection for a period of 25 years, unless the County has in the meantime provided beach access within a distance of 300 yards upcoast or downcoast of this parcel. The offer of dedication shall be conditioned on assumption by the County of Santa Barbara or its successor, of the burden of maintenance of the easement and the beach area to which access is provided, together with the burden of public liability on the easement."

The County took no steps to ensure compliance with this condition prior to issuance of the building permit in 1978 to construct the home. The house was built and occupied.

Between 1978 and 1987, the Property was sold by Mr. Johnson. At the time of the sale, there was no recorded document which provided notice to the buyer of the "Special Condition."

Ten years after issuance of the CDP and the completion and sale of the Johnson residence, on April 8, 1987, staff of the California Coastal Commission ("Commission") threatened the then-owners of the Property, Dr. and Mrs. W. Bruce Bucklew, with daily civil penalties unless they agreed to comply with the "Special Condition." While they were in escrow to sell the house, Commission staff demanded that the Bucklews sign and record a document offering the County an easement over their property for pedestrian and bicycle access. The Bucklews eventually acceded to this demand, and recorded a document entitled "Irrevocable Offer to Dedicate" which makes specific reference to CDP No. 141-19. A copy of this document is attached as Exhibit A to this letter.

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There is no evidence of the Bucklews receiving any consideration for executing and recording the Offer to Dedicate.

It appears that the "Irrevocable Offer to Dedicate" signed in 1987 was prepared on a standard County form. For reasons which are not clear, there appear to be significant inconsistencies between this 1987 document and the requirements of the 1977 "Special Condition" imposed by the Coastal Commission:

- a. The Commission condition requires that the County assume the burden of maintenance of the easement. The Offer to Dedicate notes this requirement in the recitals, but does not include it in its operative language.
- b. The Commission condition requires that the County assume the burden of public liability on the easement. The Offer to Dedicate notes this requirement in the recitals, but does not include it in its operative language.
- c. The Commission condition requires that the offer be

"... a firm continuing offer of dedication which is not rejected or vitiated by failure to accept or purported rejection for a period of 25 years unless the County has in the meantime provided beach access within a distance of 300 yards upcoast or downcoast of this parcel."

The Offer to Dedicate notes this requirement in the recitals, but does not include it in its operative language.

Further, our research indicates that the applicable Coastal Commission regulations limited such offers of dedication to 21 years; the 25 year term stated in the recorded document seems to be without legal authority. In addition, the Special Condition does not state that the term of the offer begins with the date of recordation; indeed, a reasonable interpretation is that the term began with the imposition of the condition. By contrast, the recorded Offer to Dedicate states that the term begins with the date of recordation of the offer.

- d. The "Offer to Dedicate" includes requirements which go beyond the Commission condition. Specifically, the title of the document uses the word "Irrevocable" and the operative language states that it is "irrevocable." There is no such requirement in the Commission condition.

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- e. The Commission condition is silent with regard to its binding effect on successors in interest to the Applicant, and silent with regard to being recorded. By contrast, the Offer to Dedicate states that it is binding on successors and was prepared on a form which was to be recorded.

It thus appears that the document signed by the Bucklews and recorded in 1987 is significantly different than the requirements of the condition imposed by the Coastal Commission 10 years earlier and, in some important respects, appears to be unauthorized by California law.

The "Offer to Dedicate" has remained unaccepted from April 8, 1987 until the present, over 11 years later.

In 1997, Mr. Hill and Ms. Daniel purchased the Property. This family has deep and longstanding roots in the Santa Barbara community, including the fact that Ms. Daniel was born at Cottage Hospital and attended Santa Barbara High School. They have a particular affection for Santa Barbara in general and the Padaro Lane neighborhood in particular. Their purchase of the Property was the realization of a long-standing dream of returning to Santa Barbara.

The Offer to Dedicate describes a 5 foot strip of land between Padaro Lane and the mean high tide line of the Pacific Ocean. The proposed easement location could require removal of mature eucalyptus trees which provide an annual are a haven for Monarch butterflies. As described further below, Padaro Lane at this location is 16 feet wide, with no parking or pedestrian facilities. It is a narrow and dangerous road, and was never designed as a high traffic public thoroughfare, and particularly not one with parallel parking on the roadway shoulders. There is no practical way to widen the road to handle additional traffic or to provide parking, because of the railroad right of way and a seasonal watercourse on the north side, and the private properties on the south side.

The 5 foot easement contemplated in the Offer to Dedicate would not connect to any lateral beach easements in front of the Owners' home nor the home of their neighbor to the east. Thus, a person using that easement could only walk to the mean high tide line and, unless it were low tide, would have no place to go from that point.

#### The Constitutional Issues

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Ten weeks after the 1987 Offer to Dedicate was signed and recorded, the United States Supreme Court (on June 26, 1987) issued its ruling in *Nollan v. California Coastal Commission*. In that case, the Supreme Court ruled that the Coastal Commission's long-standing program of requiring all coastal development permit applicants to dedicate strips of land for public access, without regard to the impacts caused by the proposed development, was violative of the Fifth and Fourteenth Amendments to the United States Constitution.

The *Nollan* case arose from a coastal property just 15 miles downcoast from Padaro Lane, at Faria Beach in Ventura County. In that case, the Nollans applied for a coastal development permit to demolish a small cottage on the property and to build a bigger home for themselves. The Coastal Commission approved the permit, but imposed its "standard" condition requiring that the Nollans dedicate a "lateral" easement along their beach frontage so that the public could pass over their parcel. The Nollans challenged this condition on the grounds that it was unconstitutional to compel them to convey a strip of their land in exchange for a coastal development permit where their new home would not cause any impact on public access to the ocean.

The Supreme Court agreed with the Nollans. It could find no "nexus" between the Nollans' request for a permit to replace a small house with a larger house and a condition requiring that the public be allowed to pass over their property. The Court affirmed that California has the right to pursue a program of ensuring public access to the beach; however, the Court bluntly stated: "... if [California] wants an easement across the Nollans' property, it must pay for it." The Court invalidated the public access condition as an illegal exaction under the Fifth and Fourteenth Amendments to the United States Constitution.

It is interesting that the oral argument in the *Nollan* case was held on March 30, 1987, just 8 days before the 1987 Offer to Dedicate was recorded.

The *Nollan* doctrine was reiterated seven years later in the Supreme Court decision entitled *Dolan v. City of Tigard*. In that case, Florence Dolan applied to the city for a permit to redevelop her property by enlarging her plumbing and electrical supply store from 9700 square feet to 17,600 square feet, and adding a 39 space parking lot in place of the existing gravel lot. The city approved the permit, but imposed a condition that Mrs. Dolan would have to dedicate to the city a 15 foot strip of land as a pedestrian/bicycle pathway.

Mrs. Dolan challenged the required dedication, and the Supreme Court found that it was unconstitutional and unenforceable. The Court explained:

"In *Nollan, supra*, we held that the governmental authority to exact such a condition was circumscribed by the Fifth and Fourteenth Amendments. Under the well-settled doctrine

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of 'unconstitutional conditions,' the government may not require a person to give up a constitutional right -- here the right to receive just compensation when property is taken for a public use -- in exchange for a discretionary benefit conferred by the government where the benefit sought has little or no relationship to the property." (512 U.S. at 384-85, citations omitted).

The rule articulated in *Nollan* and *Dolan* applies here. There was no "nexus" between the 1977 building permit for a single family house and the Special Condition to dedicate a 5 foot public access from Padaro Lane to the ocean. Indeed, there is no doubt that neither the Coastal Commission nor the County would seek to impose such a condition today, given the Supreme Court's decisions over the past 10 years.

One issue remains: May the County accept this particular dedication because it was signed and recorded 10 weeks before the Supreme Court decided *Nollan*? Did this dedication make it "under the wire," so to speak?

The answer is no, for two simple reasons. First, the Supreme Court did not make new law in announcing the result in *Nollan*; rather, it simply applied well established constitutional principles to a new set of facts. Thus, the 1987 Offer to Dedicate was unlawful when it was signed, and did not make it through "under the wire."

Second, this dedication has never been accepted by the County. Under California law, a dedication of land for public purposes is not complete until there has been BOTH an offer to dedicate and an acceptance of that offer. See *Santa Clara v. Ivancovich* (1947), 47 Cal. App. 2d 502). Here, the second step in that process has never occurred. As a result, the constitutional offense -- the transfer of property without just compensation and without due process -- has not yet happened. By raising this objection, and rescinding the Offer to Dedicate, the Owners hope to avoid that constitutional injury.

### Other Legal Issues

Even assuming the Offer to Dedicate is not void *ab initio*, under California law a contract may be rescinded where it is unlawful, the result of coercion, given without consideration, or violates public policy. California Civil Code Sec. 1689.

In this case, the 1977 Coastal Commission approval -- which required a public access dedication as a *quid pro quo* -- is subject to being viewed as a contract between the State of California and the owner of the Property. In exchange for permission to build a home, the owner agreed to offer to the County a 5 foot strip of land and to not revoke that offer before the

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County accepted it. That contract has not yet been fully performed: the County has not yet attempted to accept the dedication.

After this contract was made, and before it was fully performed by both parties, the Supreme Court declared the practice of compelling property owners to offer dedications in exchange for a permit to build to be unlawful and violative of public policy where the required nexus is lacking (see *Nollan* and *Dolan*, above). Thus, the contract is no longer in effect.

Further, it appears that the County has waited too long (over 11 years) to accept the offer of dedication. The California courts have stated that an offer of dedication must be accepted within a "reasonable time." In one case, the court found a delay of two to four years to be reasonable; in another, a delay of nine years was unreasonable.

Finally, the Offer to Dedicate was coerced from the Bucklews without consideration. While the Coastal Commission staff threatened the Bucklews in 1987 with civil enforcement, it appears that there was no legal basis for those threats. The Special Condition was imposed in 1977, and was not enforced against the property owner -- Carl Johnson -- who accepted that condition. Ordinarily, a building permit cannot be obtained until a dedication condition is satisfied; that procedure was not followed in this case. Moreover, there was no enforcement of the condition on Mr. Johnson before he sold the property. The Bucklews were innocent purchasers, and were not properly the subject of a civil enforcement action. They received nothing in exchange for their promise to convey the public access easement, and thus their promise is unenforceable.

For these reasons, and those stated earlier, the Owners have rescinded their offer to dedicate, by a Notice of Rescission on October 5, 1998. A copy of that document is enclosed as Exhibit B.

### Compliance With CEQA

The proposed Resolution states that acceptance of the 72 public access easements is exempt from CEQA under CEQA Guidelines Section 15061(b)(3) which states:

"Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

Aside from the bare language of the proposed Resolution, there is no evidence in the record before the Board to support such a determination.

EXHIBIT NO. 10
CCC-99-CD-03
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Indeed, the staff report before the Board indicates that the County intends to study this proposed vertical access, including its "need" and "desirability," at an indeterminate future date. The staff suggests that this study can be deferred and included as part of the Toro Canyon Plan.

CEQA does not permit a study of environmental impacts to be postponed when it is feasible to accomplish an environmental impact analysis now. As the CEQA Guidelines state:

"... EIR's and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

(1) With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. **CEQA compliance should be completed prior to acquisition of a site for a public project.**" (CEQA Guidelines Section 15004(b), emphasis added).

Moreover, an examination of the specific facts relating to the Property demonstrates that acceptance of that public access easement will, in fact, have a number of significant effects on the environment. Enclosed as Exhibit C is a letter dated October 2, 1998 from Associated Transportation Engineers which discloses the following facts concerning this proposed access easement:

1. The proposed public access will enter Padaro Lane at a location where the improved portion of the road is 16 wide.
2. On the landward side of Padaro Lane, for a substantial distance in both directions from the proposed access easement, there is a seasonal watercourse and wetlands which precludes widening Padaro Lane or creating parking areas. Adjacent to the watercourse is the Southern Pacific Railroad right of way which is an additional constraint.
3. On the oceanward side of Padaro Lane, there is insufficient easement area to create public parking areas.
4. Creating a pedestrian and bicycle access at this particular point would create a substantial traffic and safety hazard because of the narrow width of Padaro Lane, as well as traffic congestion.

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5. Creating a pedestrian and bicycle access at this particular point would result in illegal parking, which will exacerbate the traffic congestion and safety hazard.
6. There is serious doubt about the feasibility of mitigating either the traffic or parking impacts due to the narrow right of way, the proximity of the railroad tracks and the presence of the seasonal watercourse and associated wetlands.
7. There is no viable means of providing public sanitation facilities.

Given this information, CEQA does not authorize the County to conclude that there it can be seen with "certainty" that there is "no possibility" that a public access at this property will have no impact on the environment. If the County were to make such a finding despite this evidence, there is little doubt that a court would conclude that the County had abused its discretion and failed to proceed in the manner required by CEQA.

#### **Public Policy Considerations**

There are significant public policy reasons for the County to decline to accept the vertical access across the Property. The Owners and the Association are particularly concerned with the following implications of the proposed acceptance of the Offer to Dedicate:

1. It will have a significant adverse impact on the Padaro Lane community by attracting beach visitors to an area with non-existent parking and a very narrow roadway.
2. It is unnecessary, because there are existing public access points at Loon Point (1760 yards west of the Property) and at Santa Claus Lane (770 yards east of the Property).
3. Creating public access would have a significant adverse impact on the privacy, security and the property values of the people who own the properties adjacent to the proposed easement or in the Padaro Lane community.
4. The County is legally obliged to assume the duty of maintenance of the easement and public liability. Yet, there is no lateral public access easement across the two parcels which border this 5 foot vertical easement, and thus the county will have no ability to bring in equipment in order to discharge this obligation. For example, there is a concrete passageway to the beach over the existing rock revetment; this passageway requires upgrading, maintenance and repair, yet the County has no physical ability to get in with the necessary equipment to undertake that work.

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Board of Supervisors  
County of Santa Barbara  
October 5, 1998  
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5. There is no practical way to provide for public sanitation. Thus, beach visitors will of necessity either stay for a relatively brief time -- which will exacerbate the parking and traffic impacts, or they will find other means of addressing their needs, which will contribute to the ocean pollution problem the County is presently studying.

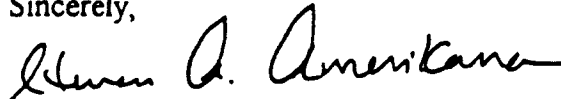
### Conclusion

For the reasons stated in this letter, the Owners and the Association respectfully request that the Board of Supervisors decline to accept the staff recommendation to accept the vertical public access easement across the Property.

In addition, the Owners join with their neighbors in opposing the staff recommendation that the Board of Supervisors accept the various lateral public access easements on Padaro Lane parcels.

Thank you for considering these views. We expect to appear at your public hearing on October 6, 1998 to present our case directly to you.

Sincerely,



Steven A. Amerikaner  
For HATCH AND PARENT

### Enclosures:

- Exh. A: Irrevocable Offer to Dedicate  
Exh. B: Letter from Associated Traffic Engineers dated October 5, 1998  
Exh. C: Rescission of Offer to Dedicate

### cc (w/enc.):

Mr. Leonard Hill/Ms. Ann Daniel  
Padaro Lane Homeowners Association  
John Patton, Planning & Development Director  
Shane Stark, County Counsel

142237.1:7788.2

EXHIBIT NO. 10
CCC-99-CD-03
10 OF 10

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Mr. Leonard Hill  
Ms. Ann Daniel  
c/o Steven A. Amerikaner  
HATCH AND PARENT  
21 East Carrillo Street  
Santa Barbara, California 93101-2782

98-07-941	Rec Fee	14.00
Reco d	AU2	2.00
Official Records	CCO	1.00
Co Santa Barbara	CR Crd	17.00
Kenneth A Pettit		
Recorder		
Larry Herrera		
Assistant		
12:30pm 5-Oct-98	CARD	CC 4

THIS SPACE RESERVED FOR RECORDER ONLY  
(Gov. Code § 27361.6)

**NOTICE OF RESCISSION OF OFFER TO DEDICATE EASEMENT  
(PUBLIC ACCESS)**

APN 005-400-035

**THIS NOTICE OF RESCISSION OF OFFER TO DEDICATE EASEMENT (PUBLIC ACCESS)** ("Notice") is given by **ANN DANIEL and LEONARD HILL** ("Owners"), owners of that certain real property located at 3443 Padaro Lane in the County of Santa Barbara, State of California, as more particularly described on the attached Exhibit A which is incorporated herein by this reference ("Property"), based on the following facts:

**WHEREAS**, on September 16, 1977, the California Coastal Commission approved Coastal Development Permit No. 141-19 authorizing construction of a single family residence on the Property ("Permit"); and

**WHEREAS**, the Permit included a condition ("Permit Condition") requiring that an easement for pedestrian and bicycle public access over the Property from Padaro Lane to the boundary of the state-owned tidelands be offered for dedication to the County of Santa Barbara despite the lack of any connection between the Permit and existing or historic public access and/or recreational use, if any, on Property; and

**WHEREAS**, on April 9, 1987, a document entitled "Irrevocable Offer to Dedicate" was recorded as Document No. 87-25967 in the Official Records of the County of Santa Barbara ("Offer to Dedicate"), which document purports to comply with the Permit Condition; and

**WHEREAS**, on June 26, 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

EXHIBIT NO. 11
CCC-99-CD-03
1 OF 4




**WHEREAS**, there is no essential nexus between the new construction authorized by the Permit and the public access rights sought by the County of Santa Barbara; and

**WHEREAS**, the Offer to Dedicate has never been accepted by the County of Santa Barbara; and

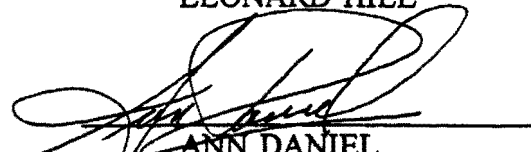
**WHEREAS**, under California law an offer to dedicate may be rescinded by the owner of the property.

**NOW, THEREFORE**, the Owners hereby give notice that the Offer to Dedicate has been rescinded on the grounds that acceptance of the Offer to Dedicate would constitute a "taking" of property in violation of the constitutional rights of the Owners, in direct contravention to the Fifth and Fourteenth Amendments to the United States Constitution and the Supreme Court decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

Dated: October 4, 1998

  
LEONARD HILL

Dated: October 4, 1998

  
ANN DANIEL

Attachment: Exhibit A

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

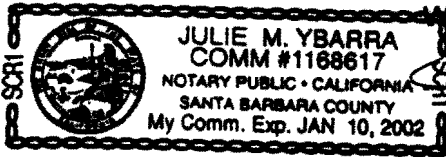
STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

On Oct. 4, 1998 before me, Julie M. Ybarra, personally appeared

LEONARD HILL AND ANN DANIEL

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose names(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.

Julie M. Ybarra  
(SIGNATURE OF NOTARY)

EXHIBIT NO. 11

CCC-99-CD-11

3 OF 4

Parcel ONE:

Parcel A of Parcel Map No. 11909, in the County of Santa Barbara, State of California, filed in Book 13, Page 65 of Parcel Maps, in the Office of the County Recorder of said County.

EXCEPTING therefrom an undivided 1/2 interest in and to all of the oil, gas, minerals and other hydrocarbon substances in and under said real property below a depth of 500 feet, without the right of surface entry, as granted by deed to Sand Castle, Inc., a corporation, recorded September 19, 1960 as Instrument No. 29088 in Book 1781, Page 16 of Official Records, records of said County.

EXHIBIT A (HILL/DANIEL)

EXHIBIT NO. 11  
CCC-99-CD-03

4 OF 4

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Mr. Leonard Hill  
Ms. Ann Daniel  
c/o Steven A. Amerikaner  
HATCH AND PARENT  
21 East Carrillo Street  
Santa Barbara, California 93101-2782

98-081060	Rec Fee	20.00
Recorded	AU2	2.00
Official Records	CC0	1.00
Co Santa Barbara	CR Crd	29.00
Kenneth A Pettit		
Recorder		
Larry Herrera		
Assistant		
11:32am 20-Oct-98	CARD	MM 6

THIS SPACE RESERVED FOR RECORDER ONLY  
(Gov. Code § 27361.6)

**AMENDED  
NOTICE OF RESCISSION OF OFFER TO DEDICATE EASEMENT  
(PUBLIC ACCESS)**

**APN 005-400-035**

**THIS AMENDED NOTICE OF RESCISSION OF OFFER TO DEDICATE EASEMENT (PUBLIC ACCESS) ("Amended Notice")** is given by **ANN DANIEL** and **LEONARD HILL** ("Owners"), owners of that certain real property located at 3443 Padaro Lane in the County of Santa Barbara, State of California, as more particularly described on the attached Exhibit A which is incorporated herein by this reference ("Property"), based on the following facts:

**WHEREAS**, on September 16, 1977, the California Coastal Commission approved Coastal Development Permit No. 141-19 authorizing construction of a single family residence on the Property ("Permit"); and

**WHEREAS**, the Permit included a condition ("Permit Condition") requiring that an easement for pedestrian and bicycle public access over the Property from Padaro Lane to the boundary of the state-owned tidelands be offered for dedication to the County of Santa Barbara despite the lack of any connection between the Permit and existing or historic public access and/or recreational use, if any, on Property; and

**WHEREAS**, on April 9, 1987, a document entitled "Irrevocable Offer to Dedicate" was recorded as Document No. 87-25967 in the Official Records of the County of Santa Barbara ("Offer to Dedicate"), which document purports to comply with the Permit Condition; and

**WHEREAS**, on June 26, 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, there is no essential nexus between the new construction authorized by the Permit and the public access rights sought by the County of Santa Barbara; and

WHEREAS, the Offer to Dedicate has never been accepted by the County of Santa Barbara; and

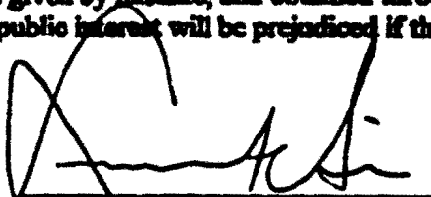
WHEREAS, under California law an offer to dedicate may be rescinded by the owner of the property, and .

WHEREAS, on October 5, 1998, the undersigned executed and caused to be recorded as Document No. 98-076841 a document entitled "Notice of Rescission of Offer to Dedicate Easement (Public Access)," and

WHEREAS, since October 5, 1998 the undersigned have learned of additional facts which provide further and additional grounds upon which the Offer to Dedicate may be rescinded.

NOW, THEREFORE, the Owners hereby give this Amended Notice (signed in counterparts) that the Offer to Dedicate has been rescinded pursuant to California Civil Code section 1689 on the all of the grounds stated therein, including without limitation the following: (i) the Offer to Dedicate is unlawful and unenforceable because its acceptance would constitute a "taking" of property in violation of the constitutional rights of the Owners, in direct contravention to the Fifth and Fourteenth Amendments to the United States Constitution and the Supreme Court decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994); (ii) the consent to the Offer to Dedicate by the Owner's predecessor-in-interest was given by mistake, and obtained through duress, menace, fraud and undue influence; (iii) the public interest will be prejudiced if the Offer to Dedicate is permitted to stand.

Dated: October 19, 1998

  
LEONARD HILL

Dated: October \_\_, 1998

ANN DANIEL

Attachment: Exhibit A

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, there is no essential nexus between the new construction authorized by the Permit and the public access rights sought by the County of Santa Barbara; and

WHEREAS, the Offer to Dedicate has never been accepted by the County of Santa Barbara; and

WHEREAS, under California law an offer to dedicate may be rescinded by the owner of the property, and

WHEREAS, on October 5, 1998, the undersigned executed and caused to be recorded as Document No. 98-076841 a document entitled "Notice of Rescission of Offer to Dedicate Easement (Public Access)," and

WHEREAS, since October 5, 1998 the undersigned have learned of additional facts which provide further and additional grounds upon which the Offer to Dedicate may be rescinded.

NOW, THEREFORE, the Owners hereby give this Amended Notice (signed in counterparts) that the Offer to Dedicate has been rescinded pursuant to California Civil Code section 1689 on the all of the grounds stated therein, including without limitation the following: (i) the Offer to Dedicate is unlawful and unenforceable because its acceptance would constitute a "taking" of property in violation of the constitutional rights of the Owners, in direct contravention to the Fifth and Fourteenth Amendments to the United States Constitution and the Supreme Court decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994); (ii) the consent to the Offer to Dedicate by the Owner's predecessor-in-interest was given by mistake, and obtained through duress, menace, fraud and undue influence; (iii) the public interest will be prejudiced if the Offer to Dedicate is permitted to stand.

Dated: October \_\_, 1998

LEONARD HILL

Dated: October 16, 1998

ANN DANIEL

Attachment: Exhibit A

EXHIBIT NO. 12
CCC-99-CD-03
3 OF 6

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

NO. 2007

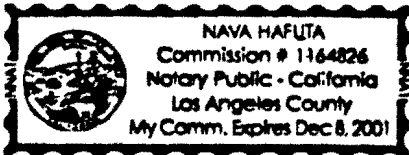
State of California

County of Los Angeles

On October 19, 1998 before me, NAVA HAFUTA, A NOTARY PUBLIC  
DATE NAME, TITLE OR OFFICE - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared LEONARD HILL  
NAME OF SIGNER

☐ 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.

Nava Hafuta  
SIGNATURE OF NOTARY

**OPTIONAL**

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

**CAPACITY CLAIMED BY SIGNER**

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

TITLE

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL

- ☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
NAME OF PERSON OR ENTITY

**DESCRIPTION OF ATTACHED DOCUMENT**

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT NO. 12

CCC-99-CD-03

4 OF 6

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 1999 before me, \_\_\_\_\_, personally appeared

LEONARD HILL

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

WITNESS my hand and official seal.

\_\_\_\_\_  
(SIGNATURE OF NOTARY)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

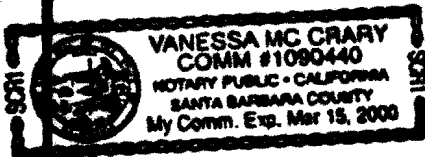
STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

On Oct. 19, 1999 before me, Vanessa McCrary, personally appeared

ANN DANIEL

☐ 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.

Vanessa McCrary  
(SIGNATURE OF NOTARY)



**PARCEL ONE:**

Parcel A of Parcel Map No. 11909, in the County of Santa Barbara, State of California, filed in Book 13, Page 65 of Parcel Maps, in the Office of the County Recorder of said County.

EXCEPTING therefrom an undivided 1/2 interest in and to all of the oil, gas, minerals and other hydrocarbon substances in and under said real property below a depth of 500 feet, without the right of surface entry, as granted by deed to Sand Castle, Inc., a corporation, recorded September 19, 1960 as Instrument No. 29088 in Book 1781, Page 16 of Official Records, records of said County.

**EXHIBIT A (HILL/DANIEL)**

EXHIBIT NO. 12
CCC-99-CD-03
6 OF 6

**CALIFORNIA COASTAL COMMISSION**

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

**REGULAR AND CERTIFIED MAIL** (Article No. P 121 002 778 )

November 24, 1998

Leonard Hill, Trustee of the Hill Trust  
Ann Daniel  
2401 Main St.  
Santa Monica, CA 90405-3515

**SUBJECT:** Notice of Intent to commence Cease and Desist Order proceedings;  
Coastal Act Violation File No. V-4-SBC-98-048

Dear Mr. Hill and Ms. Daniel:

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 005-400-35) at 3443 Padaro Lane in Carpinteria, Santa Barbara County. This violation consists of the recordation on October 5, 1998, as Instrument No. 98-076841, of a Notice of Rescission of Offer to Dedicate Easement (Public Access) affecting your property. You recorded this Notice of Rescission one day before the Santa Barbara County Board of Supervisors was expected to accept the offer of dedication, along with seventy-one others, on behalf of the public.

On April 9, 1987, W. Bruce Bucklew and Darleine J. Bucklew, your predecessors in interest in the property at 3443 Padaro Lane, recorded as Instrument No. 1987-025967 the irrevocable offer of dedication to which the above-described action pertains. The Bucklews recorded the offer to fulfill the requirements of Special Condition 1 of Coastal Development Permit (CDP) No. 141-19, which the South Central Coast Regional Commission granted to Carl Johnson, the Bucklews' predecessor in interest, on September 16, 1977 (enclosed). Your predecessors in interest accepted the permit and constructed the project the permit authorized. The offer of dedication, by its terms, binds all successors and assigns and is irrevocable for a period of twenty-five years from the time of recording.

By recording the subject Notice of Rescission, you have attempted to undo the mitigation required by the Commission as a condition of approval of CDP No. 141-19, 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 Rescission within a specified time frame.

EXHIBIT NO. 13


CCC-99-CD-03

1 OF 8

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. Burris  
Chief Deputy Director

Enclosures

EXHIBIT NO. 13

CCC-99-CD-03

2 OF 8

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5290

**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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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):**

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EXHIBIT NO. 13
CCC-99-CD-03
4 OF 8

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):**

EXHIBIT NO. 13
CCC-99-CD-03
5 OF 8

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:

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

EXHIBIT NO. 13

CCC-99-CD-03

6 OF 8

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ard Hill and Ann Danie  
ber 24, 1998

Handwritten notes and lines on the page.

EXHIBIT NO. 13
CCC-99-CD-03
8 OF 8

STANLEY C. HATCH  
GERALD B. PARENT  
S. TIMOTHY BUYNACK  
SUSAN F. PETROVICH  
PETER N. BROWN  
STANLEY M. RODEN  
SCOTT S. SLATER  
STEVEN A. AMERIKANER  
KEVIN J. NEESE  
GARY M. KVISTAD  
CHRISTOPHER A. JACOBS  
JEFFREY A. DINKIN  
COLIN L. PEARCE  
LORI LEWIS PERRY  
ROBERT J. SAPERSTEIN  
JEANNE M. MACCADDEN  
JOSEF D. HOUSKA  
CRAIG A. SMITH  
SARAH J. KNECHT  
STEPHANIE C. OSLER  
KIMBERLY E. ASKIN  
BRADLEY E. LUNDGREN  
MERRILEE A. FELLOWS  
DEBORAH L. MARTIN  
KRISTEN T. DERSCHIED

LAW OFFICES  
**HATCH AND PARENT**

A PROFESSIONAL CORPORATION  
21 EAST CARRILLO STREET  
SANTA BARBARA, CALIFORNIA 93101-2782

ALL MAIL:  
POST OFFICE DRAWER 720  
SANTA BARBARA, CALIFORNIA 93102-0720

TELEPHONE: (805) 963-7000  
FACSIMILE: (805) 965-4333

SOUTH LAKE TAHOE OFFICE  
THE SUMMIT  
SOUTH LAKE TAHOE, CA 96150  
TELEPHONE: (530) 542-7800

VENTURA COUNTY OFFICE  
300 ESPLANADE DRIVE, 19TH FLOOR  
OXNARD, CALIFORNIA 93030  
TELEPHONE: (805) 981-1818

OF COUNSEL  
JEFFERY H. SPEICH

OUR FILE # 8030.1  
DIRECT DIAL # (805) 882-1407  
INTERNET: SAmericaner@  
HatchParent.com

January 12, 1999

**VIA FACSIMILE 415 904-5235**

Ms. Nancy Cave  
Manager, Statewide Enforcement Program  
California Coastal Commission  
45 Fremont Street  
San Francisco, CA 94105-2219

**RE: Cease and Desist Proceedings**

Dear Ms. Cave:

This letter is written on behalf of all of the individuals named in my December 23, 1998 letter to Ms. Mary Travis, except for Barbara Hunter Foster and Mr. and Mrs. Venile Russon. The other named individuals are referred to herein as the "Owners."

On our about December 1, each of the Owners received from the California Coastal Commission a letter ("Commission Letter") concerning a "Notice of Rescission of Offer to Dedicate Public Access Easement" signed and recorded by the Owner ("Notice"). Following receipt of the Commission Letters, there have been discussions between your staff and myself regarding the manner in which the Owners would respond to them.

It is my understanding that one or more of the Owners are prepared to sign and record a "Withdrawal of Rescission Notice from Public Records" in the form attached to this letter ("Withdrawal"). The Withdrawal was previously submitted to and approved by Ms. Travis. (Please note that I have added a few words to the final "Whereas" in accordance with our conversation earlier today.)

During the course of our conversations, I stated to you that the Owners wished to be assured that the signing and recordation of the Withdrawal would result in termination of the current cease and desist proceedings and would constitute a complete remedy of any alleged violation of the Coastal Act stated in the Commission Letters. Specifically, I requested assurances that signing and recording the Withdrawal would relieve the Owner of any potential penalties.

EXHIBIT NO. 14
CCC-99-CD-03
1 OF 2

Ms. Nancy Cave  
Manager, Statewide Enforcement Program  
California Coastal Commission  
January 12, 1999  
Page 2

In response to my concerns, you stated that the Coastal Commission Executive Director had the authority, with regard to any alleged violation which was not already involved in litigation, to terminate cease and desist proceedings and to determine that no other penalties would be sought. In our conversation earlier today, you informed me that you had consulted with Peter Douglas, Executive Director, who stated that he agreed to terminate cease and desist proceedings and would not seek further penalties with regard to any Owner who signs and records a Withdrawal.

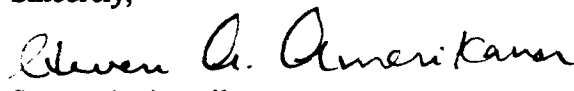
Based on our discussions, I will be advising each of the Owners that signing and recording the Withdrawal in the form of the document attached to this letter will result in termination of cease and desist proceedings and a waiver by the Coastal Commission of all rights to pursue any other enforcement with regard to the matters raised in the Commission Letters. Each Owner who does so will be acting on that understanding.

I respectfully ask that you confirm this agreement by signing and returning the enclosed copy of this letter, by fax and with the original sent by U.S. Mail.

As always, if you have any questions, please call me at your first convenience.

Thank you again for your courtesy and cooperation.

Sincerely,

  
Steven A. Amerikaner  
For HATCH AND PARENT

I AGREE TO THE UNDERSTANDING STATED ABOVE.

\_\_\_\_\_  
Nancy Cave  
On behalf of the California Coastal Commission

\_\_\_\_\_  
Date

148431.1:8030.1

EXHIBIT NO. 14

CCC-99-CD-03

2 OF 2

**CALIFORNIA COASTAL COMMISSION**

48 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94106-2219  
VOICE AND TDD (415) 904-6200

**VIA FACSIMILE AND REGULAR MAIL**

January 12, 1999

Steven A. Amerikaner  
Hatch and Parent  
21 East Carrillo Street  
Santa Barbara, California 93101-2782

**SUBJECT:** Notice of Intent to commence Cease and Desist Order proceedings; Coastal Act Violation File Nos. V-4-SBC-98-044 (Jacobs), V-4-SBC-98-045 (Broad), V-4-SBC-98-046 (Phillips), V-4-SBC-98-047 (Melville), V-4-SBC-98-048 (Hill/Daniel), V-4-SBC-98-052 (French), V-4-SBC-98-053 (Hummer/Tuttle), V-4-SBC-98-054 (Marlow), V-4-SBC-98-055 (Brown)

Dear Mr. Amerikaner:

This will respond to your letter dated January 12, 1999 regarding our discussions about resolution of the above-referenced violation cases. Your letter states your understanding that the Executive Director has agreed to terminate cease and desist proceedings and not seek penalties with regard to any property owner who signs and records a "Withdrawal of Rescission Notice from Public Records." You requested that I sign and return the letter to you as confirmation of this agreement. I would prefer to state my understanding of our agreement and clarify its terms and its extent.

The following agreement pertains specifically to the matters raised in Notice of Intent letters the Commission sent to the following property owners on the dates specified: Eleanor H. Jacobs, November 24, 1998; Jeffrey Alan Broad, November 24, 1998; Geoffrey D. Phillips, November 24, 1998; Ronald E. Melville, November 24, 1998; Leonard Hill and Ann Daniel, November 24, 1998; Michael French, December 10, 1998; Maria Hummer and Robert Tuttle, December 10, 1998; Hobbs B. and Sharon Marlow, December 10, 1998; Lawrence J. Brown, December 10, 1998.

The Executive Director has agreed that the Commission will terminate cease and desist order proceedings against any and all of the property owners named above who execute and record a "Withdrawal of Rescission Notice from Public Records" on or before January 19, 1999. Further, the Executive Director has agreed that the Commission will not seek penalties from or pursue any further enforcement against any such property owner with regard to those matters raised in the Notice of Intent letters referenced above.

Finally, with respect to the proposed change to the agreed upon "Withdrawal of Rescission Notice from Public Records" your proposed change is acceptable.

Thank you for your continued cooperation in resolving this matter.

Sincerely,

Nancy L. Cave  
Manager, Statewide Enforcement Program

EXHIBIT NO. 15
CCC-99-CD-03
1 OF 1

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Mr. Leonard Hill  
Ms. Ann Daniel  
c/o Christopher A. Jacobs  
HATCH AND PARENT  
21 East Carrillo Street  
Santa Barbara, CA 93101-2782

99-004237	Rec Fee	50.00
Recorded	AU2	2.00
Official Records	CCO	1.00
Co Santa Barbara	CR Crd	53.00
Kenneth A Pettit		
Recorder		
Larry Herrera		
Assistant		
12:00pm 19-Jan-99	CARD	BB 16

THIS SPACE RESERVED FOR RECORDER ONLY  
(Gov. Code § 27361.6)

WITHDRAWAL OF RESCISSION NOTICE FROM PUBLIC RECORDS

APN 005-400-035

THIS WITHDRAWAL OF RESCISSION NOTICE FROM PUBLIC RECORDS is given by ANN DANIEL and LEONARD HILL ("Owners"), owners of that certain real property located at 3443 Padaro Lane in the County of Santa Barbara, State of California, as more particularly described on the attached Exhibit A which is incorporated herein by this reference ("Property"), based on the following facts:

A. WHEREAS, on April 11, 1973, the South Central Coastal Regional Commission ("Regional Commission") granted to Carl D. Johnson, a predecessor-in-interest to the owner, Coastal Development Permit No. 26-25 for a subdivision of land, which included the Property, subject to a condition requiring an offer of dedication for a recreation<sup>al</sup> pedestrian and bicycle access easement to the County of Santa Barbara; and, on September 12, 1974, Carl D. Johnson recorded in the Office of the County Recorder of Santa Barbara ("County Recorder"), at Book 13, Page 65, the Parcel Map that created the Property; and

B. WHEREAS, on September 16, 1977, the Regional Commission granted to Carl D. Johnson Coastal Development Permit No. 141-19 ("Permit") for a single family residence on the Property, subject to a special condition requiring an offer of dedication to Santa Barbara County or its successor in jurisdiction a recreational pedestrian and bicycle access easement; and

C. WHEREAS, on April 9, 1987, a document entitled "Irrevocable Offer to Dedicate" ("OTD") was recorded as Document No. 87-25967 in the Official Records of the Santa Barbara County Recorder; and

D. WHEREAS, the Owners executed documents entitled "Notice of Rescission of Offer to Dedicate Public Access Easement (Coastal Access)" ("Notice") and "Amended Notice of Rescission of Offer to Dedicate Public Access Easement (Coastal Access)" ("Amended Notice") with respect to the aforementioned OTD. The Notice was recorded on October 5, 1998 as Document No. 98-076841, and the Amended Notice was recorded on October 20, 1998 as Document No. 98-081060, in the Office of the County Recorder. Copies of said Notice and Amended Notice are attached hereto as Exhibit B; and

148784.1.8030.1

EXHIBIT NO. 16
CCC-99-CD-03
1 OF 16

E. WHEREAS, in a letter dated November 24, 1998 to the Owners, the Commission ("Commission") stated its determination that the recordation of the Notice constitutes a violation of one or more of the conditions of the Permit, to which the Owners, as successor in interest to the original permittee, are subject. The letter also stated the Commission's intent to institute "Cease and Desist Order proceedings" against the Owners in order to rectify this violation. A copy of said letter is attached hereto as Exhibit C; and

F. WHEREAS, in order to avoid the expense of defending the "Cease and Desist Order proceedings" that the Commission has stated it will institute, the Owners have elected to execute and record this document; and

G. WHEREAS, the Commission and Owners have agreed that the execution and recordation of this document does not constitute either 1) an admission by either party of any fact, or 2) an agreement by either party to any proposition of law, or 3) a waiver of any legal rights or remedies held by either party, except as otherwise agreed to by the Owners and Commission.

NOW, THEREFORE, the Owners state:

THAT CERTAIN NOTICE OF RESCISSION OF OFFER TO DEDICATE PUBLIC ACCESS EASEMENT executed on October 4, 1998 by Owners and recorded on October 5, 1998 as Document No. 98-076841, and THAT CERTAIN AMENDED NOTICE OF RESCISSION OF OFFER TO DEDICATE PUBLIC ACCESS EASEMENT executed on October 19, 1998 and recorded on October 20, 1998 as Document No. 98-081060 with respect to the Property, are hereby withdrawn from the public records of Santa Barbara County.

Dated: January 18, 1999

  
LEONARD HILL

Dated: January 18, 1999

  
ANN DANIEL

Attachments: Exhibit A  
Exhibit B  
Exhibit C

EXHIBIT NO. 16
CCC-99-CD-0
2 OF 16

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

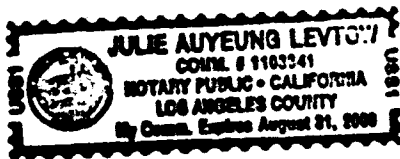
COUNTY OF Los Angeles

On January 18th, 1999, 1999 before me, Julie Auyeung Levitt, personally appeared

LEONARD HILL

☐ personally known to me - OR -

☒ proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal.

Julie Auyeung Levitt  
(SIGNATURE OF NOTARY)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

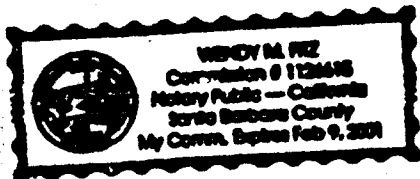
COUNTY OF SANTA BARBARA

On January 18th, 1999, 1999 before me, Wendy M. Fitz, personally appeared

ANN DANIEL

☐ personally known to me - OR -

☒ proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal.

Wendy M. Fitz  
(SIGNATURE OF NOTARY)

**PARCEL ONE:**

Parcel A of Parcel Map No. 11909, in the County of Santa Barbara, State of California, filed in Book 13, Page 65 of Parcel Maps, in the Office of the County Recorder of said County.

EXCEPTING therefrom an undivided 1/2 interest in and to all of the oil, gas, minerals and other hydrocarbon substances in and under said real property below a depth of 500 feet, without the right of surface entry, as granted by deed to Sand Castle, Inc., a corporation, recorded September 19, 1960 as Instrument No. 29088 in Book 1781, Page 16 of Official Records, records of said County.

Exhibit A (Daniel/Hill)

EXHIBIT NO. 16

CCC-99-CD-03

4 OF 16



**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Mr. Leonard Hill  
Ms. Ann Daniel  
c/o Steven A. Amerikaner  
HATCH AND PARENT  
21 East Carrillo Street  
Santa Barbara, California 93101-2782

98-0761 A	Rec Fee	14.00
Recorded	AU2	2.00
Official Records	CCO	1.00
Co Santa Barbara	CR Crd	17.00
Kenneth A Pettit		
Recorder		
Larry Herrera		
Assistant		
12:30pm 5-Oct-98	CARD	CC

THIS SPACE RESERVED FOR RECORDER ONLY  
(Gov. Code § 27361.6)

**NOTICE OF RESCISSION OF OFFER TO DEDICATE EASEMENT  
(PUBLIC ACCESS)**

APN 005-400-035

THIS NOTICE OF RESCISSION OF OFFER TO DEDICATE EASEMENT (PUBLIC ACCESS) ("Notice") is given by ANN DANIEL and LEONARD HILL ("Owners"), owners of that certain real property located at 3443 Padaro Lane in the County of Santa Barbara, State of California, as more particularly described on the attached Exhibit A which is incorporated herein by this reference ("Property"), based on the following facts:

WHEREAS, on September 16, 1977, the California Coastal Commission approved Coastal Development Permit No. 141-19 authorizing construction of a single family residence on the Property ("Permit"); and

WHEREAS, the Permit included a condition ("Permit Condition") requiring that an easement for pedestrian and bicycle public access over the Property from Padaro Lane to the boundary of the state-owned tidelands be offered for dedication to the County of Santa Barbara despite the lack of any connection between the Permit and existing or historic public access and/or recreational use, if any, on Property; and

WHEREAS, on April 9, 1987, a document entitled "Irrevocable Offer to Dedicate" was recorded as Document No. 87-25967 in the Official Records of the County of Santa Barbara ("Offer to Dedicate"), which document purports to comply with the Permit Condition; and

WHEREAS, on June 26, 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

1

Exhibit B (Daniel/Hill)

EXHIBIT NO. 16

CCC-99-CD-03

5 OF 16

WHEREAS, there is no essential nexus between the new construction authorized by the Permit and the public access rights sought by the County of Santa Barbara, and

WHEREAS, the Offer to Dedicate has never been accepted by the County of Santa Barbara; and

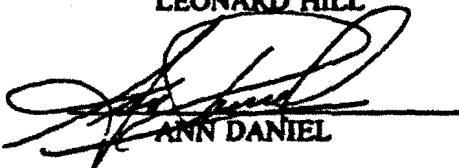
WHEREAS, under California law an offer to dedicate may be rescinded by the owner of the property.

NOW, THEREFORE, the Owners hereby give notice that the Offer to Dedicate has been rescinded on the grounds that acceptance of the Offer to Dedicate would constitute a "taking" of property in violation of the constitutional rights of the Owners, in direct contravention to the Fifth and Fourteenth Amendments to the United States Constitution and the Supreme Court decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

Dated: October 4, 1998

  
LEONARD HILL

Dated: October 4, 1998

  
ANN DANIEL

Attachment: Exhibit A

EXHIBIT NO. 16

CCC-99-CD-03

6 OF 16

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

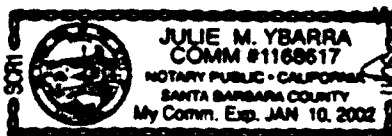
STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

On Oct. 4, 1998 before me, Julie M. Ybarra, personally appeared

LEONARD HILL AND ANN DANIEL

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) 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 OF NOTARY)

Exhibit B (Daniel/Hill)  
(page 3)

EXHIBIT NO. 16

CCC-99-CD-03

7 OF 16

**PARCEL ONE:**

Parcel A of Parcel Map No. 11909, in the County of Santa Barbara, State of California, filed in Book 13, Page 65 of Parcel Maps, in the Office of the County Recorder of said County.

EXCEPTING therefrom an undivided 1/2 interest in and to all of the oil, gas, minerals and other hydrocarbon substances in and under said real property below a depth of 500 feet, without the right of surface entry, as granted by deed to Sand Castle, Inc., a corporation, recorded September 19, 1960 as Instrument No. 29088 in Book 1781, Page 16 of Official Records, records of said County.

Exhibit B (Daniel/Hill)  
(page 4)

EXHIBIT NO. 16

CCC-99-CD-03

8 OF 16

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Mr. Leonard Hill  
Ms. Ann Daniel  
c/o Steven A. Amerikaner  
HATCH AND PARENT  
21 East Carrillo Street  
Santa Barbara, California 93101-2782

98-081-60	Rec Fee	20.00
Recorded	AU2	2.00
Official Records	CC0	1.00
Co Santa Barbara	CR Crd	23.00
Kenneth A Pettit		
Recorder		
Larry Herrera		
Assistant		
11:32am 20-Oct-98	CARD	MM 6

THIS SPACE RESERVED FOR RECORDER ONLY  
(Gov. Code § 27361.6)

**AMENDED  
NOTICE OF RESCISSION OF OFFER TO DEDICATE EASEMENT  
(PUBLIC ACCESS)**

APN 005-400-035

**THIS AMENDED NOTICE OF RESCISSION OF OFFER TO DEDICATE EASEMENT (PUBLIC ACCESS)** ("Amended Notice") is given by ANN DANIEL and LEONARD HILL ("Owners"), owners of that certain real property located at 3443 Padaro Lane in the County of Santa Barbara, State of California, as more particularly described on the attached Exhibit A which is incorporated herein by this reference ("Property"), based on the following facts:

**WHEREAS**, on September 16, 1977, the California Coastal Commission approved Coastal Development Permit No. 141-19 authorizing construction of a single family residence on the Property ("Permit"); and

**WHEREAS**, the Permit included a condition ("Permit Condition") requiring that an easement for pedestrian and bicycle public access over the Property from Padaro Lane to the boundary of the state-owned tidelands be offered for dedication to the County of Santa Barbara despite the lack of any connection between the Permit and existing or historic public access and/or recreational use, if any, on Property; and

**WHEREAS**, on April 9, 1987, a document entitled "Irrevocable Offer to Dedicate" was recorded as Document No. 87-25967 in the Official Records of the County of Santa Barbara ("Offer to Dedicate"), which document purports to comply with the Permit Condition; and

**WHEREAS**, on June 26, 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

EXHIBIT NO. 16
CCC-99-CD-03
9 OF 16

**PARCEL ONE:**

Parcel A of Parcel Map No. 11909, in the County of Santa Barbara, State of California, filed in Book 13, Page 65 of Parcel Maps, in the Office of the County Recorder of said County.

EXCEPTING therefrom an undivided 1/2 interest in and to all of the oil, gas, minerals and other hydrocarbon substances in and under said real property below a depth of 500 feet, without the right of surface entry, as granted by deed to Sand Castle, Inc., a corporation, recorded September 19, 1960 as Instrument No. 29088 in Book 1781, Page 16 of Official Records, records of said County.

Exhibit B (Daniel/Hill)  
(page 10)

EXHIBIT NO. 16

CCC-99-CD-0

10 OF 16

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, there is no essential nexus between the new construction authorized by the Permit and the public access rights sought by the County of Santa Barbara; and

WHEREAS, the Offer to Dedicate has never been accepted by the County of Santa Barbara; and

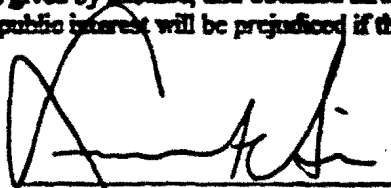
WHEREAS, under California law an offer to dedicate may be rescinded by the owner of the property, and .

WHEREAS, on October 5, 1998, the undersigned executed and caused to be recorded as Document No. 98-076841 a document entitled "Notice of Rescission of Offer to Dedicate Easement (Public Access)," and

WHEREAS, since October 5, 1998 the undersigned have learned of additional facts which provide further and additional grounds upon which the Offer to Dedicate may be rescinded.

NOW, THEREFORE, the Owners hereby give this Amended Notice (signed in counterparts) that the Offer to Dedicate has been rescinded pursuant to California Civil Code section 1689 on the all of the grounds stated therein, including without limitation the following: (i) the Offer to Dedicate is unlawful and unenforceable because its acceptance would constitute a "taking" of property in violation of the constitutional rights of the Owners, in direct contravention to the Fifth and Fourteenth Amendments to the United States Constitution and the Supreme Court decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994); (ii) the consent to the Offer to Dedicate by the Owner's predecessor-in-interest was given by mistake, and obtained through duress, menace, fraud and undue influence; (iii) the public interest will be prejudiced if the Offer to Dedicate is permitted to stand.

Dated: October 19, 1998

  
LEONARD HILL

Dated: October \_\_, 1998

\_\_\_\_\_  
ANN DANIEL

Attachment: Exhibit A

2

14200127782

Exhibit B (Daniel/Hill)  
(page 6)

EXHIBIT NO. 16
CCC-99-CD-03
11 OF 16

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, there is no essential nexus between the new construction authorized by the Permit and the public access rights sought by the County of Santa Barbara; and

WHEREAS, the Offer to Dedicate has never been accepted by the County of Santa Barbara; and

WHEREAS, under California law an offer to dedicate may be rescinded by the owner of the property, and

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Dated: October \_\_, 1998

LEONARD HILL

Dated: October 11, 1998

ANN DANIEL

Attachment: Exhibit A

2

1420012:77882

Exhibit B (Daniel/Hill)  
(page 7)

EXHIBIT NO. 16

CCC-99-CD-01

12 OF 16



State of California

County of Los Angeles

On October 19, 1998 before me, NAVA HAFUTA A NOTARY PUBLIC  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared LEONARD HILL  
NAME OF SIGNER

☐ 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.

Nava Hafuta  
SIGNATURE OF NOTARY

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

WITNESS

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL

- ☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(ES)

#### DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT NO. 16

CCC-99-CD-03

13 OF 16

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 1998 before me, \_\_\_\_\_, personally appeared

LEONARD HILL

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

WITNESS my hand and official seal.

\_\_\_\_\_  
(SIGNATURE OF NOTARY)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

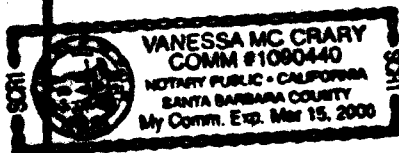
STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

On Oct 19, 1998 before me, Vanessa McCrary, personally appeared

ANN DANIEL

☐ 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.

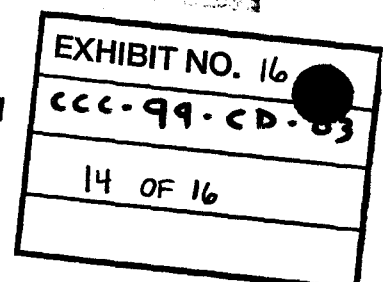


WITNESS my hand and official seal.

Vanessa McCrary  
(SIGNATURE OF NOTARY)

1430012:7788.2

Exhibit B (Daniel/Hill)  
(page 9)



**ALFONIA COASTAL COMMISSION**  
 PROJECT STREET, SUITE 200  
 10000000, CA 91100-0000  
 (415) 770-1000



**REGULAR AND CERTIFIED MAIL (Article No. P 121 002 778)**

November 24, 1998

Leonard Hill, Trustee of the Hill Trust  
 Anna Daniel  
 2401 Main St.  
 Santa Monica, CA 90405-3515

**SUBJECT:** Notice of Intent to commence Cease and Desist Order proceedings;  
 Coastal Act Violation File No. V-4-SBC-98-048

Dear Mr. Hill and Ms. Daniel:

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 005-400-35) at 3443 Padaro Lane in Carpinteria, Santa Barbara County. This violation consists of the recordation on October 5, 1998, of Instrument No. 98-076841, of a Notice of Rescission of Offer to Dedicate Easement (Public Access) affecting your property. You recorded this Notice of Rescission one day before the Santa Barbara County Board of Supervisors was expected to accept the offer of dedication, along with seventy-one others, on behalf of the public.

On April 9, 1987, W. Bruce Bucklew and Darlene J. Bucklew, your predecessors in interest in the property at 3443 Padaro Lane, recorded as Instrument No. 1987-025967 the irrevocable offer of dedication to which the above-described action pertains. The Bucklews recorded the offer to fulfill the requirements of Special Condition 1 of Coastal Development Permit (CDP) No. 141-19, which the South Central Coast Regional Commission granted to Carl Johnson, the Bucklews' predecessor in interest, on September 16, 1977 (enclosed). Your predecessors in interest accepted the permit and constructed the project the permit authorized. The offer of dedication, by its terms, binds all successors and assigns and is irrevocable for a period of twenty-five years from the time of recording.

By recording the subject Notice of Rescission, you have attempted to undo the mitigation required by the Commission as a condition of approval of CDP No. 141-19, 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 Rescission within a specified time frame.

Exhibit C (Daniel/Hill)

EXHIBIT NO. 16

666-99-CD-03


15 OF 16

Leonard Hill and Ann Daniel - Notice of Intent to prosecute Cases and Trust Order proceeding.  
November 24, 1998

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 \$10,000 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 proceed or extinguish the Notice of Revocation, please contact Ms. Travis so that we may postpone formal enforcement action.

Sincerely,

  
James W. Burns  
Chief Deputy Director

Enclosure

Exhibit C (Daniel/Hill)  
(page 2)

EXHIBIT NO. 16

ccc-99-cd-

16 OF 16

STANLEY C. HATCH  
GERALD B. PARENT  
S. TIMOTHY BUYNAK  
SUSAN F. PETROVICH  
PETER N. BROWN  
STANLEY M. RODEN  
SCOTT S. SLATER  
STEVEN A. AMERIKANER  
KEVIN J. NEESE  
GARY M. KVISTAD  
CHRISTOPHER A. JACOBS  
JEFFREY A. DINKIN  
COLIN L. PEARCE  
LORI LEWIS PERRY  
ROBERT J. SAPERSTEIN  
JEANNE M. MACCALDEN  
JOSEF D. HOUSKA  
CRAIG A. SMITH  
SARAH J. KNECHT  
STEPHANIE C. OSLER  
KIMBERLY E. ABKIN  
BRADLEY E. LUNDGREN  
MERRILEE A. FELLOWS  
DEBORAH L. MARTIN  
KRISTEN T. DERSCHIED

LAW OFFICES  
**HATCH AND PARENT**

A PROFESSIONAL CORPORATION  
21 EAST CARRILLO STREET  
SANTA BARBARA, CALIFORNIA 93101-2782

ALL MAIL:  
POST OFFICE DRAWER 720  
SANTA BARBARA, CALIFORNIA 93102-0720

TELEPHONE: (805) 963-7000  
FACSIMILE: (805) 965-4333

SOUTH LAKE TAHOE OFFICE  
THE SUMMIT  
SOUTH LAKE TAHOE, CA 96150  
TELEPHONE: (530) 542-7800

VENTURA COUNTY OFFICE  
300 ESPLANADE DRIVE, 19TH FLOOR  
OXNARD, CALIFORNIA 93030  
TELEPHONE: (805) 981-1818

OF COUNSEL  
JEFFERY H. SPEICH

OUR FILE # 8030.1  
DIRECT DIAL # (805) 882-1407  
INTERNET: SAmericaner@  
HatchParent.com

January 19, 1999

**VIA FACSIMILE (415) 904-5235**

Mrs. Mary Travis  
Statewide Enforcement Analyst  
California Coastal Commission  
45 Fremont Street  
San Francisco, CA 94105-2219

**RE: Cease and Desist Proceedings**

Dear Ms. Travis:

Enclosed please find a copy of the first page of the recorded "Withdrawal" forms for Mr. Brown, Mr. Broad, Mr. and Mrs. French, Mrs. Jacobs, Mr. and Mrs. Marlow, Mr. Melville, Mr. Phillips, Mr. Tuttle and Ms. Hummer, and Mr. Hill and Ms. Daniel.

The Hill/Daniel document includes the two recitals which you and I discussed earlier today.

I trust that this action will terminate further enforcement activities with respect to each of these individuals per our agreement with the California Coastal Commission. If I am mistaken in this belief, please let me know at your earliest convenience.

Thank you for your ongoing courtesy and cooperation.

Sincerely,



Steven A. Amerikaner  
For HATCH AND PARENT

SAA:klc  
Enclosures  
148888.1

EXHIBIT NO. 17
CCC-99-CD-03
1 OF 1

**CALIFORNIA COASTAL COMMISSION**

48 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94104-2219  
VOICE AND TDD (415) 904-8200

**VIA FACSIMILE AND REGULAR MAIL**

January 21, 1999

Steven A. Amerikaner  
Hatch and Parent  
21 East Carrillo Street  
Santa Barbara, California 93101-2782

**SUBJECT:** Notice of Intent to commence Cease and Desist Order proceedings; Coastal Act Violation File Nos. V-4-SBC-98-044 (Jacobs), V-4-SBC-98-045 (Broad), V-4-SBC-98-046 (Phillips), V-4-SBC-98-047 (Melville), V-4-SBC-98-048 (Hill/Daniel), V-4-SBC-98-052 (French), V-4-SBC-98-053 (Hummer/Tuttle), V-4-SBC-98-054 (Marlow), V-4-SBC-98-055 (Brown)

Dear Mr. Amerikaner:

We have received your letter dated January 19, 1999 in which you enclose the first pages of the recorded Withdrawal of Rescission Notice Documents your clients executed. On behalf of the Executive Director, I wish to respond further to the statement you make in that letter regarding the effect of recordation of Withdrawal documents on the Commission's enforcement actions against your clients.

Restoration of the Offers to Dedicate (OTDs)<sup>1</sup> to their pre-violation condition has been our intent throughout our negotiations with you. Therefore, before we can consider the above-referenced violation cases to be fully resolved, and, accordingly, terminate the associated cease and desist order proceedings, it is necessary that we reach a full and complete understanding as to the legal effect of the Withdrawal of Rescission Notice Documents that you have recorded on behalf of your clients. Our understanding is the following:

The recordation of the Withdrawal of Rescission Notice Documents has fully extinguished any cloud over, or doubt as to, the validity or acceptability of the OTDs that the recordation of the Notice of Rescission Documents may be perceived to have created. In other words, to the extent of any impairment of the validity or acceptability of the OTDs that recordation of the Rescission Documents may be perceived to have caused, the recordation of the Withdrawal of Rescission Notice Documents has fully restored these properties of the OTDs to the condition they were in immediately prior to the recordation of the Rescission Documents.

Please indicate your concurrence in the above-stated understanding by countersigning this letter, on behalf of all your clients as owners of the properties described in the OTDs listed in footnote 1, in the space provided at your earliest opportunity. Please return it to us no later than January 26, 1999.

<sup>1</sup> Instrument No. 81-52039 (3559 Padaro Lane, Carpinteria, Santa Barbara County); Instrument No. 81-17488 (3177 Padaro Lane); Instrument No. 82-30061 (3543 Padaro Lane); Instrument No. 82-34376 (3487 Padaro Lane); Instrument No. 1987-025967 (3443 Padaro Lane); Instrument No. 1987-043430 (3265 Padaro Lane); Instrument No. 1986-052252 (3441 Padaro Lane); Instrument No. 1987-046575 (3165 Padaro Lane); Instrument No. 1985-049433 (3055 Padaro Lane).

EXHIBIT NO. 18

CCC-99-CD-03

1 OF 2

Steven A. Amerikaner  
January 21, 1999



As a final step in resolving these violation cases, we need you to have the County Recorder's Office send to us conformed copies of the recorded documents for all clients. Please have the Recorder's Office send the conformed copies as soon as possible.

We will continue to monitor other actions you have taken or may take in the future on behalf of your clients for their effect on the OTDs and for their consistency with the terms and conditions of the relevant permits.

Thank you for your continued cooperation.

Sincerely,

*Mary Travis for*

Nancy L. Cave  
Manager, Statewide Enforcement Program

By signing here, I indicate, on behalf of my clients, agreement that the legal effect on the OTDs of recordation of the Withdrawal of Rescission Notice Documents is as stated in the foregoing letter.

\_\_\_\_\_  
Steven A. Amerikaner  
for HATCH AND PARENT

\_\_\_\_\_  
Date

on behalf of Eleanor H. Jacobs (as Trustee); Jeffrey Alan Broad; Geoffrey D. Phillips; Ronald E. Melville; Leonard Hill (as Trustee) and Ann Daniel; Michael French and Patricia French; Maria Hummer and Robert Tuttle; Hobbs B. Marlow and Sharon Marlow; and Lawrence J. Brown (as Trustee)

EXHIBIT NO. 18

CCC-99-CD-03

2 OF 2

STANLEY C. HATCH  
GERALD B. PARENT  
E. TIMOTHY BUYNAX  
BUSAN F. PETROVICH  
PETER N. BROWN  
STANLEY M. ROSEN  
SCOTT S. BLATER  
STEVEN A. AMERIKANER  
KEVIN J. NEESE  
CARY M. KVISTAD  
CHRISTOPHER A. JACOBS  
JEFFREY A. DINKIN  
COLIN L. PEARCE  
LORI LEWIS PERRY  
ROBERT J. SAPERSTEIN  
JEANNE M. MARCALDEN  
JOSEF D. HOJKA  
CRAIG A. SMITH  
SARAH J. KNECHT  
STEPHANIE G. OSLER  
KIMBERLY E. ASKIN  
BRADLEY E. LUNDGREN  
KERRILEE A. FELLOWS  
DEBORAH L. MARTIN  
KRISTEN T. DERSCHIED

## HATCH AND PARENT

A PROFESSIONAL CORPORATION  
21 EAST CARRILLO STREET  
SANTA BARBARA, CALIFORNIA 93101-2782  
ALL MAIL:  
POST OFFICE DRAWER 720  
SANTA BARBARA, CALIFORNIA 93102-0720  
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OXFORD, CALIFORNIA 93030  
TELEPHONE: (805) 881-1500

OF COUNSEL  
JEFFERY H. SPEICH

OUR FILE # 8030.1  
DIRECT DIAL # (805) 882-1407  
INTERNET: Samerikaner  
@HatchParent.com

January 25, 1999

VIA FACSIMILE  
(415) 904 5235

Nancy L. Cave  
Manager, Statewide Enforcement Program  
California Coastal Commission  
45 Fremont Street  
San Francisco, CA 94105-2219

RE: Your letter of January 21, 1999

Dear Ms. Cave:

I was stunned by your letter of January 21, 1999.

As you know, since January 6, 1999, you, Mary Travis and I have been in nearly daily contact as we negotiated the terms and conditions of the settlement we just reached. Our work was intensive and thorough. The language of the "Withdrawal" document was meticulously scrutinized by Commission staff (including, as you told me, your legal staff). When we finished, you give me your verbal assurance and your written commitment that the Executive Director had been personally consulted by you and had personally agreed to terminate enforcement efforts as to any property owner who signed and recorded the negotiated Withdrawal document.

As I stated to you both verbally and in writing, the Executive Director's agreement to terminate enforcement efforts was communicated to, and accepted by, my clients in exchange for my clients' agreement to sign the Withdrawal document. They relied on the promises made by the Commission, and I informed you of that reliance so that there would be no misunderstanding.

My clients' good faith has been exemplary. Indeed, two of them -- Leonard Hill and Ann Daniel -- did **more** than the Commission demanded. You may note that the Commission "Cease and Desist Notice Letter" to these property owners only required withdrawal of a rescission notice recorded on October 5, 1998. In fact, Mr. Hill and Ms. Daniel had recorded an

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Nancy L. Cave  
Manager, Statewide Enforcement Program  
California Coastal Commission  
January 25, 1999  
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"Amended Notice" on October 19, 1998, a fact of which the Commission was apparently unaware. Even though the Commission did not ask for it, Mr. Hill and Ms. Daniel voluntarily included a reference to this later Rescission Notice in their Withdrawal. Mr. Hill and Ms. Daniel concluded that good faith and fair dealing required that they broaden their Withdrawal.

Now, just two days after my clients fully performed their part of the bargain, the Commission staff is threatening to renege on the agreement by requiring new and different terms and conditions. You have requested certain statements from my clients which are not found in the carefully negotiated Withdrawal document that you agreed to accept.

In my 24 years of advising public agencies (including 14 years serving as an in-house public agency attorney), and practicing before public agencies, I have never encountered a public agency which conducts its business in such a fashion.

In my judgment, reneging on a settlement agreement has very serious impacts. First, it violates the basic trust which citizens place in their public agencies and public employees. It is contrary to every principle of good faith and fair dealing which should guide the work of the government agencies which serve the people.

Second, it ultimately will backfire on the public agency which breaches the public trust. After all, why should any citizen negotiate an agreement with an agency which feels free to renege on it after it has been signed and performed by one party? If the citizens of California perceive that the Coastal Commission cannot be relied on to keep its commitments, the Commission's ability to discharge its duties by seeking agreements with those citizens will be seriously compromised.

Finally, turning to the proposed new language included in your letter, there are a myriad of reasons why I could not and would not have accepted that language if you had proposed it before our agreement was concluded. First, the language you have now proposed is seriously flawed. For example, it uses the word "cloud" and "doubt" and "perceived to have created." The terms are undefined, and subject to many different meanings.

More seriously, the reference in your proposal to the effects the rescissions may be "perceived to have created" is open ended and undefinable. No one can know how a particular legal document is "perceived" by unnamed third parties and, therefore, how those parties would construe the removal of that document from the public record.

If there is ever any dispute about the legal effect of recording the rescission documents in the first place, the place to resolve that dispute will be in the courts. Likewise, if there is ever

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2 OF 3

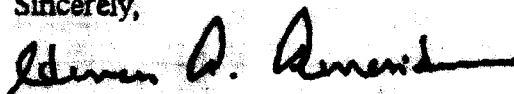
Nancy L. Cave  
Manager, Statewide Enforcement Program  
California Coastal Commission  
January 25, 1999  
Page 3

any dispute about the legal effect of the Withdrawal document, the courts are available to resolve that dispute as well.

At the moment, there is no apparent dispute between my clients and the Coastal Commission concerning the settlement agreement we reached. My clients have performed their part of the bargain in reliance on the Commission's promises, and now fully expect the Commission to honor those promises.

As a public agency dedicated to fulfilling the public trust, it is the only right thing to do.

Sincerely,



STEVEN A. AMERIKANER  
for HATCH AND PARENT

EXHIBIT NO. 19

CCC-99-CD-03

3 OF 3

1 STEVEN A. AMERIKANER (State Bar No. 056446)  
HATCH AND PARENT  
2 21 East Carrillo Street  
Santa Barbara, CA 93101-2782  
3 Telephone: (805) 963-7000  
Facsimile: (805) 965-4333  
4

5 Attorneys for Plaintiffs/Petitioners  
6  
7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 ANN DANIEL and LEONARD HILL,

12 Plaintiffs/Petitioners,

13 v.

14 COUNTY OF SANTA BARBARA, ALL  
PERSONS UNKNOWN, CLAIMING ANY  
15 LEGAL OR EQUITABLE RIGHT, TITLE,  
ESTATE, LIEN OR INTEREST IN THE  
16 PROPERTY DESCRIBED IN THE COMPLAINT  
ADVERSE TO PLAINTIFFS' TITLE THERETO,  
and DOES 1-10, INCLUSIVE,

17 Defendants/Respondents.  
18  
19

CASE NO. 98-9453 MMM

FIRST AMENDED COMPLAINT

20 Plaintiffs/petitioners allege:  
21  
22

JURISDICTION AND VENUE

23 1. This is a civil action seeking equitable and other relief for redress of deprivation  
24 of civil rights and privileges and immunities secured by the Constitution and laws of the United  
25 States, including denial of substantive and procedural due process. Jurisdiction of this Court  
26 arises under and pursuant to 28 U.S.C. sections 1331 and 1343. Venue is proper under 28 U.S.C.  
27 section 1391. Jurisdiction and venue are proper with respect to non-federal claims alleged by  
28 reason of the applicable principles of pendent jurisdiction.

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1 provision for each of the reasons stated in paragraph 55.

2 59. Plaintiffs have incurred and will incur costs for attorneys, appraisals, expert  
3 witnesses and other necessary fees and costs which are recoverable in this action under the  
4 provisions of Section 1036 of the California Code of Civil Procedure.

5 **THIRD CAUSE OF ACTION**

6 **(Pendent State Claim for Quiet Title By Plaintiffs Against All Defendants)**

7 60. Plaintiffs reallege paragraphs 1 through 59 of this complaint as though fully set  
8 forth herein.

9 61. By means of adoption of the Resolution of Acceptance, the defendants claim  
10 some right, title, estate, lien, or interest in the Property adverse to plaintiffs' title, and such claims  
11 or claim constitute a cloud on plaintiffs' title thereto. Such claims or claim are without any right  
12 whatever, and the defendants have no right, title, estate, lien, or interest whatever in the Property  
13 or any part thereof.

14 62. Plaintiffs were seized of the Property within five (5) years before the  
15 commencement of this action.

16 63. Plaintiffs are informed and believe, and on such information and belief allege,  
17 that the County claims an interest adverse to plaintiffs' interest in the Property as holder of a  
18 public access easement over the Property purportedly given by plaintiffs' or as a result of the  
19 Permit Conditions, the recordation of the Parcel Map, the 1987 Offer and the Resolution of  
20 Acceptance.

21 64. Plaintiffs are seeking to quiet title against each and every of the County's claims,  
22 and against the claims of all unknown defendants, on each of the following separately stated  
23 grounds:

24 a. The Permit Conditions were void and of no legal effect at the time that  
25 they were imposed, and therefore any subsequent acts by which any portion of the Property was  
26 purportedly conveyed to the County are void and of no legal effect.

27 b. Even if the Permit Conditions were valid when imposed, the plaintiffs  
28 have no further obligation pursuant to the Permit Conditions because (i) the Permit Conditions

1 were satisfied by recordation of the Parcel Map, (ii) any offers made by Johnson and Bucklew  
2 (including, without limitation, recordation of the Parcel Map and the 1987 Offer) expired by  
3 their own terms, and (iii) the County did not accept any offer to dedicate made by plaintiffs'  
4 predecessors-in-interest (including, without limitation, recordation of the Parcel Map and the  
5 1987 Offer) within the time allowed by law after it was granted and, therefore, any such offer is  
6 no longer subject to acceptance.

7 c. Even if the Permit Conditions were valid when imposed, the 1987 Offer  
8 was void and of no legal effect at the time that it was made, and therefore any subsequent acts by  
9 which any portion of the Property was purportedly conveyed to the County are void and of no  
10 legal effect.

11 d. Even if the 1987 Offer was valid when made, it became void and  
12 unenforceable upon issuance of the Supreme Court's ruling in *Nollan v. California Coastal*  
13 *Commission* on June 26, 1987.

14 e. Even if the 1987 Offer was valid when made, and even if it remained valid  
15 and enforceable after the *Nollan* decision was issued, the 25 year term stated in the 1987 Offer  
16 was beyond the lawful authority of the Coastal Commission and said Offer must be reformed to  
17 make it consistent with the Coastal Commission's legal authority and the Permit Conditions.

18 f. Even if the 1987 Offer was valid when made, it has been rescinded in the  
19 manner provided by law and was not valid and in effect on October 20, 1998.

20 g. Even if the 1987 Offer was valid when made, it included conditions which  
21 were required to be satisfied prior to its acceptance, and those conditions were not satisfied prior  
22 to October 20, 1998.

23 h. Even if the 1987 Offer was valid when made, and was still valid on  
24 October 20, 1998, approval of the Resolution of Acceptance on October 20, 1998 constituted a  
25 separate discretionary act and, in and of itself, accomplished a taking of property without  
26 compensation and without due process of law in violation of the Fifth and Fourteenth  
27 Amendments of the United States Constitution and Article 1, Section 19 of the California  
28 Constitution.

EXHIBIT NO. 20

CCC-99-CD-03

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**CALIFORNIA COASTAL COMMISSION**

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

**VIA FACSIMILE AND REGULAR MAIL**

January 29, 1999

Steven A. Amerikaner  
Hatch and Parent  
21 East Carrillo Street  
Santa Barbara, CA 93101-2782

**SUBJECT:** Notice of Intent to commence Cease and Desist Order proceedings; Coastal Act  
Violation File No. V-4-SBC-98-048 (Hill/Daniel)

Dear Mr. Amerikaner:

We are in receipt of your response dated January 25, 1999 to my letter to you dated January 21. We are also in receipt of a copy of the amended complaint that on January 22 you filed in the U.S. District Court in the case of *Hill and Daniel v. Santa Barbara County, et. al.* Among the claims that are made in that complaint is that "...the 1987 Offer [by predecessors to Hill and Daniel] has been rescinded in the manner provided by law and was not valid and in effect on October 20, 1998" (§64(f)).

As you know from the numerous conversations we have had, the purpose of recording the Withdrawal of Rescission Notice Document was to cancel completely the effect of the Rescission Document such that the validity and acceptability of the OTD recorded by your clients' predecessor are restored to the condition they were in prior to the recordation of the Rescission Document. We acknowledge your statement in your letter that you recorded the Withdrawal of Rescission Notice Document in accordance with our agreement. We have not yet received a complete copy of that recorded document. However, the position you are taking in the above-referenced litigation against the County makes it clear that, contrary to the above-stated purpose of the recordation of the Withdrawal Document, you are continuing to rely on the Rescission Document in a manner that impairs the validity and acceptability of the OTD.

Accordingly, we are notifying you that the cease and desist order proceeding against Hill and Daniel has been reinstated. If you wish to contest the allegations contained in the Commission's original Notice of Intent letter dated November 24, 1998, please return to me a completed Statement of Defense Form (included with that letter) not later than February 22, 1999.

Sincerely,

Nancy L. Cave, Manager  
Statewide Enforcement Program

EXHIBIT NO. 21
CCC-99-CD-03
1 OF 1

STANLEY C. HATCH  
GERALD E. PARENT  
S. TIMOTHY BUYNAK  
SUSAN F. PETROVICH  
PETER N. BROWN  
STANLEY M. RODEN  
SCOTT S. SLAYER  
STEVEN A. AMERIKANER  
GARY M. KVISTAD  
CHRISTOPHER A. JACCS  
JEFFREY A. DINKIN  
COLIN L. PEARCE  
LORI LEWIS PERRY  
ROBERT J. SAPERSTEIN  
JEANNE M. MACGALDEN  
JOSEF D. HOUSKA  
SARAH J. KNECHT  
STEPHANIE C. OBLER  
KIMBERLY E. ASKIN  
BRADLEY E. LUNDGREN  
MERRILEE A. FELLOWS  
DEBORAH L. MARTIN  
KRISTEN T. DERSCHIED  
JOHN D. BAKKER  
MICHELLE L. PICKETT

LAW OFFICES  
**HATCH AND PARENT**  
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SANTA BARBARA, CALIFORNIA 93101-2782  
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SANTA BARBARA, CALIFORNIA 93102-0720  
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FACSIMILE: (805) 265-4333

SOUTH LAKE TAHOE OFFICE  
THE SUMMIT  
SOUTH LAKE TAHOE, CA 96150  
TELEPHONE: (530) 542-7800

VENTURA COUNTY OFFICE  
300 ESPLANADE DRIVE, 18TH FLOOR  
OXNARD, CALIFORNIA 93030  
TELEPHONE: (805) 981-1818

KEVIN J. NEESE  
1999 - 1999

OF COUNSEL  
JEFFERY H. SPEICH

OUR FILE # 8030.1  
DIRECT DIAL # (805) 882-1407  
INTERNET: SAmerikaner@  
HatchParent.com

February 22, 1999

VIA U.S. MAIL AND FACSIMILE 415 904-6200

Ms. Nancy L. Cave, Manager  
Statewide Enforcement Program  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

**RE: Your File No. V-4-SBC-98-048 (Hill/Daniel): Special Notice of Defense**

Dear Ms. Cave:

This letter is written on behalf of Leonard Hill and Ann Daniel (Owners), owners of the property located at 3443 Padaro Lane, Santa Barbara, California.

**Special Appearance for Limited Purpose of Asserting Special Defenses**

The Owners are submitting the following by way of a special appearance for the sole purpose of challenging the jurisdiction of the California Coastal Commission to initiate cease and desist order proceedings. The Owners have not and do not at this time submit to the jurisdiction of the Coastal Commission.

The Owners have both procedural and substantive defenses which they will assert in the event it is determined that the California Coastal Commission has the jurisdiction to proceed with the initiation of cease and desist order proceedings, and the Owners determine that they will submit to the Commission's asserted jurisdiction. The Owners expressly reserve the right to assert these procedural and substantive defenses, including all assertions of fact which may relate thereto, in the event that it is determined that the California Coastal Commission has jurisdiction to proceed.

The Owners submit that the Commission must first determine whether it has jurisdiction to proceed in this matter, prior to the setting of any hearing on the facts. The Owners also submit that there is no compelling need for the Commission to proceed at this time with this enforcement action, since the Owners are not engaged in any physical activity on their property

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Ms. Nancy L. Cave, Manager  
Statewide Enforcement Program  
California Coastal Commission  
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which implicates any issues over which the Commission has jurisdiction. Rather, the Owners respectfully submit that due regard for the jurisdiction of the federal court indicates that the Commission's threatened enforcement action should be postponed until the conclusion of the pending federal litigation.

### **Summary of Grounds for Challenging the Jurisdiction of the Commission**

1. The Commission Notice of Intent dated January 29, 1999 is too vague to permit an adequate response by the Owners. The Notice of Intent fails to state, with requisite specificity, the "activity" which is the subject of the threatened enforcement proceedings (see Coastal Act, Sections 30106 and 30810(a)). The vagueness of the Notice of Intent violates both the Coastal Act and the Owners' rights under federal and California constitution due process provisions to be informed of the nature of the threatened administrative proceedings so that they can prepare and present an adequate defense.

2. The Commission Letter of Intent dated January 29, 1999 fail to state a claim upon which an enforcement action may proceed. The Letter of Intent appears to state that the "activity" as to which the threatened enforcement proceeding is directed consists of certain legal claims asserted by the Owners in pending federal litigation against the County of Santa Barbara although, as noted above, the Letter of Intent is vague. Assuming that the Commission is threatening to issue a Cease and Desist Order due to the positions taken by the Owners in the federal court litigation, the Owners submit that the Commission has no lawful authority to attempt to restrain the Owners' exercise of their legal right to seek federal court remedies because:

a. The Coastal Act does not authorize Cease and Desist Orders for such a purpose.

b. Any effort by the Commission to punish the Owners from seeking legal remedies in federal court would constitute a violation of the Owners' constitutional and statutory civil rights and would be actionable by means of a proceeding brought pursuant to 42 U.S.C. 1983 et seq.

3. The Commission voluntarily agreed -- by means of a written agreement with the Owners for which the Commission received adequate consideration -- not to initiate Cease and Desist Order Proceedings against the Owners. The Owners fully performed their part of this agreement, and the Commission is thus obligated to honor its part of the agreement.

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Ms. Nancy L. Cave, Manager  
Statewide Enforcement Program  
California Coastal Commission  
February 22, 1999  
Page 3

### Background Events

In a letter bearing the date November 24, 1998, James W. Burns, Chief Deputy Director of the California Coastal Commission, informed the Owners that "Commission staff is notifying [the Owners] of its intent to commence a proceeding to recommend that the Commission issue a Cease and Desist Order pursuant to section 30810." This Notice of Intent stated that the Owners could avoid the initiation of this procedure if they were to "rescind or extinguish the recorded Notice of Rescission."

Between receipt of that letter and January 19, 1999, discussions were held between Coastal Commission staff and the Owners regarding steps which could be taken to avoid the commencement of Cease and Desist Proceedings. In a letter dated January 12, 1999, you stated:

"The Executive Director has agreed that the Commission will terminate cease and desist order proceedings against any and all of the property owners named above who execute and record a "Withdrawal of Rescission Notice from Public Records" on or before January 19, 1999. Further, the Executive Director has agreed that the Commission will not seek penalties from or pursue any further enforcement against any such property owner with regard to those matters raised in the Notice of Intent letters referenced above."

In a letter dated January 14, 1999, I informed your associate, Mary Travis, as follows:

"I accept Ms. Cave's representations as stated in her January 12, 1999 [letter], and my clients will be relying on those representations in making their decisions whether to sign and record and approved 'Withdrawal' document."

In a letter dated January 19, 1999, I informed Ms. Travis that the Owners had signed the approved Withdrawal document. That letter states:

"I trust that this action will terminate further enforcement activities with respect to each of these individuals per our agreement with the California Coastal Commission."

In a letter dated January 21, 1999, you reneged on this agreement and stated:

"... before we can consider the above-referenced violation cases to be fully resolved, and, accordingly, terminate the associated cease and desist order proceedings, it is necessary that we reach a full and complete understanding as to the legal effect of the Withdrawal of Rescission Notice Documents you have recorded on behalf of your clients."

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Ms. Nancy L. Cave, Manager  
Statewide Enforcement Program  
California Coastal Commission  
February 22, 1999  
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In a letter dated January 25, 1999, I stated that the agreement between the Owners and the Coastal Commission had been fully performed by the Owners, and that they expected the Coastal Commission to honor its bargain.

In a letter dated January 29, 1999, you stated that you had received a copy of the pleading which the Owners filed in their federal court lawsuit against the County of Santa Barbara, and you quoted from that pleading. Your letter states:

"... the position you are taking in the above-referenced litigation against the County makes it clear that, contrary to the above-stated purpose of the recordation of the Withdrawal Document, you are continuing to rely on the Rescission Document in a manner that impairs the validity and acceptability of the [Offer to Dedicate.]

"Accordingly, we are notifying you that the cease and desist order proceedings against Hill and Daniel has been reinstated."

In a letter dated February 11, 1999, I stated that the Owners were utterly unable to respond to the Commission's statements. In particular, the Owners have no way of know what activity the Commission's threatened administrative procedure is directed against.

Your response, dated February 18 states:

"As far as Commission staff is concerned, my letter to you dated January 29, 1999, makes very clear why cease and desist order proceedings have been reinstated against your clients, Ms. Hill and Mr. Daniel. You continue to rely upon the rescission documents that your clients recorded, and that you purportedly withdrew, as a basis for a *legal claim* that the 'withdrawn' document rendered the offer to dedicate (OTD) unacceptable as of the time that the County recorded its acceptance resolution. *As long as you continue these arguments on behalf of your clients, we will continue to proceed as indicated in our January 29, 1999 letter.*" (Emphasis supplied.)

#### **There Is No Compelling Need to Initiate Enforcement Efforts**

The California Coastal Commission has no need to initiate enforcement efforts against the Owners at this point in time. The dispute between the Owners and the County of Santa Barbara concerning the County's legal authority to accept the purported Offer of Dedication is presently pending in federal court. That litigation will fully resolve the dispute between the Owners and the County, and will render unnecessary Commission enforcement proceedings. Delaying the commencement of enforcement efforts will not have any impact on that litigation.

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Ms. Nancy L. Cave, Manager  
Statewide Enforcement Program  
California Coastal Commission  
February 22, 1999  
Page 5

On the other hand, proceeding forward with enforcement efforts exposes the California Coastal Commission to liability under both federal and state law, for the reasons stated above.

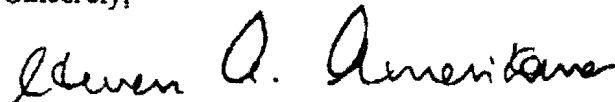
### Conclusion

The Owners respectfully request that:

1. The Commission Executive Director determine that the Commission does not have jurisdiction to proceed.
2. The Commission honor its agreement not to initiate enforcement proceedings.
3. The Commission exercise its discretion to delay the commencement of enforcement proceedings until the pending litigation between the Owners and the County of Santa Barbara has been resolved.

In the event that the Commission's Executive Director determines that the Commission has jurisdiction to proceed, and determines that enforcement proceedings will not be postponed pending completion of the federal court litigation, the Owners request that they receive written notice of that determination and a reasonable opportunity to (i) determine whether they will submit to the asserted jurisdiction of the Coastal Commission, and (ii) assuming they so determine, adequate opportunity to submit a Statement of Defense.

Sincerely,



Steven A. Amerikaner  
For HATCH AND PARENT

cc: Mr. Len Hill/Ms. Ann Daniel  
150694.1:8030.1

EXHIBIT NO. 22
CCC-99-CD-03
5 OF 5

**CALIFORNIA COASTAL COMMISSION**

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



SENT VIA FACSIMILE AND REGULAR MAIL

March 1, 1999

Steven A. Amerikaner  
Hatch and Parent  
21 East Carrillo Street  
Santa Barbara, CA 93101-2782

**SUBJECT: Coastal Act Violation File No. V-4-SBC-98-048 (Hill/Daniel)**

Dear Mr. Amerikaner:

I am in receipt of your letter to me dated February 22, 1999. In that letter you indicate that you wish to challenge the jurisdiction of the California Coastal Commission to initiate cease and desist order proceedings and state that "...The Owners have not and do not at this time submit to the jurisdiction of the Coastal Commission." You also request that the Executive Director determine the Commission's jurisdiction, that the Commission honor its agreement not to initiate enforcement proceedings, and that the Commission delay the commencement of enforcement proceedings until pending litigation between your clients and the County of Santa Barbara has been resolved.

In response to your requests, I respectfully refer you to the Notice of Intent to commence Cease and Desist Order proceedings letter sent to your clients dated November 24, 1998. That letter makes clear the basis for the Commission's jurisdiction over the action taken by your clients:

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.** ... (Emphasis added)

Thus, the Executive Director has already determined that under the provisions of section 30810 of the Public Resources Code the Commission has jurisdiction with respect to this Coastal Act violation case and sees no reason to revisit that issue now.

With respect to your other requests, I have previously responded to your arguments concerning why we have re-initiated cease and desist order proceedings and see no reason to further comment.

Finally, Commission staff has not been persuaded to take this matter off calendar for the Commission meeting scheduled to take place in April. Your clients' deadline to submit a Statement of Defense was February 22, 1999.

Sincerely,

Nancy L. Cave  
Statewide Enforcement

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