

CALIFORNIA COASTAL COMMISSION

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

RECORD PACKET COPY

**F 10**

Staff: NC-SF
Staff Report: March 23, 2000
Hearing Date: April 14, 2000
Commission Action:

**STAFF RECOMMENDATION FOR MODIFICATION AND CONDITIONAL
RESCISSION OF CEASE & DESIST ORDER**

CEASE AND DESIST ORDER: CCC-97-CD-01

DATE ORDER ISSUED: August 13, 1997

RELATED VIOLATION FILE: V-4-97-002

ENTITY SUBJECT TO ORDER: City of Malibu

**DESCRIPTION AND LOCATION OF
PROPERTY SUBJECT TO THE ORDER:** The 18-ft. wide dirt shoulder of Cliffside Drive,
between Birdview Avenue and Dume Drive,
located between the southern edge of the
pavement and the fence along the eastern
boundary of Pt. Dume Natural Preserve, Malibu,
Los Angeles County. **(Exhibit 1)**

ACTIVITY PROHIBITED BY THE ORDER: The order prohibits the City of Malibu from
1) enforcing restrictions on parking in the
subject area, and 2) maintaining parking
regulatory signs and boulders by which such
restrictions are implemented, without a coastal
development permit.

SUBSTANTIVE FILE DOCUMENTS: Commission Cease and Desist Order No.
CCC-97-CD-01

I. SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission modify and, contingent on a determination by the Executive Director that the City of Malibu has fulfilled all requirements of the agreement settling the City of Malibu's legal challenge to the Commission's issuance of the order, rescind Commission Cease and Desist Order No. CCC-97-CD-01.

II. MOTION:

Staff recommends adoption of the following motion:

I move that the Commission modify and, contingent on a determination by the Executive Director that the City of Malibu has fulfilled all requirements of the agreement settling the City's legal challenge to the order, rescind Cease and Desist Order No. CCC-97-CD-01.

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

III. PROPOSED FINDINGS

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

A. Commission Modification/Rescission Authority

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

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

B. Description of Alleged Violation

The alleged violation consists of 1) the adoption in 1982 of a parking restriction causing a change in intensity of use of land; 2) the intensification of the restriction in 1995; and 3) the addition of a new restriction in 1995. These actions, as well as the erection of regulatory signs and installation of boulders, by which such actions were effectuated in the subject area, constituted development as defined in Coastal Act section 30106. However, in violation of the permit requirement of section 30600 of the Coastal Act, the adoption of the restrictions, erection of regulatory signs, and placement of boulders were undertaken without a coastal development permit (CDP). Los Angeles County as the City's predecessor undertook some of these actions.

C. Background

After a public hearing held on August 13, 1997, the Commission issued Cease and Desist Order No. CCC-97-CD-01 to the City of Malibu. The Commission issued the Order to the City on August 15, 1997. CCC-97-CD-01 ordered the City of Malibu to comply with the following:

- A. Refrain from engaging in any development activity at the PROPERTY without first obtaining a coastal development permit which authorizes such activity.
- B. Within 60 days of the date of this order, submit to the Commission for its review and approval a complete coastal development permit application for either (a) removal of all parking restrictions, signs and boulders, and restoration of the PROPERTY to its pre-violation state; or (b) the after-the-fact authorization of the DEVELOPMENT.

Within 60 days of the date of Commission denial, in whole or in part, of an application for after-the-fact authorization of the DEVELOPMENT, submit a complete coastal development permit application for the removal and restoration of that portion of the DEVELOPMENT which remains unpermitted.

- C. Fully comply with the terms, conditions and deadlines of any coastal development permit for the restoration and/or development of the PROPERTY as the Commission may impose. **(Exhibit 2)**

On October 10, 1997, the City filed a petition for a writ of mandate challenging the issuance of Cease and Desist Order No. CCC-97-CD-01. The City and the Commission entered into a stipulation, approved by the Court, staying the Cease and Desist Order from October 14, 1997 to November 13, 1997. By a second stipulation, the stay of the Cease and Desist Order was extended from November 14, 1997 to January 13, 1998. Finally, a third stay of the Cease and Desist Order extended the stay of the Order from January 14 to March 15, 1998. During the period of court-approved stays, the City and the Commission undertook efforts to settle this violation case through mediation. They retained the services of a professional mediator, who met separately and jointly with representatives of the City and Commission in December 1997 and January 1998.

As a result of the mediation, and subsequent negotiations between the City, the Commission and the California Department of Parks and Recreation, the City and the Commission entered into an agreement entitled Settlement Agreement and dated March 15, 2000, (hereinafter referred to as "the Agreement") for the purpose of settling both the City's legal challenge to Cease and Desist Order No. CCC-97-CD-01 as well as the underlying the Coastal Act violation that is the subject of that order. **(Exhibit 3)**

D. Agreement

Under the terms of the Agreement, the City has agreed to undertake activities to improve access to Point Dume Natural Preserve (Preserve). The activities include 1) physical improvements to both sides of Cliffside Drive in the vicinity of the Preserve (including a total of ten parking spaces as described in sections IA and IB of the Agreement), 2) implementation of a public shuttle bus system between Westward State Beach and the Preserve, and 3) installation of improved signage for the public. In addition, the City will remove the unpermitted boulders. Where not inconsistent with the above-described actions, the Agreement allows the City to keep in place previously unpermitted parking restrictions and parking signs. Section I.D of the Agreement requires the City to apply for approval of the placement of these parking enforcement signs. The above-described

development activities are all subject to review and approval by the Commission through the coastal development permit process.

The City, the Commission and the California Department of Parks and Recreation (CDPR) have all agreed to work together to improve public access opportunities as a result of the Agreement. The access improvements are described and a timeline for their implementation are included in a Joint Project Agreement between the CDPR and the City (hereinafter, "City/Parks Agreement"). The City/Parks Agreement is attached to the Agreement as Exhibit A. Although, as described in the City/Parks Agreement, the City and the CDPR will be separately responsible for implementation of certain of the access improvements, the planning, design, permitting, and construction of the access improvements will be undertaken in a coordinated manner.

As set forth in the City/Parks Agreement, the City, subject to compliance with regulatory requirements, will issue an encroachment permit to the CDPR to allow construction of the access improvements to the Preserve side of Cliffside Drive including removal of boulders, construction of a loading zone, walking path, fence, and curbing at the edge of pavement, construction, if determined to be appropriate, of two accessible parking spaces, placement of parking enforcement signs, restoration of native vegetation, and installation of Preserve entry and interpretive signs.

The Agreement also requires the City, subject to compliance with regulatory requirements, to install eight standard, parallel parking spaces in the public right-of-way at 29317 Cliffside Drive. Two of the eight parking spaces will be designated for accessible use if so determined as set forth in the City/Parks Agreement, in which case two additional public parking spaces will be provided in close proximity to the Preserve in a location agreed to by the City and the Commission. In any event, the Agreement calls for the provision of ten parking spaces (8 standard and 2 accessible) in the subject area. The City will install parking enforcement signs at locations specified in the Agreement.

Finally, the Agreement requires the City, subject to compliance with regulatory requirements, to initiate and operate a shuttle bus service between the Westward Beach parking lot and the Preserve. The shuttle will be available without restriction, except for reasons of health or safety, to provide transportation to the Preserve for members of the general public who park at Westward Beach. The shuttle bus program will operate seven days a week during the summer season (e.g., from Memorial Day to Labor Day) and on weekends and holidays during the rest of the year. The Agreement calls upon the City, the Commission, and the CDPR to assess the effectiveness of the implemented shuttle bus program on a quarterly basis. In the event that one or more of the participating agencies believes that cost and revenue information shows the shuttle bus program not to be cost-effective, the agencies may investigate whether other means of access are or could be made available to meet the identified demand. If, prior to LCP certification, the City terminates the shuttle service without obtaining agreement to such termination from the other participating agencies, the Agreement requires the City to process a CDP application to construct an additional 22 parking spaces within close proximity to the Preserve and, promptly upon receipt of a CDP, undertake the steps necessary to install the additional parking spaces.

The Agreement requires the City, in cooperation with the CDPR, to apply for and diligently pursue a coastal development permit for the described improvements. Section II.A of the Agreement provides that:

The parties acknowledge that the timeline for the implementation of the Improvements set forth in the City/Parks Agreement is tentative and subject to refinement as the planning, design, and permitting for the Improvements proceed. Notwithstanding the foregoing, the City acknowledges that December 2000 is a firm deadline for the commencement of construction of the Improvements, which shall include removal of the existing boulders on the Preserve side of Cliffside Drive during the first phase of construction...(emphasis added)

E. Conclusion

The Commission and the City entered into the Agreement for the purpose of resolving the unpermitted nature of the adoption of parking restrictions currently in place along the portion of Cliffside Drive subject to Cease and Desist Order No. CCC-97-CD-01. The Agreement will result in not only removal of unpermitted development but also the improvement of public access and recreation opportunities consistent with Chapter 3 policies in the Coastal Act. For these reasons, the Commission finds that it is appropriate to modify and conditionally rescind Cease and Desist Order No. CCC-97-CD-01.

D. CEASE AND DESIST ORDER (MODIFIED)

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

Pursuant to its authority under Public Resource Code section 30810, the California Coastal Commission hereby orders The City of Malibu, all its agents and any persons acting in concert with any of the foregoing to cease and desist from: 1) engaging in any further development activity at the PROPERTY without first obtaining a coastal development permit which authorizes such activity; and 2) continuing to maintain any development on the PROPERTY that violates the California Coastal Act. Accordingly, all persons subject to this order shall fully comply with the following:

- A. Refrain from engaging in any development activity at the PROPERTY without first obtaining a coastal development permit, which authorizes such activity.
- B. Carry out fully all actions that, pursuant to the terms of the Settlement Agreement dated March 15, 2000, between the City and the Commission, are to be carried out by the City, including but not limited to the following: 1) commence construction of access improvements in and in the vicinity of Point Dume Natural Preserve as specified in sections I.A, I.B and I.C of the Agreement
- C. Fully comply with the terms and conditions of any coastal development permit for activities to improve access to Point Dume Natural Preserve as the Commission may impose.

Identification of the Property

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

18-ft. wide shoulder along the south side of Cliffside Drive between Birdview Avenue and Dume Drive, approximately 1000 feet in length, Malibu, Los Angeles County.

Description of Unpermitted Development

- The effectuation in 1982 of parking restrictions causing a change in intensity of use of land;
- The intensification of the restrictions in 1995; and
- The addition of new restrictions in 1995 which were accomplished by the erection of regulatory signs and installation of boulders in the subject area without a coastal development permit.

Term of the Order

This Cease and Desist Order will terminate and have no further force and effect upon the determination of the Executive Director of the Commission that the City of Malibu has fulfilled all of its obligations contained in the Agreement, which obligations include but are not necessarily limited to the following: 1) construction and availability for public use of all improvements described in section IA and IB of the Agreement and 2) commencement of the shuttle service between the Westward Beach parking lot and the Preserve as described in section IC of the Agreement.

Findings

This order is issued on the basis of the attached findings of fact including all referenced exhibits.

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 or in the above required coastal development permit(s) as approved by the Commission 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. The Executive Director for good cause may extend deadlines. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

Appeal

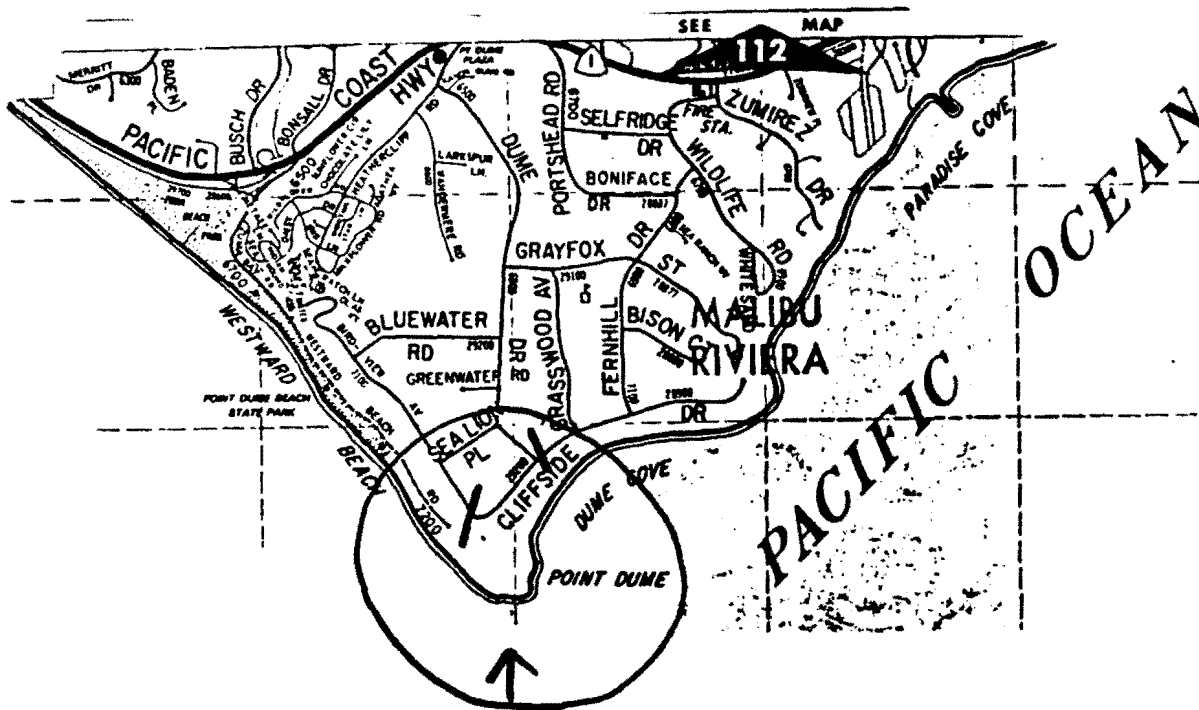
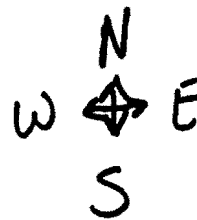
Pursuant to Public Resources Code section 30803(b), any person or entity against which this order is issued may file a petition with the Superior Court for a stay of this order.

EXHIBITS

1. Location of the property
2. Adopted findings of fact for Cease and Desist Order No. CCC-97-CD-01
3. Settlement Agreement between the City of Malibu and the Coastal Commission effective March 15, 2000.

EXHIBIT ONE

Property Location



Cliffside Drive between
Birdview Avenue and
Dume Drive

Exhibit 1
CCC-97-CD-1
(modified)

EXHIBIT TWO

Adopted Findings for CCC-97-CD-01
(without exhibits)

CALIFORNIA COASTAL COMMISSION

EMONT STREET, SUITE 2000
RANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



Staff: NC, RS - SF
& SH - V
Staff Report: July 31, 1997
Hearing Date: August 13, 1997
CCC action: Approved 9-0

ADOPTED FINDINGS FOR CEASE AND DESIST ORDER

(The addendum dated August 8, 1997, has been incorporated into these adopted findings)

CEASE AND DESIST ORDER: CCC-97-CD-01

RELATED VIOLATION FILE: V-4-97-002

PROPERTY LOCATION: South side of Cliffside Drive (approximately 1000 feet in length from Birdview Avenue towards Dume Drive), adjacent to Point Dume State Park, Malibu, Los Angeles County
APN 4468-001-900 and APN 4468-001-901
(Exhibit #1)

PROPERTY DESCRIPTION: Cliffside Drive has a 24-ft. wide pavement and is located within a 60-ft. easement held by the City of Malibu. The 18-ft. wide dirt shoulder between the southern edge of the pavement and the fence along the State Park is the location of the violation.

VIOLATOR: City of Malibu

VIOLATION DESCRIPTION: 1) The effectuation in 1982 of parking restriction causing a change in intensity of use of land; 2) the intensification of the restriction in 1995; and 3) the addition of new restriction in 1995. These actions were accomplished by the erection of regulatory signs and installation of boulders in the subject area without a coastal development permit.

SUBSTANTIVE FILE DOCUMENTS: Point Dume Ecological Reserve, Biological Assessment and Conceptual Plan, Department of Fish and Game, March 1980.
Coastal development permit Application file No.57-80
Violation file V-4-97-002

Exhibit 2
CCC-97-CD-1
(modified)

I. SUMMARY

The subject violation consists of: 1) The effectuation in 1982 of a parking restriction causing a change in intensity of use of land; 2) The intensification of the restriction in 1995; and 3) The addition of new a restriction in 1995. These actions were accomplished by the erection of regulatory signs and installation of boulders in the subject area without a coastal development permit. The City has not complied with numerous requests by Commission staff to apply for a coastal development permit to either authorize the development after-the-fact or to restore the property to its pre-development state.

The proposed order would require the City to cease and desist from engaging in any further development at the subject property without first obtaining a coastal development permit and submit timely applications to the Commission for either: 1) removal of the unpermitted development and restoration of the site, or 2) after-the-fact authorization to allow retention of the development.

II. MOTION

Staff recommends adoption of the following motion:

I move that the Commission issue Cease and Desist Order No. CCC-97-CD-01 as set forth in Section IV of the Staff Report and Recommendation dated July 31, 1997.

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

III. PROPOSED FINDINGS

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

A. Site Description and History¹

The subject area consists of the 18-ft. wide dirt shoulder between the southern edge of the pavement of Cliffside Drive and the fence along the State Park. Cliffside Drive has a 24-ft. wide pavement and is located within a 60-ft. easement held by the City of Malibu. (Exhibit #1)

The State Park consists of an overlook which is a rock promontory including the Point and portions of adjoining beaches. There are numerous trails along this upland area established by extensive public use. The three shoreline areas below the promontory, which are part of the State Park that can be accessed by trails over the Point are: 1) Pirates Cove, a small crescent shaped beach nestled at the foot of the cliffs on the west side of the Point; 2) Dume Cove, a long curving beach to the east of the Point; and 3) low lying rock area between Pirates Cove and Dume Cove.

¹ From CDP Application file No. 57-80

In 1978-79, the State of California acquired the land which is the Point Dume State Park Preserve.

B. Background

On August 8, 1995, a member of the public reported to Commission staff that the City had removed all the regulatory parking signs and placed new signs in the subject area, and as an added measure, placed boulders between the signs to prevent the public from parking along the shoulder. The same day Commission staff visited the subject area (south shoulder of Cliffside Drive) and confirmed the placement of boulders and installation of 7 new "No Parking symbol" and 7 new "Fire Lane Tow-away" signs. The boulders vary in size from approximately 10 to 60 cubic feet and are spaced with a gap of 2 to 3 feet between them. Commission staff also noted encroachment into the opposite north shoulder of Cliffside Drive by exotic plants and shrubbery planted by abutting property owners.

Commission staff opened violation file No. V-4-97-002 and in the course of an ensuing investigation obtained the following information from records of Los Angeles County and the City of Malibu:

Around July, 1929, a "Time Limited Parking R37B1R" sign was installed by Los Angeles County on the south side of Cliffside Drive, 650 feet west of Dume Drive. In August 1965, the 1929 sign was removed and a "No Parking Anytime R281" sign* (Exhibit #2) was installed.

On August 16, 1966, the Los Angeles County Board of Supervisors adopted an Order (file reference no. T660843) prohibiting parking on each side of Cliffside Drive between Birdview Avenue and Fernhill Drive (Exhibit #3).

On July 5, 1972, the Los Angeles County Board of Supervisors adopted an Order (file reference no. T720719) prohibiting parking on the north side of Cliffside Drive between the easterly terminus of Cliffside Drive and a point 380 feet west thereof (Exhibit #3).

On February 1, 1973, the subject area was included in the jurisdiction of the "Permit area" of the California Coastal Zone Conservation Act of 1972.

On July 9, 1974, in response to a petition from abutting property owners, the Los Angeles County Board of Supervisors adopted an Order (file reference no. T740685) prohibiting parking on each side of Cliffside Drive between Birdview Avenue and the terminus of Cliffside Drive east of Fernhill Drive (Exhibit #3). In July 1974, the County placed approximately 20 signs on Cliffside Drive, near Fernhill Drive. The 1974 Order superseded the previous two Orders of 1966 and 1972. In effect the 1974 Order, if and when implemented, prohibited parking on the entire stretch of Cliffside Drive.

*As per the Traffic Sign Inventory of the Los Angeles County Public Works Department. (Exhibit #2)

As of January 1, 1977, there was one "No Parking Anytime R281" sign located 650 feet west of Dume Drive, installed in August 1965 at the subject area. The 1965 sign was installed at the same location after the July 1929 sign was removed.

From Birdview Avenue to Dume Drive, Cliffside Drive is approximately 1000 feet long. In July 1982, the County installed a "No Stopping Anytime R28S1" sign on the south side of Cliffside Drive, 815 feet west off Dume Drive*. Thus as of July, 1982, there were only two regulatory signs, approximately 165 feet apart, in the subject area effectuating the parking restrictions set forth in the 1974 Order. On an unknown date before March, 1991 (City of Malibu date of incorporation), the July, 1982 "No Stopping Anytime R28S1" sign was removed and a "Time Limited Parking R37B1R" sign* was installed.

On August 10, 1982, in response to a request from the Sherriff's Department to discourage parking on Birdside Avenue and Cliffside Drive, the Los Angeles County Board of Supervisors adopted an Order (file reference no. T820838) (Exhibit #8): 1) prohibiting stopping and establishing tow-away zones on each side of Cliffside Drive between Birdview Avenue and a point 650 feet west of Dume Drive, and 2) prohibiting parking on each side of Cliffside Drive between a point 650 feet west of Dume Drive and the terminus of Cliffside Drive east of Fernhill Drive. The August 10, 1982 Order superseded the previous 1974 Order.

On August 17, 1982, in response to a request from the Sherriff's Department to discourage parking on Birdside Avenue and Cliffside Drive, the Los Angeles County Board of Supervisors adopted an Order (file reference no. T820838) (Exhibit #8): 1) prohibiting stopping and establishing tow-away zones on each side of Cliffside Drive between Birdview Avenue and Dume Drive, and 2) prohibiting parking on each side of Cliffside Drive between Dume Drive and the terminus of Cliffside Drive east of Fernhill Drive. The August 17, 1982 Order superseded the August 10, 1982 Order.

In October, 1982, the County installed on the south side of Cliffside Drive, a "No Stopping Anytime R28S1" sign 210 feet and another "No Stopping Anytime R28S1" sign 410 feet west of Dume Drive. The County's Inventory does not reflect the City's Inventory of a "Time Limited Parking R37B1R" sign installed in October 1982 on Cliffside Drive, 625 feet west of Dume Drive.

As per the City's Inventory 3 "Time Limited Parking R37B1R" signs were placed on Cliffside drive, at 0 feet east of Birdview Avenue, 0 feet west of Dume Drive and 1000 feet west of Dume Drive on unknown dates. The last actions in the Inventory for the signs indicate that they were installed before the incorporation of the City. No "Tow-away" signs were installed in the subject area by the County. No coastal development permits were obtained by the County for the change in parking restrictions in 1982 and for the replacement or installation of new signs.

In March 1991, the City of Malibu was incorporated, effectively transferring to the City all operations and management of the subject area, including enforcement of parking prohibitions.

* As per the Traffic Sign Inventory of the Los Angeles County Public Works Department. (Exhibit #2)

On August 8, 1995, Commission staff confirmed the presence of new parking signs and parking barriers in the form of boulders and opened violation file V-4-97-002.

On December 4, 1996, Commission staff member Steve Hudson telephoned John P. Clement, Public Works Director, City of Malibu, and informed him that placement of regulatory parking signs and installation of boulders undertaken by the City constitutes "development" as defined by Section 30106 of the Coastal Act. Hudson also told Clement that any "development" undertaken in the coastal zone without the benefit of a coastal development permit (CDP) constitutes a violation of the Coastal Act. Clement stated that the parking signs on Cliffside Drive were replaced in early 1995, and the boulders were installed around June, 1995. Clement stated that the boulders were necessary because people removed the regulatory parking signs and parked on the shoulder. Clement also stated that the signs that predated the City's incorporation, bearing the messages "no parking" and "tow-away / no stopping anytime", had faded and were replaced with the "no parking symbol" and "pavement fire lane tow-away" signs. According to Clement, the "fire lane" signs included language which referred only to the pavement, but the City erased that clarifying language because it was confusing.

By communications which include, but are not limited to, telephone conversations and letters to Clement dated January 21, 1997, March 17, 1997, and March 18, 1997, and a letter to the Mayor and members of the City Council dated April 10, 1997, Commission staff has recommended that the City obtain Commission approval for either after-the-fact authorization of the "development" or for the removal of the "development" and restoration of the site to resolve the Coastal Act violation.

On April 17, 1997, the City Council of Malibu directed the City staff to:

- 1) Not process a coastal development permit application for the parking restriction signs along Cliffside Drive or Birdview Avenue and to advise the Coastal Commission that the signs were installed by L. A. County at least 14 years ago, and that the signs are now prima facie permitted (due to the City's understanding that the Commission's statute of limitations has expired);
- 2) Not remove the boulders along Cliffside Drive and to not process a coastal development permit to retain the same; and
- 3) Negotiate with State Parks and Recreation Department related to disabled parking spaces at the gate at Birdview Avenue.

On May 9, 1997, Commission staff sent a Notice of Intent to commence Cease and Desist Order proceedings and a Statement of Defense form to the City (Exhibit #4). At the request of the Christi Hogin, City Attorney for Malibu, the Executive Director extended the time for submittal of the Statement of Defense form to June 11, 1997. The City's Statement of Defense was duly received by Commission staff on June 11, 1997 (Exhibit #5).

C. STAFF ALLEGATIONS

The staff alleges the following:

1. Since March, 1991, the date of incorporation for the City of Malibu the south side of Cliffside Drive, between Birdview Avenue and Dume Drive (hereinafter "the subject area") has been located within the jurisdiction of the City. Prior to March, 1991, the County of Los Angeles had jurisdiction over the subject area.
2. The subject area is located within the coastal zone and is therefore also located within the permit jurisdiction of the California Coastal Commission.
3. Development, consisting of: 1) the promulgation of parking restrictions effectuated by the placement and replacement in 1982 of parking restrictive signs by the County of Los Angeles; 2) the intensification of the 1982 restriction in 1995 by the installation of new signs and boulders by the City of Malibu; and 3) the additional promulgation of a new restriction in 1995 by the City of Malibu has been undertaken in the subject area.
4. On August 16, 1966, the Los Angeles County Board of Supervisors (hereinafter County Board of Supervisors) adopted an order (File Reference No. T660843) which prohibited parking on each side of Cliffside Drive between Birdview Avenue and Fernhill Drive (the subject area of the proposed order is included within this location).
5. On July 5, 1972, the County Board of Supervisors adopted an order (File Reference No. T72079) which prohibited parking on the north side of Cliffside Drive between the easterly terminus of Cliffside Drive and a point 380 feet west thereof.
6. On July 9, 1974, the County Board of Supervisors adopted an order (File Reference No. T740685) which prohibited parking on each side of Cliffside Drive between Birdview Avenue and the terminus of Cliffside Drive east of Fernhill Drive.
7. On August 10, 1982, the County Board of Supervisors adopted an Order (File Reference no. T820838): 1) prohibiting stopping and establishing tow-away zones on each side of Cliffside Drive between Birdview Avenue and a point 650 feet west of Dume Drive, and 2) prohibiting parking on each side of Cliffside Drive between a point 650 feet west of Dume Drive and the terminus of Cliffside Drive east of Fernhill Drive.
8. On August 17, 1982, the County Board of Supervisors adopted an Order (File Reference no. T820838): 1) prohibiting stopping and establishing tow-away zones on each side of Cliffside Drive between Birdview Avenue and Dume Drive, and 2) prohibiting parking on each side of Cliffside Drive between Dume Drive and the terminus of Cliffside Drive east of Fernhill Drive.
9. The parking restrictions adopted in the 1966, 1972, 1974, August 10, 1982 and August 17, 1982 County resolution were effectuated at the subject area in October 1982 by the installation of 2 new regulatory signs by the County. According to the County sign inventory logs, these were "No Stopping Anytime R28S1" signs. From 1982 until

March, 1991, the County periodically removed and/or added signs (See Table 2 on page 20).

10. From 1982 until March, 1991, the County failed to obtain a CDP for either the original 1982 placement or for the periodic removal and addition of signs.
11. In 1995, the City of Malibu removed existing County signs on Cliffside Drive and placed 25 new signs, containing a standardized "No Parking" symbol and the wording, "Fire Lane Tow-away". Of the 25 signs, 7 were located in the subject area. The City also installed boulders on Cliffside Drive, including the subject area.
12. The City has failed to obtain a CDP either for the placement of signs in 1982, or for the the installation of signs and of boulders in 1995.
13. The promulgation of parking restrictions as effectuated by the 1982 placement of parking restrictive signs, the 1995 installation of signs and boulders and the 1995 addition of a new restriction constitute the placement of solid material and a change in intensity of use of land and of access to water, and therefore said activities fall within the definition of development as set forth in section 30106 of the Coastal Act.
14. Section 30600 of the Act requires any person who wishes to perform development as defined in section 30106 of the Act to first obtain a CDP for such development. Section 30111 of the Act defines "person" to mean, in relevant part, "any local government."
15. Development undertaken without a CDP in the coastal zone constitutes a violation of the permit requirements of the Coastal Act. In order to resolve this Coastal Act violation, the City of Malibu must either obtain Commission approval of a CDP authorizing the activity "after-the-fact", or restore the subject area to its pre-violation status.
16. By communications which include, but are not limited to, letters to John P. Clement, Public Works Director dated January 21, 1997, March 17, 1997, and March 18, 1997, and a letter to then Mayor Harlow and members of the City Council dated April 10, 1997, Commission staff has recommended that the City must either rescind the unpermitted parking restrictions and remove the signage and boulders, or submit a CDP application for after-the-fact permit authorization, in order to resolve this Coastal Act violation.
17. The City of Malibu has neither obtained after-the-fact Commission permit approval for the unpermitted development or removed and restored the subject area to its pre-violation status.

D. IMPACTS OF ALLEGED VIOLATION

The subject unpermitted activities have an adverse impact on public access and recreational opportunities. Section 30210 of the Coastal Act provides that:

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 30211 states:

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

Section 30212.5 of the Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

In addition, section 30223 states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses where feasible.

The County and City have undertaken and continue to keep unpermitted development in place without a permit. The placement of signs and boulders and the promulgation of a new parking restriction has eliminated available parking areas located on the dirt shoulder, on the southside of Cliffside Drive between Birdview Avenue and Dume Drive, utilized by the public visiting the Point Dume State Preserve, in conflict with sections 30210, 30211, 30212.5, and 30223 of Chapter 3 of the Coastal Act.

The 34 acre Point Dume State Preserve comprises the south and east portions of Point Dume State Beach and includes the upland terrace, bluff faces and a small beach, Pirate's Cove, located just west of the Point in the headland area. Westward Beach is located upcoast from the Point; Westward Beach is heavily visited and has been improved with a parking lot. Dume Beach is located downcoast from the Point and remains relatively isolated and undeveloped.

Point Dume is a highly visible coastal zone landmark. Recreational uses of the State Park include, but are not limited to the following: Experiencing coastal views; whale watching; viewing sea lions, migratory birds and plant life; surfing at Dume Cove; snorkeling; scuba diving; sunbathing; and walking the trails and along the shoreline.

Point Dume is a popular visitor destination point. In 1963, the State acquired both Westward and Dume Beaches. In 1977, the South Coast Regional Commission authorized the Attorney General's Office to investigate the possibility of the existence of prescriptive rights at Point

Dume. The Attorney General's Office completed the study, collecting supporting data to conclude that:

public use of the Point Dume area has been open and continuous since at least World War II. The intensity of said usage has increased almost every year. Said usage has occurred over much of the subject property, especially on and around the Point itself and the beach areas, i.e., Westward Beach, Dume Cove, and Pirates Cove (CDP App. No. 57-80 [Dept. of Fish and Game] Adopted Findings, June 18, 1980, pg.4).

The results of the prescriptive rights study were used by the Department of General Services in establishing the acquisition costs of the subject property. The purchase price was substantially reduced due to the extensive evidence of public prescriptive rights on the property (CDP App. No. 57-80 [Dept. Of Fish and Game] Adopted Findings, June 18, 1990, pg.4)

Recently, letters have been received by Commission staff which underscore the historic evidence that the public has visited the Point for many years to enjoy passive recreational activities upon the headland and more active recreational activities at Westward and Dume Beaches. In a letter sent to and published by *The Malibu Surfside News*, on June 26, 1997, Donn B. Tatum, Jr. writes:

As a Malibu resident and longtime user of the Point Dume Headlands State Reserve, I have registered a complaint with the California Coastal Commission in support of its action against the City of Malibu for unpermitted installation of no-parking signs, boulders and other material designed to restrict public access to the Point Dume Headlands.

The city's placement of these obstructions along Cliffside Drive, between Birdview and Dume drives, eliminates historic parking access along public road rights-of-way that I and many others have utilized as far back as the 1970s.

This installation is designed solely for the benefit of adjoining property owners by effectively granting them view easements over a publicly owned and maintained street to keep the public from enjoying its patrimony. The "fire lane" designation is a patent smoke screen in support of this grab; there is no analogous designation anywhere in Malibu that I am aware of, including much more constricted hillside fire-zone streets.

The Malibu City Council appears not at all to have the public interest in mind, but rather the convenience of a handful of wealthy property owners. Such elitism is not appropriate public stewardship.

I have urged the council to remove this embarrassment and let the public have back its historic access to its public coastline. It would be an appalling waste of overtaxed city resources to spend money to litigate the Coastal Commission on this issue, as some council members have intimated. (Mr. Tatum telephoned Steve Hudson of Commission staff on June 27, 1997, and registered an oral complaint to the Commission, referencing his letter to the *Malibu Surfside News*)

On August 23, 1996, the Commission received a copy of a letter dated August 21, 1996, from Malcolm Dean to then City Manager for the City of Malibu, David Carmany. Mr. Dean's letter states in relevant part:

As you know, Point Dume is a location of great historical importance, in addition to being a fine area for whale spotting. When I first arrived in the Los Angeles area in 1990, I began to enjoy regular visits to the area, often introducing friends to its vistas, and not incidentally, benefiting Malibu businesses at any given moment. I never witnessed any undue garbage or rowdy behavior, and the atmosphere on the Point itself was always civil and almost scholarly.

Sometime in 1995 someone at Malibu City decided that the public has no business visiting this national treasure. A series of ugly boulders was placed along the road, denying anyone intending to visit Point Dume local parking. While it is true that the park located some 100' below offers beach parking at \$5, this does not address the needs of taxpayers who wish only to visit Point Dume for a brief period, or those who cannot make the 100' ascent due to physical limitations...

I am calling upon you to serve the greater good of California by agreeing to work together with the Coastal Commission and Parks & Recreation to provide a MEASLY five parallel daylight-only parking spaces at the gate to Point Dume. This is a low-cost solution which will have minimal impact on the neighborhood, answer the existing demand for visitation rights to this *public* property, and require very little fiscal expenditure.

In a letter to the editor of *The Malibu Times*, published May 8, 1997, Chris Ford writes:

...I have lived for more than three years neighboring what probably is the region's busiest public park: Santa Monica State Beach. For the privilege of inhabiting that gorgeous setting, I was perfectly content to accept the reality that the public has a right to access freely the park resources that it owns. So I was willing to put up with tight parking.

On the other hand, residents of beach neighborhoods in Santa Monica are not accorded so generously as Point Dume residents the opportunity to encroach on public rights-of-way with private accoutrements and appurtenances, such as thick landscaping, fencing, decorative stonework, etc...the solution [for public safety vehicles] is to enforce the public rights-of-way. Point Dume residents enjoy the benefits - and property value enhancement - of living near incredibly scenic public park and beach resources. The public has a right to park on Point Dume streets to access the headlands and beach. The time has come for neighboring residents to take the responsibility that comes with the benefit and embrace that right.

I heartily support any efforts by the state, via the Coastal Commission...to reopen Point Dume streets, which never should have been closed, to public parking.

In a letter dated June 4, 1997, to the Executive Director of the Commission, Missy Zeitsoff writes:

On Sunday, May 25, four Malibu residents set off to visit Pt. Dume Headlands, a public state park. We consisted of two grandmother types and a five year old boy and a six year old girl. The elders were eager to share beauty, environment, peace and fresh air with the younger set.

After a five minute drive from home, we spent fifteen minutes circling and circling Birdview, Cliffside, Dume Dr. and other streets, looking for a "legal" place to park. Huge boulders were strangely placed at the most appropriate place to park. Signs everywhere, "Fire-Zone - Towaway," blocked our simple right and desire to park near our state park!

Apparently these public streets are considered more fire prone than most other City...streets.

Finally...we parked on a dirt shoulder with four other cars. Besides the "security in numbers," this spot was the only offroad space available. All other shoulders have been encroached upon by homeowners who assume the public right-of-way is theirs to landscape and fence. In essence, these homeowners have eliminated all public safe parking by unfair encroachment!

With juvenile comments like "park the car - we are wasting our time" driving me to desperation, I succumbed to parking at this spot on Dume Dr.

After a lovely experience at the whale watch station, we trudged back to our car. We were welcomed by a \$50.00 ticket! What a spoiler to a great time!...

...this is a serious public park access issue, and I hope the Coastal Commission will act to immediately rectify this.

The public uses both the headland area above and the beaches located below Point Dume and has used said areas since at least the 1940's. Active recreational enthusiasts can easily park near their destination point at the Westward Beach parking area. Based upon the written evidence cited above, the Commission finds that passive recreational enthusiasts used to be able to park on the dirt shoulder adjacent to the Point Dume Preserve, on the southside of Cliffside Drive between Birdview Avenue and Dume Drive. Now persons desiring to utilize the top of Point Dume are precluded from parking along Cliffside Drive. These passive recreational enthusiasts can legally park at Westward Beach and hike up a moderately steep trail of approximately 100 feet. As stated by some of the letters received by the Commission, not all of the public wishing to enjoy the coast can accomplish this hike. The actions of the County and now the City effectively eliminate any opportunity to park near the top of Point Dume.

The Commission finds that it is feasible to provide parking support, where it was formerly available prior to boulder placement, on the dirt shoulder on the southside of Cliffside Drive between Birdview Avenue and Dume Drive. State Department of Parks and Recreation does not object to the public parking on the dirt shoulder. In a letter dated April 18, 1997, Neil Braunstein, District Planner for State Parks and Recreation stated, "As for roadside parking, we do not object to parking along Cliffside Drive or Birdview."

Section 5019.71 of the Public Resources Code defines natural preserves:

Natural preserves consist of distinct areas of outstanding natural or scientific significance established within the boundaries of other state park system units. The purpose of natural preserves shall be to preserve such features as rare or endangered plant and animal species and their supporting ecosystems...Areas set aside as natural preserves shall be of sufficient size to allow, where possible, the natural dynamics of ecological interaction to continue without interference and to provide, in all cases, a practicable management unit...(emphasis added)

State Parks and Recreation Department policy appears not to allow the construction of parking areas within an area classified as a preserve. State Parks policy Number 40, PRESERVES states the following:

Activities in natural or cultural preserves shall be limited to those required to interpret, for public use, enjoyment, and understanding, the prime resources as defined in unit resource inventories. Public uses and facilities in preserves shall be limited to those required to permit the public observation, enjoyment, and understanding of the prime resources, shall be compatible with the preservation of the prime resources, and shall conform to unit resource elements and general plans. Roads and all facilities except trails are prohibited in natural preserves. Developments shall be limited to those necessary for resource protection and visitor safety and comfort.

The above-cited section of the Public Resources Code makes clear that "natural preserves" are established within existing State park systems. The cited Department of Parks and Recreation policy allows for limited public use within a natural preserve. State Parks and Recreation staff also appear to be supportive of public parking on the dirt shoulder adjacent to and outside of the defined boundaries of the Point Dume Preserve. The above-referenced letters also indicate that the public has in the past parked on this dirt shoulder in order to access the Preserve. The subject unpermitted activities have individual and cumulative impacts on public access and recreational opportunities. Prior to 1982, when the County first placed signs in the subject area to promulgate parking restrictions, the public used the subject area as support parking space to enjoy the Preserve, as stated in the letters the Commission recently received from the public. The parking prohibition continued until 1995, when the City enacted new restrictions and intensified the prohibition through additional unpermitted development resulting in the complete inability of the public to park. The Commission therefore finds that the subject unpermitted development has an ongoing, adverse impact on public access and recreation, in conflict with the above cited public access and recreational policies included in Chapter 3 of the Coastal Act.

E. ALLEGED VIOLATOR'S STATEMENT OF DEFENSE AND COMMISSION RESPONSE

On June 11, 1997, the City, through the law firm of Shute, Mihaly & Weinburger, sent the Commission staff its statement of defense.

In summary, the City's defense rests on five contentions:

1. The City did not perform development as defined by section 30106. The City performed "repair and maintenance" on pre-existing development; therefore pursuant to section 30610(d) of the Act, the City's action was exempt from CDP requirements.
2. The City's predecessor in local governmental jurisdiction for the property, the County of Los Angeles, also performed repair and maintenance activities exempt from permit requirements. The City states that the County's placement of parking restrictive signs pre-dates the effective date of the Coastal Act (1/1/77).
3. The Commission's decision to commence a cease and desist order proceeding was premised upon a mistake of fact and, accordingly, the NOI was issued in error by Commission staff.
4. The City is not responsible for correcting the unpermitted nature of development performed by its predecessor, the County, due to court precedents.
5. An enforcement action based upon actions the County allegedly took some fourteen years ago would be barred by the applicable statute of limitations, as well as the doctrines of laches, waiver, and estoppel.

1. Repair and Maintenance or Development

City Contention

The City maintains, contrary to the allegation in the NOI, that it has neither promulgated nor implemented any new parking restrictions within the subject property since its incorporation in March, 1991. In 1995, the City replaced existing signs bearing the word messages "no parking anytime" and "tow-away/no stopping anytime" with signs depicting a standardized no parking symbol. The City undertook this maintenance work because the existing signs were faded and in need of replacement.

In conjunction with the sign replacement, the City installed what it refers to as a "landscaping feature" (boulders) on the dirt shoulder of the subject property to enforce existing parking restrictions. The installed landscaping feature is also exempt from permit requirements pursuant to the Commission's regulations on repair and maintenance (Cal. Code of Regs., Title 14, section 13252(a).

At most, the City maintains its actions reflect a decision to enforce more aggressively parking prohibitions that have been in place since long before the enactment of the Coastal Act.

Commission Response

The Commission rejects the City's contention that the promulgation of parking restrictions subsequently effectuated by signs and "landscaping" constitutes repair and maintenance activities that are therefore exempt from permit requirements. Section 30610 states in relevant part:

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

...(d) Repair or maintenance activities **that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities (emphasis added)**; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

The Repair, Maintenance and Utility Hook-up Exclusions from Permit Requirements, adopted by the Commission on September 5, 1978 (hereinafter referred to as "The 1978 Document"), are incorporated into the Commission's Administrative Regulations by section 13252(a) thereof. The 1978 Document states:

The standards for these [repair and maintenance] exclusions are stated in Section 30610 of the Coastal Act: They do not relate to the environmental impact of the proposed activity. **The repair and maintenance exclusion is intended to allow continuation of existing development and activities which began before the effective date of the Coastal Act (emphasis added)**

The following construction activities comparable to those listed do not require a coastal development permit except as specified below:

A. Roads. No permit is required for repair and maintenance of existing public roads including landscaping, ...signing...and other comparable development within the existing right-of way as specified below...The following maintenance and alteration programs of the State Department of Transportation, **or their equivalent conducted by local road departments, which do not result in an addition to or enlargement or expansion of the existing public road facility itself**, do not require a permit except as noted...(7) Sign Program...

(7) Sign Program. The sign program includes all work performed on existing signs for the purpose of warning, regulating or guiding traffic including bicycle traffic using bike lanes. The work consists of manufacture, assembly and installation of **new signs to replace existing signs** and the repair, cleaning and painting of signs. (emphasis added)

The subject unpermitted development activities do not meet the criteria of the above-cited language of the 1978 Document because they are **not** a continuation of **existing** development and activities which began before January 1, 1977. Some of the cited activities were not effectively accomplished until 1982, well after the effective date of the Coastal Act. Further, the County's promulgation and effectuation of the subject parking restrictions are outside the scope of both Section 30610(d) and the 1978 Document because they accomplish an "expansion" of parking restrictions in the subject area. Finally, in 1995, the City promulgated an additional new parking restriction and intensified the previous restrictions effectuated by the County, with its action to place new signs with a new prohibition and "landscaping".

The unpermitted development activities were the promulgation of parking/stopping restrictions first effectuated by the County's placement of new signs in 1982. The City's 1995 unpermitted activities consist of intensification of the County's promulgation of parking restrictions by the City's placement of new signs, "landscaping" and a new restriction, in other words, a further change in the intensity of use of the subject land. Any change in the intensity of use of land is not repair and maintenance as defined in the 1978 Document sections cited. The unpermitted activities constitute new development; they do not continue existing development predating the Coastal Act. Notification of the restriction of the 1966, 1972, 1974, August 10, 1982 and August 17, 1982 Orders did not begin to occur in the subject area until October, 1982. In addition, the 1995 unpermitted activities intensified and expanded the activities effectuated in 1982, because additional new signs with a new restriction and "landscaping" were placed in the subject area. Existing signs were not replaced; new signs were erected.

In addition, the City's action to install boulders does not constitute "landscaping." The Commission rejects the notion that the placement of boulders constitutes landscaping. The City states that the boulders represent landscaping and effective parking barriers (Exhibit #5, John Clement's Declaration, Page 4, lines 22-25). The placement of parking barriers is not repair and maintenance when such parking barriers did not exist prior to January 1, 1977, and when the parking barriers obstruct public access to the water.

The Commission notes that the 1978 Document does not include an exclusion for the installation of "parking barriers". There is no evidence that physical parking barriers, whether they be boulders or some other solid material, have been installed in the subject area before the effective date of the Coastal Act.

Further, the City's 1995 action does not constitute replacement of existing signs. The City did not replace parking/stopping restrictive signs with similarly worded signs. The 1995 signs also state that Birdview Avenue and Cliffside Drive constitute a "fire lane" and therefore is also a "tow-away" zone. The 1995 activities involved placement, not replacement. Signs previously installed in the subject area did not designate Birdview and Cliffside Drive as "fire lanes." The exclusion of public parking areas on dirt shoulders is not necessary for the passage of fire safety vehicles. The 18-ft. wide south shoulder outside the 24-ft. pavement of Cliffside Drive is not the fire lane, and the signs prohibiting parking on the fire lane that remain at present are misleading. As confirmed by Mr. Clement, the City Public Works Director, the signs are intended to prohibit parking on the pavement of Cliffside Drive, which is the firelane, not the dirt shoulder. In a telephone conversation with Steve Hudson of Commission staff on June 16, 1997, Captain James Jordan, a Fire Department Chief for the Los Angeles County Fire Department (the County provides fire department services for the City of Malibu) stated "there is plenty of room to park on Cliffside Drive off the pavement, as long as the pavement is 20-feet wide. I don't see a problem with parking on Cliffside as long as it's [the parked vehicle] at least 15 feet away from a fire hydrant."

Section 902.2.2.1 of the Uniform Fire Code requires that a road shall be a minimum of 20 feet in width for fire apparatus access. Birdview Avenue and Cliffside Drive are 24 feet in width, excluding right-of-way easements. Captain Jordan stated that if vehicles are allowed to park on one side of the road, a 28-ft. paved width for the road is required; however, this is only applicable if the vehicles are to be parked completely on the pavement (emphasis added).

Captain Jordan further stated that if a road is less than 28-ft. in width, it is still legal to park off or even partially on the pavement as long as at least 20 feet of paved surface is still available for safety requirements.

In conclusion, the Commission finds that the unpermitted activities do not meet the cited criteria of the 1978 Document. The development consists of placement and intensification of use that obstructs access to the shore. The change in sign wording is not necessary to achieve safe access for fire department vehicles.

2. Development Activities by County and City pre-date the effective date of the Coastal Act

City Contentions

The City states that the actions of its predecessor, Los Angeles County, to place and replace signs along the subject property did not affect existing parking restrictions in place in this section of the coastal zone. The City contends that the initial placement of parking restrictive signs along the subject property pre-dates the effective date of the Coastal Act.

In Attachment A of the City's Statement of Defense, John P. Clement, Public Works Director for the City of Malibu since 1993, states that signs were installed prior to 1977. The City therefore maintains the subject development activities are exempt from CDP requirements because they do not constitute "new" development, merely repair and maintenance activities exempt from permit requirements.

Commission Response

In a series of Orders (Exhibit # 3) adopted in 1966, 1972, and 1974 by the County Board of Supervisors, the County promulgated parking prohibitions in the subject area. The Orders prohibited parking as follows:

- | | |
|------------------------|---|
| August 16, 1966 | On each side of Cliffside Dr. between Birdview Ave. and Fernhill Dr. |
| July 5, 1972 | On the north side of Cliffside Dr. between the easterly terminus of Cliffside Dr. and a point 380 feet west thereof. |
| July 9, 1974 | On each side of Cliffside Dr. between Birdview Ave. and the terminus of Cliffside Dr. east of Fernhill Dr. |

In August, 1982, the County Board of Supervisors, adopted Orders (Exhibit #8) which promulgated parking and stopping prohibitions in the subject area as follows:

- | | |
|------------------------|---|
| August 10, 1982 | 1) prohibiting stopping and establishing tow-away zones on each side of Cliffside Drive between Birdview Avenue and a point 650 feet west of Dume Drive, and |
|------------------------|---|

2) prohibiting parking on each side of Cliffside Drive between a point 650 feet west of Dume Drive and the terminus of Cliffside Drive east of Fernhill Drive.

August 17, 1982

1) prohibiting stopping and establishing tow-away zones on each side of Cliffside Drive between Birdview Avenue and Dume Drive, and

2) prohibiting parking on each side of Cliffside Drive between Dume Drive and the terminus of Cliffside Drive east of Fernhill Drive.

The August 17, 1982 Order superseded the 1966, 1972, 1974 and August 10, 1982 Orders. However, under applicable principles of state law the August 17, 1982 Order did not become effective until October 1982, and therefore the installation of signs do not constitute pre-existing development activities that occurred before the effective date of the permit requirements of the Coastal Act, i.e., January 1, 1977.

Section 22507 of the State Vehicle Code states, in relevant part:

Local authorities may, by ordinance or resolution, prohibit or restrict the parking or standing of vehicles... on certain streets or highways, or portions thereof, during all or certain hours of the day... **no such ordinance or resolution shall apply until signs or marking giving adequate notice thereof have been placed** (emphasis added).

Thus, the cited Orders did not "apply" until after January 1, 1977, because the County failed to install signs or markings at the subject area, giving adequate notice of the cited parking prohibition described in the Orders.

The 1966 Order was adopted to prohibit parking on both sides of Cliffside Drive between Birdview Avenue and Fernhill Drive, an area which includes the subject area. However, the same Order also indicates that only five signs were to be placed to give notice of this resolution, and that the five signs were to be located on either side of Cliffside Drive between Dume Drive and Grasswood Avenue, an area which does not include the subject area. Thus, there were no signs placed upon the subject area with the exception of one, pre-existing sign² and the public was not adequately notified of the 1966 Order. Therefore, the 1966 Order did not "apply" to the subject area.

The 1972 Order is not relevant to the subject area because it was adopted to prohibit parking east of Fernhill Drive.

The 1974 Order superseded the previous orders and prohibited parking on both sides of the entire distance of Cliffside Drive. However, the County's Sign Inventory (Exhibit #2) shows the placement of one "No Stopping Anytime R28S1" sign in July, 1982, within the subject area. Thus, like the 1966 Order before it, the 1974 Order as initially carried out by the County failed to give adequate notice and did not begin to "apply" to portions of the subject area. The

² The sign was installed in 1929 as "time-limited parking"; in 1965 the 1929 sign was removed and a "no parking" sign was installed.

Commission notes that the 1974 Order prohibited **parking** and not **stopping**, as evident by the July 1982 placement of the "No Stopping Anytime R28S1" sign.

The August 10, 1982, Order: 1) prohibited stopping and established tow-away zones on each side of Cliffside Drive between Birdview Avenue and a point 650 feet west of Dume Drive, and 2) prohibited parking on each side of Cliffside Drive between a point 650 feet west of Dume Drive and the terminus of Cliffside Drive east of Fernhill Drive. However, the County's Sign Inventory (Exhibit #2) does not show the placement of signs until October, 1982, within the subject area giving notice of the parking prohibition. Thus, like the 1974 Order before it, the August 10, 1982 Order as initially carried out by the County failed to give adequate notice and did not begin to "apply" to portions of the subject area until October, 1982. The August 10, 1982 Order superseded the previous 1974 Order.

The August 17, 1982, Order: 1) prohibited stopping and established tow-away zones on each side of Cliffside Drive between Birdview Avenue and Dume Drive, and 2) prohibited parking on each side of Cliffside Drive between Dume Drive and the terminus of Cliffside Drive east of Fernhill Drive. However, the County's Sign Inventory (Exhibit #2) does not show the placement of signs until October, 1982, within the subject area giving notice of the parking prohibition. Thus, like the August 10, 1982 Order before it, the August 17, 1982 Order as initially carried out by the County failed to give adequate notice and did not begin to "apply" to portions of the subject area until October, 1982. The August 17, 1982 Order superseded the August 10, 1982 Order when the County removed and placed existing signs approximately 200 feet apart along Cliffside Drive, including the portion thereof subject to this Cease and Desist Order.

In October, 1982, the County installed on the south side of Cliffside Drive, a "No Stopping Anytime R28S1" sign 210 feet and another "No Stopping Anytime R28S1" sign 410 feet west of Dume Drive. The County's Inventory does not reflect the City's Inventory of a "Time Limited Parking R37B1R" sign installed in October 1982 on Cliffside Drive, 625 feet west of Dume Drive.

In October 1982, there were two "No Parking Anytime R281" signs (one installed in 1965 and the other in July 1982) and two "No Stopping Anytime R28S1" signs (installed in October 1982) on the south side of Cliffside Drive, spaced approximately 165 feet to 240 feet apart.

The August 17, 1982 Order or resolution was not effectuated until October, 1982, pursuant to the lack of adequate notice of the parking prohibition as stated in section 22507 of the Vehicle code. The requirement for the adoption of the 1982 Orders at the request of the Sheriff's Department to discourage parking, reinforces the Commission's finding that adequate notification of the 1966, 1972 and 1974 Orders was not achieved by the County. By the placement of regulatory parking signs in 1974 on Cliffside Drive near Fernhill Drive, the County's 1974 Order became applicable in that respective stretch of Cliffside Drive. The three regulatory parking signs installed by the County at the subject area from July to October of 1982 were intended to prohibit parking/stopping along approximately 1000 feet length of the shoulder on Cliffside Drive between Birdview Avenue and Dume Drive. Whereas, at a 1725-ft. stretch of Cliffside near Fernhill Drive, the County saw the need for 11 signs.

* As per the Traffic Sign Inventory of the Los Angeles County Public Works Department. (Exhibit #2)

Section 30608 of the Coastal Act precludes the requirement of a coastal development permit for any person who has obtained a vested right in a "development" prior to the effective date of the Coastal Act of 1976 or who has obtained a permit pursuant to the Coastal Zone Conservation Act of 1972. However, no substantial change may be made in any such development without prior approval from the Commission. The County did not apply for a vested right claim for the signs installed before 1977 or obtain a coastal development permit for any of the new signs installed or changes made to the signs after 1977.

The County Inventory shows that one "No Parking Anytime R281" sign existed within the subject area before January 1, 1977. It was located 650 feet west of Dume Drive on the southside of Cliffside Drive and installed in August 1965. The other "No Parking Anytime R281" sign installed in September 1966 was located 200 feet east of Dume Drive on the southside of Cliffside Drive. Moreover, these two signs were situated approximately 850 feet apart (Exhibit # 4). The one sign placed within the subject area prior to January 1, 1977 did not provide adequate notice of the County's parking restrictions for Cliffside Drive as the City has maintained. The two signs did not appear to be within sight of each other and were 850 feet apart.

Thus, the County Board of Supervisors' Orders adopted in 1966, 1972 1974, August 10, 1982, and August 17, 1982, (which superseded the previous Orders) did not take effect until October 1982, when 2 new signs were installed, within the subject area, finally giving adequate notice of the existence of the County's Order. Since the Order only applied to the area starting in October 1982, the County's promulgation of parking restrictions in the subject area did not take effect until after the effective date of the Coastal Act. This effectuation in October 1982 constitutes development and therefore needed a CDP from the Commission.

The following information provides a visual reference along with Exhibit #6 for the chronology and location of the signs installed by the County. It was obtained from the Traffic Sign Inventory of the Los Angeles County Public Works Department, except for Nos. 6, 7, 8 and 9 of Table 1 which were from the City's Inventory:

TABLE 1 Chronology of the installation of signs relevant to and within the subject area

<u>No.</u>	<u>Date</u>	<u>Message</u>	<u>Code</u>	<u>Location/Reference</u>	<u>Remarks</u>
1a.	07-29	Time Ltd. Pkg.	R37B1R	650 ft. west of Dume Dr.	
b.	08-65	No Pkg. Anytime R281		Same as above	1a was replaced by 1b
2.	09-66	No Pkg. Anytime R281		200 ft. east of Dume Dr.	Outside subject area
3a	07-82	No <u>Stp.</u> Anytime R28S1		815 ft. west of Dume Dr.	
b.	Unknown	Time Ltd. Pkg. R37B1D		Same as above	3a was replaced by 3b Last action 07-90
4.	10-82	No <u>Stp.</u> Anytime R28S1		210 ft. west of Dume Dr.	
5.	10-82	No <u>Stp.</u> Anytime R28S1		410 ft. west of Dume Dr.	

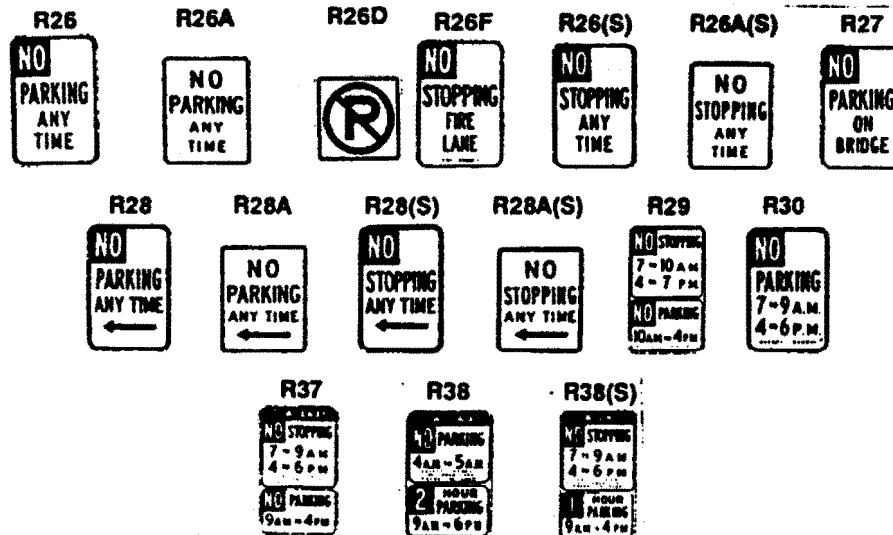
6.	10-82	Time Ltd. Pkg.	R37B	625 ft. west of Dume Dr.	City inventory Not in County's inventory
7.	Unknown	Time Ltd. Pkg.	R37B1R	0 ft. east of Birdview Ave.	City inventory Last action - 07-90
8.	Unknown	Time Ltd. Pkg.	R37B(R)	0 ft. west of Dume Dr.	Outside subject area City inventory Last action - 02-85
9.	Unknown	Time Ltd. Pkg.	R37	1000 ft. west of Dume Dr.	City inventory Last action - 10-83

TABLE 2 Chronology of the installation of signs outside the subject area on Cliffside Drive

Note: The signs outside the subject area in Table 1 are included below.

<u>No.</u>	<u>Year installed</u>	<u>Number of Signs</u>
1.	1962	1
2.	1965	1
3.	1966	6
4.	1968	1
5.	1972	3
6.	1974	20
7.	1982	4
8.	1983	2
9.	1985	1
10.	1990	2

The Uniform Sign Chart published by the Department of Transportation provides the codes and messages for warning, regulatory and guide signs prescribed pursuant to Section 21400 of the Vehicle Code. Following are the codes and messages for the regulatory signs relevant to this report:



Commission staff contacted and interviewed several professionals and local governmental officials employed in the field of traffic management. Those interviews support the conclusion that signs placed prior to 1982 did not establish a continuous no parking zone as maintained by the City's Statement of Defense, and failed to give adequate notice that such a continuous no parking zone existed along the subject area.

Anthony Cole, staff liaison with the State Department of Transportation (CALTRANS) informed Commission staff that CALTRANS has no precise dimension for placing *No Parking* signs in regard to regulatory distance. However, Mr. Cole stated that in practice, the standard is approximately 150 feet in rural areas and less in urban areas. Mr. Cole also stated that "it seems an unreasonable expectation that two *No Parking* signs 850 feet apart imply that all the area between them is *No Parking*." When asked what in his mind constitutes a continuous no parking zone, Mr. Cole responded, "There isn't a set answer, but I would say a distance no greater than 300 feet [between signs]. That would apply in a suburban or rural area; in a developed or urban area that distance would be 150 feet or less."

Section 4-01.21 Standardization of Location, of the CALTRANS Traffic Manual states the following regarding sign location:

...The signs should be spaced to allow enough time for motorists decisions to be made safely. Spacing should be determined in units of time from the vehicle approach speed.

The CALTRANS Highway Design Manual, Section 309.1, Clearances, states the following:

...The horizontal clearance to all fixed roadside objects including bridge piers, abutments, retaining walls, and noise barriers should be based on engineering judgment with the objective of maximizing the distance between fixed objects and the edge of traveled way.

Sergeant Kevin Mauch, Traffic Sergeant for the Los Angeles County Sheriff's Department, informed staff that the standard regulatory distance between *No Parking* signs is approximately 100 to 150 feet. Sergeant Mauch also stated that "if two *No Parking* signs had been 800 feet apart or more they would not be enforceable for more than 50 to 100 feet from each sign and that the distance between those two areas would be legal parking." Sergeant Mauch responded that there are no precise standards to define what constitutes a continuous no parking zone, but "if we figure that the regulatory zone for one sign is 150 feet, then the distance between two signs would be in the range of 300 feet."

Pat Ashburn with the County of Los Angeles Public Works Investigation Unit informed staff in a telephone conversation on June 16, 1997, that the "State Traffic Manual does not specify spacing" between *No Parking* signs and that ultimately it was "what is thought appropriate by the courts" that determines regulatory distance. However Mr. Ashburn also stated that in practice, the standard regulatory distance between signs is 200 to 250 feet apart. When asked on July 14, 1997, to define "continuous no parking zone," Mr. Ashburn responded that such a zone is spelled out by the Board of Supervisors and that every street has a separate action.

Ed Cline of Wildan Associates also was interviewed by Commission staff. Wildan Associates was the public works consultant for the City of Malibu prior to the hiring of Mr. Clement, the current Public Works Director for the City. Before working for Wildan Associates, Mr. Cline worked for Los Angeles County Public Works Department for 35 years. Mr. Cline stated that there are no government regulations pertaining to a precise regulatory distance between *No Parking* signs. Mr. Cline stated that the "rule of thumb" or the generally accepted standard is 50 feet of distance for 1 inch of legend lettering height (taken from the word "No" of a "No Parking" sign). Mr. Cline went on to state that the average legend height is 4 inches which would give a maximum distance of 200 feet. Mr. Cline indicated that a larger sign would allow a larger regulatory distance; however, he also said that he is familiar with the signs used by the County of Los Angeles in the 1960's and 1970's when he worked for the County and that the County used the average legend height of 4 inches for *No Parking* signs. When asked if signs that are 850 feet apart could regulate the distance between the signs, Mr. Cline replied, "I would say that is inadequate, the *No Parking* sign is basically unenforceable after 200 feet. 800 feet is unreasonable." Mr. Cline defined a continuous no parking zone to be "appropriate signs at reasonable spacing - 200 feet for a standard 12 inch by 18 inch *No Parking* sign. 300 feet between *No Parking* signs with arrows is marginal and 400 feet between signs is beyond reason."

Commission staff also contacted two traffic professionals in other coastal local governmental jurisdictions. Tom Mericle, traffic engineer for the City of Ventura, responded that there is no specified distance in state or federal traffic manuals. Mr. Mericle stated that the "standard" distance for a *No Parking* sign with arrows located on a residential street is 100 to 150 feet apart. Mr. Mericle defined a continuous no parking zone to be "a zone in which you could see or recognize the next *No Parking* sign with an arrow. At no point should the signs be placed more than 200 feet apart; a distance of 200 feet between signs with arrows would be unreasonable."

Robert Daton with the Department of Transportation for the County of Santa Barbara also stated that there is no definite regulatory distance between signs in writing. Mr. Daton stated that Santa Barbara County has considered 300 feet between signs to be enforceable, but that the County tries to place its signs 150 feet to a maximum of 200 feet between the signs. Mr. Daton also responded that he did not believe that an area of 850 feet could be regulated as an enforceable regulatory distance even if the two signs had arrows within their legends.. Mr. Daton concluded by defining continuous no parking zone to be "two *No Parking* signs with arrows at a distance from each other of up to 200 feet. Any distance of more than 200 feet between signs is unenforceable."

The Commission therefore concludes that while the County adopted Orders before and after January 1, 1977 which created a parking/stopping prohibition on both sides of the entire length of Cliffside, the County's placement of signs did not adequately notify the public that a continuous parking/stopping prohibition existed along the subject area until October, 1982, when the County installed approximately 2 new signs averaging 200 feet in regulatory distance from each other. Based upon the interviews of qualified professionals, the Commission also notes that the public, with less experience regarding parking signs would not be adequately notified that such a no parking zone existed until signs were placed approximately 200 feet apart from each other. The City's contention that parking restrictive signs calling for a complete parking prohibition along both sides of Cliffside Drive existed prior to January 1, 1977 is not proven correct based upon the actual placement of signs as

demonstrated by the County's Sign Inventory and Commission staff interviews with other traffic control professionals.

3. The Notice Of Intent was issued based upon a Mistake of Fact

City Contentions

The City states that the Commission's Notice of Intent to issue a Cease and Desist Order (NOI) alleges the City violated section 30600 of the Act, since between 1977 and the present time, the City and its predecessor, the County, promulgated parking regulations without first obtaining a CDP. The City also states that Commission staff is mistaken due to an factual error made by the City Public Works Director, Mr. Clement:

From its review of the NOI and recent correspondence, the City believes that actions of its staff have contributed to a mistaken understanding of the relevant facts by Commission staff. An erroneous initial City Traffic Sign Inventory and a misstatement by City staff in a recent memorandum (**Exhibit #7**) appear to have given credence to the allegation that the County and City changed and intensified parking restrictions in the subject area in the early 1980's and in 1995...The City regrets that its actions may have contributed to causing Commission staff's misunderstanding, even if the County had undertaken unpermitted development. (**Exhibit #5**, City Statement of Defense, page 3, lines 11 through 21)

Mr. Clement stated in his declaration included in the City's Statement of Defense (**Exhibit #7**) as Exhibit A:

...An early version of the City's Traffic Sign Inventory, which I prepared in 1994, indicates erroneously that "Time Limited Parking" signs (code "R37") were installed along both sides of South Birdview Avenue and Cliffside Drive within the subject area. I prepared this early version...by taking the information from the County's Inventory and putting it into a different format, which included sign descriptions. When I prepared this...version..., I had not yet visually inspected the traffic signs in the Point Dume area. Consequently...I relied solely on the description contained in the California Department of Transportation's traffic manual...That manual describes an "R37" sign as one which prohibits parking and stopping during specific hours. Later, when I made my 1995 field survey, I learned that all "R37" signs installed within the subject area, including those installed prior to 1977 as well as those installed by the County in the early 1980's in fact prohibited parking and stopping at all times.

As a licensed traffic engineer and the Public Works Director for the City, I am familiar with the California Department of Transportation traffic sign codes. The traffic sign code "R37" refers to a sign bearing the word message "Tow-Away--No Parking/No Stopping." A sign designated as code "R37" may indicate specific time periods during which parking and stopping are prohibited or it may instead prohibit parking and stopping any time.

The City concludes its discussion regarding the mistake of fact by including eleven declarations from residents in the Point Dume area as evidence that there have never been "time limited" parking signs in the subject area (Exhibit C of City's Statement of Defense). The City therefore contends that the NOI has been issued in error and should be rescinded by Commission staff.

Commission Response

The NOI alleges that some parking restrictions took effect before incorporation of the City, promulgated by the County of Los Angeles. Since the City's March 1991 creation, it has promulgated its own, new parking restrictions, and intensified the County's restrictions. The Commission relies upon its interpretation of State Vehicle Code section 22507 to find that development took place in 1982, when the County finally erected signs effectuating parking prohibitions around Point Dume, adopted by order of the County Board of Supervisors in 1974. In 1982, there were two "No Parking Anytime R281" signs and two "No Stopping Anytime R28S1" signs at the subject area. In 1995, there were seven new signs with "No Parking" symbols. In 1995 the City also installed 7 new "Fire Lane Tow-away"³ signs⁴ and numerous parking barriers in the form of boulders placed every 2 to 3 feet.

The Commission disagrees with Mr. Clement's definition of a "R37" parking sign. According to the County sign inventory log, "R37" means "Time Limited Parking," not "No Parking at Any Time." The County sign inventory log defines an "R28" parking sign to be a sign prohibiting parking at all times.

According to CALTRANS 1990 Uniform Sign Chart, Regulatory Signs, contained within its traffic manual, an R37 sign indicates no parking within set time parameters (Exhibit #7). The CALTRANS Sign Chart identifies the R28 series to be "No Parking/Stopping at Any Time." The Commission cannot find a factual basis for Mr. Clement's definition of legend lettering for R37 signs.

³ The "Fire Lane Tow-away" sign is not a conventional sign as per the 1990 Uniform Sign Chart of the Department of Transportation. Additionally, by the placement of these signs within the 18-ft. shoulder of Cliffside the City has incorrectly regulated the public's right-of-way.

⁴ Commission staff disagrees with Mr. Clement's definition of a "R37" parking sign, which is "a sign designated as code R37 may indicate specific time periods during which parking and stopping are prohibited, or it may instead prohibit parking and stopping any time".

According to the County sign inventory log, "R37" means "Time Limited Parking," not "No Parking at Any Time." The County sign inventory defines an "R28" parking sign to be a sign prohibiting parking at all times. According to CALTRANS 1990 Uniform Sign Chart, an R37 sign indicates "Tow-away with set times" (Exhibit #7). The CALTRANS Sign Chart identifies the R28 series to be "No Parking/Stopping at Any Time, rather than as Mr. Clement has declared. According to Appendix 2 of the City's Statement of Defense (Sections 4-0.7 and 4-0.8 of the CALTRANS Traffic Manual) an R28 is indicated as "No Parking Anytime" and an R37 is indicated as "No Parking / Stopping Tow-away with certain hours" sign. Since none of the sign charts cited depict Mr. Clement's meaning for a "R37 sign, the Commission cannot find a factual basis for Mr. Clement's definition.

Regardless of these distinctions, the Commission has demonstrated in earlier sections of this report that the County performed new development without a CDP or Vested Rights Claim, in 1982, when it finally effectuated the orders adopted by the County Board of Supervisors. Thus, the Executive Director appropriately issued the NOI to the City. The issue now before the Commission is whether or not a basis exists, pursuant to section 30810 of the Act, for the issuance of a Commission Cease and Desist Order.

4. The City is Not Responsible for actions undertaken by its Predecessor

City Contentions

The City states that contrary to Commission staff allegations, the City is **not** responsible "for correcting the unpermitted actions of its predecessor." First, the City contends California courts have held that a landowner does not violate the Act by failing to obtain a coastal development permit authorizing "development" undertaken by a previous owner. The City cites one depublished Court of Appeal decision, *California Coastal Comm'n v. Adams*, to back its statement concerning California law (Statement of Defense, pg. 3, line 24). The City therefore contends it cannot be held responsible for failing to obtain a permit for any alleged "development" undertaken by the County.

The City further explains its contentions by stating that it did not participate in any decision by the County to implement additional parking restrictions within the subject area. The City cites the same depublished Court of Appeal decision as authority for its position that the Commission may not hold a successor in interest liable for resolving a violation of the Coastal Act committed by a prior landowner.

Commission Response

Under applicable rules governing judicial precedent, the City of Malibu's citation to the *Adams* case is improper.

Court Rule No. 977(a), Citation of unpublished opinions prohibited;

(a) [Unpublished opinions] An opinion that is not ordered published shall not be cited or relied upon by a court or a party in any other action or proceeding

The Commission finds that the published and therefore precedential case that pertains to the subject violation is *Leslie Salt Co. v. San Francisco Bay Conservation and Development Commission* (1984) 153 Cal.App.3d 605, 618, where the Court held that a landowner cannot avoid liability under the Act based upon a claim that he did not perform the unauthorized activity on his property.

In *Leslie Salt* the Court held that under similar legislation⁵ the McAteer-Petris Act (Gov. Code, section 66000, et seq.) allows the San Francisco Bay Conservation and Development

⁵The language of Government Code section 66632(a) of the McAteer-Petris Act at issue in *Leslie Salt* is, in essence, identical to that of section 30600 of the Coastal Act.

Commission (BCDC) to hold a landowner strictly liable for unauthorized bay fill placed upon his property by unknown third persons.

In addition, Civil Code § 3483 provides that "Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it." In the case of *CREED v. Cal. Coastal Zone Conservation Comm'n* (1974) 43 Cal.App.3d 306, 318-319, the Court of Appeal held that "Contemporary environmental legislation [such as the Coastal Zone Conservation Act, predecessor legislation to the California Coastal Act] represents an exercise by government of the traditional power to regulate activities in the nature of nuisances...[and] constitutes but 'a sensitizing of and refinement of nuisance law.' [Citation omitted.]" Accordingly, development, such as that at issue in the present proceeding, which is performed in violation of the permit requirements of the Coastal Act, may legitimately be considered to be a "continuing nuisance" for purposes of section 3483.

Therefore the Commission rejects the City's contention that, as a matter of law, it cannot be held responsible for the actions of its predecessor, Los Angeles County.

5. The Commission is barred from taking Enforcement Action against the City by the Statute of Limitations, and by the Doctrines of Laches, Waiver, and Estoppel

(a) Statute of Limitations

City Contentions

The City contends that the County has not placed any parking restrictive signs within the subject area since October, 1983, as evidenced by the County's sign inventory log. Because the signs themselves and the inventories have been available to the Commission for at least 14 years, the Commission either knew or should have known about the County's sign placement. In these circumstances, the time has long passed for any enforcement action against the City, based on conduct which the county allegedly engaged in nearly fourteen years ago.

The City further contends that the statute of limitations expired long ago on any enforcement action against the City for civil penalties pursuant to section 30805.5 of the Act.

Commission Response

The Commission's primary enforcement interest in the subject area has always been to subject the parking restrictions along Cliffside Drive to the permit requirements of the Coastal Act as opposed to the collection of civil penalties. The NOI sent by Commission staff is silent on the issue of civil penalties; it alleges that "development" has been performed and that the development is unpermitted and is thus a violation unless and until the Commission issues a permit for said activity. The Commission will not seek court action for the collection of civil penalties for the occurrence of the underlying violation.

The applicable statutes of limitation for initiating litigation to enforce the provisions of the Coastal Act depend on the type of remedy sought. The City is correct in its statement that

section 30805.5 of the Act requires that actions to recover civil fines or penalties under Chapter 9 of the Coastal Act be commenced not later than three years from the date on which the cause of action for the recovery is known or should have been known.

However, the City is incorrect in its statement that section 30805.5 of the Act bars the Commission from taking an enforcement action for the purpose of rectifying a violation of the Coastal Act. Section 30805.5 pertains solely to litigation initiated by the Commission pursuant to sections 30805 or 30822 of the Act to collect civil penalties for violations of the Coastal Act. The Commission is considering whether or not to issue a cease and desist order pursuant to section 30810, not to seek civil fines but to halt the ongoing nature of this violation initiated by the County and continued by the City, and to require that a permit be obtained.

The statute of limitations for monetary penalties or injunctive relief commences to run from the date the violation occurred. However, it does not run in the case of a continuing nuisance (Civ. Code, section 3490; *Phillips v. City of Pasadena* (1945) 27 Cal.2d 104, 107; *Tucker v. Watkins* (1967) 251 Cal.App.2d 327, 333.) A continuing nuisance is a "use which may be discontinued at any time." (*Baker v. Burbank-Glendale-Pasadena Airport Authority* (1985) 39 Cal.3d 862, 869-870.) It is distinguished from a permanent nuisance where "by one act a permanent injury is done, [and] damages are assessed once and for all." (*Baker*, at 868.) The parking restrictions involved in this matter are continuously causing an adverse impact on coastal resources protected by the resource policies of Chapter 3 of the Coastal Act. The courts have similarly held that a limitations period does not accrue while a statutory or ordinance violation continues. (*City of Fontana v. Atkinson* (1963) 212 Cal.App.2d 499, 509.) Since, as indicated⁶, an action to restrain a violation of the Coastal Act is akin to a suit to abate a continuing nuisance, the fact of the continuing violation delays running of the applicable statute of limitations.

The Commission therefore finds that its action to issue a cease and desist order to the City of Malibu to halt the ongoing nature of unpermitted development activity which has continuously occurred since 1983 is not barred by any statute of limitations.

(b) The Commission's action is barred by the Doctrine of Laches

City Contentions

Any claim against the City for equitable relief based on the County's sign placement is barred by the doctrine of laches. In an appropriate case, the doctrine of laches will bar equitable relief in quasi-judicative proceedings brought by administrative agencies. The defense of laches requires unreasonable delay plus either the acquiescence in the act about which the plaintiff complains or prejudice to the defendant resulting from the delay. The City maintains all the elements of laches exist in the subject violation situation.

First, the Commission's delay in enforcing the Act's CDP requirements with respect to County sign placement has been unreasonable. Plainly a delay of nearly fourteen years qualifies as an unreasonable delay, particularly given the Commission staff's complete failure to provide any explanation to the City for its inaction to this point.

⁶ See discussion of *CREED v. CCZCC*, supra p.23.

Second, the Commission has clearly acquiesced in any sign placement action taken by the County in the early 1980's. While the Commission either has known or should have known about the County's parking restriction/sign placement for well over a decade, the Commission has done nothing (until now) about those actions.

Finally, the prejudice to the City resulting from the delay is severe. The doctrine of laches is "designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence have been lost, memories have faded, and witnesses have disappeared." *Id.* at 1161 (*quoting Wood v. Elling Corp.*, 20 Cal.3d 353, 362, 142 Cal.Rptr. 696 (1977)). Here the City would be severely prejudiced by having to unearth evidence concerning the County's sign placement which, some fourteen years later, may no longer exist.

Commission Response

First, although it is true that a substantial period of time has elapsed since the County's effectuation in 1982 of its parking restrictions it does not appear that any delay in enforcement action has caused a severe prejudice to the City. In this case, evidence has not been lost, memories have not faded, and witnesses have not disappeared. Both the City's and County's sign inventory logs are still in existence, indicating specific dates signs were installed, specific locations for sign installation and even specific wording for a particular sign code. Further, the Commission staff investigating this matter obtained orders adopted by the County Board of Supervisors imposing parking restrictions more than 30 years ago. Finally, the City undermines its own laches argument by easily producing eleven residents who have signed declarations asserting that as far back as 1950, some forty-seven years, the wording of parking restrictive signs has never been time limited parking as opposed to no parking at any time.

Furthermore the doctrine of laches does not apply against the Commission when to do so would defeat a policy adopted for the benefit of the public (*In re Marriage of Mena*, 212 Cal App. 3rd 12, opinion modified). Where there is no showing of manifest injustice to a party asserting laches, and when the application of the doctrine would nullify policy adopted for public protection, laches may not be raised against a governmental agency (*Morrison v. California Horse Racing Bd.*, 205 Cal.App.3rd 211, review denied). Finally, the doctrine of laches is rarely involved against a public entity to defeat policies adopted for the protection of the public. (*In re Marriage of Lugo*, 170 Cal.App.3rd 427). The Chapter 3 resource policies of the Act previously cited in this report constitute policies adopted for the benefit of the public. The Coastal Act creates a permit program to protect the availability of coastal resources (in this instance public access to and along the coast and public recreational opportunities) for the general public today and in the future.

The Commission finds the City has not made a showing of manifest injustice occurring in this particular situation. Further, the City does not appear to be harmed in making a defensive statement in light of the document and attachments submitted.

- (c) **The Commission's Enforcement Action is Barred by the Doctrines of Waiver and Estoppel**

City contentions

The doctrines of equitable estoppel and waiver arise when a party has, by his own inaction or relinquishment of a known right, led another to act in reliance on that inaction or relinquishment. Such doctrines may be applied in a quasi adjudicative proceeding brought by an administrative agency (*See, e.g., Lentz v. McMahon*, (1989)49 Cal.3d 393.

The Commission relinquished any claim it may once have had against the County for placing signs restricting parking within the subject area and thus has led City staff to reasonably conclude that such signs may be replaced without obtaining a coastal development permit. In such circumstances, the doctrines of waiver and estoppel preclude the Commission from bringing an enforcement action against the City for its sign replacement and boulder installation.

Commission Response

Just as in the case of laches, the doctrine of estoppel will be applied against the government only where justice and right require it, and it will not be applied if to do so would result in effectively nullifying a strong rule of policy adopted for the benefit of the public. (*County of San Diego v. Cal. Water etc. Co.* (1947) 30 Cal.2d 817, 829-830; Accord: *Lentz v. McMahon*, *supra*, 49 Cal.3d at 399.)

In addition, in the *Lentz* case, on which the City principally relies in making its estoppel argument, the Supreme Court held merely that "estoppel...may be appropriate when...a government agent has...caused a claimant to fail to comply with a *procedural* precondition to eligibility...." (39 Cal.3d at 401-402; emphasis in original.) The court indicated that it might not be as willing to find an estoppel where the preconditions to eligibility for a governmental benefit with which an applicant has failed to comply are *substantive* in character. (*Id.*) The requirement under section 30600 of the Coastal Act to obtain a coastal development permit before engaging in any development activity in the coastal zone is the process mandated by the legislature by which a determination is made as to the conformity of such development with the Coastal Act's *substantive* standards. Compliance with this requirement must thus be viewed as falling outside of the scope of the Supreme Court's decision in *Lentz*.

IV. CONCLUSION

The Commission concludes that all relevant investigative facts available as of the date of this report, and the statement of defense submitted by the City of Malibu have been fully considered in this report. Unpermitted development has been performed, since 1982, intensified in 1995, and continues to this day along the dirt shoulder of Cliffside Drive, adjacent to the publicly owned Point Dume State Preserve.

The City has refused to voluntarily file for a coastal development permit after receiving several written and oral requests to do so by the Commission. It is therefore necessary, in order to cure this violation, to issue a Cease and Desist Order to the City so that the Chapter 3 resource impacts caused by this violation can either be evaluated, mitigated and permitted in a Commission permit proceeding, or eliminated.

Those impacts include the removal of available upland area, the dirt shoulder, as an area for parking support for Point Dume State Preserve visitors. Point Dume State Preserve acquired with public funds, is a public park and should be available to the public to the maximum extent feasible in accordance with Chapter 3 public access and recreation policies of the Act.

The City is unwilling to accept the Commission's finding that unpermitted development has occurred and refuses to remove the unpermitted parking restrictions. The City's decision has forced the issuance of this Cease and Desist Order so that regulatory compliance with the Act can be achieved.

The Commission notes the issued Cease and Desist Order does not preclude the possibility of a CDP being issued for the subject unpermitted activities. The purpose of the issuance of the Cease and Desist Order is to achieve compliance with CDP permit requirements that all persons performing development in the Coastal Zone, whether they be municipalities or individuals.

The Commission rejects all of the City's arguments as to why a CDP is not necessary. First, the City performed development, not repair and maintenance activities at the subject area. There was no pre-existing development in place that was repaired or maintained by the City's undertaking in 1995. The City's erection of 24 signs with new, more prohibitive parking wording is not exempt as repair. Further, the Commission finds no basis to conclude that the unpermitted installation of boulders constitutes "landscaping".

Similarly, the Commission rejects the City's argument that its predecessor performed repair and maintenance activities and that the unpermitted development at the same subject area was installed prior to January 1, 1977 of the Act. While the County may have adopted resolutions, before the effective date of the Coastal Act, that called for the effectuation of parking restrictions, the County's August 17, 1982 resolution superseded the previous resolutions. Additionally the County effectuated these restrictions for the first time, in the subject area, in 1982, as has been thoroughly demonstrated in the preceding sections.

The Commission's enforcement action is not barred by the applicable statute of limitations, or by the doctrine of laches, waiver and estoppel. The City has not been prejudiced by when Commission staff first began its investigation of unpermitted activity at Point Dume. The City was easily able to present eleven declarations from local Point Dume residents. Similarly, the Commission's own research has produced 30-year old records. Finally, any factual and policy basis which may exist for the City's increase of the parking restrictions at this site in 1995, or continuing today, remain fully available for the City to present to the Commission at an appropriate permit proceeding, as the Coastal Act contemplates.

The Commission notes the primary purpose of this investigation has been to resolve an unpermitted activity taking place in the coastal zone. All the City must do to rectify its current situation is to file a CDP within the timeframe set forth in the Cease and Desist Order. The Commission is not prejudging any application that the City may wish to consider filing to respond to the Cease and Desist Order. It will determine the unpermitted development activity's consistency with the Act at the permit application hearing. After the City's application is accepted and scheduled for hearing, the hearing will become the forum in which the City can

explain to the Commission their reasons for prohibiting public parking adjacent to a public park acquired with public funds.

The Commission's concern for the public's right to access Point Dume is long documented and has been voiced continuously since the passage of the Coastal Act. The Commission asked and received a prescriptive rights study that demonstrated conclusively that the public had visited the Point Dume headland for over fifty years. The Commission has helped craft the multi-area, multi-use Point Dume State Park with other state and local agencies and therefore must ensure that the public can still reach land they have always visited and paid to acquire.

Despite the City's submittal and argument, the Commission finds the issuance of a Cease and Desist Order to be necessary to resolve this Coastal Act violation and refusal by the City to submit voluntarily to the Commission's permitting process.

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 The City of Malibu, all its agents and any persons acting in concert with any of the foregoing to cease and desist from : 1) engaging in any further development activity at the property without first obtaining a coastal development permit which authorizes such activity; and 2) continuing to maintain any development on the PROPERTY that violates the California Coastal Act. Accordingly, all persons subject to this order shall fully comply with the following:

- A. Refrain from engaging in any development activity at the PROPERTY without first obtaining a coastal development permit which authorizes such activity.
- B. (1) Within 60 days of the date of this order, submit to the Commission for its review and approval a complete coastal development permit application for either: (a) removal of all parking restrictions, signs and boulders, and restoration of the PROPERTY to its pre-violation state; or (b) the after-the-fact authorization of the DEVELOPMENT.

(2) Within 60 days of the date of Commission denial, in whole or in part, of an application for after-the-fact authorization of the DEVELOPMENT, submit a complete coastal development permit application for the removal and restoration of that portion of the DEVELOPMENT which remains unpermitted.
- C. Fully comply with the terms, conditions and deadlines of any coastal development permit for the restoration and/or development of the PROPERTY as the Commission may impose.

Identification of the Property

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

18-ft wide shoulder along the south side of Cliffside Drive between Birdview Avenue and Dume Drive, approximately 1000 feet in length, Malibu, Los Angeles County.

Description of Unpermitted Development

1) The effectuation in 1982 of parking restrictions causing a change in intensity of use of land; 2) the intensification of the restrictions in 1995; and 3) the addition of new restrictions in 1995. These actions were accomplished by the erection of regulatory signs and installation of boulders in the subject area without a coastal development permit.

Term of the Order

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

Findings

This order is issued on the basis of the findings adopted by the Commission on August 13, 1997, as set forth in the attached document entitled "Adopted findings for Cease and Desist Order No. CCC-97-CD-01".

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 or in the above required coastal development permit(s) as approved by the Commission 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. Deadline s 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 at least 10 days 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 the property.
2. Traffic Sign Inventory of the Los Angeles County Public Works Department and City of Malibu.
3. Parking prohibition Orders adopted by the County Board of Supervisors in 1966, 1972 and 1974.
4. Notice of Intent to commence Cease and Desist Order proceedings dated May 9, 1997.
5. City's Statement of Defense.
6. Illustration of sign location
7. Memorandum dated December 27, 1977 (sic), from Clement to Embre, TSG.
8. Parking/stopping prohibition Orders adopted by the County Board of Supervisors in 1982.

EXHIBIT THREE

**Settlement Agreement between City of Malibu and Coastal Commission
(effective March 15, 2000)**

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of _____, 2000 by and among the City of Malibu ("City"), a municipal corporation, and the California Coastal Commission ("Commission"), an agency of the State of California, referred to collectively in the Agreement as the "parties."

RECITALS

A. The City is in the coastal zone established by the California Coastal Act of 1976 (the "Act"). As defined in the Act, "development" in the coastal zone requires the issuance of a coastal development permit by the Commission, unless the development is subject to one of the exemptions provided in the Act or the Commission's regulations.

B. In August 1995 the Commission staff received information indicating that the City had placed signs restricting parking and boulders in the 18-foot wide shoulder along the south side of Cliffside Drive between Birdview Avenue and Dume Drive, in the City, adjacent to Point Dume Natural Preserve ("Preserve"). The Commission staff visited the site, determined that signs and boulders had been placed in this area, and thereafter opened violation file V-4-97-002.

C. The Commission staff recommended that the City should obtain approval for either an after-the-fact permit for this development or for a permit regulating the removal of the boulders and signs, and providing for restoration of the property. The City, however, maintained that no permit should be required for several reasons, including the contention that signs restricting parking had existed on the property since before the City had incorporated, and indeed had been installed in the area adjacent to Point Dume at least 14 years earlier by the County of Los Angeles.

D. In May 1997 the Commission staff sent a Notice of Intent to commence Cease and Desist Order proceedings and a Statement of Defense form to the City. In June 1997 the City submitted a Statement of Defense, to which the Commission staff responded in a report dated July 31, 1997, and an addendum dated August 8, 1997.

E. After a public hearing held on August 13, 1997, the Commission voted to issue Cease and Desist Order No. CCC-97-CD-01 ("Cease and Desist Order" or "Order") and adopted the findings prepared by the staff in support of this order. The Cease and Desist Order was issued to the City on August 15, 1997.

F. Among other things, the Cease and Desist Order directed the City to refrain from engaging in any development on the property without first obtaining a coastal permit. The Order also required the City to submit a coastal permit application within 60 days after the date of the order for either (1) removal of all parking restrictions, signs and boulders, and restoration of the property to its pre-violation state; or (2) after-the-fact authorization of the development. The Cease and Desist Order provided that the time for compliance with the Order could be extended by the Executive Director for good cause.

G. On October 10, 1997, the City filed a petition for a writ of mandate challenging the issuance of the Cease and Desist Order (the "Litigation").

H. The City and Commission entered into a stipulation which was approved by the Court on October 20, 1997, staying the Cease and Desist Order from October 14, 1997 to November 13, 1997. By a second stipulation which was approved by the Court on November 21, 1997, the stay of the Cease and Desist order was extended from November 14, 1997 to January 13, 1998. Finally a third stay of the Cease and Desist Order was approved by the Court on January 22, 1998, extending the stay of the Cease and Desist Order from January 14 to March 16, 1998.

I. During the period of the Court-approved stays the City and the Commission undertook efforts to settle their dispute through mediation. They retained the services of a professional mediator, who met separately and jointly with representatives of the City and Commission in December 1997 and January 1998.

J. In addition to the parking restrictions within the area covered by the Order, the City enforces parking restrictions on additional public streets in the Point Dume area, including all or portions of Sea Lion Place, Dume Drive, Grasswood Avenue and Fernhill

Drive ("Additional Parking Restrictions"). During the course of the mediation it was determined that the City has erected signs enforcing the parking restrictions on the aforementioned streets. The City and Commission disagree as to whether a coastal development permit is required for the erection of these signs.

K. As a result of the mediation, the City and Commission reached a tentative settlement of the issues covered by the Cease and Desist Order. On March 16, 1998, the Executive Director of the Commission stayed the time for compliance with the Cease and Desist Order in order to provide time for the preparation of a final settlement agreement. This stay may be rescinded by the Executive Director at any time, upon 30 days written notice to the City.

L. The City subsequently asked for modifications to the tentative settlement and also entered into discussions with the California Department of Parks and Recreation ("State Parks") concerning certain public access improvements on and in the vicinity of the Preserve. These discussions culminated in an agreement under which the City and State Parks will cooperate in the planning, design, permitting and construction of public access improvements. State Parks also has proposed to prepare and implement a management plan for the Preserve. The Commission has been apprised of these developments, participated in discussions with the City and State Parks, and shares the City's intention to resolve the issues giving rise to the Cease and Desist Order through a settlement agreement providing for public access improvements at Point Dume.

M. The City and the Commission are both government entities and therefore their actions are subject to state laws requiring them to hold public hearings when taking certain actions and regulating the manner in which they exercise their authority under the police power.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement the City and Commission agree that:

I. AGREEMENT TO UNDERTAKE ACCESS IMPROVEMENTS. The City agrees to undertake activities to improve access to the Preserve as set forth in this Agreement ("the Improvements"). The Improvements are described and a timeline for their implementation are contained in a Joint Project Agreement between State Parks and the City (City/Parks Agreement), a copy of which is set forth at Exhibit A to this Agreement and incorporated herein. The Improvements include physical improvements to both sides of Cliffside Drive in the vicinity of the Preserve (including a total of ten parking spaces as described below), implementation of a shuttle bus between Westward Beach and the Preserve, and improved signage. Although the City and State Parks will be separately responsible for implementation of certain of these Improvements, the planning, design, permitting, and construction of the Improvements will be undertaken in a coordinated manner as described in the City/Parks Agreement. Implementation of the Improvements shall be carried out in accordance with and subject to the following:

A. Preserve Improvements. Subject to compliance with regulatory requirements, including the provisions of the California Environmental Quality Act ("CEQA"), the City will issue an encroachment permit to State Parks to allow construction of the Improvements on the Preserve side of Cliffside Drive as set forth in the City/Parks Agreement, including removal of boulders; construction of a loading zone, walking path, fence, and curbing at the edge of pavement; construction, if determined to be appropriate as set forth in the City/Parks Agreement, of two accessible parking spaces; placement of parking enforcement signs in accordance with Section I.D of this Agreement; restoration of native vegetation; and installation of Preserve entry and interpretive signs; and

B. Inland Side of Cliffside Drive Improvements. Subject to compliance with regulatory requirements, including the provisions of the CEQA, the City will install eight standard, parallel parking spaces in the public right of way at 29317 Cliffside Drive. Two of the eight parking spaces will be designated for accessible use if so determined as set forth in the City/Parks Agreement, in which case two additional

public parking spaces will be provided in close proximity to the Preserve in a location agreed to by the City and Commission. The City will also install parking enforcement signs at this location in accordance with the provisions of Section I.D of this Agreement.

C. Shuttle Bus Service.

1. Subject to compliance with regulatory requirements, including the provisions of CEQA, the City will initiate and operate a shuttle bus service between the Westward Beach parking lot and the Preserve. The shuttle will be available without restriction, except for reasons of health or safety, to provide transportation to the Preserve for members of the general public who park at Westward Beach. The shuttle program will operate seven days a week during the summer season (e.g., from Memorial Day to Labor Day) and on weekends and holidays during the rest of the year. The City with the concurrence of the Commission will adopt and adjust as necessary a schedule of service, including hours of daily operation, in order to appropriately serve visitors to the Preserve as set forth in the City/Parks Agreement. The City will install appropriate signage to inform the public of the availability of the shuttle.
2. Promptly following certification by the City of the environmental document prepared pursuant to CEQA assessing the environmental impacts of the Improvements and issuance of a coastal development permit authorizing the shuttle service, if required, the City will solicit proposals from qualified entities and, upon consideration of the responses, select an entity to provide the shuttle bus service. The City anticipates that the cost of providing the shuttle bus service contemplated by this Agreement will not exceed approximately \$50,000.00 per year. The shuttle bus service shall commence promptly following the selection of the provider or at such other time

as the City and Commission shall determine in consultation with State Parks.

3. Representatives of the City and Commission shall meet on a quarterly basis following commencement of the shuttle service, or more frequently if requested by one of the parties, to assess the effectiveness of the shuttle service in providing access to the Preserve and to determine whether adjustments to scheduling, signage, or marketing would be appropriate to better meet demand. The parties shall request that a representative of State Parks participate in these meetings. In the event that one or more of the participating agencies believes that the shuttle has not proved cost effective, the participating agencies may investigate whether other means of access are or could be made available to meet the identified demand. The participating agencies shall consult regarding the implementation of such other identified means of access.
4. If the City terminates the shuttle service (a) prior to LCP certification or such longer period as the parties may determine pursuant to Section III.E of this Agreement and (b) without obtaining the agreement to such termination pursuant to Section C.3 above, the City shall promptly thereafter process an application for a coastal development permit to construct an additional 22 parking spaces within close proximity to the Preserve and, promptly following receipt of such permit, undertake the steps necessary to install the additional parking spaces.

D. Implementation of Parking Restrictions.

1. Except for the provision of the passenger loading zone and possible installation of accessible parking spaces on the Preserve side of

Cliffside Drive as set forth in the City/Parks Agreement, the City's current parking regulations on the Preserve side of Cliffside Drive will remain in place. The City may install parking enforcement signs limiting use of the passenger loading zones and accessible parking spaces for the specified purposes. The City may replace existing no parking/ towing signs following installation of the Improvements on the remaining portion of the Preserve side of Cliffside Drive.

2. Except for the parking spaces to be installed at 29317 Cliffside Drive as set forth in the City/Parks Agreement, the City's current parking regulations on the inland side of Cliffside Drive will remain in place. The City may time-limit use of the parking spaces to be installed at 29317 Cliffside Drive for no less than two, but not more than four, hour limits per vehicle. The City may prohibit parking in these parking spaces between sunset and sunrise daily.
3. The City will not impose any public parking restrictions within the area of the Additional Parking Restrictions beyond those in effect as of the effective date of this Agreement except as specifically authorized by this Agreement. The foregoing prohibition shall remain in effect until the certification by the Commission of the Local Coastal Plan (LCP) for the City.

II. IMPLEMENTATION OF IMPROVEMENTS.

A. **Timeline for Improvements.** The parties acknowledge that the timeline for the implementation of the Improvements set forth in the City/Parks Agreement is tentative and subject to refinement as the planning, design, and permitting for the Improvements proceed. Notwithstanding the foregoing, the City acknowledges that December 2000 is a firm deadline for the commencement of construction of the Improvements, which shall include removal of the existing boulders on the Preserve side of Cliffside Drive during the first phase of construction. The foregoing deadline may be extended by the Executive

Director of the Commission upon a determination that the City has exercised good faith diligence in seeking to implement the Improvements and that delay in commencement of construction is due to circumstances beyond the City's control.

B. Coastal Development Permit.

1. In cooperation with State Parks, the City shall apply for and diligently pursue a coastal development permit for the Improvements specified in Section I, above, and as described in the City/Parks Agreement. Subject to compliance with regulatory requirements, the Commission shall diligently and promptly process the application for action by the Commission. The parties acknowledge that the City's obligation to implement the Improvements in cooperation with State Parks is subject to issuance by the Commission of a coastal development permit authorizing the construction and/or placement of the Improvements. Provided that the Commission staff determines that the application for a coastal development permit is complete and otherwise conforms to the requirements of this Agreement, the staff will promptly process the application for consideration by the Commission. Failure by the Commission to act affirmatively on the application at its first meeting held more than 40 days following submission of a complete application for reasons other than the failure of the application to conform to the provision of this Agreement shall extend the deadline for commencing construction of the Improvements as set forth in subsection II.A, above, from the date of such meeting until the date the Commission approves the application.
2. Following issuance of a coastal development permit for the Improvements, the City in cooperation with State Parks will diligently proceed with bidding and construction of the

Improvements as set forth in the City/State Parks Agreement.

C. Funding for Construction. The Commission agrees that it will provide funds to the City for the construction of the portion of the Improvements identified as City elements in Attachment 3 to the City/State Parks Agreement ("authorized expenses"). Notwithstanding the foregoing, the Commission shall have no responsibility to provide funding for the planning or operation of the shuttle service. The Commission will reimburse the City within 60 days following submission of invoices for authorized expenses incurred by the City to a maximum of \$40,000.00. To the extent that authorized expenses reasonably incurred by the City exceed \$40,000.00, the Commission will undertake good faith efforts to allocate or secure additional funds to reimburse City for such additional authorized expenses, provided that the total expended by the Commission in no event shall exceed \$100,000.00.

D. Commission Cooperation. The Commission agrees the Commission staff will cooperate by reviewing and commenting on the scoping, design and implementation of the Management Plan, Point Dume Preserve Access Study, and Site Improvements to be carried out by the City and/or State Parks pursuant to the City/State Parks Agreement. The Commission further agrees to consider the data, contents and conclusions contained in and derived from the Management Plan and Point Dume Preserve Access Study in the course of the Commission's consideration of and action upon the proposed LCP for the City.

III. DISPOSITION OF PROCEEDINGS AND FUTURE ACTIONS.

A. Termination of the Cease and Desist Order. Upon the effectiveness of this Agreement the Commission shall schedule a hearing to be held no later than the April 2000 Commission meeting to consider modification or termination of the Cease and Desist Order pursuant to the procedures established in the Commission's regulations. It is understood by the parties that the Commission may modify the Cease and Desist Order to provide that the Order will terminate and have no further force and effect upon the

determination of the Executive Director of the Commission that the Improvements have been constructed in accordance with this Agreement and made available for public use, including commencement of the shuttle service. The City's obligation to approve and implement the Improvements in accordance with this Agreement is subject to prior action by the Commission terminating the Order or modifying the Order as set forth in the previous sentence.

B. Dismissal of the Litigation. The City shall dismiss with prejudice the petition for writ of mandate filed by the City in City of Malibu v. California Coastal Commission, Los Angeles Superior Court Case No. BS047627, upon receipt by the City of written confirmation from the Executive Director of the Commission that the Cease and Desist Order has been terminated and will have no further force and effect.

C. Settlement of all Claims. Upon (1) termination by the Commission of the Cease and Desist Order and (2) dismissal of the Litigation with prejudice by the City, each party shall release the other from all claims, demands, and causes of action, whether known or unknown, arising out of the Cease and Desist Order and the Litigation.

D. Resolution of Disputes. If one party believes that the other party has breached the terms of this Agreement or otherwise has failed to fulfill all of its obligations contained herein, it shall provide written notification to the other party of such alleged breach or failure. In such an event, the parties shall promptly meet in an effort to resolve and/or remedy the alleged breach or failure. The parties may reactivate proceedings under the Litigation and/or Cease and Desist Order only after undertaking all reasonable efforts to resolve and/or remedy the alleged breach or failure.

E. Additional Parking Restrictions and Local Coastal Plan.

1. This Agreement does not resolve the dispute between the parties concerning the legality of the Additional Parking Restrictions. The Commission agrees that it will not initiate or pursue any enforcement action with respect to the Additional Parking Restrictions so long as

the City (a) is in substantial compliance with the terms of this Agreement, and (b) continues to make progress toward submission and certification of an LCP for the City within a reasonable period of time. The parties agree that a reasonable period of time for certification of an LCP by the City is three years from the effective date of this Agreement; provided, however, that this time period will be extended if an LCP has not been certified but the City is making ongoing good faith efforts to complete and obtain certification of its LCP. The parties anticipate that the LCP will address the sufficiency of access to the Preserve, including the Improvements to be implemented pursuant to this Agreement.

2. In the event that the Commission believes that the City is not in substantial compliance with the terms of this Agreement, and before initiating any enforcement action with respect to the Additional Parking Restrictions, the Commission shall first utilize the process set forth in Section III.D. of this Agreement in an effort to resolve or otherwise cure the alleged noncompliance.
3. In the event that the Commission initiates an enforcement action with respect to the Additional Parking Restrictions under the circumstances authorized by this Section III.E, the City shall not assert that the time between the effective date of this Agreement and the date of commencing such enforcement action constitutes a bar or defense to the maintenance of such action.

IV. OTHER PROVISIONS.

A. Cooperation in the Defense of Challenge. In the event that a legal action is filed challenging approval or implementation of the Improvements, or any portion thereof, the parties desire to cooperate in the defense of the action. Accordingly:

1. In the event that both parties are named as defendants, respondents

and/or real parties in interest in such an action, each party shall participate in the defense of the action by providing legal counsel of its choosing and at its expense. The parties shall allocate between them responsibilities in the defense of the action based upon the nature of the claims and other relevant factors so as, so far as is practicable, to avoid duplication of effort.

2. In the event that the City but not the Commission is named as a defendant, respondent and/or real party in interest in such an action, the Commission agrees to assist the City in the defense of the action. Such assistance may include, but not be limited to, the filing of an amicus brief in support of the City explaining the significant public access purposes advanced by this Agreement and by the implementation of the Improvements, or such other assistance as the Commission determines is appropriate in consultation with the City.
3. The parties shall consult regarding any proposed settlement or other disposition of the action and, if both Commission and City are parties to the action, any such settlement or disposition is subject to approval of both parties.

B. Litigation Costs. The City and Commission shall bear their own costs and attorney fees relating to the Order and the Litigation.

C. Modification. No modification, amendment or alteration of the Agreement shall be valid unless it is in writing and signed by the parties.

D. Governmental Powers. Nothing in this Agreement shall limit or restrict the exercise of authorized statutory and/or police powers by the parties.

E. No Effect on Other Governmental Jurisdiction. This Agreement has no effect on the regulatory, environmental, administrative, or other jurisdiction of any federal state, local or other government entity.

F. Counterparts. This Agreement may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as an original instrument.

G. Agreement Binding on Successors and Assigns. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

H. Effective Date. This Agreement shall become effective upon full execution by the parties.

I. Construction of the Agreement. This Agreement has been prepared pursuant to the mutual direction of the parties and their respective counsel, and all rules with respect to the construction of agreements, instruments or documents against the drafter are expressly waived.

J. Headings. The title headings of the paragraphs of this agreement are inserted for convenience only and shall not be considered in construing this agreement.

K. Subsequent Agreement. In the event this Agreement ceases to have any force and effect, or if prior to complete implementation this Agreement is ever found by the final, nonappealable judgment of a court of competent jurisdiction to be invalid, the parties shall confer with the purpose of entering into a subsequent agreement that will implement to the maximum degree feasible the provisions of this Agreement. In the event that the parties do not reach a subsequent agreement within 60 days following such judgment, or such additional time as the parties may agree, the City may proceed with the litigation of the petition for writ of mandate filed by the City in City of Malibu v. California Coastal Commission, Los Angeles Superior Court Case No. BS047627, and the Commission may take such measures as are necessary to enforce Cease and Desist Order No. CCC-97-CD-01, provided, however, that the time period during which this Agreement was in effect shall not be considered in (1) computing penalties for violation of the Coastal Act; or (2) establishing a defense to any violation action brought by the

Commission, including, but not limited to a defense based on laches, estoppel or a statute of limitations. In any such litigation, the terms and recitals of this Agreement shall not to be used as admissions by either of the parties or any other person or entity.

L. Further Assurances. So long as authorized by other applicable laws, the parties will perform such acts and execute, acknowledge, and deliver all instruments, applications and notices that may be necessary to implement this Agreement.

M. Enforcement of the Agreement. This Agreement is made and entered into in the State of California and shall be governed by, interpreted, enforced, and construed in all respects in accordance with the laws of the State of California. This Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

N. Representation by Counsel. The parties represent and acknowledge that each of them has been represented by counsel with respect to this Agreement and all matters covered by or related to such Agreement. Each party has been fully advised with respect to all rights which are affected by the Agreement. Each party warrants and represents that they have read this Agreement and they have had the terms used in this Agreement and their consequences explained to them by their respective attorneys; and that they have not relied on any inducement, promise, or representation made by any party or any party's representative or attorney, or any other person, except for those expressly stated in this Agreement.

///

///

///

///

///

///

///

///

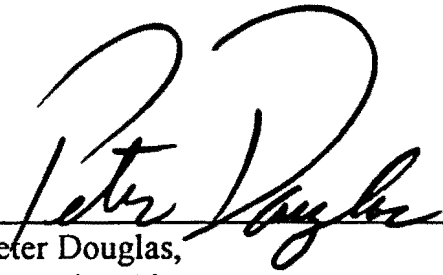
Dated: _____

Carolyn Van Horn
Mayor, City of Malibu

Attest:

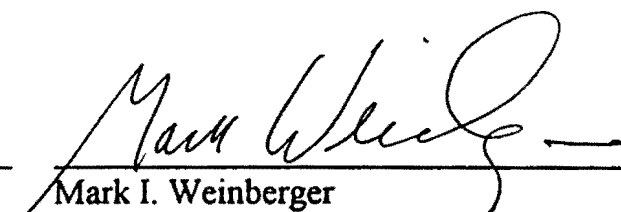
Virginia Bloom, City Clerk
(seal)

Dated: 3/8/00

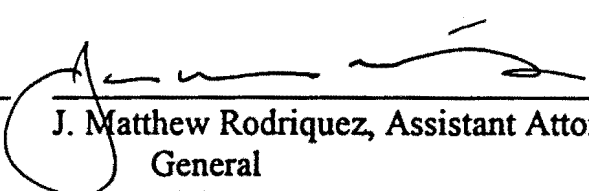

Peter Douglas,
Executive Director,
California Coastal Commission

Approved as to Form:

Dated: 2/28/00


Mark I. Weinberger
Shute, Mihaly & Weinberger LLP
Attorneys for City of Malibu

Dated: 3/9/00


J. Matthew Rodriquez, Assistant Attorney
General
Office of the Attorney General
Attorneys for California Coastal
Commission

FINAL

EXHIBIT A

Joint Project Agreement Between California Department of Parks and Recreation and City of Malibu

Point Dume Natural Preserve Management, Parking and Transportation Improvements

This Joint Project Agreement ("Agreement") is entered into as of _____, between the California Department of Parks and Recreation ("Department") and the City of Malibu ("City") relating to implementation of management, parking and transportation improvements for Point Dume Natural Preserve ("Preserve"), which is owned by the Department and is located in the City

RECITALS

- A. Both the Department and the City have vital interests in the protection and enhancement of the Preserve.
- B. The City and the California Coastal Commission are involved in litigation ("Litigation") concerning the legality of certain restrictions currently enforced by the City on vehicle parking on City streets in the vicinity of the Preserve.
- C. The Department proposes to prepare and implement a management plan for the Preserve. The City supports the Department's proposal.
- D. The Department and the City each propose to implement certain access improvements on and in the vicinity of the Preserve which will enhance public access to the Preserve (Site Improvements). The Department and City wish to cooperate in the, planning (including environmental review under the California Environmental Quality Act ["CEQA"]), design, permitting and construction of the Site Improvements.
- E. The Department and City anticipate that the City's agreement to implement the Site Improvements as set forth in this Agreement will become an element of the settlement of the Litigation.

///

///

///

///

AGREEMENT

1. Effective Date. This Agreement shall be dated as of the date upon which both parties have executed this Agreement. This Agreement shall become effective upon the effective date of a settlement agreement between the City and the Commission.
2. Preserve Staffing and Visitor Services. The Department will provide a staff person to support its management goals at Point Dume. It will immediately seek out a qualified individual to support the development of a volunteer docent program, and provide on site presence to insure public safety and protect the fragile resources of the Preserve. The Department will provide the funding for staff support as described in this paragraph.

In addition to the paid staff person provided for in this section, the Department will develop a volunteer docent program to provide interpretive support for visitors to the Preserve.

3. Management Plan. The Department will initiate preparation of a Management Plan for the Preserve that will provide the direction for restoration, renovation and enhancement of the Preserve. The plan will emphasize strategies to sustain and protect the diverse resources that make up the Preserve. The carrying capacity of the Preserve will be addressed as part of the implementation of the management plan. In preparing and implementing the Management Plan, public access will be provided in a manner consistent with the Department's goals for resource protection and preservation reflecting the designation of the area as a Preserve. A tentative outline and timeline for the Management Plan prepared by the Department is set forth at Attachment 1, which is incorporated into this Agreement. The Department shall consult with the City periodically during the scoping and preparation of the Management Plan.
4. Point Dume Preserve Access Study. Utilizing information developed during the preparation of the Management Plan, the City shall commission and pay for an independently conducted Point Dume Preserve Access Study ("Study") to assess overall Preserve transportation access, including parking needs. The scope of the Study will require consultant expertise in the fields of (1) traffic and parking and (2) user surveys for recreational and park users. A tentative scope for the Study is set forth at Attachment 2, which is incorporated into this Agreement by this reference. The firm(s) retained by the City to conduct the Study and the scope of work shall be agreed to by the Department. The City shall include the Department and the Commission in review of the Study methodology, results and conclusions and consider their input, comments and concerns in the Study outcomes. The Study will

identify all currently available public parking spaces providing access to the Preserve, identify other available means of access, and review available data concerning Preserve usage patterns. The Study will assess the adequacy of access to the Preserve through available means, including by foot, bus, bicycle and automobile, and including the Site Improvements specified in this Agreement.

The results of the Study will be submitted to the Commission and the Department as a tool (i) to assess the sufficiency of access to the Preserve by available means, including the sufficiency of parking in the vicinity, and (ii) to identify options for revising access consistent with the Preserve's carrying capacity.

While the City's request for certification of its Local Coastal Plan ("LCP") is pending with the Commission, the City agrees that, except for the Site Improvements, it will not alter "on street" parking on Point Dume for non-residents and that it will submit a current inventory of "on street" parking with its LCP submittal.

5. Site Improvements. The Department and the City will undertake the planning for (including compliance with CEQA), design, permitting and construction of certain improvements to access to the Preserve in the manner specified in this Agreement. The Department will prepare a concept plan for the Site Improvements. The elements of the Site Improvements, the responsibility for the costs of each element, and a projected timeline for implementation of the Site Improvements is set forth in Attachment 3, which is incorporated into this Agreement. The Site Improvements are also subject to the following:

- A. Improvements Adjacent to Preserve. Subject to completion of environmental review pursuant to CEQA, the City will provide an encroachment permit to the State to allow for the relocation of the existing fence line at the Preserve adjacent to Cliffside Drive. The fence will be placed in the City's right of way as an alternative to the existing boulders that presently occupy the shoulder of the road. The Department will pay all costs associated with the relocation of the fence, including removal of the existing chain link fence and construction of a more aesthetically pleasing fence. As provided for in Section 6 (C), the removal, relocation, and construction of the fence will be carried out as part of the City's contract for the Site Improvements. Once the contract is let and the contractor is prepared to install the fence, the City will move the existing boulders, but not later than December 2000 or such other date as may be established pursuant to the settlement agreement between the City and the Commission. The Department will revegetate the reclaimed road shoulder with native species to enhance the resources of the Preserve as needed. The new fence line will be laid out to allow for establishment of a passenger loading zone to be constructed by the City. The Department will provide a walking path between the edge of the pavement and the

fence to the entrance of the Preserve from the passenger loading zone. Curbing will be constructed at the edge of the pavement to deter illegal parking on the road shoulder adjoining the Preserve. Except for the provision of the passenger loading zone and accessible parking spaces as provided for elsewhere in this Agreement, the City's current parking regulations on the Preserve side of Cliffside Drive will remain in place and replacement signs will be installed by City as needed. The replacement of parking control signs, if or as needed, will be subject to concurrence by the Department, which shall not be unreasonably withheld so long as the appearance and placement of the parking control signs both (1) satisfy regulatory standards for enforcement signs and (2) minimize visual impacts upon the overall appearance of the new fence and entrance facilities to be planned and constructed at the Preserve.

- B. Accessible Parking Spaces. As part of the preparation of the concept plan for the Site Improvements, the Department will evaluate the appropriate location for two accessible parking spaces in compliance with the Americans with Disabilities Act of 1990 ("ADA") and related and/or comparable state law. In evaluating alternative locations for the two accessible parking spaces, the Department will consider ADA and accessibility guidelines, traffic safety, environmental impact (including any cut, fill, retaining structures, and impacts on views), and cost.

The Department will evaluate locating the two accessible parking spaces in the public right of way on the Preserve side of Cliffside Drive. If accessible parking is determined in the manner set forth in the next paragraph not to be appropriate on the Preserve side of Cliffside Drive, the accessible parking spaces shall be placed on the inland side of Cliffside Drive pursuant to Section 5 (C), below. In the event this location is selected, the City agrees to install all necessary traffic control and otherwise conform to all other requirements required by the ADA and state law and accessibility guidelines.

The Department, with the concurrence of the City, shall determine the proposed location for the two accessible parking spaces for inclusion in the concept plan and further processing in accordance with this Agreement. City will not unreasonably withhold its concurrence with Department's determination as to the plan for locating the accessible parking spaces so long as the Department's concept plan is safe, conforms with applicable accessibility law and guidelines, is environmentally acceptable, and is feasible from a construction viewpoint.

- C. Inland Side of Cliffside Drive. The City will develop standard, parallel parking spaces in the public right of way along the entire frontage of the property at 29317 Cliffside Drive consistent with the proposed driveway location in the current site plan for the property and with uses on the adjoining property. A previous analysis

by the City concluded that eight standard parking spaces can be accommodated at this location. If determined to be placed at this location pursuant to Section 5 (B), above, two of the eight parking spaces will be designated as accessible parking spaces only and will meet all applicable accessibility guidelines for such parking spaces, in which case two additional public parking spaces will be provided in close proximity to the Preserve, in a location agreed to by the City and the Commission.

- D. Shuttle Bus Service. The City will provide a shuttle bus service referred to as the "nature bus." This service will be used to provide transportation for members of the general public from the Westward Beach parking lot to the Preserve. The City will plan, schedule and operate the "nature bus" program to supplement the Department's visitor and interpretive program at the Preserve as contemplated by this Agreement. The "nature bus" service would be provided seven days per week during the summer months and on weekends and holidays the remainder of the year. The City with the concurrence of the Commission will adopt and adjust as necessary a schedule of service in order to appropriately serve visitors to the Preserve and, where appropriate, coordinate with scheduled interpretive programs at the Preserve. Appropriate and adequate signing and other public outreach regarding the service will be provided by the City. The City has estimated that the cost of providing the shuttle service would not exceed \$50,000 per year to meet expected demand. Operation of the "nature bus" is expected to commence in June 2000 or as soon thereafter as possible pending environmental clearance and any permit requirements from regulatory agencies.

6. Implementation of Site Improvements.

- A. CEQA Review. Because the Site Improvements constitute a joint project, by agreement of the City and the Department, the Department shall serve as the Lead Agency and the City shall serve as a Responsible Agency for purposes of compliance with CEQA. Consistent with the provisions of law applicable to the duties of the Lead Agency, (i) the Department and the City will cooperate in the analysis and documentation of the environmental impacts associated with the proposed Site Improvements, (ii) the Department will provide staff and funding for assessment of environmental impacts on the Preserve associated with the Site Improvements, and (iii) the City will provide staff and funding, including any private consultants (for transportation analysis or otherwise) for assessment of environmental impacts off-site from the Preserve, including the inland side of Cliffside Drive and impacts related to the operation of the nature bus shuttle service, associated with the Site Improvements.

- B. Permitting Process. The Department and the City will coordinate to the maximum degree feasible the public review of concept plans and analysis and permitting of the Site Improvements. The parties will jointly sponsor a public meeting to review the concept plans and a public meeting during consideration of the environmental document and proposed Site Improvements.
- C. Bidding and Construction. Following receipt of necessary permits for the Site Improvements, the Department will prepare detailed specifications for the fence, pathways, revegetation, and entry sign and interpretive panels and the City will prepare specifications for all other Site Improvements to be carried out pursuant to this Agreement. The City will take lead responsibility for preparing bid materials (including, without limitation, working drawings and other construction contract documents), conducting the bidding process and, subject to concurrence by the Department, selection of contractors to undertake the physical improvements. Bids will be itemized for each element of the Site Improvements to allow the costs to be allocated between the City and the Department as specified in Attachment 2 to this Agreement. Department will reimburse City within 90 days following submittal of an invoice for all costs incurred which are the obligation of the Department, unless the Department notifies the City within 15 days following submittal of the invoice that the Department believes that the work has not been satisfactorily completed, in which case the Department will reimburse City within 90 days following the Department's acceptance of the work. Unpaid invoices after such 90 day period as is applicable shall accrue interest at the rate of one percent per month until paid by the Department. The City will provide supervision and inspection of construction with assistance from the Department as regards conformance with the specifications for the fence, pathways, revegetation, and entry sign and interpretive panels. City will require that indemnity and insurance requirements for any construction contracts contain provision for naming Department as an indemnitee or additional named insured at no added cost to the Department.

In no event shall Department's approval, concurrence, or inspections for conformance with conceptual plans relieve City from responsibility for accurate and complete working drawings and other construction documents and for proper supervision and completion of the work. City shall make the final determination as to the contents of working drawings, construction specifications and other construction documents, and shall carry out the construction functions in accordance with law pertaining to City in such activities. City agrees to protect, hold harmless, indemnify and defend Department from and against liability, losses or damages in connection with the construction and other activities carried out by the City under this Agreement. Conversely, the Department agrees to protect, hold harmless, indemnify and defend the City from and against liability, losses or

damages in connection with the activities carried out by the Department under this Agreement.

The City shall be responsible for the bid, selection, operation, and contract for the operator of the shuttle service.

7. Submission to Commission. If the Management Plan, Point Dume Preserve Access Study, or other relevant information developed pursuant to this Agreement are available during the processing of the City's LCP, the City and Department will cooperate to make the information available to the Commission for consideration during review of the LCP.
8. Cooperation in the Defense of Challenge. The City and the Department recognize that the Site Improvements constitute coordinated and interrelated activities in the form of a joint project, which will be carried out cooperatively by the agencies. In the event that a legal action is filed challenging compliance with CEQA, the implementation of the Site Improvements, or any portion thereof, the parties desire to cooperate in the defense of the action. Accordingly, in the event that both parties are named as defendants, respondents and/or real parties in interest in such an action, each party shall participate in the defense of the action by providing legal counsel of its choosing and at its expense. The parties shall allocate between them responsibilities in the defense of the action based upon the nature of the claims, the portions of the Site Improvements that have been challenged, and other relevant factors so as, so far as is practicable, to avoid duplication of effort. If only one of the parties is named as a respondent, defendant and/or real party in interest, and if the nature of the action affects the interests of the unnamed party, the unnamed party shall provide legal assistance in the defense of the action through provision of legal counsel to assist in defense of the action or through financial contribution, with the objective of equalizing, so far as is practicable, the expenditure of funds and effort between the parties. If the unnamed party determines that it is appropriate under the circumstances, it may seek to intervene or otherwise participate in the defense of the action, and the named party shall support the application for intervention. The parties shall consult regarding any proposed settlement or other disposition of the action and, if both Department and City are parties to the action, any such settlement or disposition is subject to approval of both parties.

Except for claims for which a party has indemnified the other party, each party shall bear its own costs of defense of any personal injury or contract claims. The parties shall cooperate in the defense of such action and shall allocate between them responsibilities in the defense of the action based upon the nature of the claims, the extent of potential liability for each party, and other relevant factors so as, so far as is practicable, to avoid duplication of effort. Each party with potential liability shall

approve any settlement or other disposition of the action. In the event that such claims are settled or otherwise determined to be payable by the parties, the claims shall be allocated in accordance with the negligence of the parties as determined by the court or, as regards contract claims, the share of the costs of or claims attributable to the Site Improvements borne by each of the parties according to this Agreement.

9. Mutual Commitment. It is understood that the City's commitments set forth in this proposal are contingent on the Department's continued fulfillment of all of its obligations contained herein. Likewise, the Department's commitments are contingent on the City's continued fulfillment of all its obligations contained herein. The failure by either party to continue to fulfill its obligations in any material way will relieve the other party of any obligations to continue to honor its commitments as set forth above.

If one party believes that the other party may fail or has failed to fulfill all of its obligations contained herein, it shall provide written notification to the other party of such failure. In such an event, the parties shall promptly meet in an effort to resolve the alleged failure such that both parties agree to continue to fulfill all of their obligations contained herein. In addition, both party's commitments set forth in this Agreement are contingent on agreement between the City and the Commission settling the Litigation.

10. This Agreement contains the complete agreement of the City and Department as regards the subject matter of this Agreement and there are no other agreements, oral or written except as are included within the terms of this Agreement. Any amendments or clarifications must be in writing executed by both parties.
11. Should any provision of this Agreement be found to be void or unenforceable, it shall be severable from the rest of the Agreement and the remaining terms shall be enforced as if the unenforceable term had not existed.
12. The Agreement shall be deemed to have been drafted by both parties, with each having equal say and status. In no event shall any term be interpreted more favorably as to one party or the other.
13. Each party warrants that it has the authority to execute this agreement, but with the condition that the Agreement is subject to the approval of the California Department of General Services before it is binding on Department.
14. The term of this Agreement shall be ten years from the effective date except upon earlier termination by mutual written agreement of the parties. In the event a party believes that the other party has failed to perform all of its obligations hereunder, and following compliance with the procedures in Section 9, above, the other party may, on

for such period of time as statutes of limitations have not expired on any possible pending claims. Further, if executory contracts exist for which a party is obligated to reimburse the other party, such reimbursement obligation shall survive termination to the extent of work or services performed up to the date of termination.

15. Time is of the essence in the performance of the activities contemplated by this Agreement.

16. Except as specified in this Agreement, nothing in this Agreement shall be construed as giving either the City or the Department to right or ability to bind the other or create any joint liability as regards the activities under the Agreement.

CITY OF MALIBU

Dated: _____

Carolyn Van Horn, Mayor

Attest:

Virginia Bloom, City Clerk
(seal)

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

Dated: _____

Rusty Areias, Director

Approved as to Form:

Dated: _____

Mark Weinberger
Shute, Mihaly & Weinberger LLP
Attorneys for City of Malibu

Dated: _____

Timothy S. LaFranchi
Chief Counsel
Attorney for California
Department of Parks and
Recreation

miw016J.DOC
FINAL

California State Parks
Point Dume State Beach
Management Plan, Outline & Process

Immediate Site Improvements (Subject to Coastal Commission and City agreement.)

- Staffing
- Site Improvements (fence, rock removal, parking, path, loading zone ...)
- Shuttle System
- Docent Program
- Environmental Compliance

Management Plan - Proposed Document Outline

- A. Introduction
 - Need for Management Plan – Explains the reason why the management plan is being done; portrays the recent events that led to preparation of the plan.
 - Site History – A brief narrative that describes both the prehistoric and historic background of the site.
- B. Existing Conditions – A description of the site's current conditions, facilities and public use.
 - Natural Resources
 - Cultural Resource
 - Visitor Use and Facilities
- C. Carrying Capacity Analysis
 - 1. Desired Future Conditions – Affirms the purpose of the park unit and identifies the desired future condition of resources and visitor use. Establishes broad goals intended to achieve and/or maintain those conditions, and to respect the Preserve's carrying capacity.
 - Natural Resources Goals
 - Cultural Resource Goals
 - Visitor Use and Facilities Goals
 - 2. Action Plan – Proposes more detailed plans to accomplished the above goals. The action components include the following:
 - Site Restoration Plan – Addresses issues that relate to the restoration and health of the natural conditions and wildlife of the site. These issues may include plant communities restoration, exotic species control, habitat protection, and erosion control.
 - Facility and Trail Design – Reconsiders the trail system and the need for fencing, stairway and other site improvements.
 - Visitor Use Plan – Addresses needs of visitors, including public safety issues relating to access to the Preserve and use of trails, stairs, and beaches.
 - Interpretation and Signing Plan – Develops a strategy for providing education at the park.
 - Operations and Staffing Plan – Discusses the staffing support (both paid and volunteer) needed to implement the Action Plan and manage the unit. May also discuss support costs for the park.

- **Future Study and Actions** – Anticipates the future areas of study necessary to gain information that could not be collected during the management plan schedule.
3. **Visitor Use Management and Monitoring Plan** – Develops a strategy to monitor the types and levels of visitor use and the condition of the park's resources to evaluate the effectiveness of the management plan actions and determine the need for revisions to the management plan.
- Visitor Use
 - Resource Condition
- D. **Environmental Analysis** – In compliance with the California Environmental Quality Act, the section analyzes the management plans proposed actions, considers the possible environmental effects of those actions, and, where needed, suggests possible mitigation measures to those effects.

Management Plan Process

<i>Task</i>	<i>Anticipated Start Date</i>	<i>Anticipated Completion Date</i>
Data Collection, Mapping and Field Research	October 1, 1999	November 30, 1999
<i>City/Commission Input and Public Meeting</i>	<i>December 15, 1999</i>	<i>March 2, 2000</i>
Complete Draft Management Plan	March 3, 2000	May 1, 2000
Department Review of Draft Management Plan	May 2, 2000	May 23, 2000
Complete Preliminary Management Plan	May 24, 2000	June 15, 2000
Department Review of Preliminary Management Plan	June 16, 2000	July 7, 2000
<i>City/Commission Review and Public Presentation of Plan and Alternatives</i>	<i>July 8, 2000</i>	<i>September 8, 2000</i>
CEQA Review and response to comments	September 9, 2000	November 20, 2000
Final Management Plan approved by Director	December 1, 2000	December 15, 2000

Management Plan Team

Clay Phillips, Manager, Southern Service Center (Project Facilitator)
 Rich Risner, Landscape Architect
 Karen Miner, Resource Ecologist
 Mike Sampson, Archaeologist
 Alex Bevil, Historian
 Robert Shanaberger, G.I.S. Specialist
 Suzanne Goode, Resource Ecologist
 Hayden Sohm, Malibu Sector Superintendent (District Liaison)

Point Dume Preserve Access Study Tentative Scope of Work

The City of Malibu will be responsible for the costs of the Study as its part of the cooperative effort between CDPR (the Department) and the City on access to and protection of the Pt. Dume Natural Preserve. The City with the concurrence of the Department will finalize this scope and select contractors to implement it. The Department and the City will request the participation of the Coastal Commission ("Commission") in the scoping and review of the Study and will consider comments received by the Commission.

I. Purpose

The purpose of the Study will be to provide meaningful information to the City, the Department and the Commission as to: (a) what the current usage and traffic volumes are before any improvements are installed; b) how effective the interim access improvements are; (c) how the volume of automobile traffic and preserve visitors changes; and (d) how the ability of visitors outside of the local area to access the preserve changes as a result of various improvements to the Preserve, parking and transportation. The study will be a way of measuring whether there is adequate access to the preserve, taking into account the existing parking on Point Dume, the County parking lot at Westward Beach, the new parking and the Nature Bus, and other means of access to the preserve. It would provide the Department with guidance on the adequacy of its management plan to protect the preserve. It would also provide guidance to the City and the Commission as to whether less parking is needed, more parking is needed or if sufficient parking is provided by existing parking plus interim improvements to meet access needs to the preserve consistent with management plan objectives.

II. Independent Consultant Services Required

Independent consultant services will be required in conducting this study. Expertise will be required in the fields of (1) traffic engineering and parking analysis, including performing traffic counts, (2) preparing, implementing and analyzing Preserve user surveys, and (3) mapping available public parking spaces in the Point Dume area. Separate consultants may be retained, or a main consultant with sub-consultant(s) with the needed expertise may be utilized. Some of the work may be undertaken by the City's public works department and by the Nature Bus Driver if trained properly. All consultants and sub-consultants will be selected and the scope of work finalized by the City with the concurrence of the Department. All work will be performed pursuant to the approved scope of work.

III. Proposed Scope of Work

A. Traffic counts would be taken by or under the supervision of the traffic consultant on Cliffside/Birdview/Fernhill and other streets on Pt Dume to establish baseline traffic counts. This would be done in conjunction with the CEQA review for the interim improvements, prior to any improvements or the initiation of the Nature Bus.

B. Once the Nature Bus starts, bus user counts (round trips and one way trips) will be taken. The City may assign this task to the bus driver. The survey research consultant, who would collect and analyze this data, would establish the methodology and frequency of the user counts in accordance with the approved scope of work.

C. The consultant would develop a sampling protocol and questionnaire for interviewing visitors entering the Preserve that address the topics identified for sampling in the scope of work. The sampling protocol would determine the volume, frequency, content and timing of interviews in order to ascertain visitor origin and adequacy of access before and after the interim improvements are installed. The multiple entry points to the Preserve will be addressed in the sampling protocol.

The user survey data would be made available to the City, the Department and the Commission as they are completed and analyzed, to help in assessing whether any midcourse changes should be made to the Site Improvements, particularly on the Nature Bus.

D. The consultant will prepare an analysis, subject to scope and methodology review by the City and the Department to prepare a pre-improvements and post-improvements report. This report should be designed to help understand how user access, activities and satisfaction with parking and bus access changes over time, "before" and "after" the improvements and the management plan are put into place. The "before" and "after" information may be used by the Department to initially design, and then make changes to, the long term management plan for the Preserve.

E. The City or consultant will map all available parking spaces on Point Dume as of the date of settlement with the Commission. Those spaces added by the interim improvements would be monitored once constructed. The consultant would design a parking monitoring protocol for the City. On specified monitoring days, before, during and after the implementation of the interim improvements, the City would identify whether all legal parking spaces were filled within an agreed upon distance of the preserve, or if empty parking spaces are available.

F. The City or consultant, would, on a periodic basis, monitor and map parking statistics on Pt Dume Streets under a protocol set up by the consultant.

G. The consultant would take post interim improvement traffic counts at the same times of year/time of week/ time of day as the pre-improvements traffic counts.

H. The survey research and traffic consultants will compile the results of their studies into a report that answers the questions raised at the beginning of the study. Is there sufficient parking, as evidenced by a drop in illegal citations and increase in user satisfaction? Is the shuttle a viable replacement for more street parking? Or, is there still a need for more parking? Can the Department effectively manage the visitor numbers to the Preserve and effectively protect the Preserve Resources? The City, the Department and the Commission would then work together to determine what additional solutions, if any, are needed.

017J.DOC

California State Parks
Point Dume State Beach

Immediate Site Improvements
Scope and Timeline
December 22, 1999

Introduction

The California Department of Parks and Recreation (California State Parks) and the City of Malibu are entering into a Joint Project Agreement for management, parking and transportation improvements at Point Dume Natural Preserve. Pursuant to Section 5 of the Agreement, California State Parks will prepare a concept plan for the Site Improvements as follows:

Design Elements

California State Parks will prepare a concept plan that includes the following elements. Sections 5 and 6 Agreement delineate who is responsible for the costs and implementation of each element.

- Remove the existing boundary fence that parallels Cliffside Drive and replace it with a more aesthetically pleasing fence. Locate the new fence within the City's right of way.+
- Install a walking path from the loading zone to the main Preserve entrance along Cliffside Drive.+
- Restore native vegetation along disturbed corridor between old and new fence lines.+
- Park entry sign, Interpretive signs and panels on state property.+
- Remove Boulders*
- Construct a passenger loading zone along the Preserve side of Cliffside Drive.*
- Construct, if feasible, 2 parking spaces for handicapped use on the Preserve side of Cliffside Drive.*
- Construct 8 parking spaces along the inland side of Cliffside Drive.*
- Install curbing at edge of pavement along the Preserve side of Cliffside Drive to deter parking on shoulder. The City and California State Parks will consult concerning choice of curbing materials.*
- Onsite and offsite parking enforcement signage.*^
- Offsite Directional traffic signs for access to Preserve.*^
- Shuttle from Westward Beach*^

+ California State Parks element, including funding

* City of Malibu element, including funding

^ A part of the Site Improvements, but the concept plan prepared by State Park Staff will not include these elements

Projected Site Improvements Timeline

<i>Task</i>	<i>Anticipated Start Date</i>	<i>Anticipated Completion Date</i>
Prepare Base Map	November 1, 1999	November 15, 1999
Prepare Draft Concept Plan	November 1, 1999	January 7, 2000
Organizational Meeting (City/State Parks)	November 10, 1999	November 10, 1999
Initial onsite design consultation w/ City, Coastal, and Parks specialists	December 15, 1999	December 15, 1999
Deadline for designation of CEQA lead agency	December 21, 1999	December 21, 1999
Parks Department review/revision of concept plan	January 10, 2000	January 21, 2000
City review/approval of concept plan	January 24, 2000	February 24, 2000
CEQA Compliance (to include: doc. prep., public comment, and response to comments.)	January 24, 2000	July 14, 2000
Public Meeting to discuss concept plan	March 2, 2000	March 2, 2000
Submit Coastal Permit/Approval	May 15, 2000*	September 15, 2000
Submit for City Encroachment Permit / Approval of CEQA doc.	June 15, 2000	August 11, 2000
Final revision of concept plan if any Commission revisions	September 18, 2000	September 25, 2000
Complete final construction documents (plans/specs)	September 25, 2000	October 9, 2000
Construction Bid / Award	October 9, 2000	November 6, 2000
Initial Site Improvements (1 st step: Remove Boulders, Relocate Fence)	December 11, 2000	December 31, 2000

*Requires Coastal Commission acceptance of concurrent submittal