

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: 11/13-16/01
Commission Action:



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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-97-236

APPLICANT: NOAS Properties, Inc.

AGENTS: Allan Abshez and Richard Sol

PROJECT LOCATION: 23730 Malibu Colony Road, Malibu, Los Angeles County.

PROJECT DESCRIPTION: Removal of a rock revetment and construction of new 50 foot long by 19 foot wide by 10 foot high rock revetment fronting an existing timber bulkhead. The proposed revetment consists of a 2 foot layer of drain rock (3/4 to 6" size) at a design depth of 0.0 mean sea level (MSL), a 1-2 foot layer of "B" stone (200 pounds to 1,200 pounds) and cap stone (2 to 7 tons) placed over the filter rock and "B" stone layers.

Staff Note

Staff recommends that the Commission act on this permit application at the November 13-16, 2001 hearing because more than 180 days from filing of the application has passed. Motion and resolution is on Page 3.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission Deny this application for a regular Coastal Development Permit for the proposed project. The applicant is proposing the removal of an existing unpermitted 50 foot long by 25 foot wide by 12 foot high rock revetment and construct a new 50 foot long by 19 foot wide by 10 foot high rock revetment seaward of an existing timber bulkhead. The purpose of the revetment is to prevent scour below the existing bulkhead. The bulkhead is part of a long continuous bulkhead that fronts much of the beachfront residences in Malibu Colony. The beach in this location is narrow and has been identified as an eroding beach. Many properties along Malibu Colony have rock revetments or rock scour protection seaward of the bulkhead similar to the subject site.

Summary cont.

The applicant maintains the proposed improvements constitute a repair of the existing revetment and not removal and construction of a new revetment. The applicant also disputes the Commission's claim that the revetment is unpermitted. However, the applicant has not submitted adequate evidence that would demonstrate the revetment is a permitted structure.

Staff is recommending denial of the permit application for the rock revetment due the potential adverse impacts on the shoreline profile, sand supply and public access. In addition, during certain times of the year, the proposed revetment intrudes into, and interferes with, a lateral access easement that has been accepted by the State Lands Commission.

Staff has identified feasible alternatives to the proposed project that involve the removal of the unpermitted rock revetment and construction of improvements to the existing timber bulkhead that would not result in the seaward expansion of the bulkhead. Staff has identified three alternative bulkhead upgrades to prevent scour under the bulkhead: (1) the addition of timber sheathing to the existing bulkhead below design scour depth of the beach; (2) a poured in place concrete underpin wall directly beneath the existing bulkhead below the design scour depth of the beach; and (3) the installation of sheet pile attached to and behind the wood bulkhead to below the design scour depth of the beach. These alternative improvements to the existing bulkhead would protect the existing residence but would not extend the bulkhead seaward and would present less risk of beach erosion and scour effects than a rock revetment.

In past permit actions, the Commission has required that all new development on a beach, including shoreline protective devices, be located as far landward as possible in order to avoid and reduce adverse impacts to the sand supply and public access resulting from the project. The Commission has permitted bulkhead and seawall upgrades and repairs on other bulkheads in Malibu utilizing the techniques described above as an alternative to rock revetments. The Commission recently approved a bulkhead repair and improvement under coastal development permit 4-99-281 (March) which provided the applicant the option of either the addition of timber sheathing or sheet pile to the bulkhead to a depth below the scour depth of the beach. This property is located at 23634 Malibu Colony Drive, approximately 230 feet east of the subject site. In addition, at 23516 Malibu Colony Drive, the Commission approved a concrete underpin repair of an existing bulkhead, landward of the bulkhead, under coastal development permit 4-97-228 (Caron). This underpin repair was designed by David Weiss the consulting engineer for the applicant.

As described in the findings below, the proposed project will have significant unmitigated adverse effects on the environment and it is not consistent with the Chapter three policies of the Coastal Act relating to public access, shoreline protective devices, and shoreline erosion. In addition, there are feasible alternatives which would substantially lessen significant adverse effects to the beach and public access.

I. STAFF RECOMMENDATION

Staff recommends that the Commission DENY the permit application as submitted by the applicant.

MOTION:

Staff recommends a NO vote on the following motion and adoption of the following resolution and findings:

I move that the Commission approve Coastal Development Permit No. 4-97-236 for the development proposed by the applicant.

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a NO vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 and is located between the sea and the first public road nearest the shoreline and is not in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

LOCAL APPROVALS RECEIVED: City of Malibu, Planning Department, Approval in Concept, 11/26/97;

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains Land Use Plan; Report on Observation of Existing Timber Bulkhead at 23730 Malibu Colony Drive AKA, 26 Malibu Colony Drive, Malibu, CA; by David Weiss (May 27, 1997); Shoreline Constraints Study, Moffatt and Nichols Engineers, dated June 30, 1992; Photographs/slides taken November 2, 1978 and Memorandum to File from L. Thomas Tobin, dated November 2, 1978 (describing location of photographs).

Court Documents in *California Coastal Commission and South Coast Regional Commission v. Willens, et al.*, L.A. Superior Court, Case No. C245720: Complaint for Declaratory Relief and Mandatory Injunction (June 28, 1978); Memorandum of Points and Authorities in Response to Court's Notice of Intention to Dismiss on Court's Motion; Declaration of Steven H. Kaufman in Support Thereof (December 22, 1982); Special Appearance Memorandum of Points and Authorities And Declarations of Morton M. Gerson, Maria D. Hummer, Lawrence Longo and Jane L. Ellison in Support of Motion to Dismiss (January 11, 1983); Notice of Intention to Dismiss on Court's Motion.

Coastal Development Permits: 4-00-017 (Green); 4-00-057 (Morton); 4-00-123 (Broad Beach ,LLC); 4-00-111 (Kilb); 4-99-239 (Sol Brothers); 4-99-281 (March); 4-98-214 (Malibu Beach Colony Trust); 4-98-052 (Neiter & Behar); 4-98-051 (Tuchman); 4-98-050 (Gallo); 4-97-215 (Addis); 4-97-228 (Caron); A-07522 (Hagman); 5-81-393 (Hagman);and 5-82-847 (Hagman).

II. Findings and Declarations:

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing the removal of an existing 50 foot long by 25 foot wide by 12 foot high rock revetment and construction of a new 50 foot long by 19 foot wide by 10 foot high rock revetment seaward of an existing timber bulkhead. The proposed revetment consists of a 2 foot layer of drain rock (3/4 to 6"size) at a design depth of 0.0 mean sea level (MSL), a 1-2 foot layer of "B" stone (200 pounds to 1,200 pounds) and cap stone (2 to 7 tons) placed over the filter rock and "B" stone layers. The proposed revetment is designed to prevent scour below the existing timber bulkhead which was not designed at an adequate depth to prevent scour under the bulkhead (Exhibit 3).

The project site is located on a beachfront parcel of land approximately 50 feet wide and 17,111 sq. ft. in size in Malibu Colony, Malibu. (Exhibits 1 & 2). The project site is developed with a single family residence, swimming pool, detached garage and guest unit and septic system. The adjacent narrow beachfronting lots are developed with residences fronted by an existing continuous wood bulkhead. Many of these lots also have rock revetments or rock scour protection seaward of the bulkhead. These shoreline protective structures are necessary to protect the existing homes, which are built on at grade foundation systems, constructed prior to the effective date of the Coastal Zone Management Act of 1972.

Background

The project site has been subject to past Commission action. Coastal development permit (CDP) A-07522 (Hagman) was approved in 1976 for the construction of a

swimming pool subject to no special conditions. CDP 5-81-393 (Hagman) was approved in 1981 for the construction of a three car garage with studio and bath and storage area above the garage and a 1,500 gallon septic tank. This CDP was subject to a special condition requiring an offer to dedicate (OTD) a public lateral access easement. The OTD, which has been accepted by the State Lands Commission, describes the lateral access easement as a 25 foot wide strip of beach as measured inland from the daily high water line (the daily water line is understood to be ambulatory from day to day, as will the 25 foot wide strip of dry sandy beach). The proposed revetment will at certain times of the year extend into this public lateral access easement. The OTD also indicates that in no case shall the said access be closer than 10 feet from the approved development. The garage and studio approved pursuant to the 1981 permit are located some 145 feet landward of the bulkhead and landward of the residence. A 10 foot setback from the "approved structure" would be in a garden area located on the landward side of the residence. Since this obviously was not what the condition intended, the OTD language describing the 10 foot setback area appears to reference either the bulkhead, or the seaward extend of the deck present in 1981, as the starting point for the 10 foot privacy buffer. Typically, an OTD that includes a 10 foot privacy buffer would be measured from the seaward most portion of the development on the site, e.g. the deck dripline or seaward face of the seawall or bulkhead. In this case the logical starting point for the 10 foot privacy buffer would begin at the seaward face of the bulkhead. In February of 1982 the permit was amended, pursuant to an immaterial amendment, to remodel and strengthen the structural walls of the existing residence.

A subsequent CDP, 5-82-847 (Hagman), was approved in January of 1983 for the demolition of the existing residence and construction of a new residence in approximately the same footprint as the existing residence. This permit was approved with no special conditions. In the findings for approval of this permit there is a reference indicating the existing timber bulkhead on the site was constructed without a CDP and was presently the subject of a separate violation and pending lawsuit. The staff report findings indicate the bulkhead was constructed in a continuous line protecting 34 beachfront properties. The staff report does not refer to any rock revetment on the site. It states: "The houses in this particular area are separated from the sandy beach by a 5 to 7 foot high timber bulkhead with deck areas on top. The bulkhead has been constructed in a continuous line protecting 34 beachfront properties both east and west of the applicant's parcel."

Winter storms caused considerable damage to bulkheads in Malibu Colony in 1978. The applicant asserts that the previous property owner constructed a new timber bulkhead in front of an old bulkhead after these storms, in May or June of 1978. He also asserts that the rock revetment was placed on the property around February or March of 1978. Two photographs taken in November 1978 do not show a rock revetment seaward of the bulkhead (Exhibit 9). According to records received from the Attorney General's office, there was a civil lawsuit brought against the former property owners (Larry and Maj Hagman) on behalf of the Commission involving the unpermitted

bulkhead (California Coastal Commission and South Coast Regional Commission v. Willens, et al., L.A. Superior Court, Case No. C245720). The dispute in the case was whether defendants' construction of new bulkheads following the 1978 storms required a coastal development permit, and was not exempt as "repair and maintenance", because the new bulkheads were located 3 to 7 feet seaward of the old bulkheads. The case was dismissed by the Superior Court sometime in early 1983 for failure to comply with the court deadlines. No further enforcement actions were pursued at that time. As a result, the Commission concludes the existing continuous timber bulkhead on the subject site must be considered a legal structure. However, no previous staff reports or court records mention an existing rock revetment. The applicant asserts that the Commission may have authorized a rock revetment on the site in a letter it issued authorizing repair of the damaged bulkhead. Documents filed in the court action indicate that the Commission issued letters to the defendants, including the Haggans, the prior owners of this site, authorizing repair and maintenance of structures damaged by the 1978 winter storms. The court records contain only one example of a letter issued to a nearby property owner, and this letter authorizes repair of a bulkhead, pilings and septic system, but does not authorize construction or repair of a rock revetment. (Exhibit 13, Special Appearance Memorandum (January 11, 1983); Exhibit A to Declaration of Morton Gerson). The Commission staff is not able to locate a letter authorizing any repairs on the subject property. Nor has the applicant provided such a letter. The court records also contain a copy of the building permit issued to the prior owners of the subject site in 1978 that authorized: "Replacement of Bulkhead." The building permit does not authorize construction of a revetment. (Exhibit 14, Complaint for Declaratory Relief (June 28, 1978); Exhibit to Declaration of Karl Hinderer). The applicant also asserts that a 1978 Memorandum to Peter Douglas, State Coastal Commission from M.J. Carpenter, Executive Director, South Coast, dated 3-9-78 supports its assertion that the Commission authorized construction of a revetment at the subject site. The applicant relies on the statement: "During this period, we issued almost 100 Repair & Maintenance Authorizations per Section 30610(c) of the Coastal Act. In fact, we stretched this to mean anything that was necessary to protect the property or structure." (Exhibit 14, Complaint for Declaratory Relief (June 28, 1978); Exhibit A). However, the memo to Peter Douglas also states the following: "I again emphasize that we have approved everything possible to be rebuilt to its existing size, location, etc., before the damage occurred." And: "Our efforts are to unequivocally permit rebuilding of what existed prior to the storm without exception." The applicant has not provided evidence indicating that a rock revetment existed at the site prior to the 1978 storms or that a revetment was constructed at the site prior to the effective date of the Coastal Act in 1972. We also note that the applicant has not demonstrated that a revetment was "necessary" to protect the site in 1978. For all the reasons discussed above, the Commission finds that there is no evidence that the Commission authorized construction of a rock revetment on the site in 1978, or at any other time. Therefore, the Commission considers the revetment to be an unpermitted and unauthorized structure.

Nevertheless, the applicant is now proposing to remove this revetment and construct a new rock revetment in a different configuration. Therefore, the Commission considers this project to be a new development and not a repair of an existing revetment. Therefore, even if the applicant provided evidence that the rock revetment at the site was authorized, which it has not done, the Commission would still find that a coastal development permit for the proposed new rock revetment must be denied because it is not consistent with the Chapter 3 policies of the Coastal Act, for the reasons discussed below.

In a letter sent to the Commission on October 15, 2001, the applicant's attorney maintains that the proposed project is simply a repair of the existing revetment and will not require the removal of the revetment (Exhibit 11). However, the existing revetment must be removed in order to place the proposed drain rock at 0.0 MSL and "B" stone under the larger 2 to 7 ton cap stones. The proposed revetment would be somewhat smaller than the existing one, resulting in a reduction of the size from a depth of 25 feet from the face of the bulkhead to 19 feet and a reduction in height from 12 feet to 10 feet from MSL.

Permit Streamlining Act

The pending permit application was received on December 1, 1997. Commission staff reviewed the CDP application and sent a letter to the applicant dated January 6, 1998 indicating that the application was incomplete and requesting additional information. The applicant submitted the requested information, with the exception of a letter from the State Lands Commission indicating their view of the project as it relates to State lands. Because a letter from the State Lands Commission was never submitted, the Commission staff considered the application to remain incomplete. Under the Permit Streamlining Act, the Commission has 30 days to review an application and send a letter stating that the application is incomplete, and that additional information is required. In this case, the incomplete letter was inadvertently sent 37 days after receipt of the permit application. However, the Commission staff did not realize that the incomplete letter was not timely until receiving correspondence from the applicant regarding the Permit Streamlining Act dated August 31, 2001. At that time, the staff became aware that under the Permit Streamlining Act, the application was actually deemed complete on December 31, 1997. Therefore, under the Permit Streamlining Act, the Commission should have acted on the permit application by June 29, 1998.

In late August 2001, the applicant sent commission staff a letter indicating that, pursuant to the Section 65956 of the Government Code (Permit Streamlining Act), the applicant is sending public notice of the "deemed approved" status of the permit application (Exhibit 5). However, this section of the Government Code also provides that, if an applicant provides the required public notice of the application, "the time limit for action by the permitting agency shall be extended to 60 days after the public notice is provided." Therefore, this application was scheduled for a public hearing and decision by the Commission at the October 9-12, 2001 meeting. Commission staff sent

a letter dated September 7, 2001 to the applicant stating that the Commission would hold a hearing and act on its application at the October 2001 Commission hearing (Exhibit 9). The applicant's attorney subsequently requested in writing that the Commission not hold the hearing in October due to the lack of appropriate public notice (Exhibit 10). Accordingly, the Commission staff agreed to postpone the hearing. The permit application has been rescheduled for the November 2001 Commission meeting. The Commission staff has provided the appropriate public notice of the November hearing on the application. If the Commission does not act on this CDP application at the November 2001 meeting, the permit may be deemed approved pursuant to the Permit Streamlining Act.

B. Shoreline Protective Devices

The proposed project involves the removal of an unpermitted revetment and construction of a new 50 ft. long, 10 ft. high (max. ht. from 0.0 msl), 19 ft. wide rock revetment in front of an existing timber bulkhead. The revetment consists of a 2 foot layer of drain rock (3/4" to 6" size) at a design depth of 0.0 mean sea level (MSL), a 1-2 foot layer of "B" stone (200 pounds to 1,200 pounds) and cap stone (2 to 7 tons) placed over the filter rock and "B" stone layers (Exhibit 3). The proposed revetment is designed to prevent scour below the existing timber bulkhead. The existing bulkhead was not designed at an adequate depth to prevent scour under the bulkhead. The existing residence on the site is setback only six (6) feet from existing bulkhead and is on a conventional at grade foundation (Exhibit 2). The loss of fill or sand from behind the bulkhead would result in damage to the existing residence by undermining the foundation. In addition, neighboring properties could also be adversely effected by the loss of fill or sand under the bulkhead. The proposed revetment is smaller than the existing unpermitted revetment which extended approximately 25 feet from the face of the existing timber bulkhead and reached a height of approximately 12 feet above MSL.

Past Commission review of shoreline residential projects in Malibu has shown that such development results in potential individual and cumulative adverse effects to coastal processes, shoreline sand supply, and public access. Shoreline development, if not properly designed to minimize adverse effects, may result in encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and interference with the public's access to and the ability to use public tideland areas. In order to accurately determine what adverse effects to coastal processes will result from the proposed project, it is necessary to analyze the proposed project in relation to characteristics of the project site shoreline, location of the development on the beach, and wave action. Therefore, it is necessary to review the proposed project for its consistency with Sections 30235, 30250(a) and 30253 of the Coastal Act.

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act states:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30250(a) of the Coastal Act states, in part:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

To assist in the determination of whether a project is consistent with Sections 30235, 30253, and 30250(a) of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. The Malibu/Santa Monica Mountains LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast. For example, Policies 166 and 167 provide, in concert with Coastal Act Section 30235, that revetments, seawalls, cliff retaining walls and other shoreline protective devices be permitted only when required to serve coastal-dependent uses, to protect existing structures or new structures which constitute infill development, and only when such structures are designed and engineered to eliminate or mitigate the adverse effects on shoreline sand supply. In addition, Policy 153 indicates that development of sites that are exposed to potentially heavy tidal and wave action shall require that development be set back a minimum of 10 ft. landward from the mean high tide line.

1. Site Shoreline Characteristics

The project is located on Malibu Beach (aka Malibu Colony), between Amarillo Beach and Malibu Point. This beach can be characterized as a narrow sand spit that formerly served as a barrier beach to a once larger Malibu Lagoon. The U.S. Army Corps of Engineers, Los Angeles District, in their *Reconnaissance Study of the Malibu Coast*, dated 1994, identified this beach as having stable to slow erosional characteristics. The *Shoreline Constraints Study*, by Moffatt and Nichol Engineers, dated June 30, 1992, indicates that the subject beach is retreating at the rate of 0.25 to 1.5 feet per year. Based on the above information, the Commission concludes that the subject site is located on an eroding beach. The existing residential development is exposed to recurring damage because of the absence of a sufficiently wide, protective beach. The beach in this location experiences wide fluctuations in the beach profile seasonally (personal observations by commission staff). In the winter storm waves and tidal action can cause significant scouring of this beach (Exhibits 7 & 8). The elevation of the beach can be lowered as much as 15 feet (\pm) in one storm event. In the summer the gentler wave action rebuilds the beach. The residences along this beach, including the subject site, employ bulkheads or other forms of shoreline protection for the residences and the associated septic systems.

2. Location of the Proposed Shoreline Protective Device in Relation to the Mean High Tide Line and Wave Action

Based on the available evidence discussed in the previous section which concludes that Malibu Beach is an eroding beach, the Commission finds that Malibu Beach is a narrow beach experiencing a long-term erosion trend and the proposed revetment will occupy sandy beach area and modify the beach response to coastal forces. Many studies performed on both equilibrium and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists (including but not limited to Nicholas Kraus, *The Effects of Seawalls on the Beach: an Extended Literature Review*, *Journal of Coastal Research*, SI #4 (1988), 1 - 28; Orrin Pilkey and Howard Wright, III, *Seawalls Versus Beaches*, *Journal of Coastal Research*, SI #4 (1988), 41 - 64; Paul Komar and William MacDougal, *Coastal Erosion and Engineered Structures, The Oregon Experience*, *Journal of Coastal Research*, SI #4 (1988), 77 - 92; Gary B. Griggs and James F. Tait, *The Effects of Coastal Protection Structures on Beaches along Northern Monterey Bay, California*, *Journal of Coastal Research*, SI #4 (1988), 93 - 111; Robert Morton, *Interactions of Storms, Seawalls and Beaches of the Texas Coast*, *Journal of Coastal Research*, SI #4 (1988), 113 - 134; Gary B. Griggs, James F. Tait and Wendy Corona, *The Interaction of Seawalls and Beaches: Seven Years of Monitoring, Monterey Bay, California*, *Shore and Beach*, July 1994, 21 - 28). In order to determine the specific impacts of the proposed revetment on

the shoreline the location of the proposed protective device must be analyzed in relation to the expected wave uprush and varying beach profiles.

a. **Mean High Tide Line and Wave Uprush**

The applicant's coastal engineering study prepared by David C. Weiss Structural Engineer and Associates, dated 9/12/97, identified the most landward known measurement of the ambulatory mean high tide line (MHTL) on the project site as approximately 75 feet seaward from the face of the existing bulkhead (September 9, 1997). Mr. Weiss identified two other mean high tide locations, a March 1967 MHTL approximately 90 feet from the face of the existing bulkhead and a June 1969 MHTL located approximately 115 feet from the face of the bulkhead. Based on the submitted information, the proposed development will be located landward of the most landward measured MHTL of September 9, 1997. However, the September 9, 1997 MHTL has not been verified by the State Lands Commission and the measurement represents only one measurement and does not provide adequate information for a definitive determination of the location of the mean high tide line at the site. Furthermore, the location of the mean high tide line at the site is ambulatory in nature. In the winter the existing revetment and bulkhead are routinely subject to wave action from high tides and storm waves.

Although the proposed revetment will be located landward of the September 9, 1997 MHTL, the Coastal Engineering Study prepared by David Weiss Structural Engineer & Associates dated 9/12/97 indicates that the theoretical maximum wave uprush at the subject site will occur approximately 40 feet landward of the bulkhead or 160 feet from the right-of-way line of Malibu Colony Road. The existing bulkhead interrupts this wave uprush. Based on this evidence, it appears that the proposed revetment will, at times, be subject to wave run-up that exceeds the landward location of the MHTL.

3. **Effects of the Shoreline Protective Device on the Beach**

One of the main functions of a revetment or seawall is protection of the upland area and structures landward of the shoreline protective structure. While they are often effective in protecting the landward development, they do nothing to protect the beach seaward of the shoreline protective device and often can have adverse effects on the nearby beach area. Dr. Douglas Inman, a recognized authority on Southern California beaches concludes that, "the likely detrimental effect of the seawall on the beach can usually be determined in advance by competent analysis." Dr. Inman further explains

the importance of the seawall's design and location as it relates to predicting the degree of erosion that will be caused by the shoreline protection device. He states:

Seawalls usually caused accelerated erosion of the beaches fronting them and an increase in the transport rate of sand along them. While natural sand beaches respond to wave forces by changing their configuration into a form that dissipates the energy of the waves forming them, seawalls are rigid and fixed, and at best can only be designed for a single wave condition. Thus, seawalls introduce a disequilibrium that usually results in the reflection of wave energy and increased erosion seaward of the wall. The degree of erosion caused by the seawall is mostly a function of its reflectivity, which depends upon its design and location.¹

In past permit actions, the Commission has found that one of the most critical factors controlling the impact of a shoreline protective device on the beach is its position on the beach profile relative to the surf zone. All other things being equal, the further seaward the wall is, the more often and more vigorously waves interact with it. The best place for a seawall, if one is necessary, is at the back of the beach where it provides protection against the largest of storms. By contrast, a seawall constructed too near to the mean high tide line may create problems related to frontal and end scour, as well as upcoast sand impoundment.

Ninety-four experts in the field of coastal geology signed the following statement of the adverse effects of shoreline protective devices:

These structures [seawalls, revetments and bulkheads] are fixed in space and represent considerable effort and expense to construct and maintain. They are designed for as long a life as possible and hence are not easily moved or replaced. They become permanent fixtures in our coastal scenery but their performance is poor in protecting community and municipalities from beach retreat and destruction. Even more damaging is the fact that these shoreline defense structures frequently enhance erosion by reducing beach width, steepening offshore gradients, and increasing wave heights. As a result, they seriously degrade the environment and eventually help to destroy the areas they were designed to protect.²

The above statement states clearly that sandy beach areas available for public use can be harmed through the introduction of seawalls. Thus, in evaluating an individual project, the Commission assumes that the principles reflected in that statement are applicable. The proposed project involves a shoreline structure that, as a result of

1 Letter dated 25 February 1991 to Coastal Commission staff member and engineer Lesley Ewing from Dr. Douglas Inman.

2 Saving The American Beach: A Position Paper by Concerned Coastal Geologists, Results of the Skidaway Institute of Oceanography Conference on America's Eroding Shoreline: The need for geologic input into shoreline management, decisions and strategy, 25 - 27 March 1981, Savannah, GA.

wave interaction with the structure, will seasonally affect the configuration of the shoreline and the beach profile. Even though the precise impact of a structure on the beach is a persistent subject of debate within the discipline of coastal science, and particularly between coastal engineers and marine geologists, it is generally agreed that a shoreline protective device will affect the configuration of the shoreline and beach profile whenever the structures are subject to wave uprush. The main difference between a vertical seawall and rock revetment seawall is their physical encroachment onto the beach. It is well documented by coastal engineers and coastal geologists that shoreline protective devices or shoreline structures in the form of either a rock revetment or vertical seawall will adversely impact the shoreline as a result of beach scour, end scour (the beach areas at the end of the seawall), the retention of potential beach material behind the wall, the fixing of the back beach, and the interruption of longshore processes³. In order to evaluate these potential impacts relative to the proposed structure, its design and location on Malibu Beach will be analyzed, and each of the identified effects on the beach will be evaluated below.

a. Beach Scour

Scour is the removal of beach material from the base of a cliff, seawall or revetment due to wave action. The increase of scouring of beaches caused by protective devices is a frequently-observed occurrence. When waves impact on a hard surface such as a coastal bluff, rock revetment, or vertical seawall, some of the energy from the wave will be absorbed, but much of it will be reflected back seaward. This reflected wave energy in combination with the incoming wave energy, will disturb the material at the base of the seawall and cause erosion to occur in front and down coast of the hard structure. This phenomenon has been recognized for many years and the literature acknowledges, as cited below, that seawalls do affect local beach scour.

The proposed revetment will be subject to wave action during winter storm and tidal conditions on a regular basis. As the Commission has found in past permit actions, shoreline protective devices which are subject to wave action tend to exacerbate or increase beach scour [CDPs: 4-99-239 (Sol Brothers); 4-00-017 (Green); 4-00-057 (Morton) & 4-00-123 (Broad Beach, LLC)]. This phenomenon has been recognized for many years. A 1976 report by the State Department of Boating and Waterways found that:

³ Gary B. Griggs, California's Coastline: El Niño, Erosion and Protection, in California's Natural Hazards, Proceedings from the Conference hosted by the California Shore and Beach Preservation Association and the University of Southern California Sea Grant Program, November 12 -14, 1997, Santa Barbara, CA).

While seawalls may protect the upland, they do not hold or protect the beach which is the greatest asset of shorefront property. In some cases, the seawall may be detrimental to the beach in that the downward forces of water, created by the waves striking the wall rapidly remove sand from the beach.⁴

Finally this observation was underscored more recently in 1987 by Robert G. Dean in "Coastal Sediment Processes: Toward Engineering Solutions":

Armoring can cause localized additional storm scour, both in front of and at the ends of the armoring...Under normal wave and tide conditions, armoring can contribute to the downdrift deficit of sediment through decreasing the supply on an eroding coast and interruption of supply if the armoring projects into the active littoral zone.⁵

As stated previously, Malibu Beach is a narrow eroding beach. The subject property is located approximately 930 ft. to the east of Malibu Lagoon State Park which provides public vertical access to this beach. Scouring and beach erosion resulting from construction of a rock revetment seaward of the existing bulkhead will translate into a loss of beach sand at an accelerated rate. The resultant sand loss will be greater during high tide and winter season conditions than would otherwise occur if the beach were unaltered. Because there is already a narrow beach at Malibu Beach, even a small loss of the beach slope seaward of the wall would reduce the physical and temporal availability of the beach at this location for public use.

The proposed revetment will be acted upon by waves during storm conditions and the winter season. A seasonal eroded beach condition can be expected to occur with greater frequency due to the placement of the revetment on the subject site. Additionally, factors such as an increase in storm frequency or an increase in sea level rise will subject the proposed revetment to greater wave attack and exacerbate the seasonally eroded beach condition. With an increase in seasonal erosion, the subject beach will experience accelerated scour and also accrete at a slower rate. Therefore, the Commission finds that the proposed revetment, over time, will result in potential adverse effects to beach sand supply resulting in increased seasonal erosion of the beach and longer periods for the beach to rebuild.

b. Shoreline Protective Devices Fix the Location of the Backshore

4 State Department of Boating and Waterways (formerly called Navigation and Ocean Development), Shore Protection in California (1976), page 30.

5 Coastal Sediments '87.

It is generally agreed that where a beach is eroding, the erection of a shoreline protective structure will eventually define the boundary between the sea and the upland. This result can be best explained as follows: on an eroding shoreline fronted by a beach, a beach will be present as long as some sand is supplied to the shoreline. As erosion proceeds the entire profile of the beach retreats. A revetment or seawall will halt the landward retreat of the backshore, but will not alter the landward retreat of the rest of the shore profile. The beach and nearshore will continue to move landward. Eventually, the dry beach will disappear in front of the revetment or seawall and the structure will protrude into the ocean with the mean high tide line fixed at the base of the structure. Such a loss of beach has been called passive erosion; however, in the case of an eroding shoreline this represents the loss of a beach as a direct result of the shoreline protective device.

Dr. Craig Everts found that on narrow beaches where the shoreline is not armored, the most important element of sustaining the beach width over a long period of time is the retreat of the back beach and the beach itself. He concludes that:

Seawalls inhibit erosion that naturally occurs and sustains the beach. The two most important aspects of beach behavior are changes in width and changes in the position of the beach. On narrow, natural beaches, the retreat of the back beach, and hence the beach itself, is the most important element in sustaining the width of the beach over a long time period. Narrow beaches, typical of most of the California coast, do not provide enough sacrificial sand during storms to provide protection against scour caused by breaking waves at the back beach line. This is the reason the back boundary of our beaches retreats during storms.⁶

Dr. Everts further concludes that armoring in the form of a shoreline protection device interrupts the natural process of beach retreat during a storm event and that, "a beach with a fixed landward boundary is not maintained on a recessional coast because the beach can no longer retreat."

As described previously, Malibu Beach is an eroding beach and therefore, the effects of the proposed revetment could potentially have adverse impacts as the beach erodes further landward and the protective device prevents beach retreat.

c. Retention of Potential Beach Material

⁶ Letter Report dated March 14, 1994 to Coastal Commission staff member and engineer Lesley Ewing from Dr. Craig Everts, Moffatt and Nichol Engineers.

A shoreline protective device's retention of potential beach material inherently impacts shoreline processes. One of the main functions of a bulkhead or revetment is upland stabilization -- to protect backshore development from wave action and bluff retreat. In the case of Malibu Beach the back of the beach is fixed at the existing continuous bulkhead. The main sources of sediment for California beaches are bluffs and material that has eroded from inland sources and is carried to the beach by coastal streams⁷. The National Academy of Sciences found that retention of material behind a shoreline protective device may be linked to increased loss of material in front of the wall. The net effect is documented in "Responding to Changes in Sea Level, Engineering Implications" which provides :

A common result of sea wall and bulkhead placement along the open coastline is the loss of the beach fronting the structure. This phenomenon, however, is not well understood. It appears that during a storm the volume of sand eroded at the base of a sea wall is nearly equivalent to the volume of upland erosion prevented by the sea wall. Thus, the offshore profile has a certain "demand" for sand and this is "satisfied" by erosion of the upland on a natural beach or as close as possible to the natural area of erosion on an armored shoreline...⁸

d. Encroachment

The revetment will physically occupy an area 19 feet wide by 50 feet in length (950 sq. ft.) in front of the existing bulkhead. This represents encroachment on sandy beach and the revetment will occupy beach area which may otherwise be used by the public. As the seaward face of the beach continues to erode, the available beach area will decrease and this encroachment will remove a larger and larger percentage of available dry beach. The impacts of this encroachment will increase directly with increased beach erosion.

The revetment will provide scour protection for the existing bulkhead. However, the result of this protection, particularly on a narrow beach, is a loss of sediment on the sandy beach area that fronts the revetment. Furthermore, as explained previously, this loss of sediment from the active beach leads to a loss of beach sand, seaward of the protective device, where the protective structure will have greater exposure to wave attack.

⁷ Dr. Douglas Inman, Nearshore Processes, Encyclopedia of Science and Technology, 3rd Edition, McGraw-Hill Book Company, 1971

⁸ National Academy of Sciences, Responding to Changes in Sea Level: Engineering Implications, National Academy Press, Washington D.C., 1987, page 74.

4. Sea Level Rise

Sea level has been rising slightly for many years. In the Santa Monica Bay area, the historic rate of sea level rise has been 1.8 mm/yr. or about 7 inches per century⁹. Sea level rise is expected to increase by 8 to 12 inches in the 21st century.¹⁰ There is a growing body of evidence that there has been a slight increase in global temperature and that an accelerated rate of sea level rise can be expected to accompany this increase in temperature. Mean water level affects shoreline erosion in several ways and an increase in the average sea level will exacerbate shoreline erosion.

On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore. On a relatively flat beach, with a slope of 40:1, every inch of sea level rise will result in a 40-inch landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as bulkheads, revetments, seawalls, single family residences, pilings, an increase in sea level will increase the extent and frequency of wave action and future inundation of the structure. More of the structure will be inundated or underwater than are inundated now and the portions of the structure that are now underwater part of the time will be underwater more frequently.

Accompanying this rise in sea level will be increased wave heights and wave energy. Along much of the California coast, ocean bottom depth controls nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage.¹¹ So, combined with a physical increase in water elevation, a small rise in sea level can expose areas that are already exposed to wave attack to more frequent wave attack with higher wave forces.

Therefore, if new development along the shoreline is to be found consistent with the Coastal Act, the most landward location must be explored to minimize wave attack with higher wave forces as the level of the sea rises over time. Shoreline protective devices must also be located as far landward as feasible to protect public access along the beach as discussed further below.

5. Alternatives to the Proposed Revetment

⁹ Hicks, Steacy D. and Leonard E. Hickman, Jr. (1988) United States Sea Level Variations Through 1986. Shore and Beach, Vol. 56, no. 3, 3 - 7.

¹⁰ Field et. al., Union of Concerned Scientists and the Ecological Society of America (November 1999) Confronting Climate Change in California, www.ucsusa.org.

¹¹ Dean, Robert G. and Robert Dalrymple (1984) Water Wave Mechanics for Engineers and Scientists, Prentice-Hall, Inc. New Jersey.

The further landward a shoreline protective device is located the less wave refraction off of that structure and the less scour and erosion of the beach will occur. The Commission has found in past permit actions that a shoreline protective device required to protect an existing structure should be sited as far landward as feasible to minimize the potential adverse impacts on the beach profile and sand supply.

In this case, there are three alternative bulkhead repair or upgrade designs that would minimize encroachment of the protective device seaward and prevent scouring below the existing bulkhead. The first alternative involves the addition of timber sheathing to the existing bulkhead below the design scour depth of the beach. The second design alternative is a poured in place concrete underpin wall located directly below the existing bulkhead which would extend below the design scour level of the beach. The third alternative involves the installation of sheet pile attached to landward side of the bulkhead extending below the scour depth of the beach. All of these alternatives would prevent scour below the existing bulkhead and would eliminate the need for a rock revetment that extends a considerable distance seaward of the existing bulkhead. These alternatives would result in either no seaward encroachment or very limited seaward encroachment onto the beach. The Commission's coastal engineer, Lesley Ewing, has indicated that these are feasible alternatives to construction of a rock revetment to prevent scour below an existing timber bulkhead.

On December 12, 2000 the Commission approved a bulkhead repair at 23634 Malibu Colony Drive [4-99-281 (March)] permitting the option of either the addition timber sheathing or installation of sheetpile landward of the bulkhead to prevent scour under the bulkhead. This property is located approximately 230 feet east of the subject property. On February 4, 1999 the Commission approved a concrete underpin to repair an existing bulkhead at 23516 Malibu Colony Road 4-97-228 (Caron). This concrete underpin was designed to be entirely landward of the existing bulkhead. The consulting coastal engineer on this project (4-97-228), David Weiss, is the consulting engineer for the applicant. Under coastal development permit 4-98-214 (Malibu Colony Trust), approved in October 1999, the applicant was proposing to deepen a vertical concrete seawall with a concrete underpin to protect an existing residence on Malibu Road. The Commission approved this concrete underpin subject to a special condition requiring revised plans that illustrate the underpin could extend no further seaward than the existing seawall. In addition, the Commission has consistently required, through numerous permit actions in Malibu, that shoreline protective works when required to protect existing structures be located as far landward as feasible in order to minimize the erosion and scour effects of these structures [CDPs: 4-99-239 (Sol Brothers); 4-00-017 (Green); 4-00-057 (Morton) & 4-00-123 (Broad Beach ,LLC)].

Section 30253 of the Coastal Act states in part that new development shall "assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability or destruction of the site..." The alternative discussed above, if designed by a coastal engineer and if properly constructed and maintained would assure stability and structural integrity as required by section 30253 of the Coastal Act.

As discussed above the proposed revetment sited seaward of the existing bulkhead will overtime result in increased erosion and scour of this narrow beach. However, as noted above there are feasible alternatives to the proposed revetment that would not require any seaward encroachment of the existing bulkhead and would minimize the erosion and scour of the shoreline.

6. Conclusion

Coastal Act Section 30235, as previously cited, indicates that shoreline protective devices, such as revetment, seawalls and other construction that alter shoreline processes, shall be permitted when required to protect existing structures in danger from erosion and when designed to eliminate or mitigate adverse impacts on local sand supply. In this case, the existing bulkhead protecting the residence on the site is not designed to an adequate depth to prevent scour beneath the existing bulkhead which could result in the loss of fill or sand material from behind the bulkhead. The loss of the fill or sand behind the bulkhead would result in damage to the existing residence on the site and possibly adjacent development. The applicant is proposing a 50 foot long 19 foot wide and 10 foot high rock revetment to prevent scour under the existing bulkhead. The proposed revetment extends seaward some 19 feet from the face of the bulkhead on a narrow eroding beach that is subject to wave action.

As discussed above, the addition of a protective rock revetment seaward of the existing bulkhead will over time have an adverse impact on the profile and sand supply of this beach. To minimize the adverse impacts associated with shoreline protective devices the Commission has required in past permit actions that the shoreline protective structure be sited as far landward as feasible. In this case there are three alternatives to the proposed revetment which would not require the seaward encroachment of the protective device. These alternatives include; (1) the addition of timber sheathing to the existing bulkhead below the design scour depth of the beach; (2) the construction of a poured in place concrete undepin wall beneath the existing bulkhead to a depth below the design scour depth of the beach; and (3) the installation of sheet pile behind and attached to the existing bulkhead extending below the design scour depth of the beach.

Furthermore, section 30253 of the Coastal Act indicates that new development shall "neither create nor contribute significantly to erosion..." As discussed above, the proposed revetment sited seaward of the existing bulkhead will overtime result in increased erosion and scour of this narrow beach. In addition, as noted above there are feasible alternatives to the proposed revetment that would not require any seaward encroach of the existing bulkhead and would minimize the erosion and scour of the shoreline. Section 30235 of the Coastal Act requires approval of necessary shoreline protection "when designed to eliminate or mitigate adverse impacts on local shoreline sand supply." The proposed revetment will over time result in increased erosion and scour and therefore Section 30235 does not require approval of the proposed structure.

The Commission finds that the proposed revetment is not designed to mitigate or eliminate adverse impacts on the shoreline sand supply and there are feasible alternatives that would substantially lessen the adverse scour and erosion impacts to the shoreline and sand supply. Therefore, the Commission finds that the proposed project is not consistent with section 30235 and 30253 of the Coastal Act. Thus, the permit application is denied.

C. Public Access

The Coastal Act mandates the provision of maximum public access and recreational opportunities along the coast. The Coastal Act contains several policies which address the issues of public access and recreation along the coast.

Coastal Act Section 30210 states 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 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.

Coastal Act 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.

Coastal Act Section 30212(a) provides that in new shoreline development projects, public access from the nearest public roadway to the shoreline and along the coast shall be provided except in specified circumstances, where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.*
- (2) adequate access exists nearby, or,*
- (3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30220 of the Coastal Act states that:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such use.

Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided, including use of dry sand and rocky coastal beaches, and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that adequate public access to the sea be provided except where it would be inconsistent with public safety, military security needs, protection of fragile coastal resources and agriculture, or where adequate access exists nearby.

All projects requiring a coastal development permit must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act. Based on the access, recreation and development sections of the Coastal Act, the Commission has required public access to and along the shoreline in new development and has required design changes in other projects on the coast to reduce interference with access to and along the shoreline.

The major access issue in this permit application is the potential adverse impacts of the proposed shoreline protection device on coastal processes, shoreline sand supply, and public access in contradiction of Coastal Act policies 30210, 30211 and 30212. The proposed revetment also directly intrudes into and interferes with a public lateral access easement that has been accepted by the State Lands Commission. The proposed project is located on Malibu Beach (aka, Malibu Colony), approximately 930 ft. west (upcoast) of a vertical public coastal access point from the State Beach at Malibu Lagoon (Exhibits 1 & 4). The public does walk from the State Beach along this section of Malibu Beach even though there is a fence and signage at the boundary between Malibu Colony and the State Beach stating erroneously that this is a "private" beach.

The public readily has access to this section of beach via vertical access from the State Beach at Malibu Lagoon (Exhibits 1 & 4). Numerous lateral access easements also exist along the shoreline of Malibu Beach (Exhibit 4). Observations by Commission Staff over the past two decades provide evidence of substantial public use of the public trust lands along Malibu Beach. Thus, the Commission finds that the public's ability to achieve continued access on the subject beach must be protected consistent with the requirements of applicable policies of the Coastal Act.

The beaches of Malibu are extensively used by both local and non-local visitors. Most planning and demographic studies indicate that attendance of recreational sites in Southern California will continue to increase significantly over the coming years. The public has a right to use the shoreline under the public trust doctrine, the California Constitution and California common law. The Commission must protect public access rights by assuring that any proposed shoreline development does not interfere with those rights.

The State owns tidelands, which are those lands located seaward of the mean high tide line as it exists from time to time. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters.

These lands are held in the State's sovereign capacity and are subject to the common law public trust. The public trust doctrine restricts uses of sovereign lands to public trust purposes, such as navigation, fisheries, commerce, public access, water oriented recreation, open space, and environmental protection. The public trust doctrine also severely limits the ability of the State to alienate these sovereign lands into private ownership and use free of the public trust. Consequently, the Commission must avoid decisions that improperly compromise public ownership and use of sovereign tidelands. In this case, the State Lands Commission has accepted an offer to dedicate a lateral public access easement that was required pursuant to CDP 4-81-393. The lateral access easement is described as follows:

A 25 foot wide strip of beach as measured inland from the water line (document shall state that the daily high waterline is understood by both parties to be ambulatory from day to day, as will the 25 ft. wide strip of dry sandy beach). In no case shall said access be closer than 10 feet from the approved development.

Therefore, the boundary line between the public easement and private lands in this case is a line extending 25 feet inland from the ambulatory daily high water line but no closer than 10 feet to the face of the bulkhead. The proposed revetment intrudes into and interferes with the public access easement because at times the water line will be closer than 25 feet from the revetment.

Where development is proposed that may impair public use on state lands, public easements or ownership of tidelands, the Commission must consider where the development will be located in relation to tidelands or, in this case, a public lateral access easement. The legal boundary between public tidelands and private uplands is relative to the ordinary high water mark. In California, where the shoreline has not been affected by fill or artificial accretion, the ordinary high water mark of tidelands is determined by locating the existing "mean high tide line." The mean high tide line is the intersection of the elevation of mean high tide with the shore profile. Where the shore is composed of sandy beach in which the profile changes as a result of wave action, the location at which the elevation of the mean high tide line intersects the shore is subject to change. The result is that the mean high tide line (and therefore the boundary) is an "ambulatory" or moving line that moves seaward through the process known as accretion and landward through the process known as erosion. In this case, the boundary line between the public easement and private lands is an ambulatory line 25 foot inland of the daily high water line.

Consequently, the position of the mean high tide line or in this case the line 25 foot inland of the daily high water line, fluctuates seasonally as high wave energy (usually but not necessarily) in the winter months causes the mean high tide line to move landward through erosion, and as milder wave conditions (generally associated with the summer) cause the mean high tide line to move seaward through accretion. In addition to ordinary seasonal changes, the location of the mean high tide line is affected by long term changes such as sea level rise and diminution of sand supply.

The Commission must consider a project's direct and indirect effect on public tidelands and in this case the lateral access easement. To protect public tidelands when beachfront development is proposed, the Commission must consider (1) whether the development or some portion of it will encroach on public tidelands (i.e., will the development be located below the mean high tide line as it may exist at some point throughout the year) and (2) if not located on tidelands, whether the development will indirectly affect tidelands by causing physical impacts to tidelands or, as in this case, affect a public lateral access easement.

In the case of the proposed project, the State Lands Commission presently does not assert a claim that the project intrudes onto sovereign tidelands. However, the State Lands Commission does assert that the revetment will at times intrude into, and interfere with, the public access easement accepted by the State Lands Commission (Exhibit 6). In response to this assertion, the applicant reduced the proposed footprint of the revetment from 25 feet to 19 feet in an attempt to reduce the extent of this encroachment into the access easement. However, the redesigned revetment will continue at certain times of the year to intrude and interfere with the accepted public lateral access easement.

Although the revetment may at times be located outside of the lateral access easement and mean high tide line this structure can have an adverse effect on shoreline processes as wave energy reflected by this structure contributes to erosion and steepening of the shore profile, and ultimately to the extent and availability of tidelands and the lateral access easement. That is why the Commission also must consider whether the project will have indirect effects on public ownership and public use of shorelands. As discussed in detail in Section B. Shoreline Protective Devices, there is substantial evidence indicating that the proposed revetment will be subject to wave action which will result in adverse impacts on the shoreline processes and sand supply that maintain the beach at the subject site. Therefore the proposed revetment will have both an individual and, combined with the numerous existing shoreline protective devices, cumulative adverse impact on public use of tidelands.

The proposed project involves construction of a 50 ft. long, 19 foot wide and 10 foot high rock revetment that will have a number of adverse effects on the dynamic shoreline and the public's beach ownership interests. As described in detail above, the proposed shoreline protective device will individually and cumulatively affect public access by causing accelerated and increased erosion on the adjacent public beach. Adverse impacts resulting from shoreline protective devices may not become clear until such devices are constructed individually along a shoreline and they eventually affect the profile of an entire beach. Changes in the shoreline profile, particularly changes in the slope of the profile, caused by increased beach scour, erosion and a reduced beach width, alters usable beach area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This

reduces the physical area of public property available for public beach use. Additionally, through the progressive loss of sand caused by increased scour and erosion, shore material is no longer available to nourish the beach and seasonal beach accretion occurs at a much slower rate. As the natural process of beach accretion slows the beach fails to establish a sufficient beach width, which normally functions as a buffer area absorbing wave energy. The lack of an effective beach width can allow such high wave energy on the shoreline that beach material may be further eroded by wave action and lost far offshore where it is no longer available to nourish the beach. The effect of this on public access along the beach is again a loss of beach area between the mean high water line and the actual water. Furthermore, if not sited landward in a location that insures that the shoreline protective device is only acted upon during severe storm events, the revetment will experience frequent wave interaction and cause accelerated beach scour during the winter season when there is less beach area to dissipate wave energy

The proposed revetment directly interferes a public access easement by occupying all or part of the lateral access during high tide and severe storm events, and potentially throughout the entire winter season. The impact of a shoreline protective device on public access is most evident on a narrow and eroding beach where wave run-up and the mean high tide line are more frequently observed in an extreme landward position during storm events and the winter season. As the shoreline retreats landward due to the natural process of erosion, the boundary between public and private land also retreats landward. As the beach narrows over time due to erosion resulting from the proposed revetment less beach will be available to the public within the easement.

In past permit actions, the Commission has required that new shoreline protection devices be located as landward as possible to reduce the identified adverse impacts to shoreline processes, sand supply and public access described above [CDPs: 4-99-239 (Sol Brothers); 4-00-017 (Green); 4-00-057 (Morton) & 4-00-123 (Broad Beach ,LLC)]. In the case of this project, there are alternatives to the proposed revetment that would eliminate encroachment into a public access easement and sandy beach area. These alternatives, discussed in detail above, involve improvements to the existing bulkhead which would result in a bulkhead that extends below the design scour depth of the beach but not extend any further seaward than the existing bulkhead. Therefore, the Commission finds, that proposed revetment directly interferes with, and intrudes into, a public lateral access easement and overtime will narrow the beach in this location which will adversely impact access to and along the coast. The Commission further finds that the proposed project is not consistent with Sections 30210, 30211, 30212, and 30220 of the Coastal Act. Thus, the permit application is denied.

D. Violation

The existing rock revetment on the site was constructed without a coastal development permit. Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not

constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

E. Local Coastal Program

Section 30604 of the Coastal Act states:

a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will create adverse effects and is found to be inconsistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that the approval of the development will prejudice the City's ability to prepare a Local Coastal Development Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

F. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission finds that the proposed project will have significant adverse effects on the environment and that there are feasible alternatives which would substantially lessen any significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the Commission finds that the proposed project is inconsistent with the requirements of CEQA and the policies of the Coastal Act.

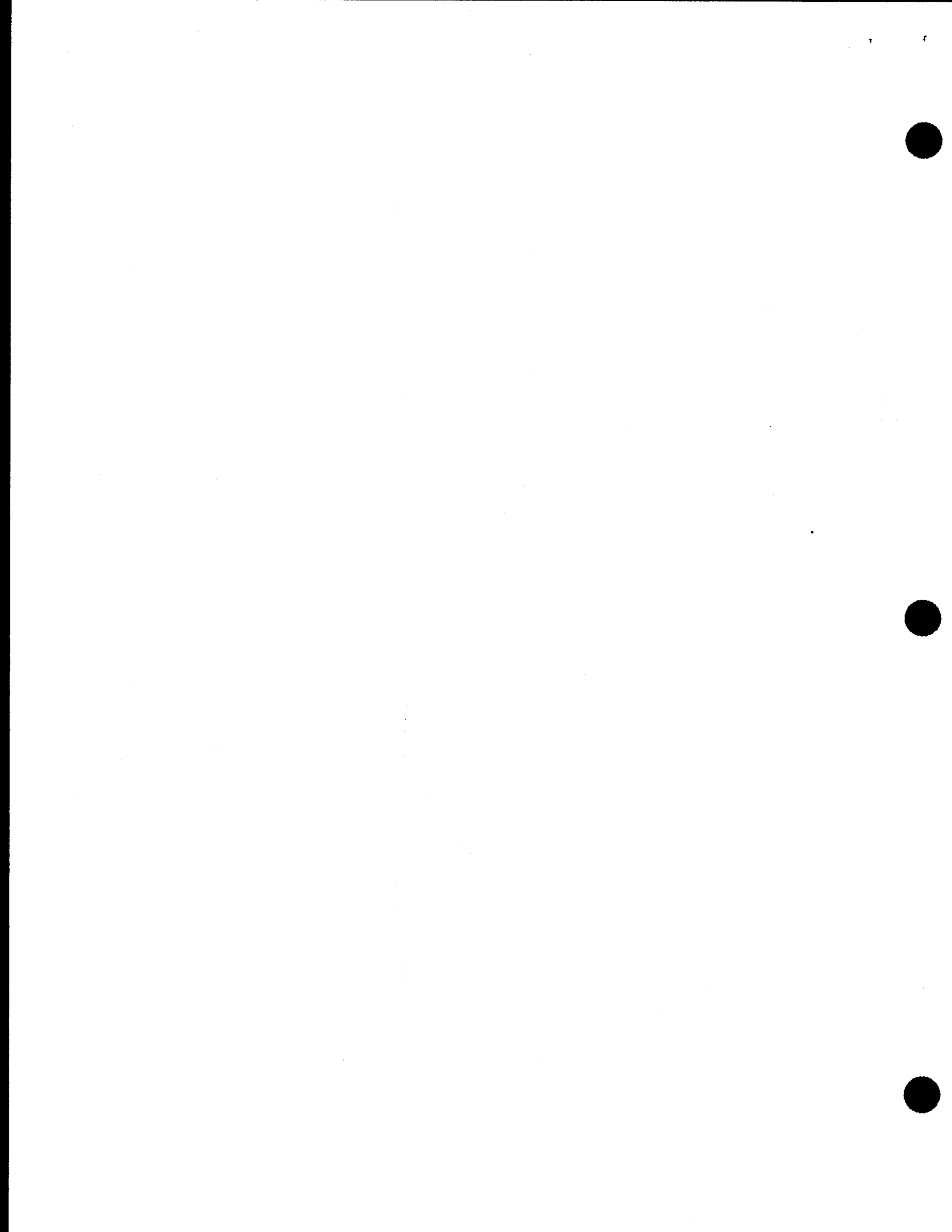
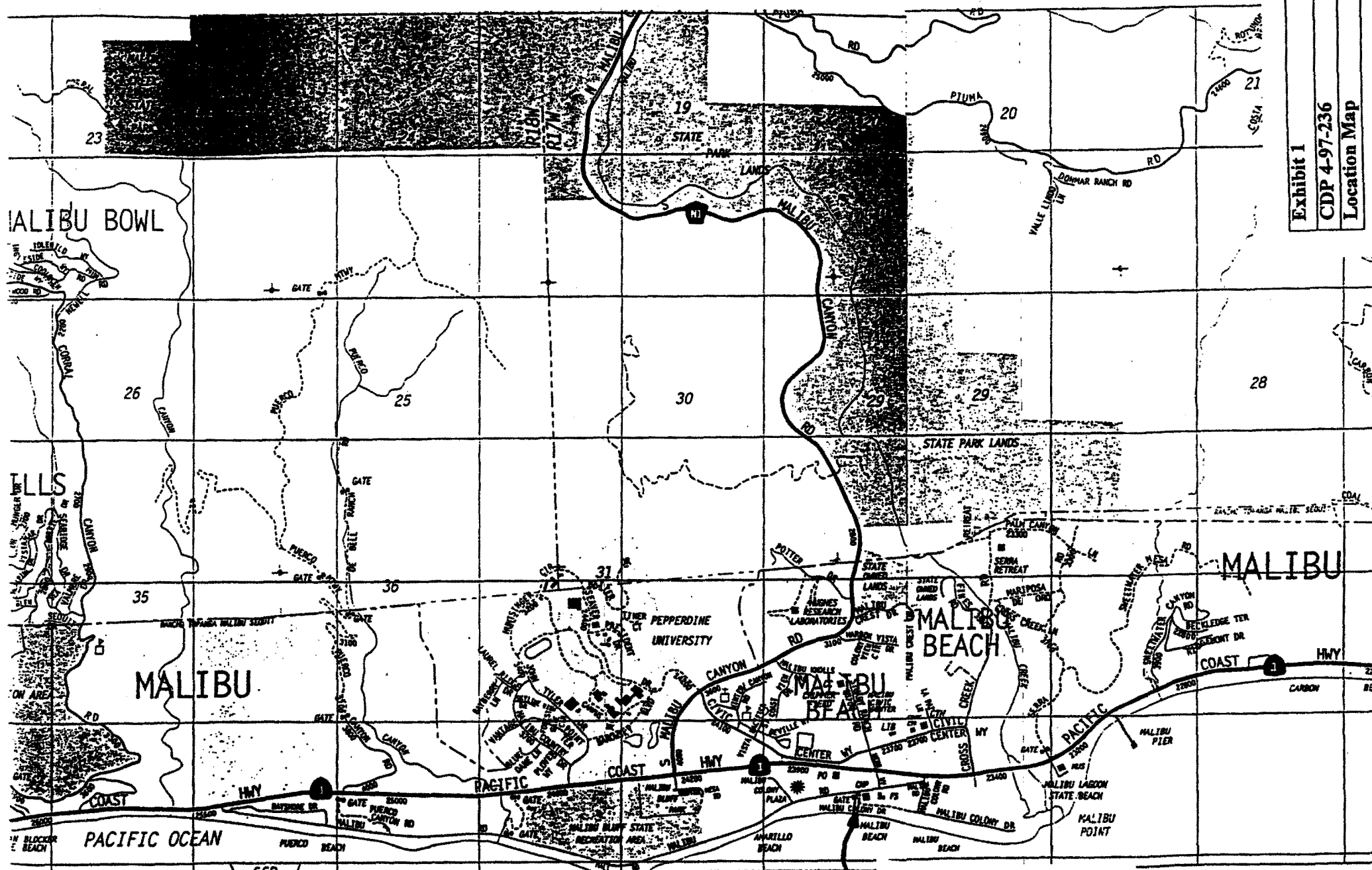


Exhibit 1

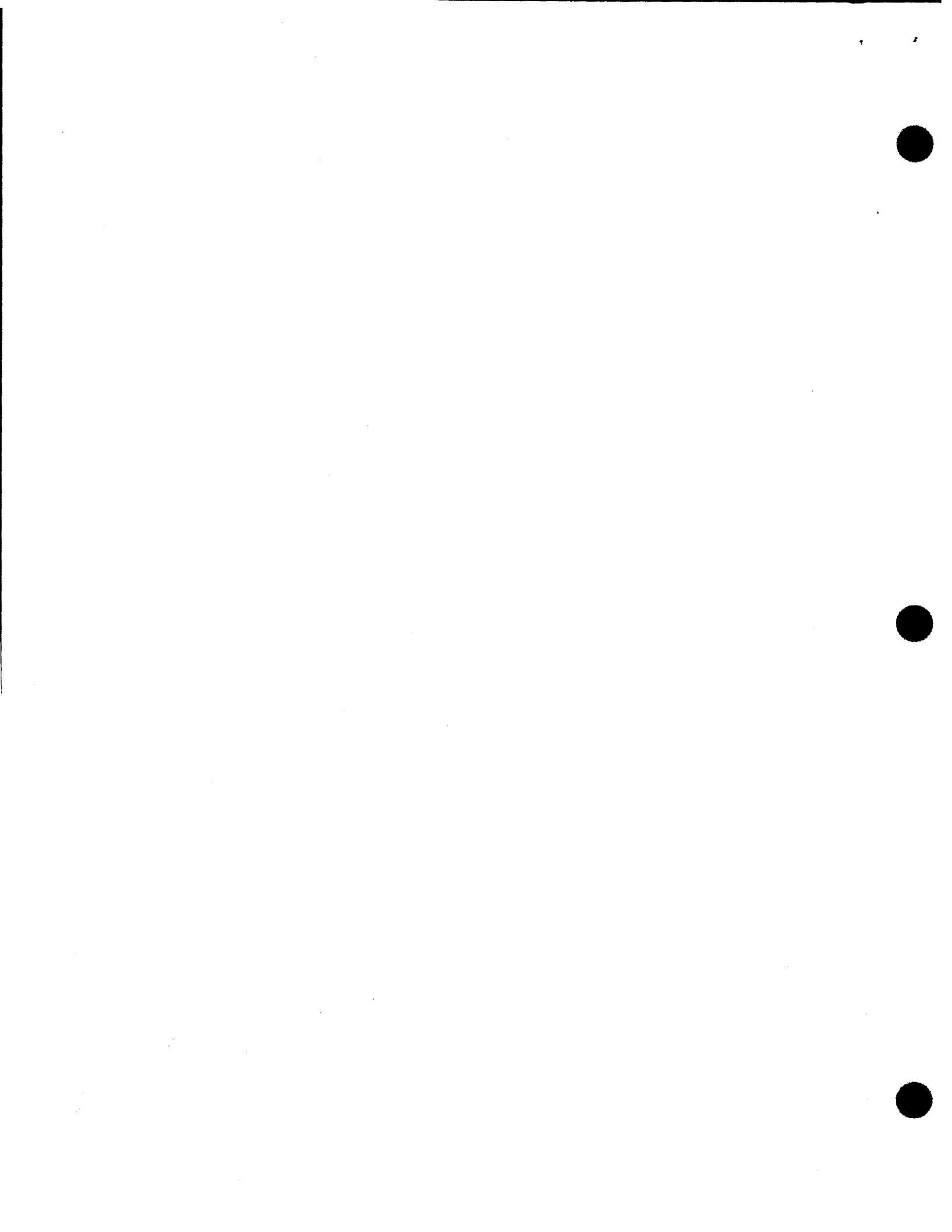
CDP 4-97-236

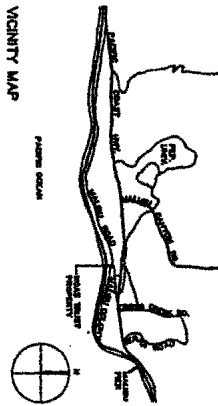
Location Map



SEE 668 MAP

Project Site





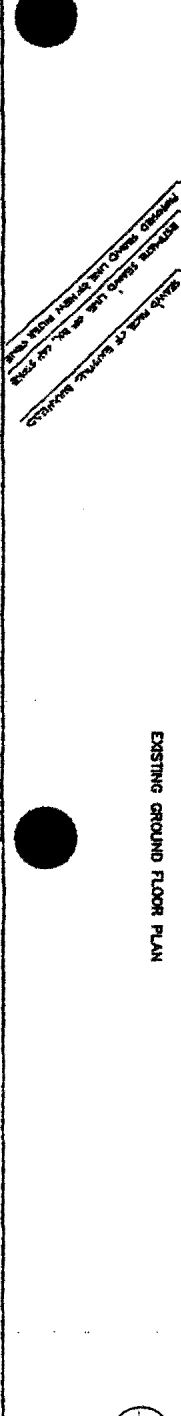
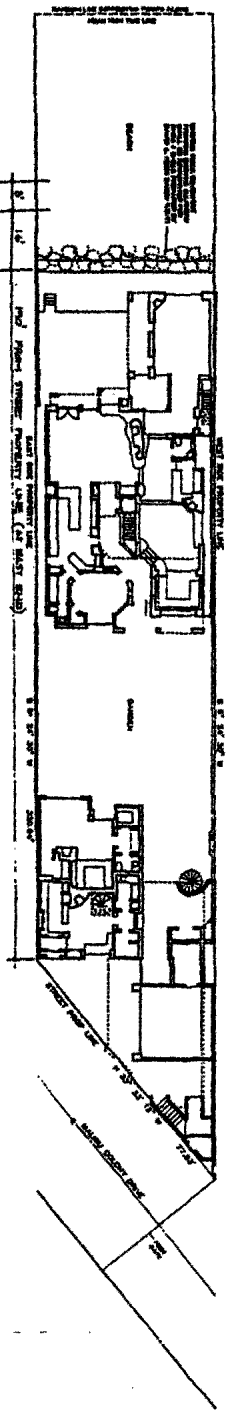
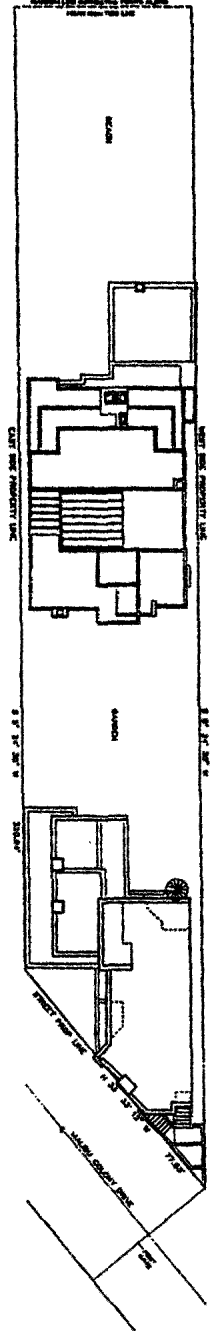
GENERAL NOTES

1. GENERAL NOTES ARE SHOWN ON SHEET 201.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.

SHEET SCHEDULE

SHEET NO.	TITLE	SCALE
201	GENERAL NOTES	1/8" = 1'-0"
202	EXISTING ROOF PLAN	1/8" = 1'-0"
203	EXISTING GROUND FLOOR PLAN	1/8" = 1'-0"

NO.	REVISION	DATE
1	ISSUED FOR PERMITTING	10/1/88
2	ISSUED FOR PERMITTING	10/1/88
3	ISSUED FOR PERMITTING	10/1/88



NOAS TRUST RESIDENCE
 23750 BALDWIN COLONY DR.
 MALIBU, CA 90265

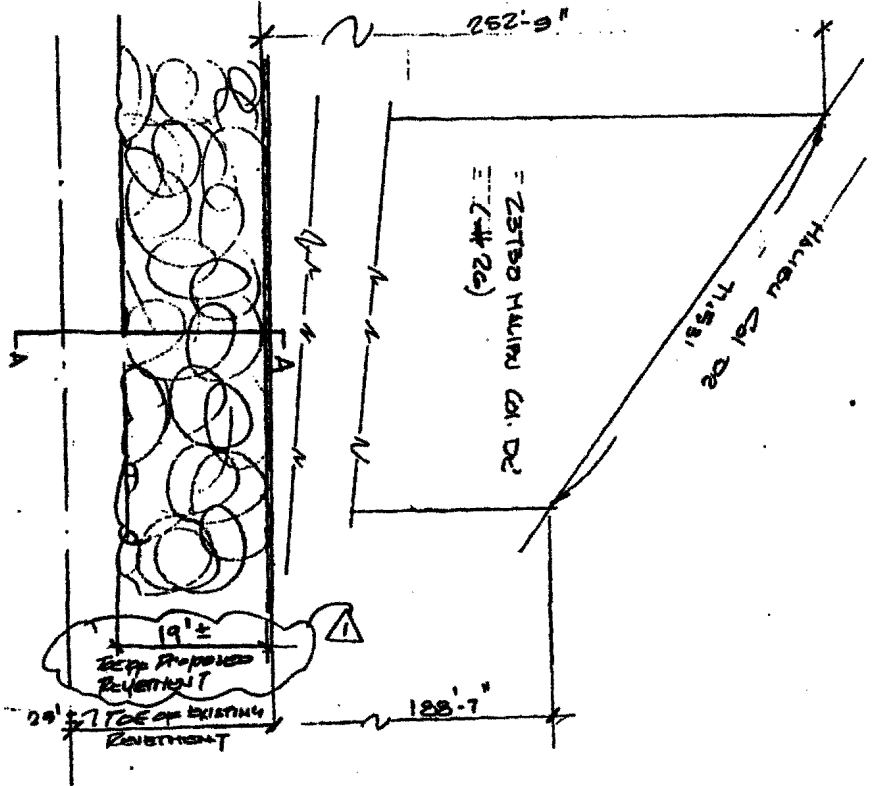
ARCHITECT:
 Michael R. Lee, AIA
 23750 Baldwin Colony Dr., Suite 200
 Malibu, CA 90265
 310-316-8800

INTERIOR DESIGNER:
 David S. Stone
 David S. Stone Interiors, Inc.
 23750 Baldwin Colony Dr., Suite 200
 Malibu, CA 90265

NO.	REVISION	DATE
1	ISSUED FOR PERMITTING	10/1/88
2	ISSUED FOR PERMITTING	10/1/88
3	ISSUED FOR PERMITTING	10/1/88

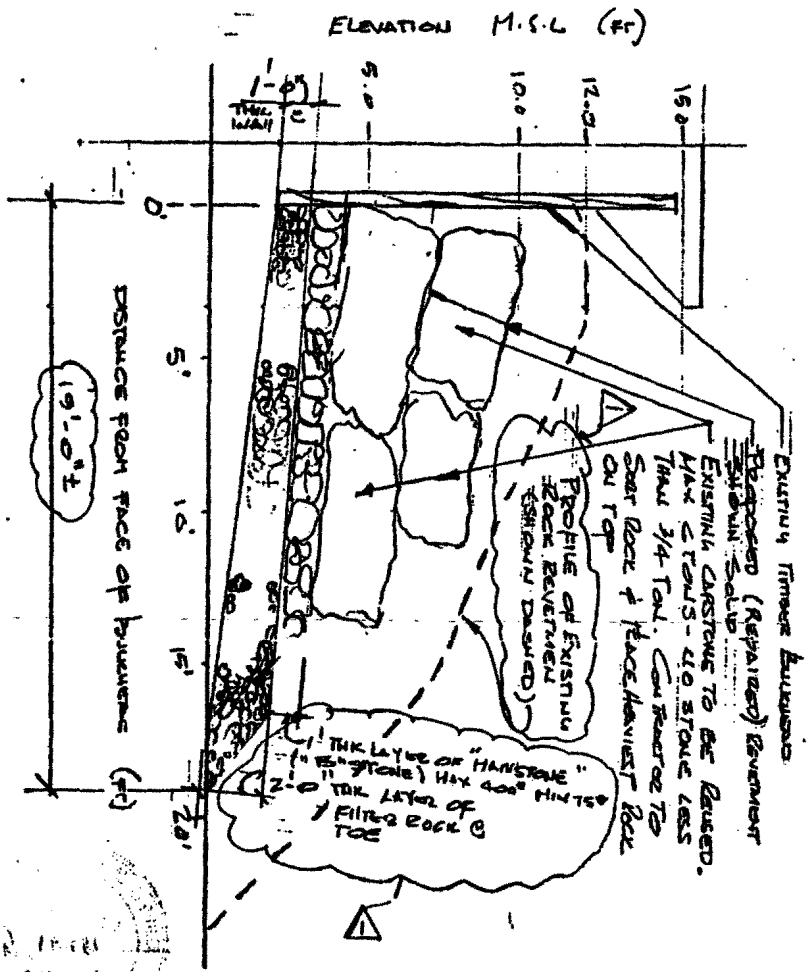


SITE PLAN
SCALE: 1/4" = 1'



SECTION "A-A" - REPAIRED REVETMENT
SCALE: 1/4" = 1'

SEE SHEET 2/2 FOR ROCK SPECIFICATIONS AND SPECIAL CONDITIONS



AUG 27 1983

RECEIVED

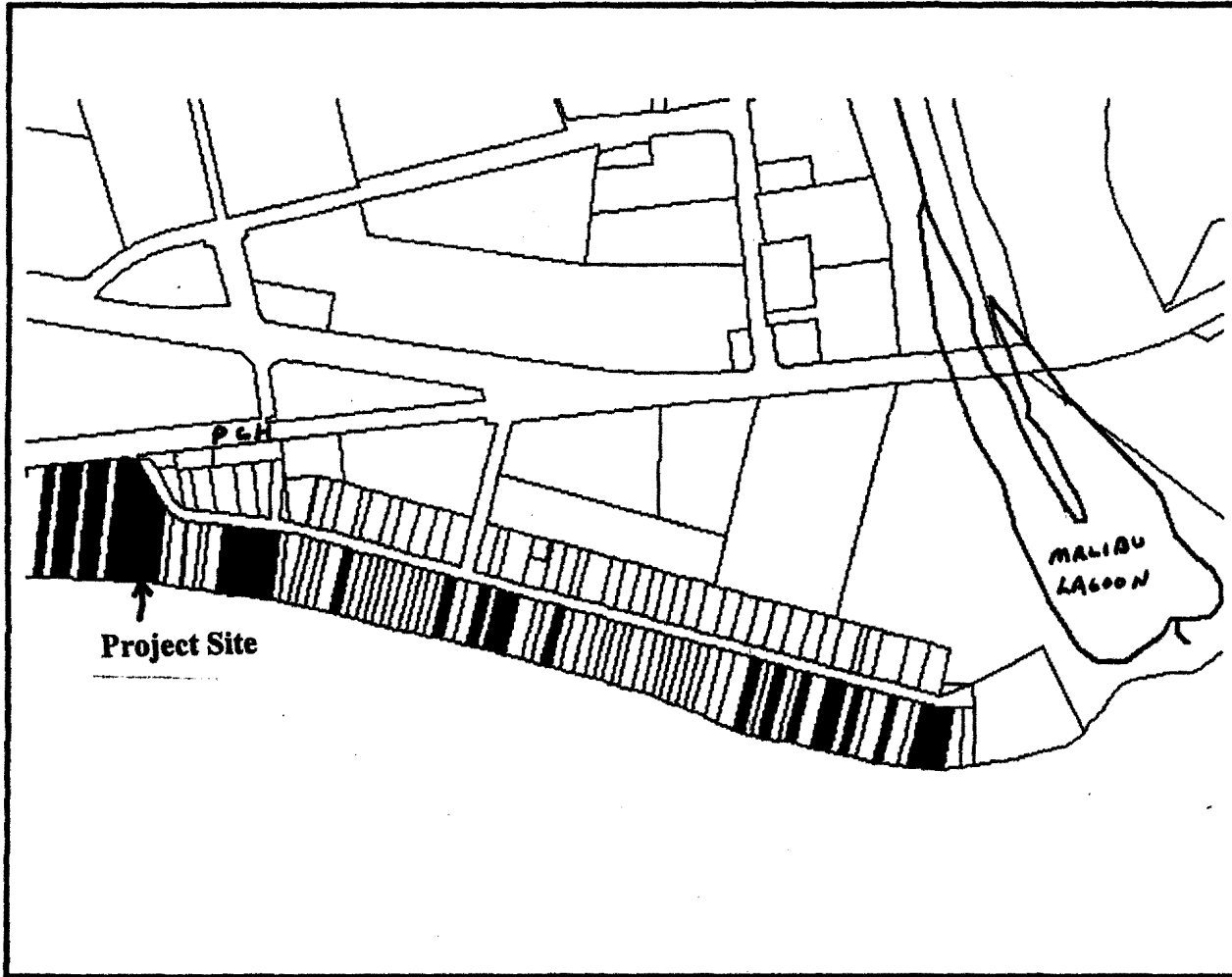
CAROLINA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

NOAS TRUST C/O RICHARD SOL, ARCHITECT 23904 DEVILLE WAY MALIBU, CA	PROJECT: REPAIR OF EXISTING ROCK REV'TMT 23730 MALIBU COLONY DRIVE (#26) MALIBU, CA
---	--

Exhibit 3
CDP 4-97-236
Revetment Plan



Lateral Public Access Offers to Dedicate






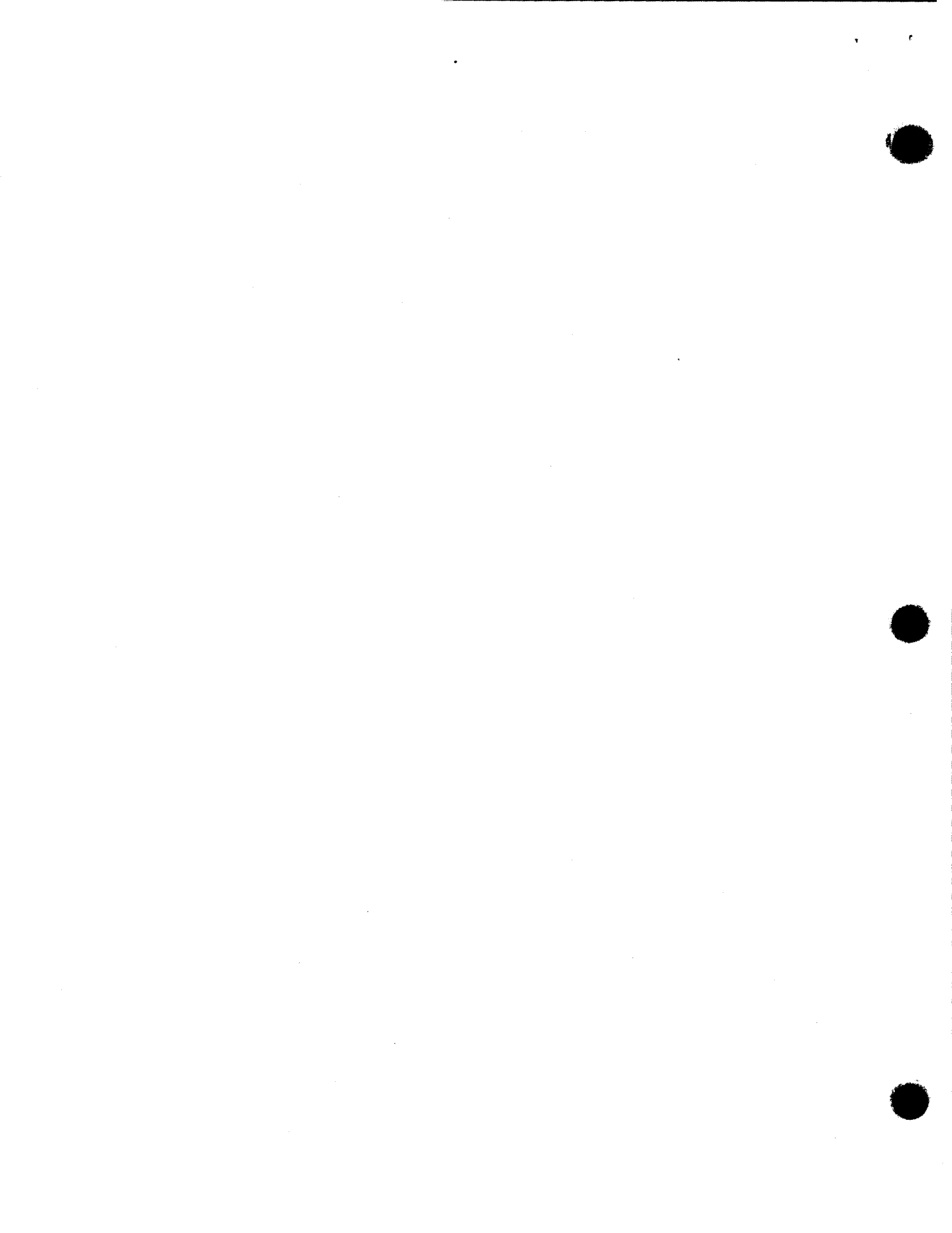
-  Blue Line Streams
-  Lateral OTDs
-  laprcs



Exhibit 4
CDP 4-97-236
Lateral Public Access Offers to Dedicate



IRELL & MANELIA LLPA REGISTERED LIMITED LIABILITY LAW FIRM
INCLUDING PROFESSIONAL CORPORATION1800 AVENUE OF THE STARS, SUITE 900
LOS ANGELES, CALIFORNIA 90067-4278TELEPHONE (310) 277-1010
FACSIMILE (310) 203-7199
WEBSITE: www.irell.comWRITER'S DIRECT
TELEPHONE (310) 203-7573
FACSIMILE (310) 203-7199
cshdnt@irell.com

August 31, 2001

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219Re: Application No. 4-97-236

To whom it may concern:

I. INTRODUCTION

We are writing on behalf of our client, the NOAS Properties, Inc. (the "Applicant"), which is the owner of the property located at 23730 Malibu Colony Road (the "Property"). The Applicant filed an application for a Coastal Development Permit to repair a revetment and bulkhead which protects the improvements at the Property (Application No. 4-97-236 (the "Application")). We are writing to provide the California Coastal Commission (the "Commission") with seven days advance notice of Applicant's intent to provide public notice of the deemed approval status of the Application, as required by Section 65956 of the Government Code and the other relevant provisions of the Permit Streamlining Act. Gov't Code §§ 65920 *et seq.* As discussed in more detail below, good cause exists for approving the revetment and for deeming the Application – which was filed in 1997 – approved in accordance with the California Coastal Act and the Permit Streamlining Act.

II. RELEVANT FACTS

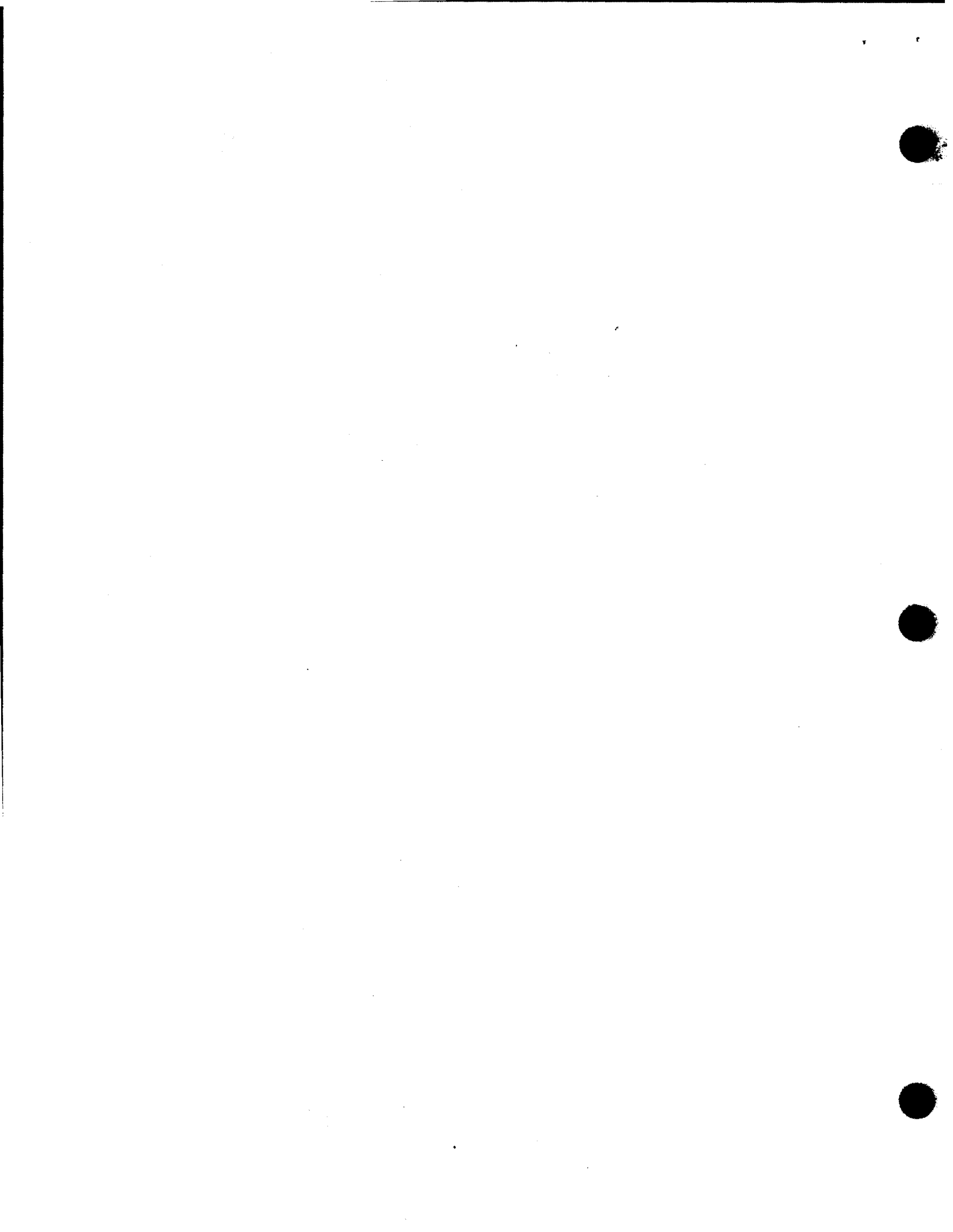
On November 26, 1997, Mr. Sol, the Applicant's architect, filed an Application for a development permit with the Commission to repair an existing rock revetment fronting the existing timber bulkhead on the subject property located at 23730 Malibu Colony Road. The existing revetment is deficient and inadequate to protect the existing house from sand erosion and undermining caused by tidal surge or high surf. An engineering analysis explaining the deficiencies of the revetment and the bulkhead, as well as the required repairs, accompanied the Application filed by Mr. Sol.

Generally, the proposed repair consists of adding a layer of drain rock, replacing the cap stone, and adding a layer of "B" stone. After placing the existing cap stones upon the proposed "B" stone and filter stone, the elevation of the top of the cap stone will not exceed

Exhibit 5

CDP 4-97-236

Letter from Applicant's Attorney
Regarding "Deemed Approved"
Status of the Permit



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August 31, 2001
Page 2

the elevation of the top of the pre-existing cap stone. Thus, when completed, the repaired revetment will not exceed the boundaries of the existing revetment, and in fact will be lower and not extend as far seaward as the existing revetment.

Following submission of the Application, the Commission, on January 6, 1998, sent a letter specifying those parts of the Application which were incomplete. Mr. Sol responded immediately on January 7, 1998 by supplying the Commission with all additional requested application materials. No further letters were received advising Mr. Sol that any additional materials were required in order to deem the Applicant's Application complete - or to process its approval.

III. THE APPLICATION SHOULD BE DEEMED APPROVED

A. The Coastal Act Requires that Permits for Revetments Protecting Existing Structures Must be Granted

The Application must be approved because the Coastal Act mandates that permits for revetments to protect existing structures must be granted. Public Resources Code Section 30235 requires that the Commission must approve the Application for revetment repair. Section 30235 provides that:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes *shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.*

(emphasis added).

The proposed revetment repair is required to protect the existing home located at the Property. An engineering analysis, prepared by David C. Weiss accompanied the Application (the "Weiss Report"). The Weiss Report concluded that portions of the house are in danger of being washed away, and that the repair of the existing revetment and bulkhead is necessary to protect the house. David C. Weiss has designed the proposed modifications to the rock revetment to have a lower profile, and, therefore, there is no possibility that the revetment will have adverse impacts on local shoreline sand supply. Accordingly, because the revetment is needed to protect an existing house, and was designed in a way to mitigate adverse impacts on the local shoreline sand supply, the Commission must approve the Application as required by Public Resources Code Section 30235.



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California Coastal Commission
August 31, 2001
Page 3

B. The Application should be Deemed Approved under the Permit Streamlining Act

In addition to the requirements of Public Resources Section 30235, mandating the approval of the Application, the Application should be deemed approved because the time limit has passed for the Commission to make a determination with respect to approval of the Application. Specifically, and as discussed in more detail below, the Application was deemed complete pursuant to Government Code Section 65943(a) in 1998, and the Commission thereafter failed to act within sixty days as required by Government Code Section 65950. The Application therefore must be deemed approved in accordance with the provisions of Government Code Section 65956.

1. The Application was Deemed Complete under the Permit Streamlining Act in 1998

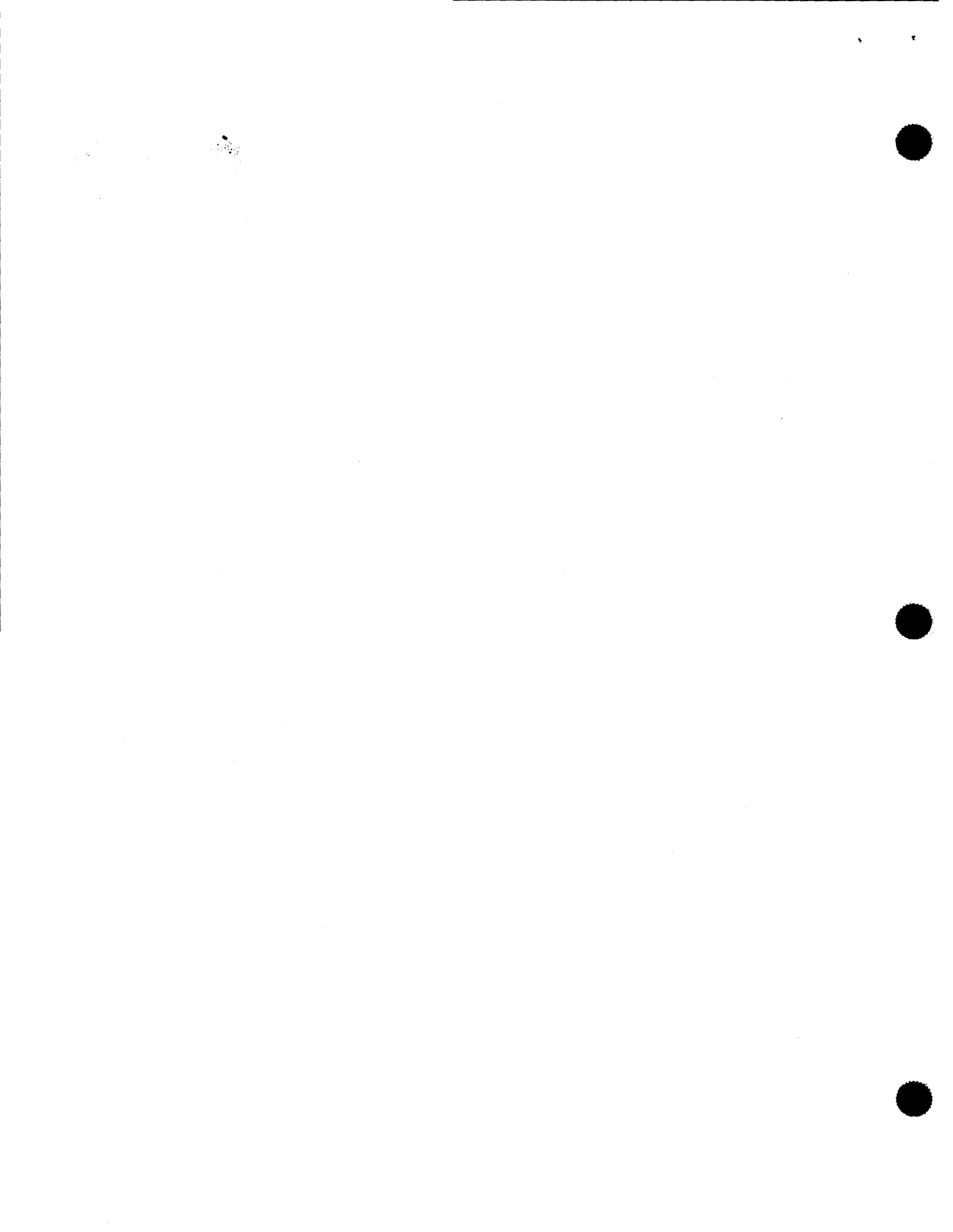
Because the Commission did not provide a written determination regarding the completeness of the Application within the required time period provided for in Government Code Section 65943(a), the Application was deemed complete. California Government Code Section 65943(a) requires that:

Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, *the application shall be deemed complete* for purposes of this chapter.

(emphasis added).

Applicant filed its Application with the Commission on November 26, 1997, and the Commission received it on December 1, 1997. The Commission did not provide a written determination regarding the completeness of the Application until January 6, 1998. Because the Commission failed to respond to the Application with a written determination within the thirty days mandated by Section 65943(a) of the Government Code, Applicant's Application was deemed complete on January 1, 1998.

Nevertheless, on behalf of Applicant, Mr. Sol supplied all information requested in the Coastal Commission's letter dated January 6, 1998 concerning Applicant's Application. No further request or any written determination that Applicant's Application was incomplete in any respect was made within thirty (30) days thereafter. Accordingly, the Application is deemed complete as a matter of law.



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INCORPORATED PROFESSIONAL CORPORATION

California Coastal Commission
August 31, 2001
Page 4

2. The Time Limit for a Determination Has Run Under the Permit Streamlining Act

Once the application was deemed complete the Commission was required to act upon the Application within sixty days. Section 65950 of the Government code requires that:

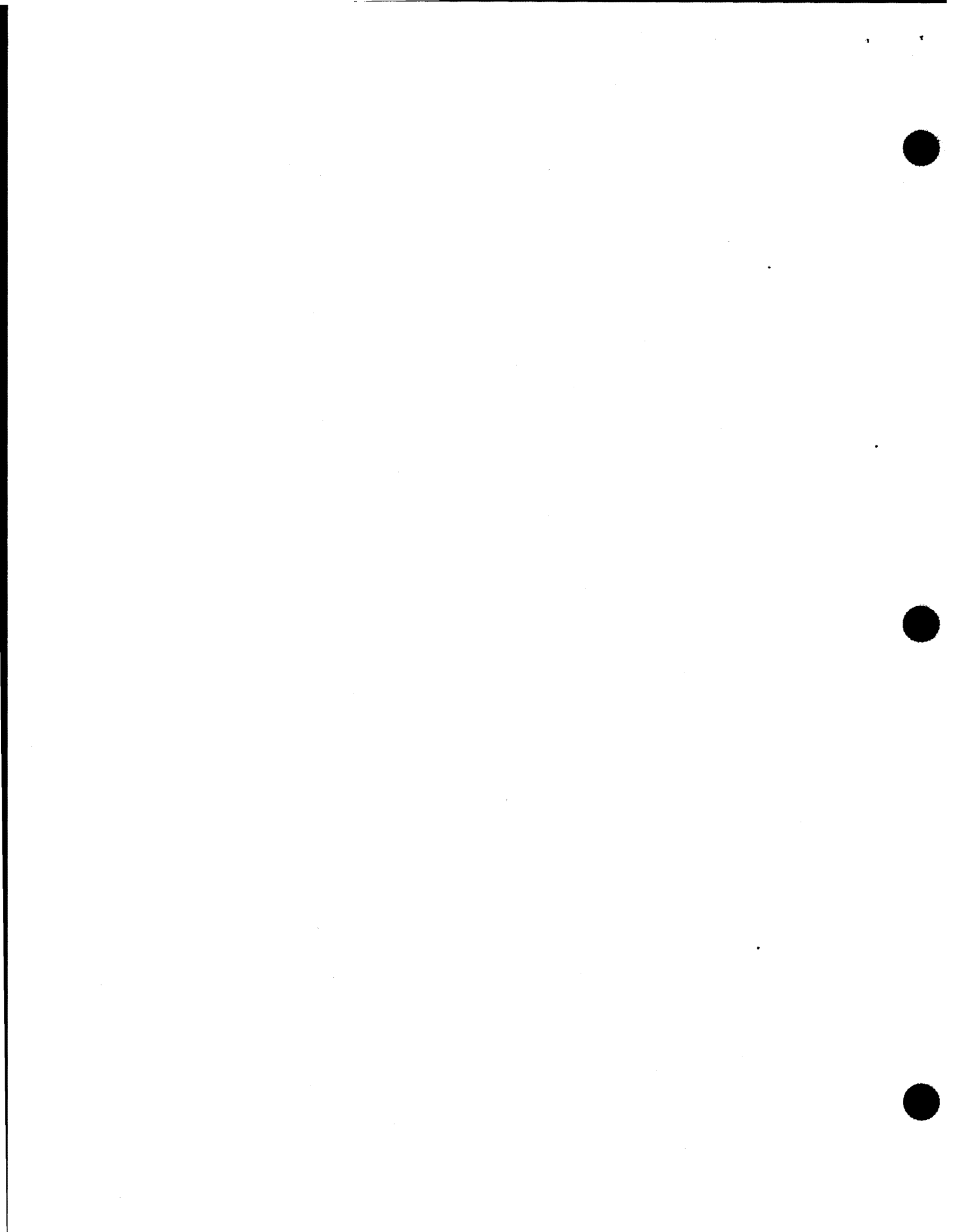
Any public agency that is the lead agency for a development project shall approve or disapprove the project within . . . [s]ixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) if the project is exempt from the California Environmental Quality Act.

The Commission was required to act upon Applicant's application within sixty days of its being deemed complete because the Application is exempt from the California Environmental Quality Act (CEQA) as a matter of law. Pursuant to California Public Resources Code Section 21080.5 and Section 15250 of Title 14 of the California Code of Regulations, the Commission is exempt from requirements to prepare EIRs, negative declarations, and initial studies under CEQA, because the California Coastal Commission's regulatory program, "dealing with the consideration and granting of coastal development permits" is one of the certified programs that is exempt from CEQA. CAL CODE Regs tit. 14, § 15251(c). Because the Application is exempt from CEQA, Government Code Section 65950 and Public Resources Code Section 30235 required the Commission to approve the Application no later than March 1, 1998 (60 days after the Application was deemed complete).

Section 65956 of the Government Code requires that "[i]n the event that a lead agency or a responsible agency fails to act to approve or to disapprove a development project within the time limits required by this article, the failure to act shall be deemed approval of the permit application for the development project." The relevant time period for approving the Application (sixty days from the Application being deemed complete) has long since passed. Applicant is now entitled to invoke the deemed approval provision of Section 65956 of the California Government Code so that the needed repairs to the revetment can be completed.

C. The Consent of the State Lands Commission is Not Required for Permit Approval

According to Mr. Sol, Commission staff requested that Applicant obtain the consent of the California State Lands Commission to Applicant's application to repair the revetment. The Commission had no jurisdiction to require the pre-approval of the State Lands Commission to Applicant's application, as the State Lands Commission has no permitting jurisdiction over the proposed revetment repair.



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INCLUDING PROFESSIONAL CORPORATIONCalifornia Coastal Commission
August 31, 2001
Page 5

The State Lands Commission is the holder of a non-exclusive lateral access easement which, depending upon the location of the high tide line, may overlap a portion of the property on which the revetment is situated. The easement was granted by Larry and Maj Hagman in 1981. The easement is subject to the revetment in that the existing revetment was in place before the easement was granted. The easement holder takes its easement subject to the conditions existing at the time of the conveyance. *Besneatte v. Gourdin*, 16 Cal. App. 4th 1277, 1282 (1993) (holding "[i]t is well settled under the principles of common-law dedication the public takes nothing but an easement for a public use, the title to the underlying fee remaining in the original owner. . ."). In addition, the proposed revetment will actually reduce the profile, elevation and the seaward extent of the current revetment. Thus, the revetment repair will create a lesser projection into the area which is subject to the lateral access easement, and will be more stable and safer for members of the public who occasionally use the easement.

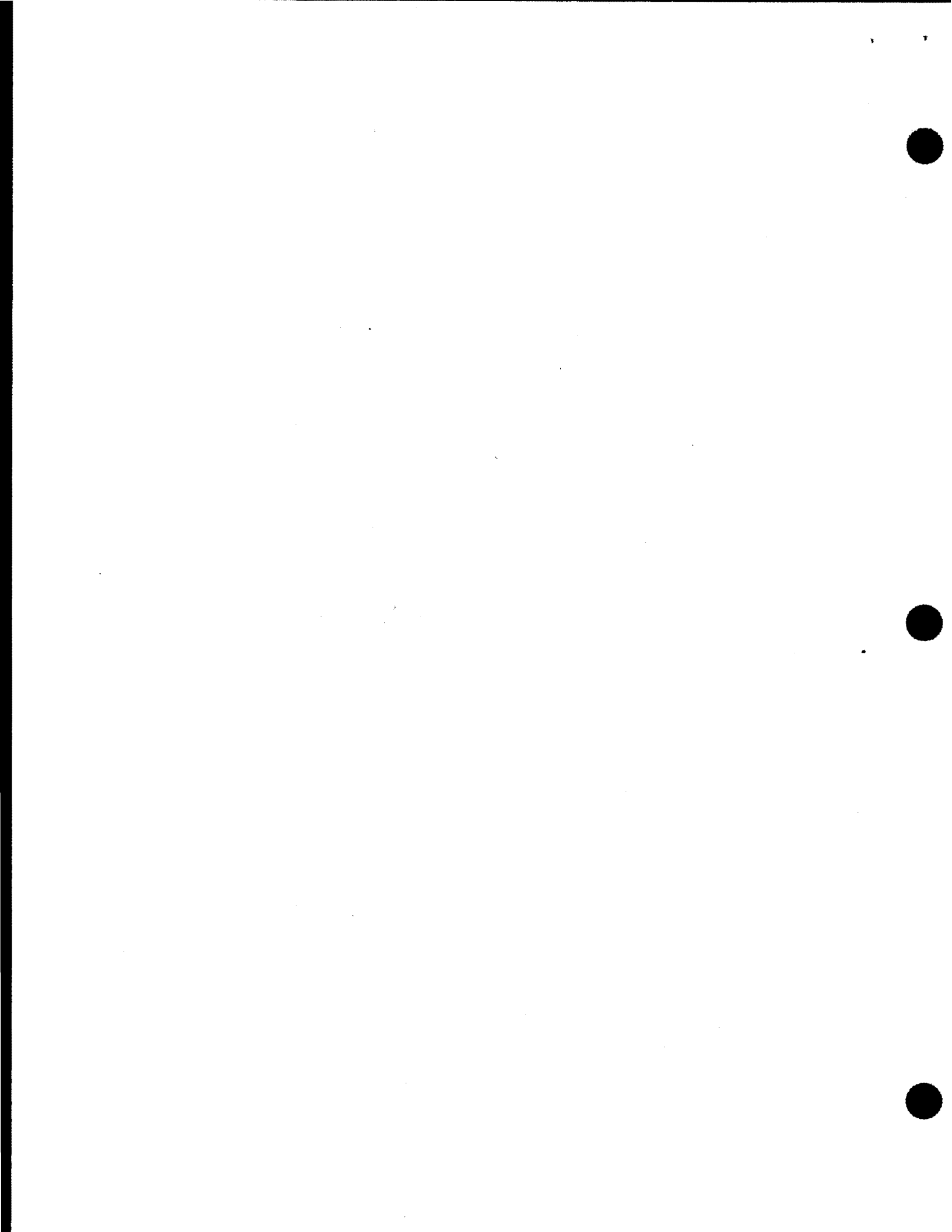
The proposed revetment repair will actually reduce the revetment's presence in the area which is subject to the lateral access easement. However, even if the State Lands Commission disagrees with the Applicant's legal position and contends that the proposed repair conflicts with its easement rights (which it does not), the Commission has no authority to adjudicate such a potential dispute, and any potential delay in the processing and approval of the Applicant's Application for such reason would be *ultra vires*.¹

IV. CONCLUSION

Applicant's application was filed in 1997. All relevant information requested by the Commission was promptly supplied when requested. The relevant time period within which the California Coastal Commission must approve the Application has passed. The repaired revetment, which will have a lower profile and seaward extent than the existing revetment, is necessary to protect the existing house and will not have any adverse environmental effects. The proposed revetment repair will not implicate the easement rights of the State Lands Commission, but in any event, the Commission has no jurisdiction to adjudicate any potential dispute between the State Lands Commission and Applicant.

Because the California Coastal Act mandates the approval of revetments which are necessary to protect coastal structures, and the Commission has failed to comply with the requirements of the Permit Streamlining Act, the Applicant is hereby providing the

¹ It should be noted that in a good faith effort to respond to the concerns of the State Lands Commission (expressed in a letter dated December 1, 1998 from Robert Lynch, Chief of the Division of Land Management for the State Lands Commission to Mr. Sol), David C. Weiss decreased the proposed profile, elevation and seaward extent of the repaired revetment when compared to the current revetment.



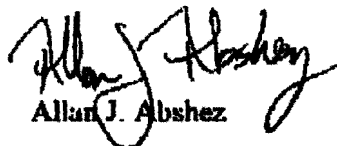
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A REGISTERED LIMITED LIABILITY LAW PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

California Coastal Commission
August 31, 2001
Page 6

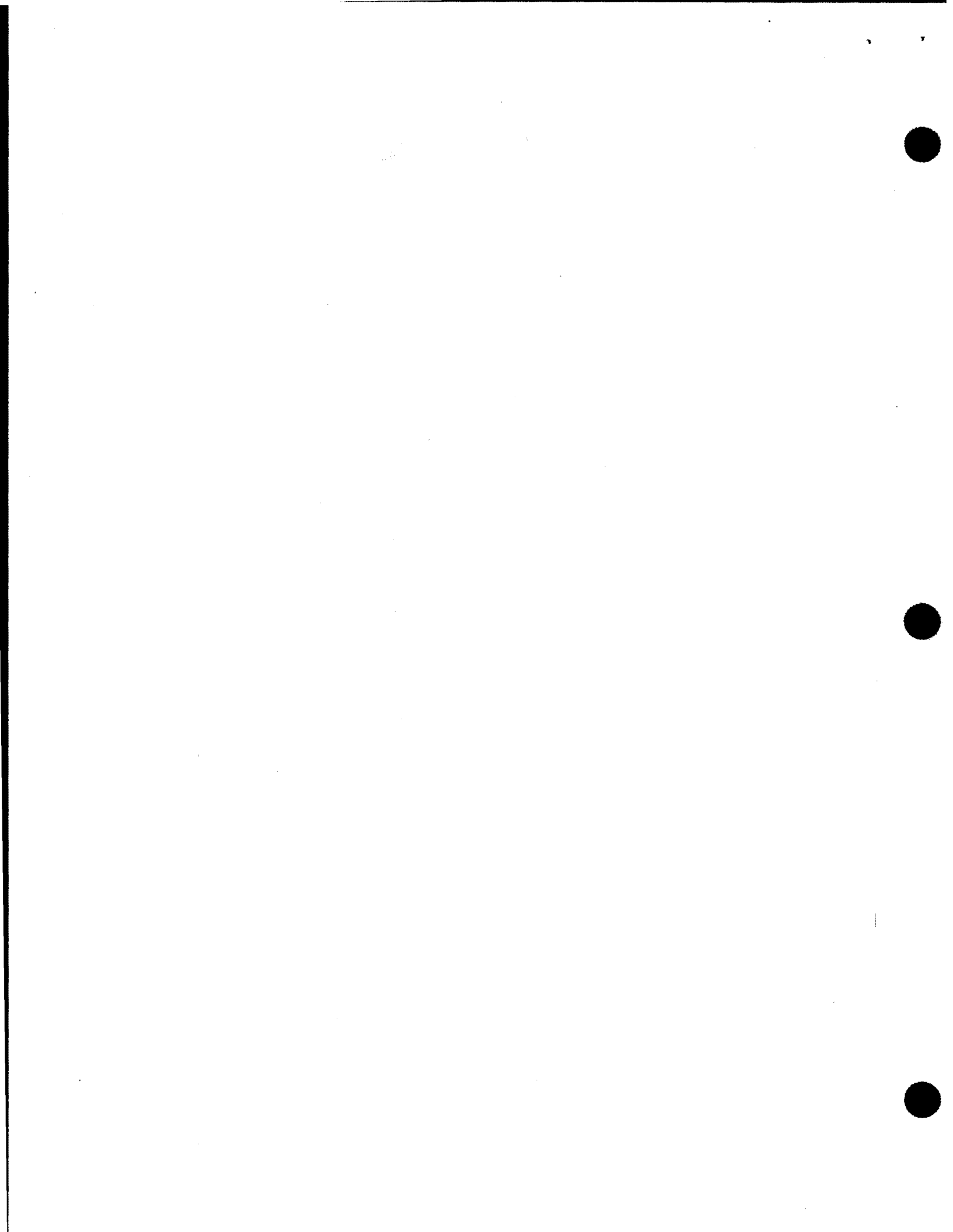
Commission with the seven days notice of its intent to provide public notice of the deemed approval status of the Application.

Sincerely,


Allan J. Abshez

AJA

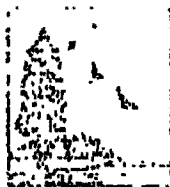
cc: Mr. Richard Sol
California Coastal Commission, South Central Coast Office



STATE OF CALIFORNIA

PETE WILSON, Governor

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202

ROBERT C. HIGHT, Executive Officer

(916) 574-1800 FAX (916) 574-1810

California Relay Service From TDD Phone 1-800-735-2922
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1892

Contact FAX: (916) 574-1925

E-Mail Address: smithj@sla.ca.gov

December 1, 1998

File Ref: SD 98-01-09.5

AD 301

Richard Sol
AIA Architect
23804 De Ville Way
Malibu, CA 90265

Dear Mr. Sol:

SUBJECT: Coastal Development Project Review for Repair to Existing Rock Toe Protection at 23730 Malibu Colony Road, Malibu; California Coastal Commission Application 4-97-236

This is in response to your request on behalf of your client, Noas Trust, for a determination by the California State Lands Commission (CSLC) whether it asserts a sovereign title interest in the property that the subject project will occupy and whether it asserts that the project will intrude into an area that is subject to the public easement in navigable waters.

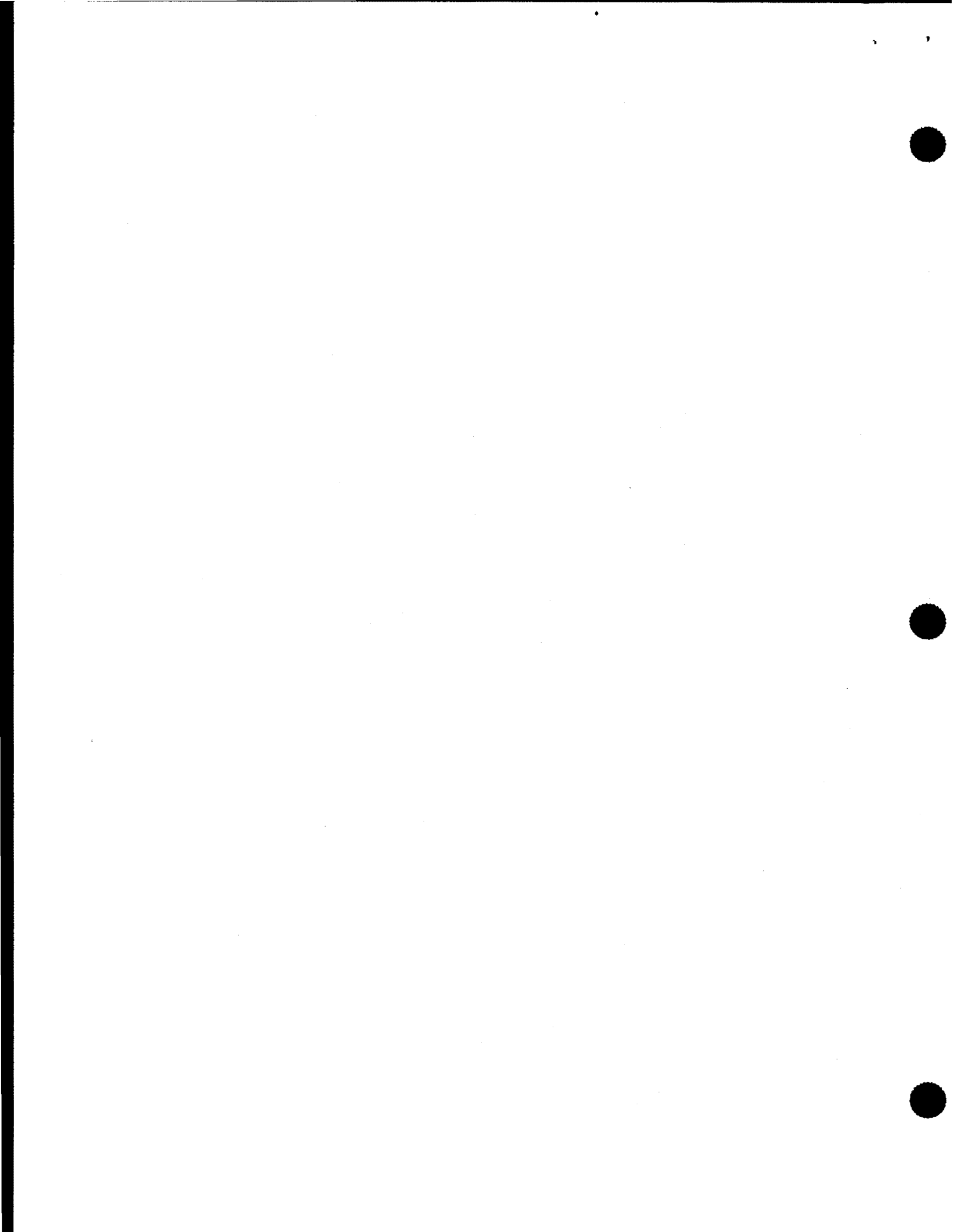
The facts pertaining to your client's project, as we understand them, are these:

Your client proposes to repair an existing rock revetment which protects an existing timber bulkhead and cantilevered deck at 23730 Malibu Colony Road. It does not appear that the existing revetment was ever reviewed and/or permitted by the CSLC or the California Coastal Commission (CCC). The September 12, 1997 plans prepared by David C. Weiss show that the existing revetment, which extends approximately 25 feet seaward of the bulkhead, will be redesigned such that the height and seaward extent of the revetment will be reduced 2 feet and 5-6 feet respectively. As redesigned, the most seaward extent of the rock will be the two foot bottom layer of filter stone. You have stated that the revetment is completely covered by sand the majority of the year. The photograph you submitted which was taken on November 12 of this year shows a relatively wide sandy beach and the rocks completely covered with sand. This is a well developed stretch of beach with numerous residences with bulkheads and rock toe protection.

Exhibit 6

CDP 4-97-236

Letter from State Lands
Commission



Richard Sol AIA

-2-

December 1, 1998

We do not at this time have sufficient information to determine whether this project intrudes upon state sovereign lands. Development of information sufficient to make such a determination would be expensive and time-consuming. We do not think such an expenditure of time, effort and money is warranted in this situation, given the limited resources of this agency and the circumstances set forth above. Accordingly, the CSLC presently asserts no claims that the project intrudes onto sovereign lands. This conclusion is without prejudice to any future assertion of state ownership, should circumstances change, or should additional information come to our attention.

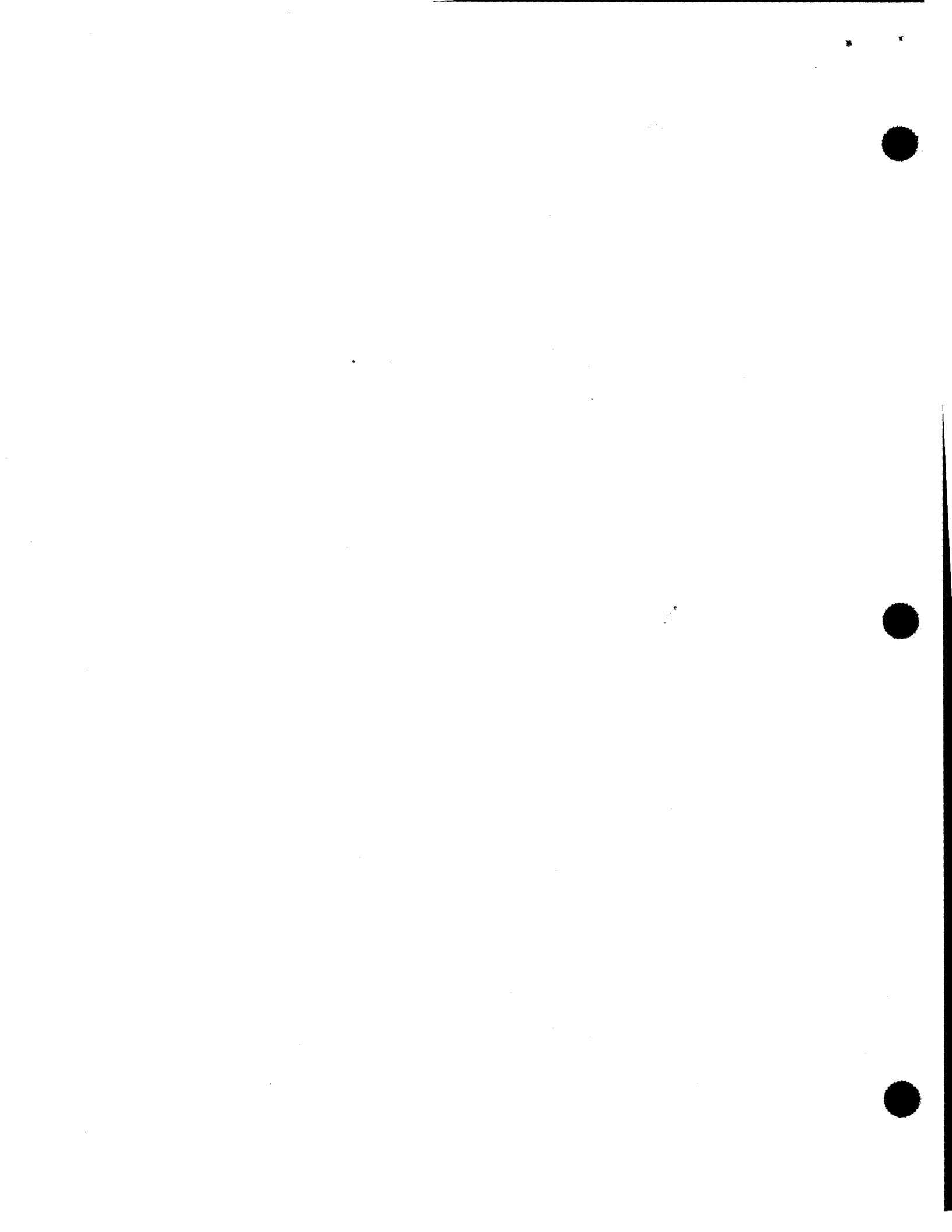
However, a review of our files indicates that this property is subject to an Irrevocable Offer to Dedicate Public Access Easement recorded by the previous property owners, Larry and Maj Hagman, and accepted by the CSLC on February 12, 1987 (Minute Item 74). The dedication provides for a public access easement along a strip of "dry sandy beach" that is 25 feet in width. The dedication also provides for a ten foot privacy buffer for the property owner between the bulkhead and the easement. The 25 foot strip runs inland from the "daily high water line which is understood to be ambulatory."

We do not agree with your interpretation that the easement runs inland from the "mean high tide line." The mean high tide line is the line of intersection of the beach slope with a horizontal plane (or elevation) equal to the average height of the two daily high tides over a 19 year period. Because many high tides are higher than this average elevation, and because the mean high tide line does not take into account the effect of wave run up on the actual inland extent of ocean waters, the mean high tide line, in virtually all cases, will lie seaward of the daily high water line on a sandy beach. The intent of the offer to dedicate required by the CCC was to insure that the public was afforded access and recreational opportunities along a strip of beach that was dry sand -- above the reach of ocean waters.

While it is true that the revetment is covered by sand during some periods of the year, we know from first-hand observation that there are other times, particularly during the winter season and before the sand has built back up in the summer months, when the rocks of the revetment are exposed and prevent use of portions of the dry sandy beach over which the public has access rights. When a member of our staff visited the beach last May with CCC staff, the rocks of the revetment were clearly visible and extended seaward of the ten foot privacy buffer -- onto an area of sandy beach that is subject to the easement.

Based on the foregoing, we have concluded that at certain times of the year, the revetment is exposed and intrudes into, and interferes with, the public access easement accepted by the CSLC. We suggest that you explore ways in which you might obtain the protection sought without the placement of any portion of the revetment seaward of

EXHIBIT 6 (cont)



Richard Sol AIA

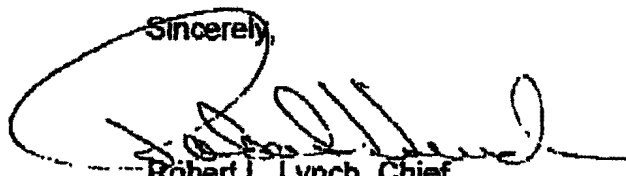
-3-

December 1, 1998

the ten foot privacy buffer. Should such an engineering design not prove feasible, we expect that any encroachment beyond the ten foot privacy buffer, if approved, would trigger the necessity for mitigation of the impact on existing public access rights. We reserve the right to comment to the CCC and take any other appropriate action regarding protection of public rights on the beach. We are so advising the CCC by copy of this letter.

If you have any questions, please contact Jane E. Smith, Public Land Management Specialist, at (916) 574-1892.

Sincerely,

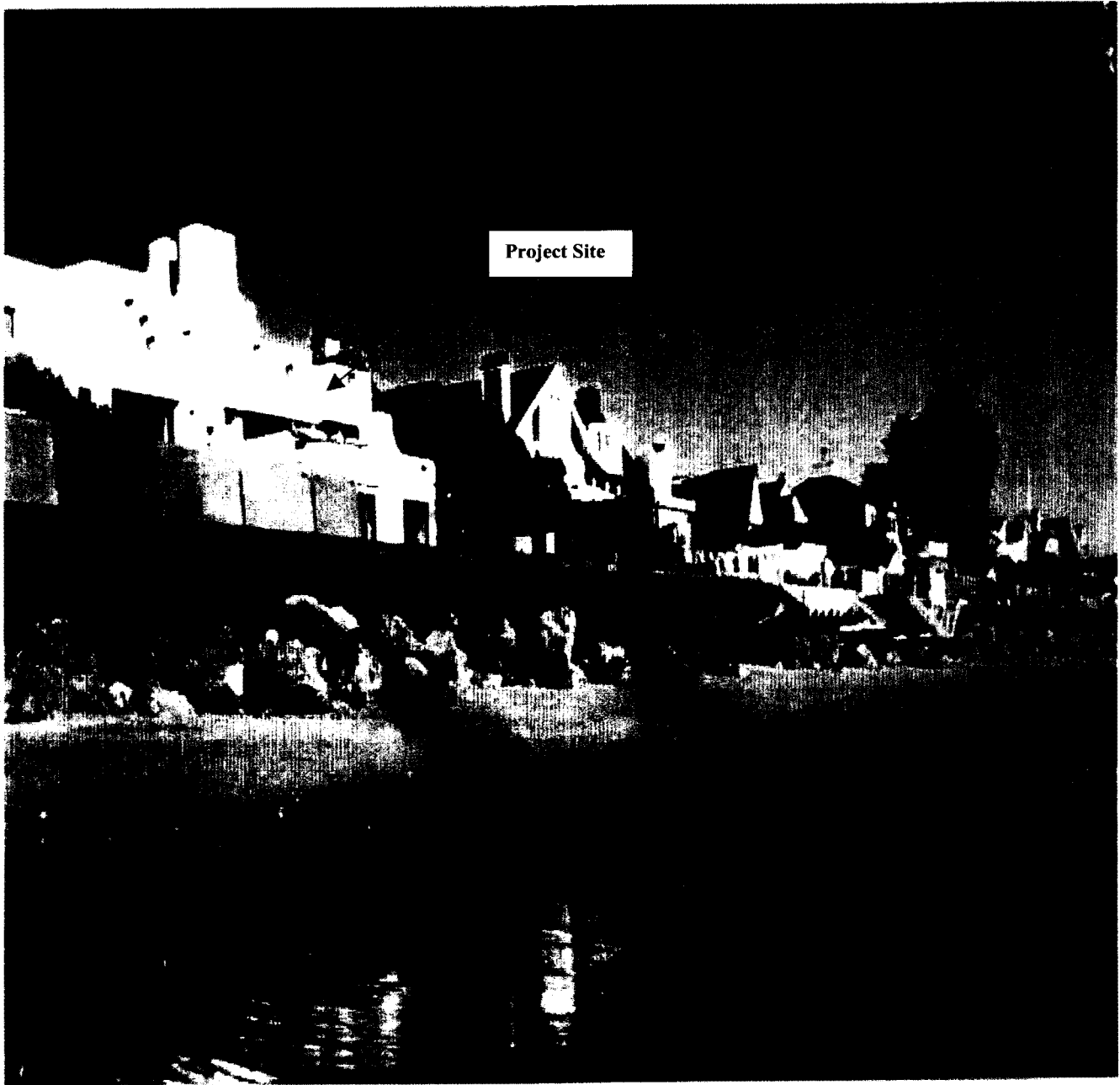


Robert L. Lynch, Chief
Division of Land Management

cc: Jack Ainsworth, CCC/San Buenaventura
Art Bashmakian, City of Malibu
Sandra Kanengiser

EXH 1017 6 (cont)





Project Site

Exhibit 7
Photograph of Existing
Bulkhead and
Unpermitted Rock
Revetment

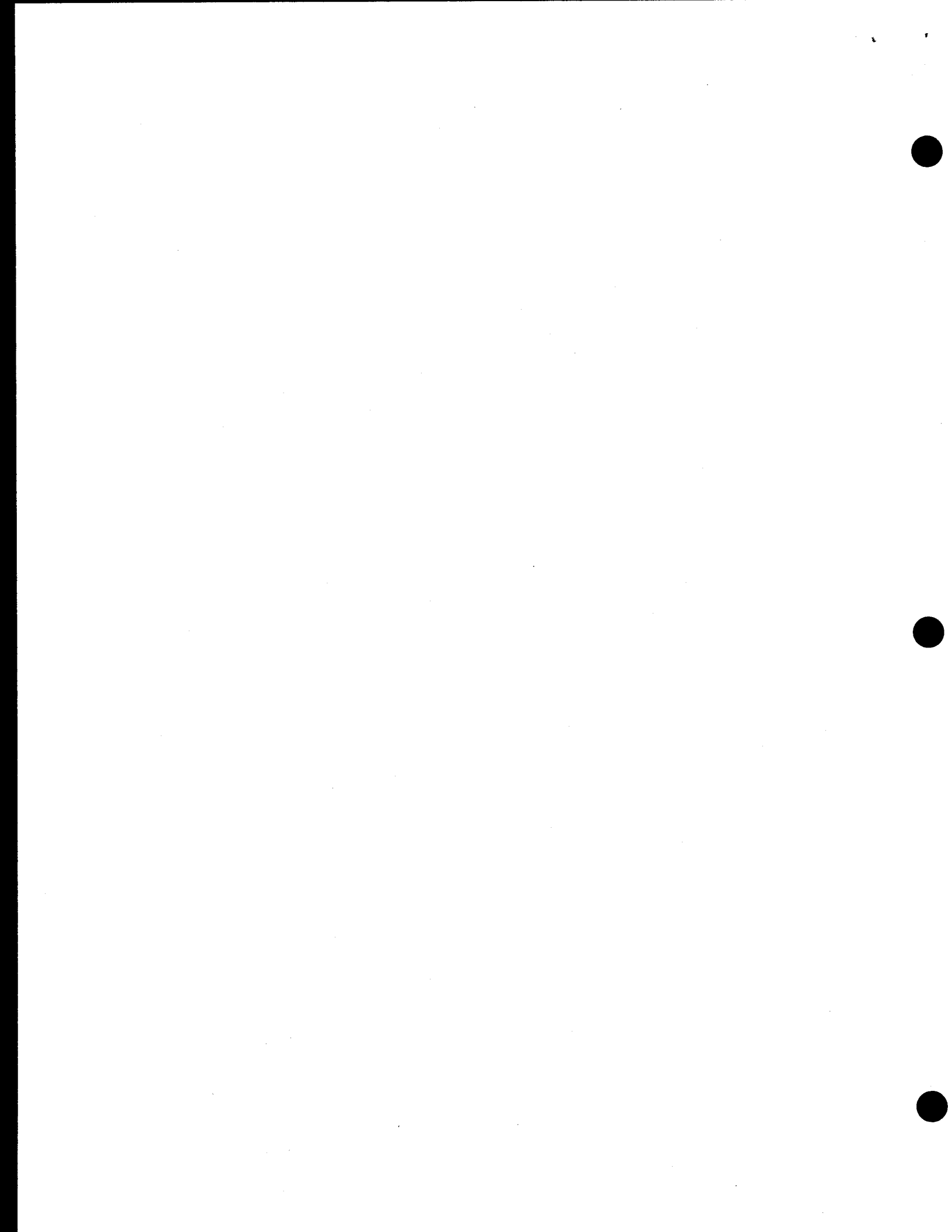
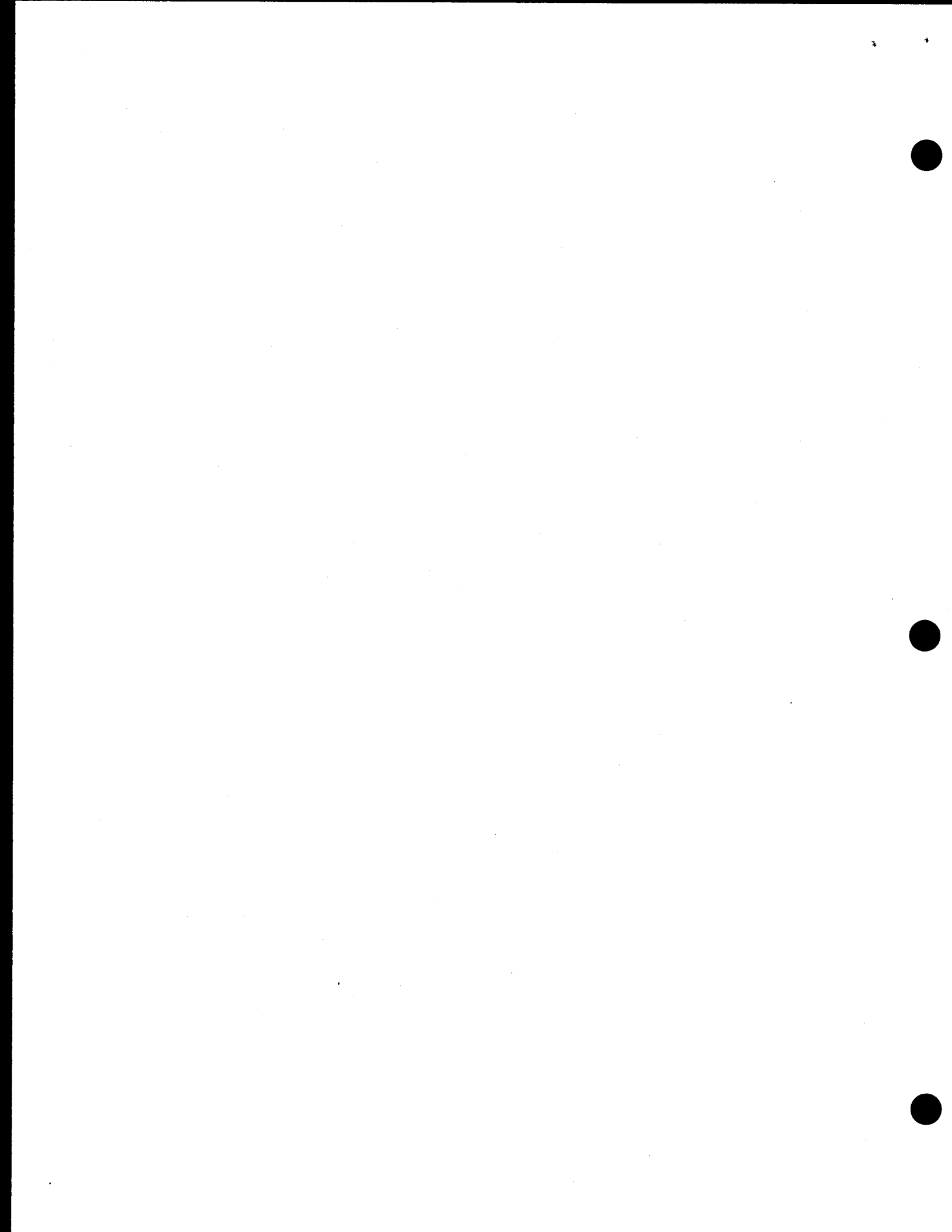




Exhibit 8
Photographs of Beach
at Different Sand
Levels



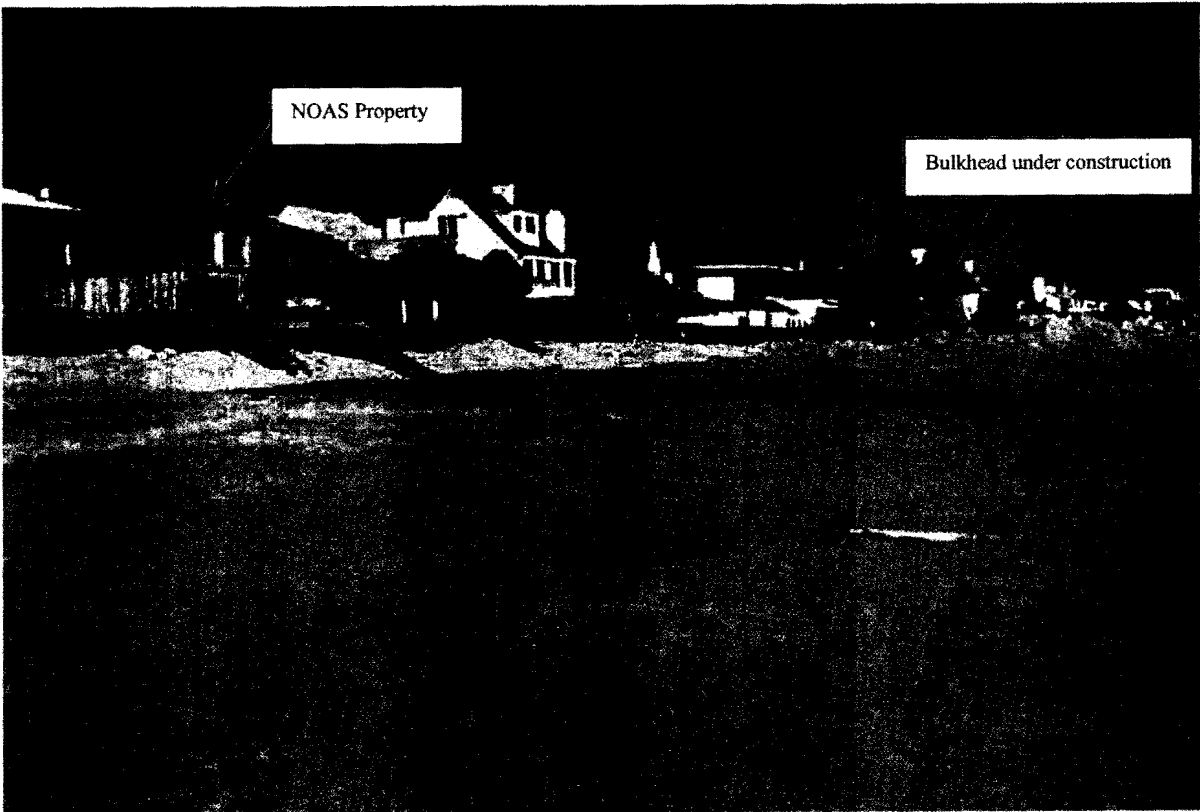
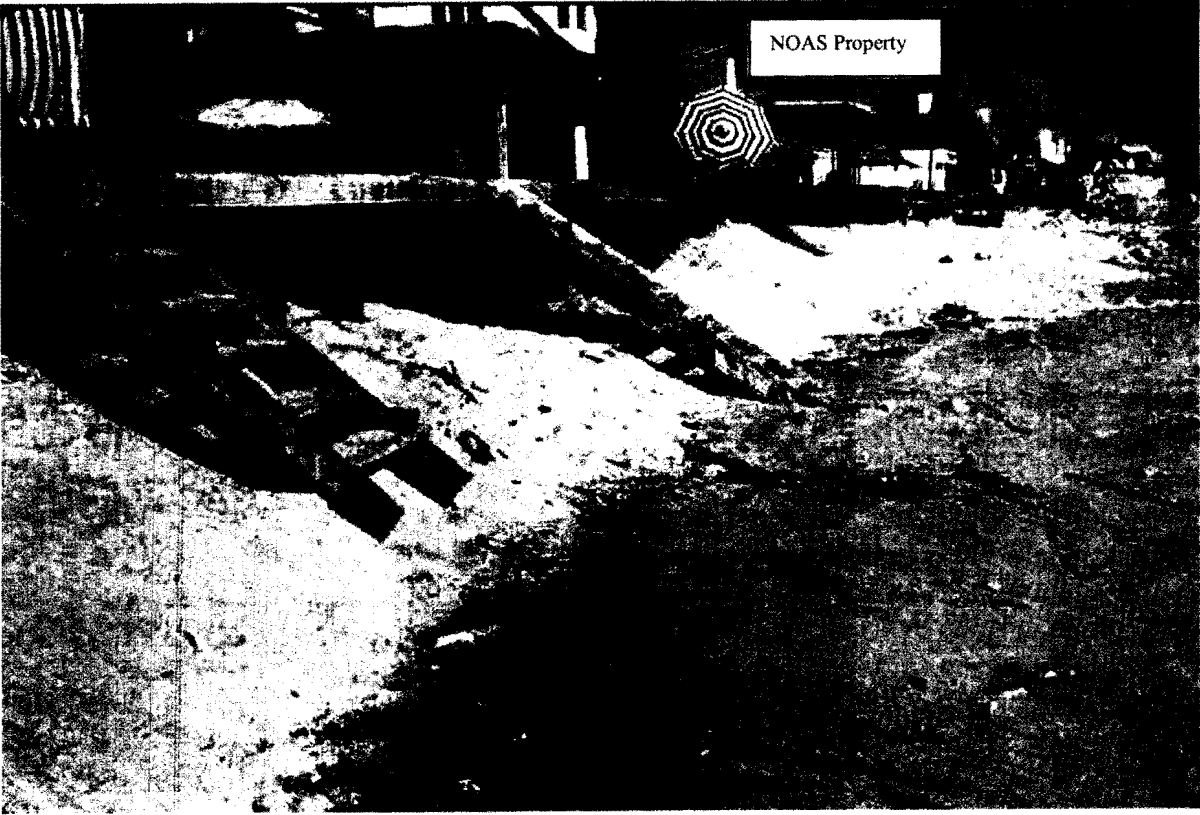
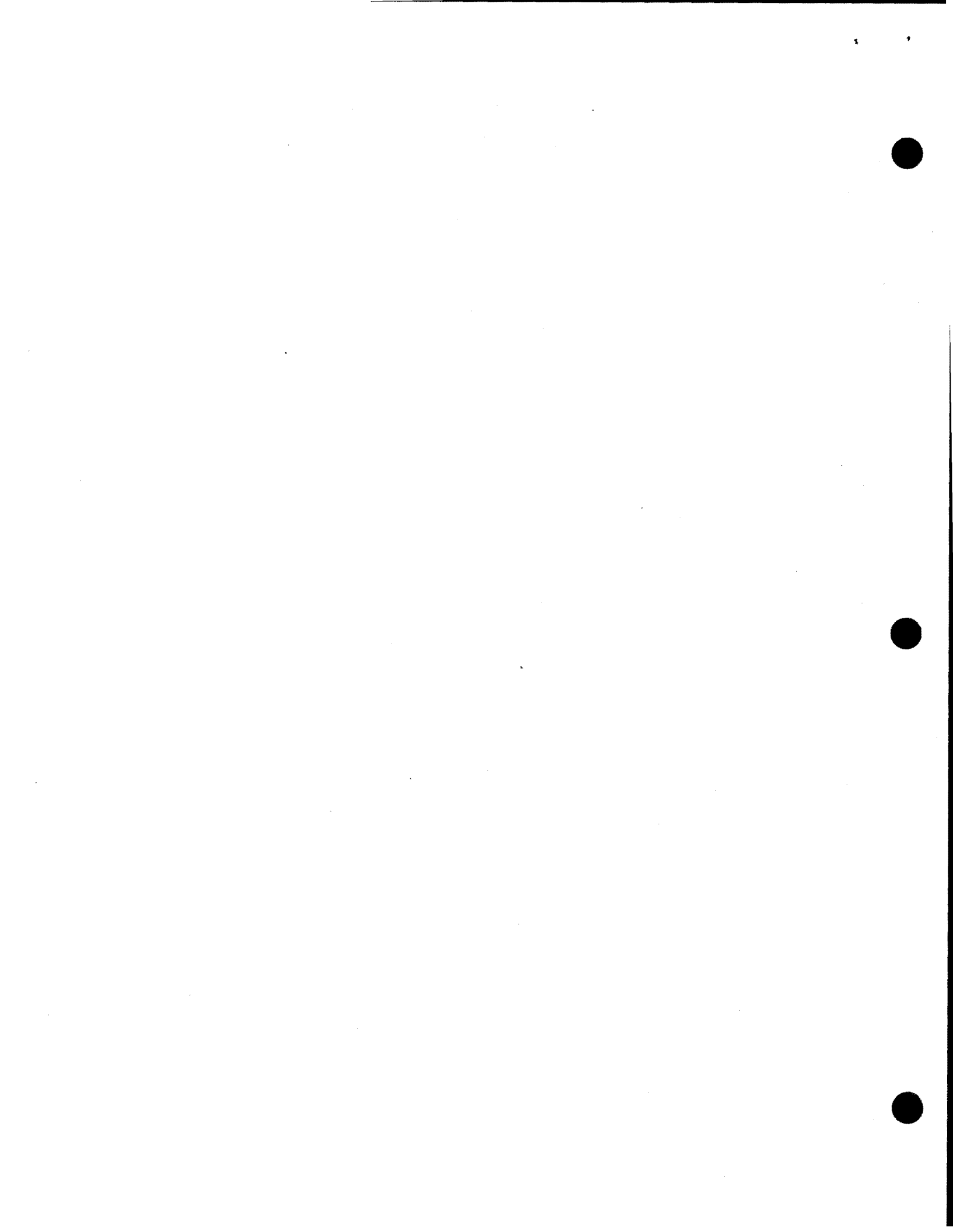


Exhibit 9
November 1978
Photographs of Malibu
Colony Beach



CALIFORNIA COASTAL COMMISSION

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



September 7, 2001

By Telecopy and Mail

Allan J. Abshez
Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067-4276

Re: *Coastal Development Permit Application No. 4-97-236*

Dear Mr. Abshez:

I am writing in response to your letter dated August 31, 2001 regarding Application No. 4-97-236, submitted by NOAS Properties, Inc. ("the applicant"). We received your letter on September 4, 2001. Application No. 4-97-236 seeks a coastal development permit ("CDP") for repair of a revetment at 23730 Malibu Colony Road, Malibu. The application was received by the Coastal Commission on December 1, 1997. The Coastal Commission sent a letter to the applicant on January 6, 1998, stating that the application was incomplete and indicating additional information that was required to evaluate the application. Our review of the file indicates that at least one item that was requested in the January 6, 1998 letter -- information about the project site from the State Lands Commission -- was never provided to the Coastal Commission.

You assert that the January 6, 1998 letter from the Coastal Commission stating that the application was incomplete was not timely because it was sent more than 30 days after receipt of the application and; therefore, according to Government Code section 65943, the application was deemed complete. The application was received on December 1, 1997 and the incomplete letter was sent on January 6, 1998, which is more than 30 days after receipt of the application. Therefore, the application appears to have been deemed complete on or about January 1, 1998. The Coastal Commission then had 180 days to act on the application and failed to do so. For this reason, you state in your letter that you are providing the Coastal Commission with seven days advance notice of the applicant's intent to provide public notice of the "deemed approved" status of the application for a CDP, as required by Section 65956 of the Government Code. Section 65956 provides that "the permit shall be deemed approved only if the public notice required by law has occurred." This section also provides that, if an applicant provides the required public notice of the application, "the time limit for action by the permitting agency shall be extended to 60 days after the public notice is provided."

If the applicant provides public notice as you have indicated that it intends to, Application No. 4-97-236 will be scheduled for a hearing and decision by the Coastal Commission

Exhibit 10
CDP 4-97-236
Letter from Commission Legal Staff to Applicant's Attorney



September 7, 2001
Page 2

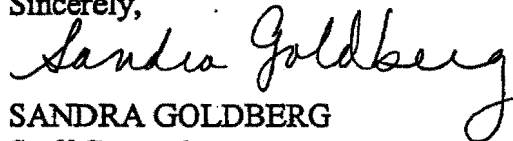
within 60 days of that notice. Assuming that the applicant provides the required public notice immediately after seven days from your August 31 letter, Application No. 4-97-236 will be scheduled for a hearing and decision at the Coastal Commission's October 2001 meeting at Hotel Del Coronado, in Coronado, CA. The meeting is the week of October 9-11, 2001. We will notify you of the day of the hearing on this application.

Please send me documentation of the date and contents of the public notice that the applicant provides for CDP Application No. 4-97-236.

Additionally, your August 31, 2001 letter contains numerous legal arguments and factual assertions that the Coastal Commission does not agree with. We will respond to these issues, if appropriate, at a later time.

Please let me know if you have any questions about this matter.

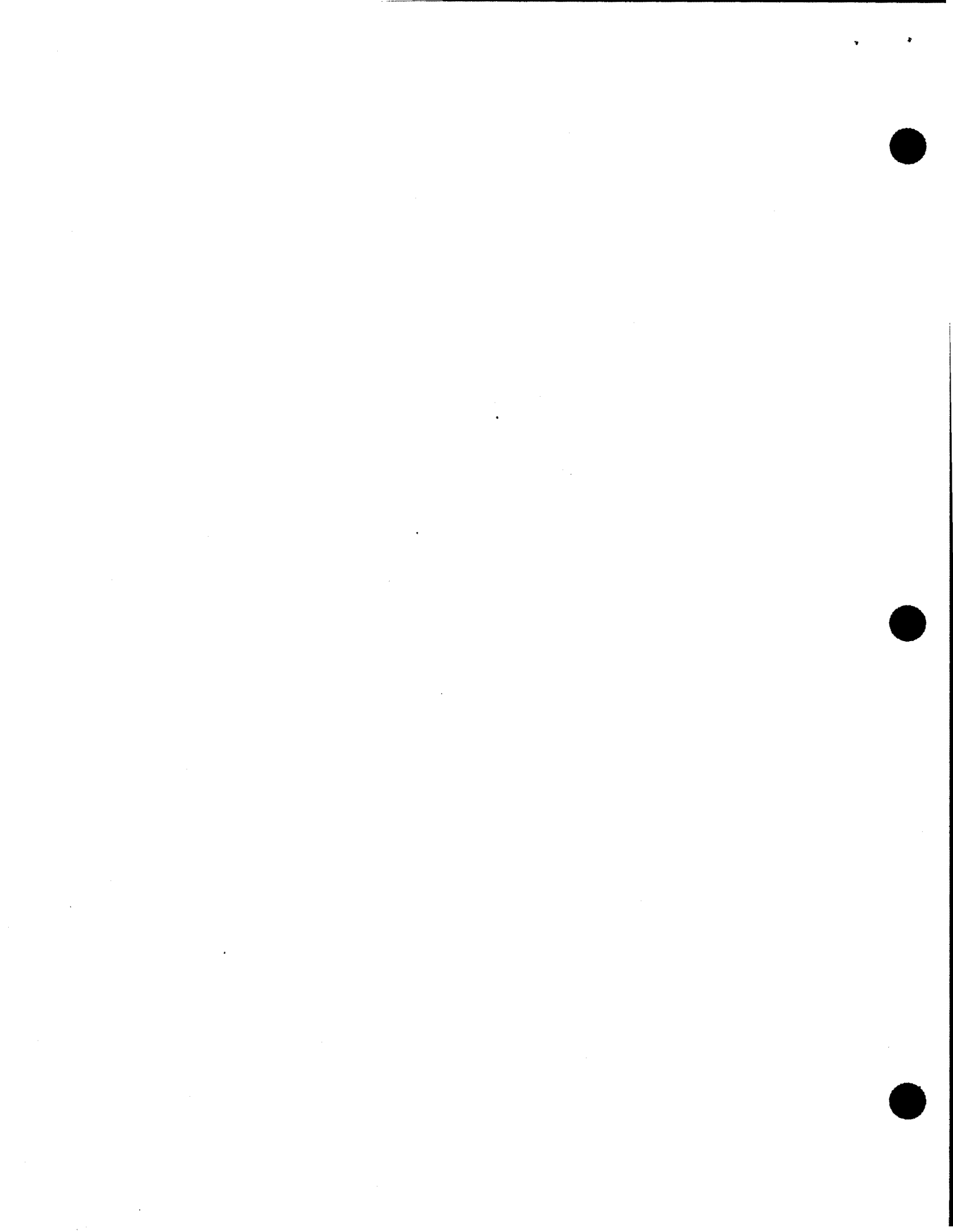
Sincerely,



SANDRA GOLDBERG
Staff Counsel

cc: Jack Ainsworth
Chuck Damm
Ralph Faust

Exhibit 10 (cont.)
CDP 4-97-236
Letter from Commission Legal Staff to Applicant's Attorney



IRELL & MANELLA LLP

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FACSIMILE (949) 760-5200

WRITER'S DIRECT
TELEPHONE (310) 203-7573
gabshesz@irell.com

September 30, 2001

VIA FACSIMILE AND U.S. MAIL

Sandra Goldberg, Esq.
Staff Counsel
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 84105-2219

Re: Coastal Development Permit Application No. 4-97-236

Dear Ms. Goldberg:

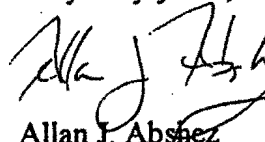
I am in receipt of your letter of September 25, 2001. Please be advised that Noas Properties, Inc. has not yet completed the process of providing public notice regarding the above-referenced application. The necessary materials are presently being prepared by a mapping service, which has yet to complete its work. As such, it would not be appropriate to schedule or a conduct a public hearing regarding the above referenced permit application on October 9, 2001.

We will provide your office with documentation regarding the notice once it is prepared, whereupon it would be appropriate to schedule and conduct the hearing in accordance with Government Code Section 65956.

I would appreciate your confirming that the above-referenced application has been removed from the Commission's October calendar. Neither I nor my client will be attending the October meeting. I would also appreciate your informing the appropriate personnel in the Commission's South Central-Coast Office that the hearing will not take place on October 9, 2001.

Thank you for your cooperation.

Very truly yours,



Allan J. Abshez

Exhibit 11
CDP 4-97-236
Letter from Applicant's Attorney Requesting Continuance of Hearing



IRELL & MANELLA LLP

A REGISTERED LIMITED LIABILITY LAW PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

40 NEWPORT CENTER DRIVE, SUITE 400
NEWPORT BEACH, CA 92660-6324
TELEPHONE (949) 760-0991
FACSIMILE (949) 760-5200

1800 AVENUE OF THE STARS, SUITE 900
LOS ANGELES, CALIFORNIA 90067-4276

TELEPHONE (310) 277-1010
FACSIMILE (310) 203-7199
WEBSITE: www.irell.com

WRITER'S DIRECT
TELEPHONE (310) 203-7573
cobshaz@irell.com

October 15, 2001

RECEIVED

OCT 22 2001

VIA FACSIMILE AND U.S. MAIL

Mr. Jack Ainsworth
California Coastal Commission
89 South California Street, Suite 200
Ventura, California 93001

CALIFORNIA
COASTAL COMMISSION
SOUTH CALIFORNIA DISTRICT

Re: Coastal Development Permit Application No. 4-97-236

Dear Mr. Ainsworth:

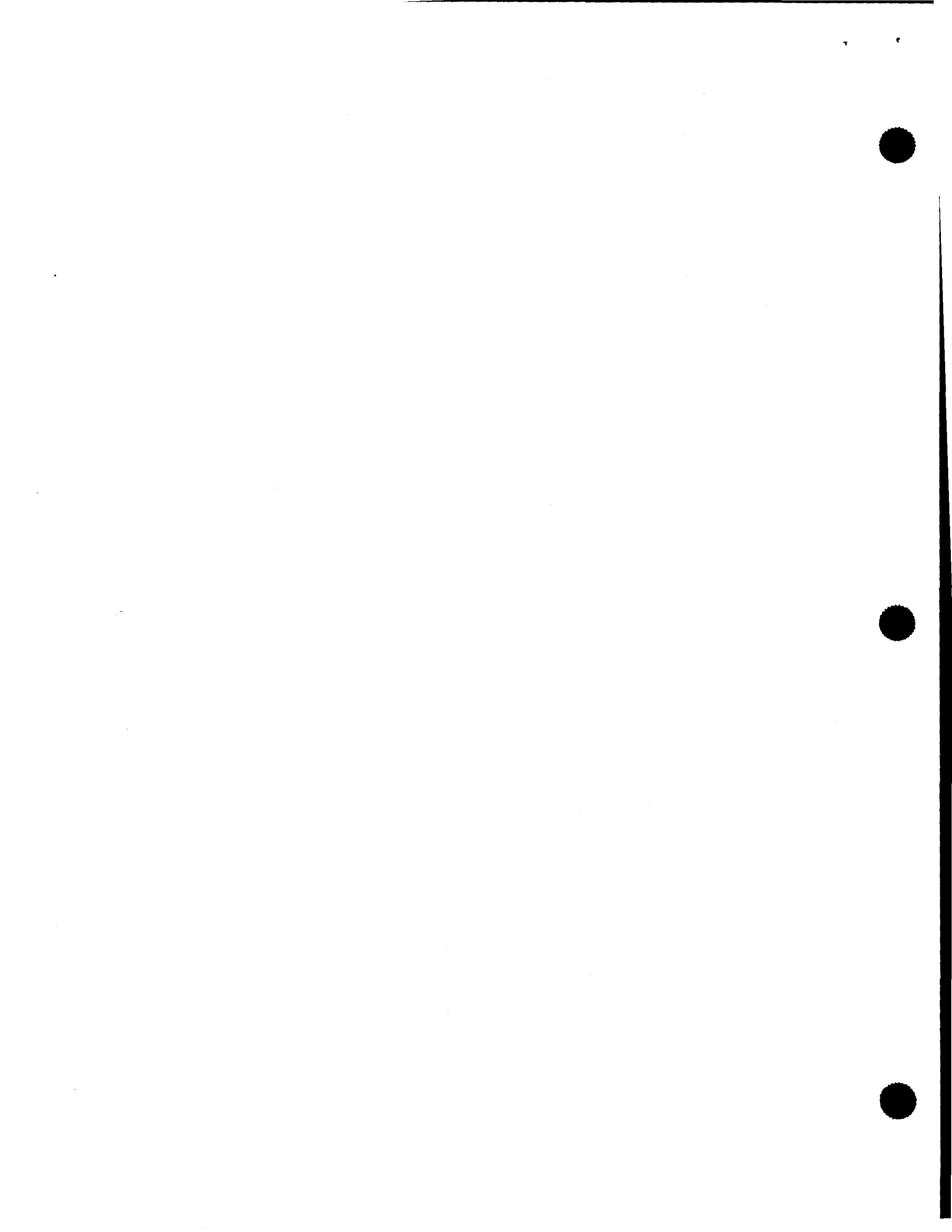
We are writing on behalf of our client, Noas Properties, Inc. ("Noas Properties"), to request that the staff report (and related notice) which has been prepared and circulated in reference to above-referenced application be withdrawn, and that a new staff report be prepared.

The basis for our request is that, as further discussed below, the notice and staff report are fundamentally defective both as a matter of fact and law. The project description in the staff report and related notice are inaccurate. In addition, the analysis of the project's potential environmental and coastal impacts is misleading and deficient, and the staff report contains no actual analysis of the potential environmental and coastal impacts of the project upon existing conditions. Section 13025 of the Coastal Commission Regulations states, in pertinent part, that "[t]he commission shall not vote upon. . . permit applications when adequate descriptive notice has not been given. . . as part of the required notice of the meeting." In addition to preparing a new staff report, we specifically request that the new staff report respond to the specific comments in this letter as required by Coastal Commission Regulations Section 13057(c)(3).

The Project Description in the Staff Report and Notice Are Fundamentally Flawed

CEQA and the Coastal Act require "[a]n accurate, stable and finite project description." *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185. The project description contained in the staff report and related notice are fundamentally inaccurate and misleading. The staff report describes the project as the "removal of an unpermitted rock revetment and construction of new 50 foot long by 19 foot wide by 10 foot high rock revetment fronting an existing timber bulkhead."

Exhibit 12
CDP 4-97-236
Letter From Applicant's Attorney Commenting on Staff Report



Mr. Jack Ainsworth
October 15, 2001
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In actuality, the existing revetment will not be removed. Instead, the existing revetment will be repaired by adding a 1-2 foot layer of drain rock at a design depth of 0.0 mean sea level (MSL) and a 1-2 foot layer of "B" below the existing rock. The repair will stabilize the existing revetment, will reduce its depth from 25 to 19 feet, and will lower its finish elevation from 12 to 10 feet MSL.¹ The project description should be revised accordingly.

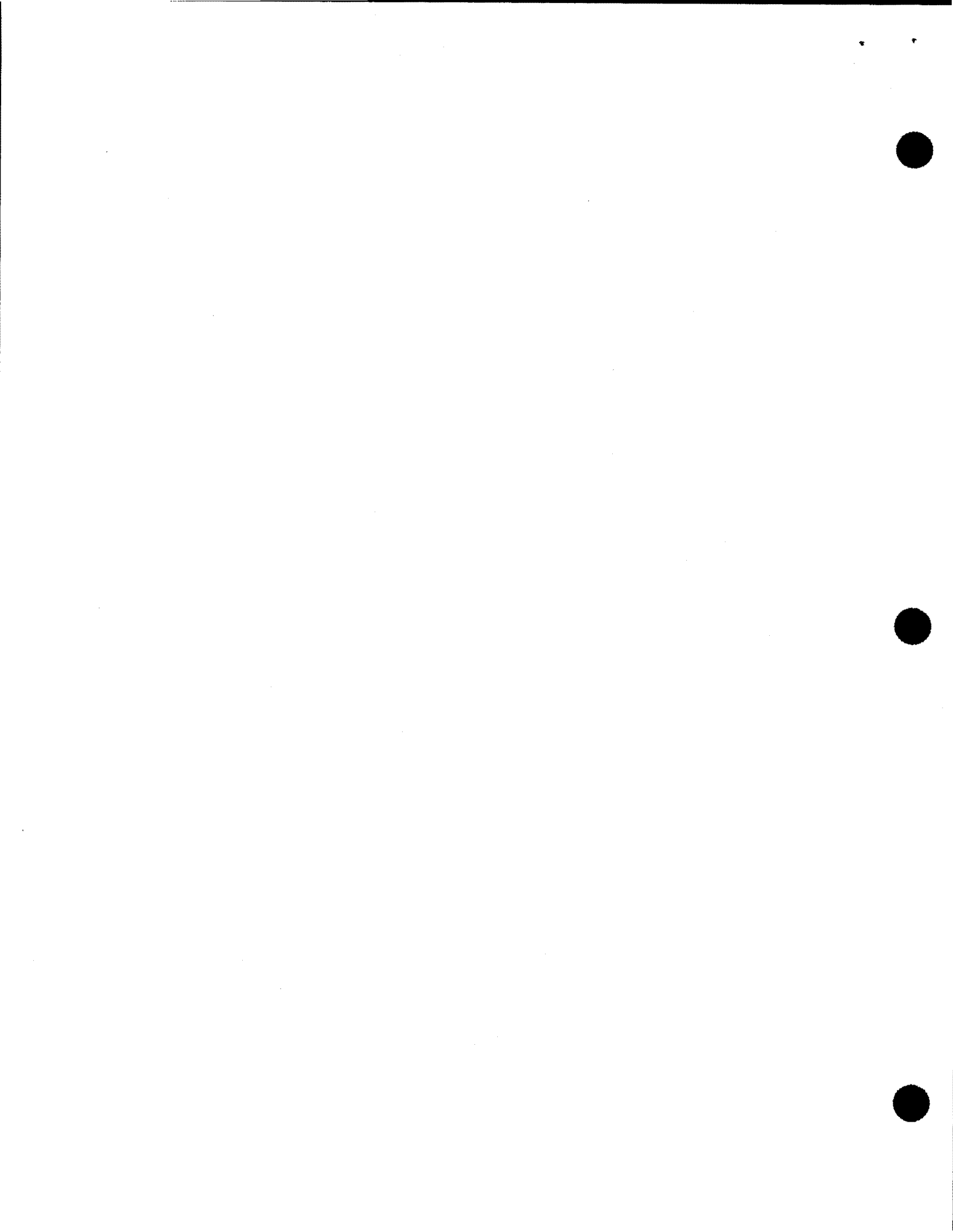
Unless revised, the staff report will fundamentally mislead the public and the Commission in its consideration of the issues posed by Noas Properties' application. In the absence of complete revision, the staff report cannot serve as substantial evidence for Staff's recommendation and proposed findings that the Development Permit be denied. Indeed, the staff report and related notice previously issued by the Commission has already resulted in significant confusion in the local community. After Commission Staff issued the report and notice, Noas Properties received calls from several members of the community who were confused. The callers were unable to understand from the staff report that both the depth and height of the revetment would be reduced by the project from existing conditions.

The CEQA and Coastal Act Impact Analyses Are Fundamentally Flawed

The inaccurate project description in the staff report and related notice contributes to a second significant flaw in the staff report – a fundamentally defective analysis of environmental and coastal impacts. As the Court of Appeals held in *McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District*, "[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." (1988) 202 Cal. App. 3d 1136, 1143.

The staff report's analysis of CEQA and Coastal impacts improperly assumes that there is not an existing revetment on the beach. In addition, in its purported analysis of beach impacts, the staff ignores that there is also an existing bulkhead behind the existing revetment on the beach. Thus, the staff report misstates existing conditions and the project's environmental setting. CEQA requires that the "existing" conditions constitute the baseline

¹ The staff report should be revised to remove the unsupported legal conclusion that the existing revetment is "an unpermitted structure." There is no substantial evidence to support such a conclusion. The staff report should be revised to state that staff has been unable to determine the permit status of the revetment. The staff report acknowledges that "Commission enforcement and legal files on this case are not complete." (emphasis added). In fact, it should be noted that there is no dispute that the revetment was installed at least 23 years ago, and prior to 1981, when regional commissions were abolished. The staff report also states that "there is no mention in any previous staff reports or enforcement files indicating the existing rock revetment was part of the lawsuit on the bulkhead." There is no other discussion of the legal status of the existing revetment in the staff report.



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physical conditions by which a lead agency determines whether an impact is significant. CEQA Guidelines Section 15125(a). Impact analysis based on "hypothetical" conditions is not permitted by CEQA. *Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal. App. 3d 350; *Christward Ministry v. Superior Court* (1986) 184 Cal. App. 3d 180.

~~In actuality, of course, there is both an existing revetment and an existing bulkhead~~ not only at the subject property, but on at least 33 other properties adjacent to the subject properties. The staff report's improper disregard of existing conditions leads to a fundamentally fallacious, unsubstantiated analysis by the staff, including but not limited to unfounded claims regarding beach scour, end scour, retention of beach materials, fixing of the back beach, interruption of longshore processes, and public access.

In summary, there is no actual analysis of project effects contained in the staff report.

The Staff Report Must Contain an Actual Analysis of the Project's Environmental and Coastal Impacts

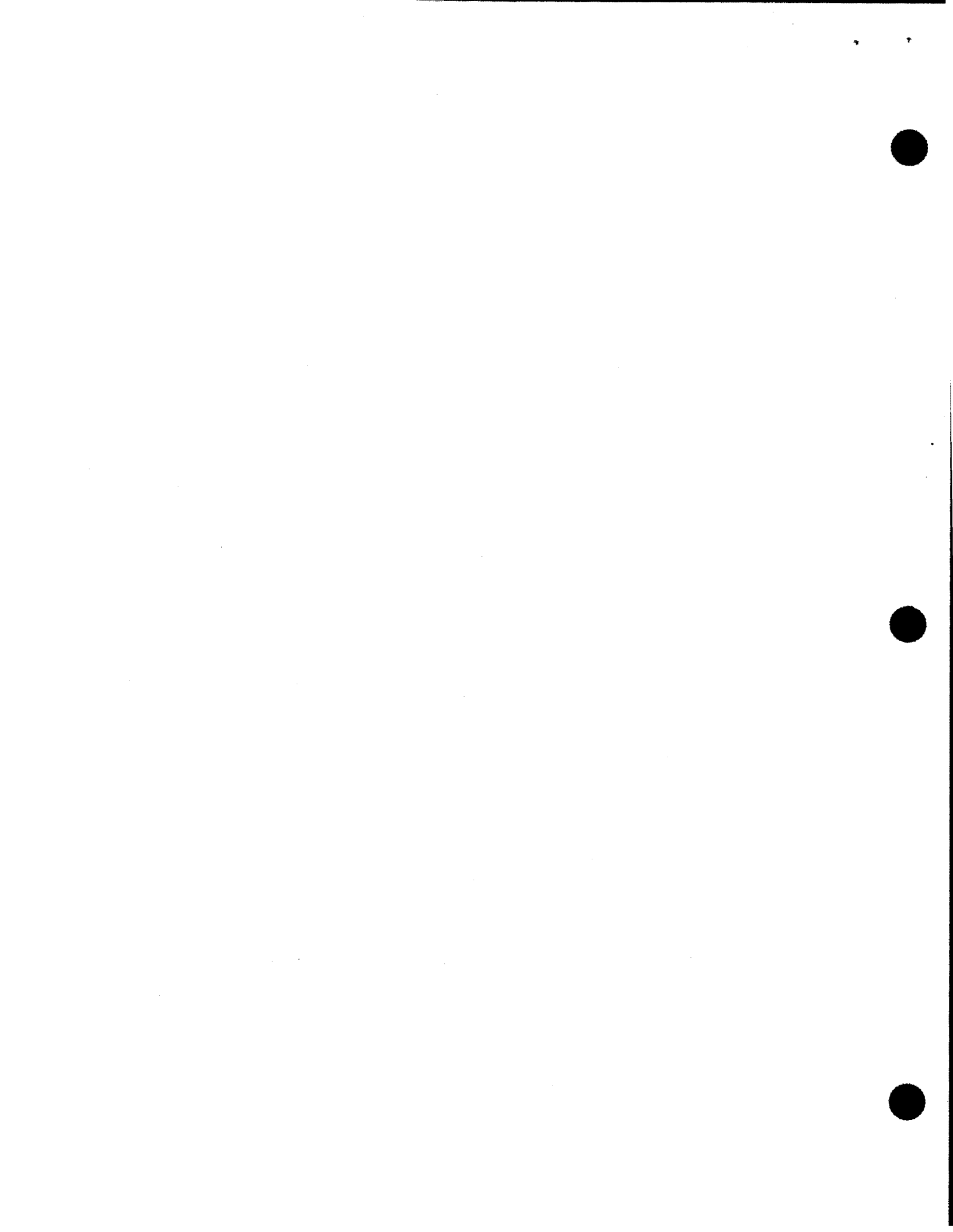
Both CEQA and the Coastal Act mandate that the Coastal Commission analyze the actual impact of a project. CEQA Guidelines Section 15050; Coastal Act Regulations Section 13057. The CEQA Guidelines provide that "[i]n evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environmental which may be caused by the project. . ." CEQA Guidelines Section 15064(d) (emphasis added).

The staff report fails to satisfy CEQA Guidelines Section 15050 and 15064(d) because it contains no analysis of the impacts of the project on existing conditions, and because it misrepresents existing conditions.

Further, because it contains no analysis of the impacts of the project on existing conditions, and because it misrepresents existing conditions, the staff report cannot serve as substantial evidence for Staff's recommendation and proposed findings that the Development Permit be denied. CEQA Guidelines Section 15064(f)(5) specifically states that "[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts." The staff report lacks any factual analysis, and rests upon clearly inaccurate and erroneous assumptions.

In order to satisfy its responsibilities under CEQA and the Coastal Act, a revised staff report must be prepared which contains an analysis of the impacts of the proposed project upon existing conditions.

Exhibit 12
CDP 4-97-236
Letter From Applicant's Attorney Commenting on Staff Report



Mr. Jack Ainsworth
October 15, 2001
Page 4

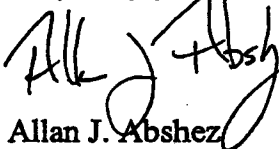
Conclusion

For all of these reasons, we respectfully request that:

1. The staff report dated September 21, 2001 and related notice dated September 28, 2001 be withdrawn;
2. A new staff report be prepared, containing:
 - (a) an accurate project description and an accurate description of existing conditions; and
 - (b) a factual analysis of the project's potential impacts upon existing conditions.
3. The new staff report respond to the specific comments in this letter as required by Coastal Commission Regulations Section 13057(c)(3).

Please do not hesitate to contact us if you have any questions or comments.

Very truly yours,



Allan J. Abshez

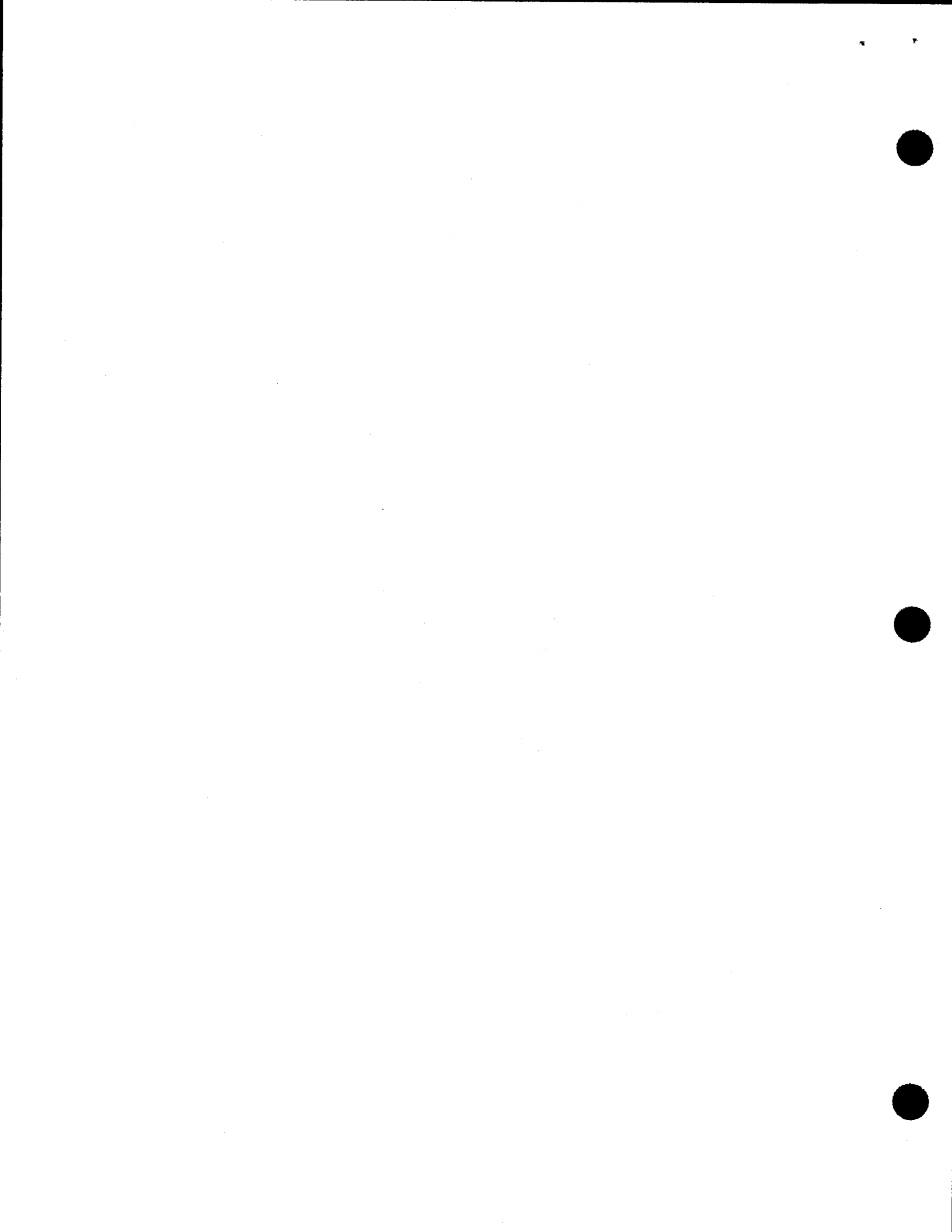
AJA

cc: Mr. Richard Sol
Sandra Kanengiser, Esq.
Sandy Goldberg, Esq.

Exhibit 12

CDP 4-97-236

Letter From Applicant's Attorney
Commenting on Staff Report



STATE OF CALIFORNIA
CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION

EDMUND G. BROWN JR., Governor



SOUTH COAST REGIONAL COMMISSION

E. OCEAN BOULEVARD, SUITE 3107

P.O. BOX 1450

LONG BEACH, CALIFORNIA 90801

(213) 435-5071 (714) 845-0648

590-5071

3/13/78

Sidney Franklin Jr.

23652 Malibu Colony Dr (#45), Malibu

Subject: Release from Permit Requirements of the South Coast Regional Commission

1. Section 30610 (c) of the Public Resources Code states that no permit shall be required for the following types of development: "Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of the object of such repair or maintenance activities."
2. In accordance with Section 30610 (c) of the Public Resources Code, replace for repair bulkhead, pilings, & tie system

is released from the requirements of obtaining a permit from the South Coast Regional Commission for repair or maintenance activities of any sort provided that such activities do not result in an addition to, or enlargement or expansion of such activities.

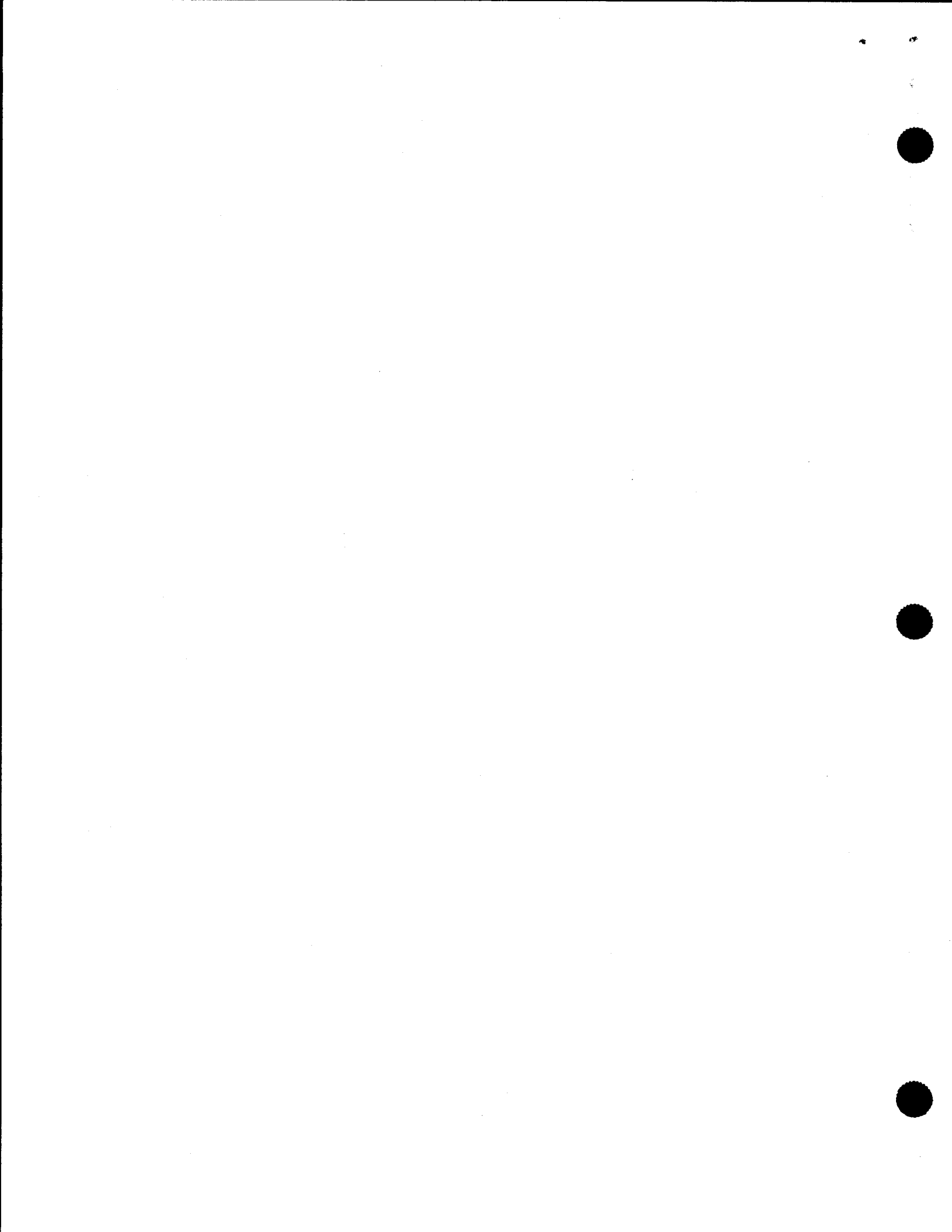
SOUTH COAST REGIONAL COMMISSION

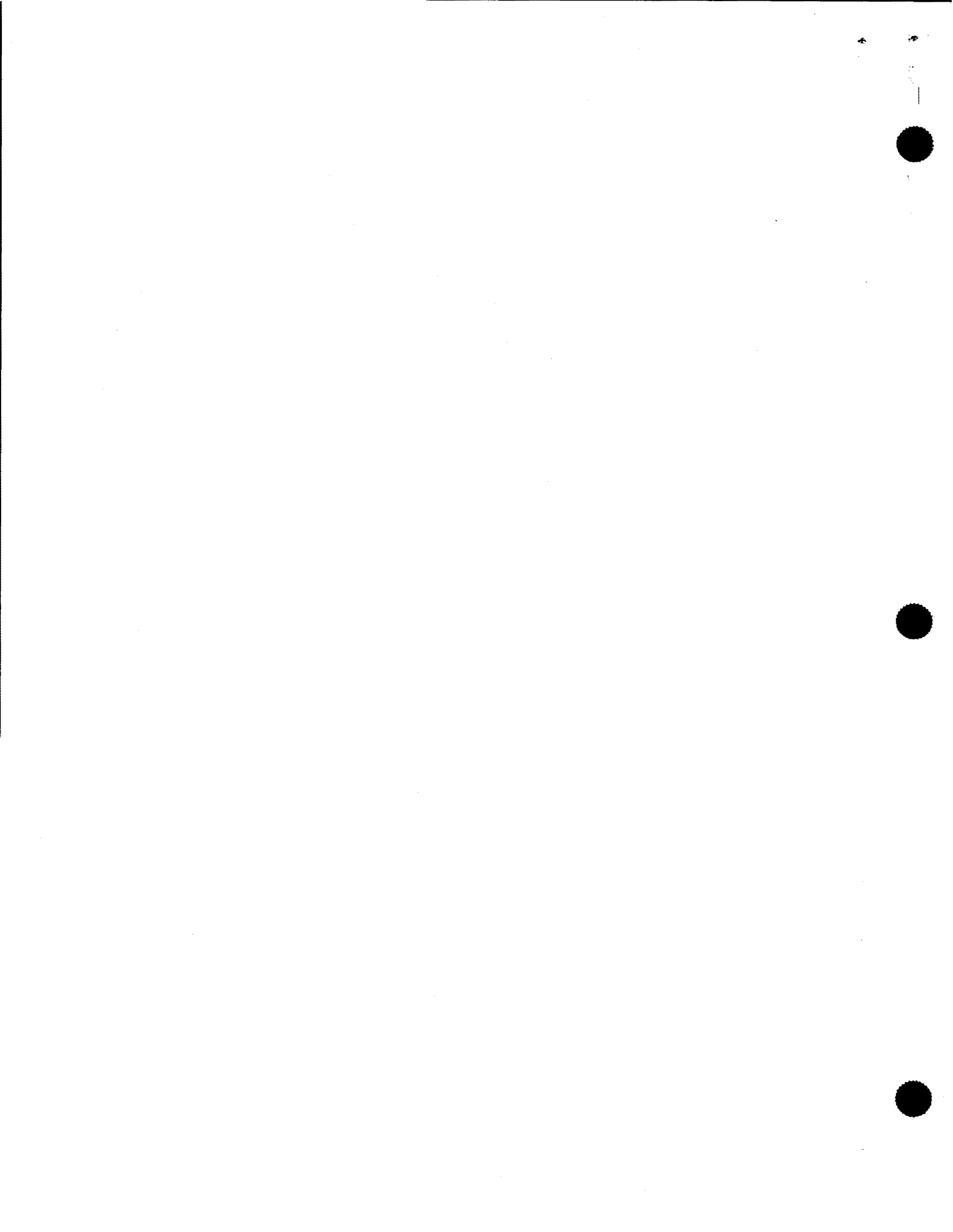
M.J. Carpenter
M.J. Carpenter
Executive Director

4

1-12-77

Exhibit 13
CDP 4-97-236
Repair and Maintenance Exemption Letter for a Neighboring Property





Memorandum

3-9-78

To: Peter Douglas, State Coastal Commission
From: H. J. Carpenter, Executive Director, South Coast
Subject: Storm-Damaged Problems/Malibu

As requested, the following information pertaining to storm damaged problems is submitted.

On March 3, 7 and 8 our staff spent the entire days in Malibu assisting residents with their problems. During this period we issued almost 100 Repair & Maintenance Authorizations per Section 30610(c) of the Coastal Act. In fact, we stretched this to mean anything that was necessary to protect the property or structure.

During these meetings, we did stress that any new structure contemplated or a structure that would exceed the damaged structure would have to be handled through the emergency permit process per Section 30624 and Articles 1336 thru 13143 of the of the Rules & Regulations.

We also attended a meeting of the Homeowners' Association on Monday the 7th to go over all aspects of Coastal requirements and as to what work staff can authorize. I again emphasize that we have approved everything possible to be rebuilt to its existing size, location, etc., before the damage occurred. We are now getting queries that ask for R&M plus adding 4 additional feet to the bulkhead, relocating the bulkhead, building new bulkheads with rock reinforcement on the beach, adding two additional bedrooms, etc. I think you can well realize that people will try to take advantage of the situation.

Our efforts are to unequivocally permit rebuilding of what existed prior to the storm without exception.

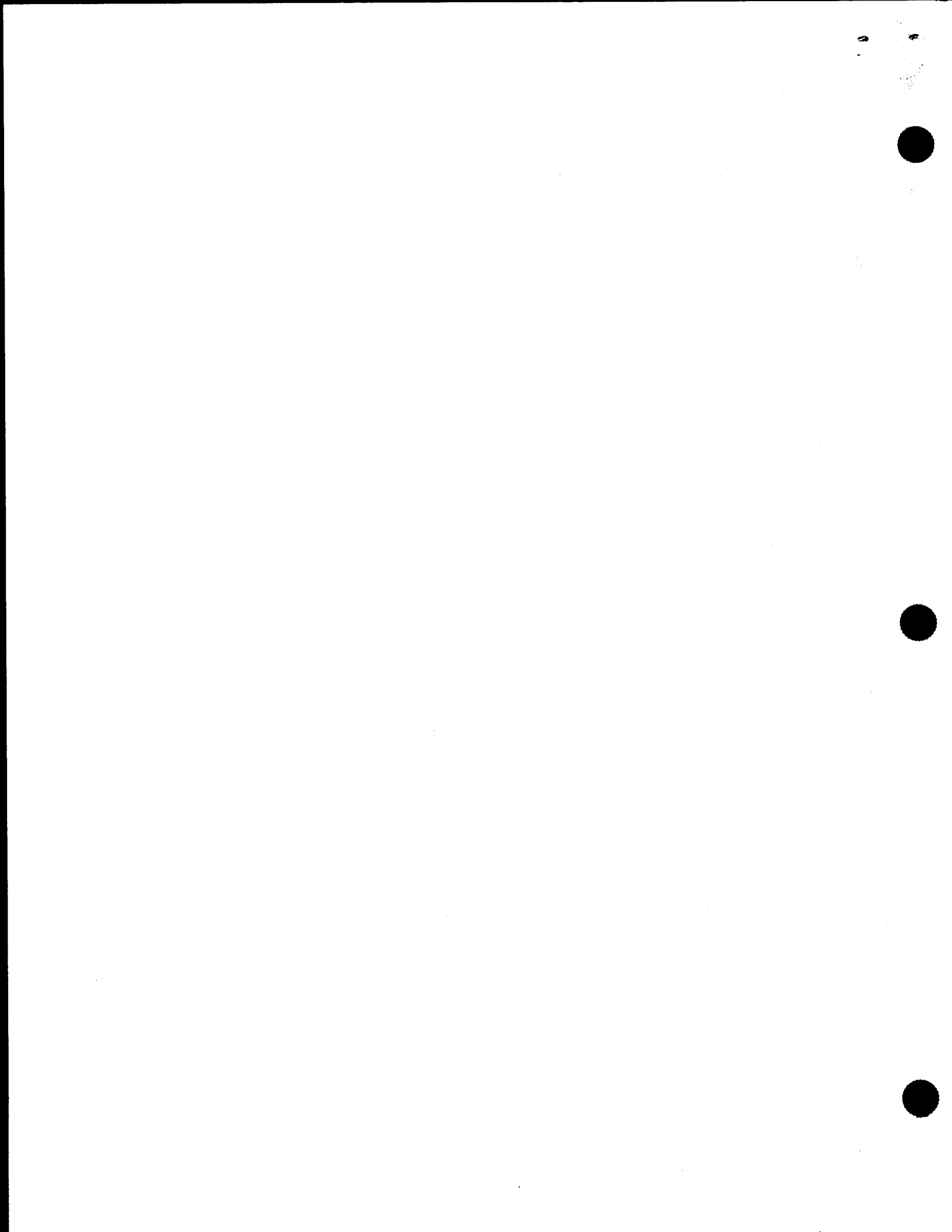
In reference to Mr. Meredith, our files do not show any permit application from him. I am enclosing a copy of the R&M authorization issued on the scene by staff to Mr. Meredith. I presume he has represented that he wants to rebuild more than what existed and, therefore, the consternation.

I have stated and will so do, that I will, under Section 30624, waive the 21 day waiting period for new construction applications over and above R&M authorization.

Exhibit 15

CDP 4-97-236

3/9/78 Memo from Mel
Carpenter to Peter Douglas



Page 2.

In summary, my staff and I have done everything possible under the law (and then some) to assist the Malibu residents (even those inland). I have also had concurrence by the Commission in my actions.

Mel Carpenter

MJC:dn
Encl.

