

CALIFORNIA COASTAL COMMISSION

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Staff Report: October 16, 2003
Hearing Date: November 6, 2003
Staff: CLD-SF

RECOMMENDED FINDINGS FOR CEASE AND DESIST ORDER

- CEASE AND DESIST ORDER:** CCC-03-CD-07
- RELATED VIOLATION FILE:** V-4-03-014
- PROPERTY LOCATION:** Vacant lot adjacent to 42500 Pacific Coast Highway, Malibu, Ventura County, APN 0700-80-0305.
- PROPERTY DESCRIPTION:** Vacant lot located on the south side of Pacific Coast Highway between a 42500 Pacific Coast Highway and the north bank of Little Sycamore Canyon Creek in an area referred to as County Line Beach. The southeastern portion of the site has also been designated a cultural resource site based on the discovery of Native American remains and artifacts near the mouth of Little Sycamore Canyon Creek.
- PROPERTY OWNER:** Elizabeth Harrington
- VIOLATION DESCRIPTION:** (1) Construction of a railroad tie seawall/planter with a concrete footing extending approximately 100-feet along the toe of the coastal bluff and into the mouth of Little Sycamore Canyon Creek without a coastal development permit, (2) Construction of a 6-foot high staggered double retaining wall on the upper section of the bank of Little Sycamore Canyon Creek, (3) Installation of a chain link fence with shade fabric that blocks

public views from the highway to the ocean, and (4) Landscaping, including the use of some non-native invasive species that blocks public views of the ocean from the highway.

SUBSTANTIVE FILE DOCUMENTS: Executive Director Cease and Desist Order No. ED-03-CD-01, Exhibits A through M.

CEQA STATUS: Exempt (CEQA Guidelines (GC) §§ 15060(c) (2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308 and 15321).

I. SUMMARY

Staff recommends that the Commission issue the proposed Cease and Desist Order (CDO) to Elizabeth Harrington, owner of the subject property, and her husband William F. Lynch (hereinafter referred to as "Respondents") to resolve their Coastal Act violations. The subject property is an undeveloped beachfront lot located southeast of 42500 Pacific Coastal Highway. The Coastal Act violations consist of development in the coastal zone without a coastal development permit (CDP) in violation of Section 30600(a) of the Coastal Act.

A portion of the unpermitted development lies within the Commission's retained jurisdiction and other portions lie within the jurisdiction of Ventura County's certified local coastal plan (LCP). The unpermitted development within the Commission's retained jurisdiction is a seawall/planter constructed of railroad ties with a concrete footing extending approximately 100-feet along the toe of the coastal bluff and into the mouth of Little Sycamore Canyon Creek, which drains onto the beach at the southeastern end of the property. (See photographs in EXHIBIT A) The unpermitted development within the LCP jurisdiction consists of a 6-foot high staggered double retaining wall on the upper section of the bank of Little Sycamore Canyon Creek, a chain link fence with visually impermeable shade fabric along Pacific Coast Highway, and landscaping including the use of some non-native and invasive species that block public views of the ocean from the highway. (See photographs in EXHIBIT B)

Staff discovered the unpermitted development on March 11, 2003. Upon meeting with Mr. Lynch, Staff directed Respondents to halt construction of the seawall/planter because it was development that required a CDP. Respondents initially complied but then recommenced construction on March 12, 2003. Despite repeated verbal warnings from Staff issued during site visits on March 11, 14 and 17, 2003 and by telephone on March 17, 2003 Respondents continued work because they asserted the project had received approval of the County Building and Safety Division. On March 14, 2003, Staff hand delivered to

Respondents a Notice of Intent (NOI) to issue an Executive Director cease and desist order (EDCDO) (EXHIBIT C) to order them to stop work pursuant to his authority under California Public Resources Code (PRC) Section 30809. When Respondents continued working despite the issuance of the NOI, the Executive Director issued EDCDO No. CCC-03-ED-01 on March 19, 2003. (EXHIBIT D)

The southeastern portion of the site was identified as an important archaeological site in 1952 and was called the Sand Dune Site. In 1966 it was designated as Cultural Resource Site VEN-86 after a prehistoric Native American shell midden and artifacts were discovered at the site. In 1971 researchers excavated a prehistoric Native American burial and a large mortar at the site. (EXHIBIT E)

Coastal resource impacts from the unpermitted development consist of damage to an environmentally sensitive habitat area (ESHA) and the water quality in Little Sycamore Canyon Creek caused by the railroad tie seawall/planter and retaining wall, grading and berming of sand on the beach, and blockage of public views of the ocean from Pacific Coast Highway. The seawall/planter has the potential to negatively impact the public beach in the intertidal zone by accelerating erosion and scour of the beach in front of the seawall and at either end of the seawall, interrupting longshore processes, altering the configuration of the shoreline by fixing the seaward extent of the coastal bluff, and blocking the sand supply to the beach from the coastal bluff.

Staff recommends the Commission issue this CDO pursuant to authority in Section 30810 to require Respondents to: (1) cease and desist from maintaining unpermitted development on their property in violation of the Coastal Act, (2) refrain from conducting any further development on their property without a CDP, and (3) remove the unpermitted development and carry out such work under the terms and conditions of the CDO as necessary to ensure compliance with the Coastal Act, pursuant to the authority of Section 30811.

II. HEARING PROCEDURES

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

For a CDO hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her

discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which Staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the proposed CDO, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per Staff recommendation or as amended by the Commission, will result in issuance of the proposed CDO.

III. MOTIONS

MOTION 1: I move that the Commission issue Cease and Desist Order No. CCC-03-CD-07.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of the motion results in adoption of the following resolution and findings and the issuance of the Cease and Desist Order No. CCC-03-CD-07. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to issue Cease and Desist Order:

The Commission hereby issues Cease and Desist Order No. CCC-03-CD-07 set forth below and adopts the proposed findings set forth below on the grounds that Respondents have conducted development without a coastal development permit and in so doing have violated the Coastal Act.

IV. PROPOSED FINDINGS

A. Coastal Act Violation

Respondents have conducted development in the coastal zone without a CDP in violation of Coastal Act Section 30600(a).

Section 30600(a) provides:

(a) Except as provides in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a [public] facility subject to Section 25500, shall obtain a coastal development permit.

"Development" is defined in Coastal Act Section 30106 as:

...on land, in or under water, the placement or erection of any solid material or structure;... grading, removing, dredging, mining, or extraction of any materials;...[and] construction, reconstruction, demolition, or alteration of the size of any structure.

The unpermitted development consists of:

- (1) Construction of a railroad tie seawall/planter with a concrete footing that extends approximately 100-feet along the toe of the coastal bluff and into the mouth of Little Sycamore Canyon Creek.
- (2) Construction of a 6-foot high staggered double retaining wall on the upper section of the bank of Little Sycamore Canyon Creek and backfill behind the retaining wall.
- (3) Installation of a chain link fence with visually impermeable shade fabric along Pacific Coast Highway that blocks public views of the ocean from Pacific Coast Highway.
- (4) Landscaping, including the use of some non-native and invasive species that block public views of the ocean from Pacific Coast Highway.

The seawall/planter is located on the beach within the Commission's retained jurisdiction, while the remainder of the unpermitted development lies within the jurisdiction of Ventura County local coastal plan (LCP).

In a letter to Ventura County Planning Department dated April 14, 2003, Staff noted the unpermitted development in the LCP jurisdiction and asked whether the County was going to take enforcement action. (EXHIBIT F) In a response dated April 16, 2003, Ventura County confirmed the existence of the violations and informed the Executive Director that it lacks the capacity to enforce the LCP violations. (EXHIBIT G) Pursuant to Coastal Act Section 30810(a)(2), a CDO may be issued by the Commission to enforce any requirements of the LCP if "(2) The Commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources."

B. Basis for Issuance of the Cease and Desist Order

(1) Coastal Act Authority

The Commission is authorized to issue a CDO pursuant to Section 30810 of the Coastal Act. Section 30810 provides:

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit... the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirement of a certified local coastal program [if] (2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding the alleged violation which could cause significant damage to coastal resources.

Subsection (b) of Section 30810 also provides:

(a) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

(2) Consistency with Chapter 3 Policies of the Coastal Act

In addition to being unpermitted under the Coastal Act, the development does not meet the requirements for approval in Section 30235 and is inconsistent with Sections 30240, 30231 and 30251 of the Coastal Act,¹ as discussed below.

¹ These findings are provided for contextual purposes, but it should be noted that inclusion of these findings is not a requirement for issuance of a cease and desist order pursuant to authority in § 30810 of the Coastal Act.

Seawall/planter

Section 30235 provides:

...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 supply.

Approval of the seawall/planter is not required under Section 30235 because it neither serves a coastal dependent use, nor protects existing structures or public beaches in danger from erosion, and it was not designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30253 provides:

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.*

The seawall is not consistent with Section 30253 because it may negatively impact the public beach in the intertidal zone by accelerating erosion and scour of the beach in front of the seawall and at either end of the seawall, interrupting longshore processes, altering the configuration of the shoreline by fixing the seaward extent of the coastal bluff, and blocking the sand supply to the beach from the coastal bluff.

Section 30231 provides:

The biological productivity and the quality of coastal waters, streams, wetlands estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The railroad ties used to construct the seawall/planter and the retaining wall are impregnated with creosote and may impact the water quality of Little Sycamore Canyon Creek, which flows across the beach and into the ocean.

Retaining wall on upper section of creek bank

The 6-foot high staggered double retaining wall on the upper section of the bank of Little Sycamore Canyon Creek is not consistent with the ESHA policies of the Ventura County LCP. Under Section C of the Environmentally Sensitive Habitats section of the Ventura County South Coast Area Plan, creek corridors, including Little Sycamore Canyon Creek, are protected as ESHA. Policy 2 of Section C provides:

2. *All projects on land either in a stream or creek corridor or within 100-feet of such corridor, shall be sited and designed to prevent impacts which would significantly degrade riparian habitats, and shall be compatible with the continuance of such habitats.*

In addition, Section 30240 of the Coastal Act provides:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those area, and shall be compatible with the continuance of those habitat and recreation areas.*

The retaining wall is not consistent with the Ventura County LCP and Section 30240 of the Coastal Act because: (a) it has altered the creek bank and is likely cause accelerated erosion into the creek channel, (b) it displaces riparian habitat and prevents riparian vegetation from growing there, and (c) adverse impacts to water quality will occur if creosote from the railroad ties leaches into the creek. This has the potential to harm marine organisms. Thus, the retaining wall will have impacts that will significantly degrade the riparian habitat and is not compatible with continuance of the riparian habitat.

Chain link fence with view-blocking shade fabric

Section D, Policy 7 of the South Coast Area Plan Environmentally Sensitive Habitats provides:

Scenic and Visual Qualities:

7. *New development shall be sited and designed to protect public views to and from the shoreline and public recreational areas. Where feasible, development on sloped terrain shall be set below road grade.*

Coastal Act Section 30251 provides:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas...

The installation of a chain link fence with visually impermeable shade fabric along Pacific Coast Highway does not meet the scenic and visual quality requirements of the Ventura County LCP or Section 30251 of the Coastal Act because it blocks public views of the ocean from Pacific Coast Highway.

Landscaping

Finally, the landscaping on both sides of the fence near the road blocks public views to the shoreline and the ocean from the highway, which is not consistent with the requirements for approval in the LCP and Section 30251 of the Coastal Act, as discussed above. Some of the plants are non-native and invasive and have the capacity to degrade the ESHA as they mature.

C. Archaeology

The southeastern portion of the property was identified as an important archaeological site in 1952 and was called the Sand Dune Site. After the discovery of a prehistoric Native American shell midden and artifacts in 1966, this portion of the site was designated a State Archaeological Site VEN-86. In 1971, researchers excavated a prehistoric Native American burial and a large mortar at the site. Archaeological excavation of portions of the site indicates the site was occupied for over 3000 years and its occupation overlaps the later occupation at VEN-1, on the east side of Little Sycamore Canyon Creek, which is owned by the California Department of Parks and Recreation. (EXHIBIT E) The potential for additional discoveries of Native American burials and artifacts at the site is indicated. In the event that Native American burials or artifacts are excavated in the process of removing the unpermitted development and

restoring the site, they must be handled in accordance with relevant law, including California Public Resources Code Section 5097.9.

D. Background and Administrative Resolution Attempts

On March 11, 2003, Staff discovered unpermitted development consisting of: (1) ongoing construction of a seawall/planter at the toe of a coastal bluff, (2) a 6-foot high staggered double retaining wall on the upper section of the bank of Little Sycamore Canyon Creek, (3) a chain link fence with visually impermeable shade fabric along Pacific Coast Highway, and (4) landscaping, including the use of some non-native and invasive species on both sides of the fence that block public views of the ocean from the highway. The seawall/planter was constructed of 8-foot railroad ties in a concrete footing approximately 3 feet below beach grade, with sand bermed at the seaward base of the wall.

Staff spoke with Mr. Lynch, who identified himself as the owner of the property. Mr. Lynch informed Staff that he was constructing the wall to protect his property from erosion. Staff explained to Mr. Lynch that Coastal Act Section 30600(a) requires persons performing development in the coastal zone to obtain a CDP and that seawalls are only permitted when required to protect existing structures in danger from erosion. Staff advised Mr. Lynch he was violating the Coastal Act, that he must halt construction immediately, and that he needed to obtain a CDP to conduct any further work.

Mr. Lynch asserted that Ventura County Building inspector Steve MacAtee had visited the site and advised him the development did not require a CDP. Staff informed Mr. Lynch the Commission had jurisdiction over the beach area and that the development required a CDP. Staff instructed Mr. Lynch to halt any further work on the seawall/planter, and to remove any loose timber and construction debris from the creek. Staff also informed Mr. Lynch that any further construction activity would constitute knowing and intentional violation of the Coastal Act. Mr. Lynch indicated he understood these instructions and agreed to follow Staff's direction.

During a site visit on March 12, 2003, Staff observed that construction of the unpermitted seawall was continuing with the use of a backhoe on the beach, which was dumping imported soil to backfill behind the seawall/planter. Staff observed two wood pallets on the property, each stacked with approximately 50 bags of dry concrete.

On March 13, 2003, Staff hand-delivered a NOI to issue an EDCDO (EXHIBIT C) to Respondents at their residence at 42500 Pacific Coast Highway in accordance with the provisions of Coastal Act Section 30809(b). The NOI specifically required them to cease all unpermitted work at the site. It stated "the Executive Director intends to issue an EDCDO against you unless you respond

to this letter in a satisfactory manner." The NOI stated "a satisfactory response should include an assurance that no further development will be undertaken at the site unless specifically authorized by a permit granted by the Commission." Respondents did not agree to halt construction.

On March 14, 2003, Mr. Lynch contacted Staff by telephone in response to the directions in the NOI. He also faxed a letter dated March 16, 2003 and a copy of Ventura County Document SBD. B-12 (dated October 1996). (EXHIBIT H) This document is a reference document provided by the County that generally indicates that retaining walls less than 36 inches in height may be exempt from County requirements for building permits. Document SBD. B-12, however, is not an exemption or authorization by the County for any development on Respondents' property. In his letter, Mr. Lynch asserted he was constructing a "36-inch high planter" and that it is exempt from the requirement for a CDP. He also restated his understanding that the project is in the jurisdiction of Ventura County LCP not the Commission. Mr. Lynch did not provide a verbal or written assurance that he would halt construction activity.

On March 17, 2003, Staff observed a large dump truck depositing several cubic yards of soil and a backhoe berming sand at the toe of the seawall/planter and backfilling the space behind the wall. Staff also observed recent evidence of grading in the creek channel. Staff again advised Mr. Lynch that he was violating the Coastal Act and directed him to halt construction immediately. Mr. Lynch declined to stop, asserting that the work was landscaping and that Mr. MacAtee had told him the development was in the jurisdiction of the Ventura County LCP and the Commission had no authority to regulate the activity.

Also on March 17, 2003, Nancy Francis, Residential Permit Supervisor at the Ventura County Planning Division, confirmed to Staff that a CDP is required for any development on the beach and that the 36-inch permit exemption does not apply to development activities on the beach. The County also agreed that the unpermitted seawall/planter is in the Commission's retained jurisdiction. Staff conveyed this information to Mr. Lynch and again advised him to immediately halt construction activity.

On March 18, the Executive Director concluded it was necessary to issue the EDCDO because Mr. Lynch had failed to provide adequate assurances he would stop work, as required by the NOI.

On March 19, 2003, the Executive Director issued EDCDO No. ED-03-CD-01 to Respondents, as owners of the property that contains the unpermitted development. The EDCDO required Respondents to "cease and desist from violating the Coastal Act by undertaking development without a CDP, including the construction of a timber retaining wall/seawall and concrete footing on the

beach." The CDO was hand delivered by Staff. No construction activity was observed.

On April 14, 2003, Staff sent a letter to Nancy Francis at the Ventura County Planning Division requesting coordination with the County in enforcing the unpermitted development on Respondents' property that lies within the County certified LCP jurisdiction. (EXHIBIT F) In a response to Staff's letter dated April 16, 2003, Todd Collart of the Ventura County Planning Division confirmed the existence of the violations and indicated the County lacked the capacity to enforce the LCP violations due to insufficient staff. (EXHIBIT G) The letter also states that should Respondents attempt to remedy the violations, they should contact the Planning Division.

On April 17, 2003, the Executive Director sent Respondents a NOI to commence this CDO proceeding (EXHIBIT I) to prohibit any further unpermitted development and remedy the violation. The NOI stated, "In addition to requiring you to cease and desist from conducting any further development on your property without a CDP in violation of the Coastal Act, if issued, the CDO would require the immediate removal of the unpermitted development and restoration of the property to its pre-violation condition." The letter stated that Staff would schedule a hearing on the issuance of the CDO at the June 2003 Commission meeting in Long Beach.

On May 5, 2003, in response to an email inquiry from Mr. Lynch dated April 17, 2003, Staff sent a letter to Mr. Lynch outlining the jurisdiction issues regarding the unpermitted development on his property and explaining his options to resolve the Coastal Act violations.

On May 21, 2003, Staff received Respondents' Statement of Defense. (EXHIBIT J)

On May 22, 2003 Staff participated in a conference call with Mr. Lynch and his attorney John Fletcher. Various proposals to resolve this matter were discussed. On May 23, 2003, Staff again discussed settlement options with Mr. Fletcher. Staff was unsuccessful in persuading Respondents to agree to resolve this matter through a consent order because Mr. Lynch did not agree to remove all of the unpermitted development and refused to discuss payment of a penalty or admit any wrong doing. Mr. Lynch and Mr. Fletcher agreed to consider possible mitigation projects in lieu of a penalty and come back to Staff with a new settlement offer. In order to allow more time to negotiate a settlement, Staff agreed to postpone Commission action on a unilateral CDO scheduled for the June Commission meeting, Staff never heard from Respondents or their attorney and calls to Respondents' attorney went unreturned.

On June 9, 2003, Executive Director Peter Douglas and Chief of Enforcement Lisa Haage received letters from Mr. Lynch by electronic mail. (EXHIBIT K) In his letter to Mr. Douglas, Mr. Lynch provided background information about the case and proposed to arrange for the removal of only the seawall/planter in exchange for Staff's agreement to halt this CDO proceeding. Mr. Lynch did not agree to remove the other items of unpermitted development on his property or agree to pay a penalty. (Mr. Lynch had made basically the same settlement offer to Staff during the conference call on May 22, 2003)

Staff again scheduled Commission consideration of a unilateral CDO at the July Commission meeting. On July 10, 2003 (the evening before the day of the hearing), Staff and Mr. Lynch reached an agreement on the terms of a Consent Order. Mr. Lynch and Mr. Fletcher then indicated that they did not represent Ms. Harrington and were unable to finalize the agreement because they did not have her consent. They agreed, however, to recommend that she approve the terms of the Consent Order. Staff again agreed to postpone Commission action on the unilateral CDO with the expectation that the Consent Order would be approved. Staff proceeded to schedule Commission action on the negotiated Consent Order at the August meeting.

On July 24, 2003, Mr. Fletcher advised Staff that Ms. Harrington approved the terms of the Consent Order, however, Respondents could not be located to sign the Consent Order, as is required prior to Commission action on a Consent Order. Staff obtained the signature of Mr. Fletcher on the Consent Order and gave Respondents a deadline of close of business on July 28, 2003 to sign the Consent Order they had agreed to.

On July 28, 2003, Respondents declined to sign the Consent Order that they previously agreed to and insisted on the inclusion in the Consent Order of unacceptable language and terms that were inconsistent with the policies of the Coastal Act.

On July 29, 2003, Staff sent a letter to Mr. Fletcher and Respondents (EXHIBIT L) indicating that Staff would not recommend yet more changes to the Consent Order that would be inconsistent with Coastal Act policies and the statutory requirements of Section 30810 of the Coastal Act and its implementing regulations. Staff also informed Mr. Fletcher and Respondents that Commission consideration of the matter was again postponed to the September 2003 Commission meeting.

On August 4, 2003, Staff received an email from Mr. Fletcher stating that Respondents had dismissed him as their legal counsel. On August 12, 2003, Staff was contacted by attorney Stanley Lamport, who indicated that he had been retained by Respondents to represent them in this matter. Mr. Lamport indicated that Respondents were again interested in resolving the Coastal Act

violations on their property through a Consent Order. Staff indicated that they would entertain a new settlement offer, but emphasized that, in light of the additional resources expended to reach a settlement, the new offer would have to include payment of a higher penalty than Staff was previously willing to accept.

During the week of August 18, 2003, Staff and Mr. Lamport held numerous discussions to try to reach agreement on language in the Consent Order that would be acceptable to both Staff and Respondents. On August 21, 2003 (the deadline for reproducing and mailing the Staff Reports), Mr. Lamport sent a letter to Staff stating that not only were Respondents unwilling to pay a higher penalty, but they were now unwilling to pay any penalty. (EXHIBIT M)

Staff scheduled Commission action on a CDO at the September 2003 meeting. On September 9, 2003, Staff received from Mr. Lamport a letter requesting a continuance of the public hearing and Commission consideration of the proposed CDO because Mr. Lynch was too ill to travel to the meeting. Because Staff understood that Mr. Lynch desired to address the Commission, they consented to the continuance.

E. Allegations

- (1) Respondents are owners of the vacant lot adjacent to 42500 Pacific Coast Highway containing the unpermitted development that is basis of the Coastal Act violations that are the subject of this CDO proceeding. (Not contested)
- (2) Respondents did not obtain a CDP approved by the Commission or Ventura County to authorize the development on their property. (Not contested)
- (3) The development conducted by Respondents on their property was unauthorized. (Contested)
- (4) After initially halting construction activity on March 11, 2003 at the direction of Staff, Respondents recommenced construction activity without a CDP on March 12, 2003. (Not contested)
- (5) Development, as that term is defined in the Coastal Act, continued at the site for four days after Staff informed Respondents of the Coastal Act permit requirements on March 11, 2003. (Not contested)
- (6) Respondents knowingly and intentionally violated the Coastal Act by conducting development without a CDP. (Contested)

- (7) Respondents installed a chain link fence with shade fabric that blocks public views of the ocean from Pacific Coast Highway. (Not contested)
- (8) Respondents landscaped on their vacant lot with invasive plants not native to southern California. (Contested)

F. Statement of Defense

- (1) Respondents assert that all development that is the subject of this enforcement action was given approval by other government agencies that claimed to have jurisdiction over the development.
 - (a) **Construction of "36-inch high planter"**: Respondents assert the Ventura County Building and Safety Division informed them the development was exempt from permit requirements and gave prior approval to the project during on-site inspections. Respondents state the County building inspector specifically informed Respondents the County had jurisdiction over the project and the Coastal Commission did not have jurisdiction. Respondents say they consulted with state and federal wildlife agencies and the U.S. Army Corps of Engineers before commencing work and they had "no issues" and "no problems" with the project.

Commission response:

Respondents have not provided Staff with any evidence that any permit, exemption or any other form of authorization was ever issued by Ventura County or any other government agency for the unpermitted development. Respondents provided Staff with Form SBD. B-12 (EXHIBIT H), which is simply a general reference document that refers only to building permits, not CDPs, and does not constitute an authorization for development. Even if Respondents did receive incorrect advice from the Ventura County Building Inspector Steve MacAtee with regard to the need to obtain a CDP for the unpermitted development, the Commission rejects Respondents' assertion that they had a right to rely on such advice. Furthermore, Respondents have not provided any evidence that Mr. MacAtee told them that no CDP was required. Tom Melugin, Mr. MacAtee's supervisor, stated that it is highly unlikely that Mr. MacAtee would give legal advice to a property owner. Respondents have also not provided Staff with proof of potential contacts with state and federal wildlife agencies and the U.S. Army Corps of Engineers.

Section 30600(a) of the Coastal Act states, "in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person... wishing to perform or undertake

any development in the coastal zone... shall obtain a coastal development permit." Under California law, one public agency cannot impair the legal jurisdiction of another public agency by giving erroneous advice. (*California Tahoe Regional Planning Agency v. Day and Night Electric, Inc.* (1985) 163 Cal.App.3d 898.) Moreover, on several occasions Staff informed Respondents of the Commission's authority and provided the statutory basis to Respondents both verbally and in writing. Thus, regardless of whether other government agencies advised Respondents they did not require a CDP, Respondents were responsible for complying with the Coastal Act permit requirements and were informed of such on numerous occasions.

- (b) ***Landscaping, including some non-native and invasive species that block public views of the ocean from the highway:*** Respondents admit to landscaping with plants native to southern California along the side of Pacific Coast Highway. Respondents contend that work was inspected and approved by California Department of Transportation. Respondents further assert that no non-native, invasive plant species were introduced to the area.

Commission response:

Landscaping on a vacant lot constitutes development and requires a CDP. In addition, some of the species planted by Respondents are non-native and invasive species, including Myaporum trees. The unpermitted landscaping blocks public views of the ocean from the highway, which is not consistent with Policy 7 Section D of the Ventura County LCP or Coastal Act Section 30251. The Commission is willing to allow Respondents to retain the native southern California plants they have planted on their on their property as long as they will not in the future block public views of the ocean from the highway.

- (c) ***Chain link fence and visually impermeable shade fabric:*** Respondents state the fence is within the right-of-way of Pacific Coast Highway and that it predates the Coastal Act. Respondents admit to the addition of the shade fabric but assert they were given prior approval by the California Department of Transportation, which specifically informed them it had jurisdiction. Respondents note there are many such shade fabrics on fences in the vicinity of the property including state parks and beaches. Respondents further assert that almost 200 feet of the same lot provides the public with unobstructed views of the ocean.

Commission Response:

Respondents have neither provided Staff with evidence the fence predates the Coastal Act nor filed a claim of vested rights for consideration by the Commission. (See 14 CCR Sections 13200-13207) Respondents have provided Staff with photographs of chain link fences with shade fabric and walls along Pacific Coast Highway in the vicinity of their property to show that it is a common feature in the area. Staff is investigating the fences and walls to determine whether they are permitted, or alternatively whether they are violations of the Ventura County LCP or the Coastal Act. Regardless of the results of this investigation, the Commission has the statutory right to take action in response to the Coastal Act violations on Respondents' property pursuant to Section 30810 of the Coastal Act.

Although the only fact at issue in the issuance of this CDO is whether the development was authorized by a valid CDP, it is also noted for the record that Policy 7 of Section D of the LCP provides, "...development shall be sited and designed to protect views to and from the shoreline..." In this case, the fence and shade fabric blocks public views of the shoreline and ocean from Pacific Coast Highway. Respondents' claim regarding the amount of continuous unobstructed views of the ocean on the lot is questionable. The fact that some views across the lot may still exist beyond the end of the fence does not make the fence consistent with the LCP. Moreover, the LCP does not recognize maintaining public views across a portion of Respondents' property as a justification for failing to protect public views over another section of the property. Thus, Respondents' installation of the chain link fence with shade fabric violates the LCP policy cited above as well as Coastal Act Section 30251.

- (2) Respondents assert that based on findings adopted by Ventura County in connection with its previous approval of CDP Nos. PD-1290 and PD-1738, the County determined that the subject property is not located in or near an ESHA. Respondents presented copies of the adopted findings to support this assertion.

Commission Response:

Although the only fact at issue is whether or not Respondents had a valid CDP authorizing the development (which they did not), it is also noted for the record that Section C of the South Coast Environmentally Sensitive Habitats section of the Ventura County LCP defines creek corridors, including Little Sycamore Canyon Creek, as ESHA. Policy 2 of Section C provides, "All projects on land either in a stream or creek corridor or within 100 feet of such corridor, shall be sited and designed to prevent impacts

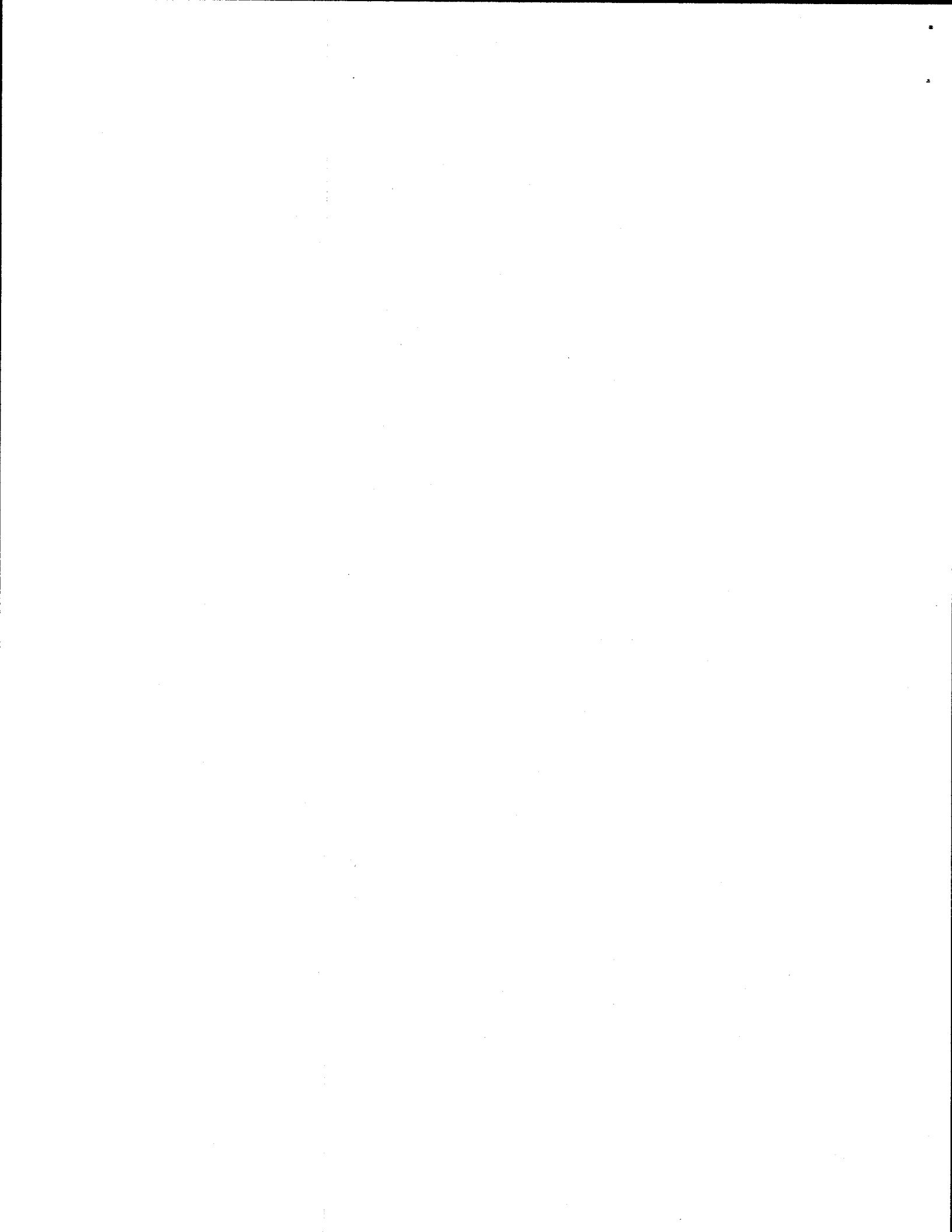
which would significantly degrade riparian habitats, and shall be compatible with the continuance of such habitats." Section 30240 of the Coastal Act provides that ESHA "shall be protected against any disruption of habitat values," and that development adjacent to ESHA "shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat areas..." Virtually all of the unpermitted development lies within 100 feet of the corridor of Little Sycamore Canyon Creek. The unpermitted retaining wall on the upper section of the creek bank will significantly degrade the riparian habitat, including the water quality of the Creek and displacement of riparian vegetation. Thus, the retaining wall violates the LCP and the Coastal Act.

G. CEQA

The Commission finds that issuing an order to cease and desist from maintaining unpermitted development in violation of the Coastal Act and to remove of such development is consistent with the requirements of the California Environmental Quality Act (CEQA) of 1970 and will have no significant adverse effects on the environment, within the meaning of CEQA. The proposed CDO is exempt from the requirements for the preparation of an environmental impact report based upon Sections 15060(c)(2), and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

Exhibits

- A. Photographs of unpermitted development in Commission jurisdiction.
- B. Photographs of unpermitted development in Ventura County LCP jurisdiction.
- C. Notice of Intent for Executive Director Cease and Desist Order (EDCDO) No. ED-03-CD-01 dated March 14, 2003.
- D. EDCDO No. ED-03-CD-01 issued March 19, 2003.
- E. Archaeological site records, diagrams, maps and photographs regarding Cultural Resource Site VEN-86, provided by the South Central Coastal Information Center of the California Historical Resources Information System.
- F. Correspondence from Tom Sinclair to Nancy Francis dated April 14, 2003.
- G. Correspondence from Todd Collart to Peter Douglas dated April 16, 2003.
- H. Ventura County Division of Building Safety Form SBD. B-12 (dated October 1996).
- I. Notice of Intent for Cease and Desist Order No. CCC-03-CD-07 dated April 17, 2003.
- J. Respondents' Statement of Defense submitted May 21, 2003.
- K. Correspondence from William F. Lynch to Peter M. Douglas and Lisa Haage dated June 9, 2003 and delivered via electronic mail.
- L. Correspondence from Chris Darnell to John Fletcher dated July 29, 2003.
- M. Correspondence from Stanley Lamport to Lisa Haage and Christopher Darnell dated August 20, 2003.



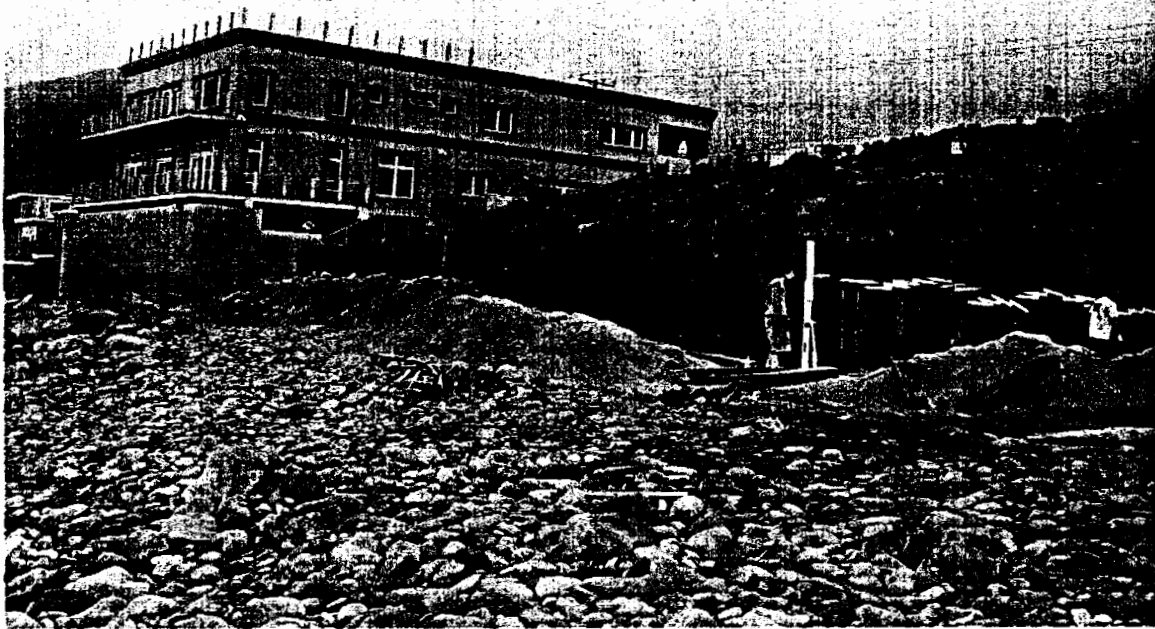
Unpermitted Development in Commission Retained Jurisdiction



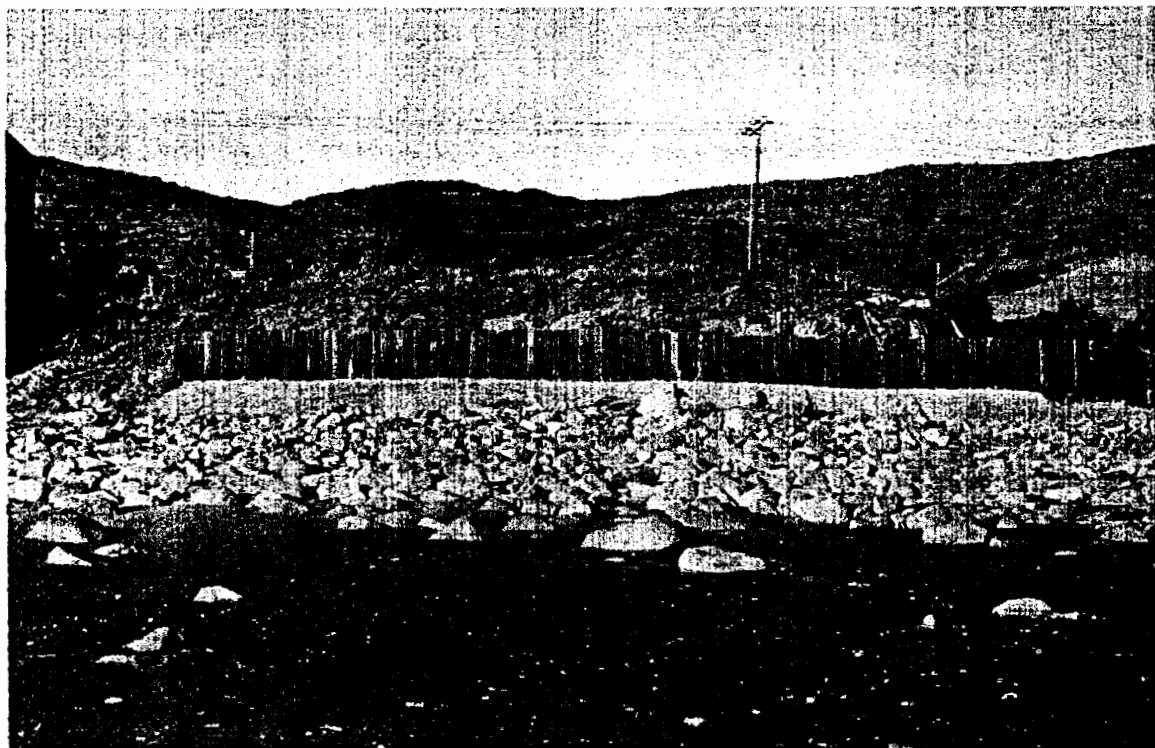
The seawall/planter and Little Sycamore Canyon Creek under construction viewed from the beach on March 17, 2003



The seawall/planter and the mouth of Little Sycamore Canyon Creek viewed from Pacific Coast Highway on March 11, 2003

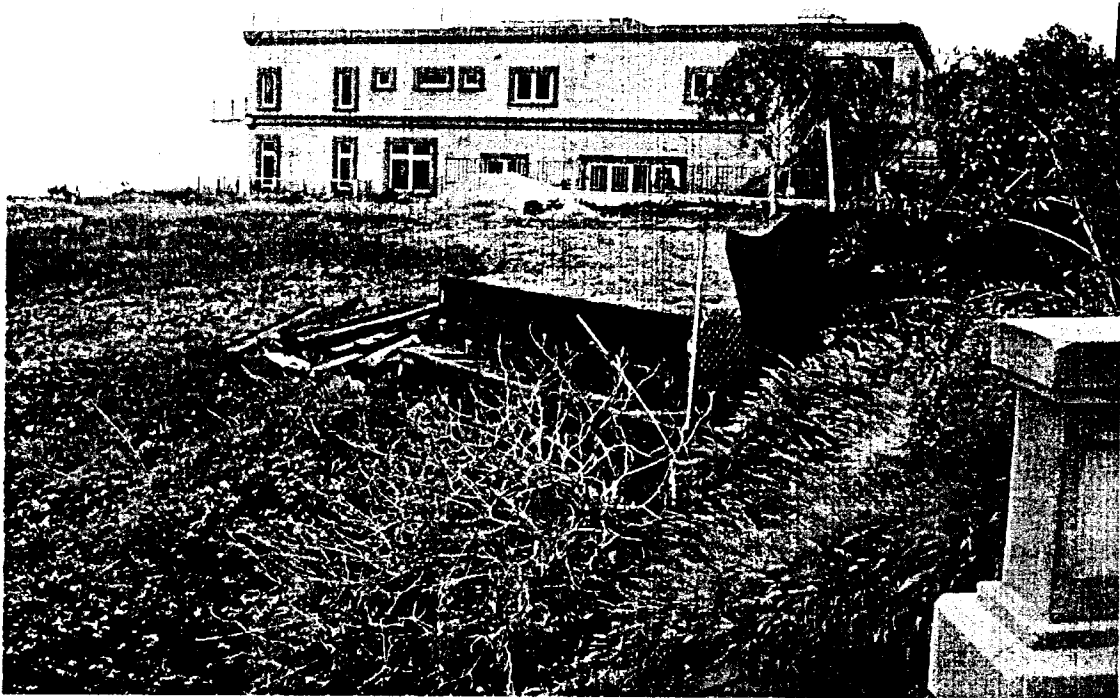


The seawall/planter under construction viewed from the beach on March 11, 2003

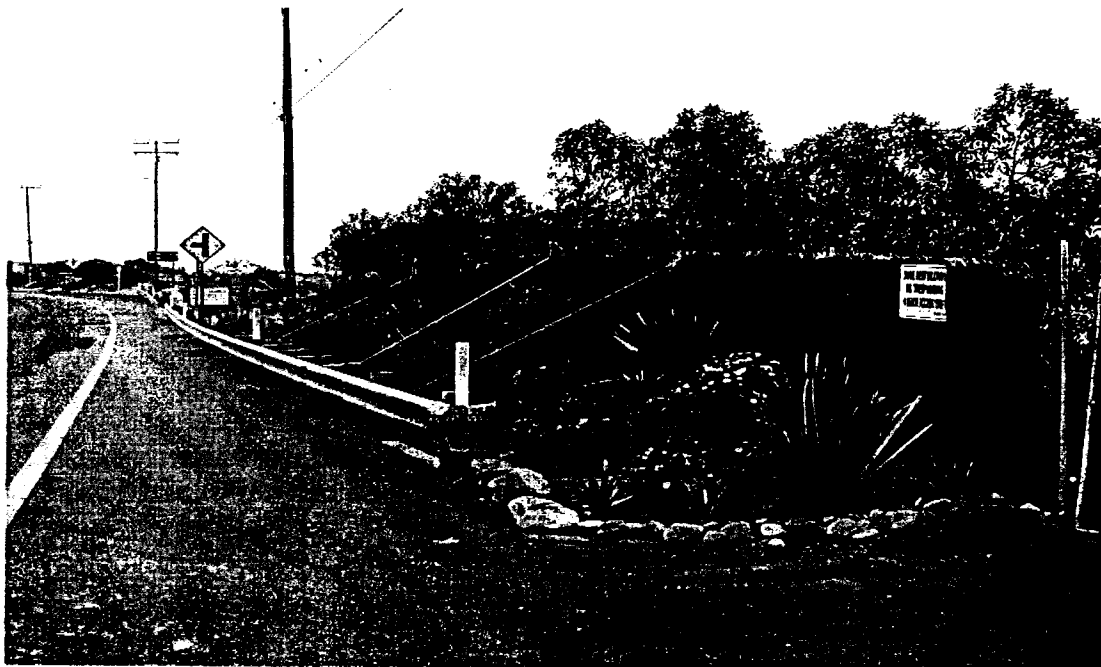


The seawall/planter with sand berm viewed from the beach on March 19, 2003

Unpermitted Development in Ventura County LCP Jurisdiction



Retaining wall on the upper section of the bank of Little Sycamore Creek viewed from Pacific Coast Highway on March 11, 2003



Unpermitted chain link fence and landscaping blocking ocean views from Pacific Coast Highway viewed from Pacific Coast Highway on March 11, 2003

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



VIA CERTIFIED MAIL AND HAND DELIVERY

March 13, 2003

**NOTICE OF INTENT TO ISSUE AN EXECUTIVE DIRECTOR
CEASE AND DESIST ORDER**

Mr. Bill Lynch and Ms. Elizabeth Harrington
42500 Pacific Coast Highway
Malibu, CA 90265-2220

Subject: Coastal Act Violation File No. V-4-03-014 (Lynch)

Property: Vacant parcel adjacent to 42500 Pacific Coast Highway, Malibu
Ventura County, APN 0700-80-0305

Dear Mr. Lynch and Ms. Harrington:

I am writing to you as the legal owners of the subject property to notify you that, pursuant to my authority under 30809(a)(1) of the Coastal Act, I intend to issue you an order requiring you to cease and desist from violating the Coastal Act by performing development without a valid coastal development permit (CDP). The development in question is a vertical seawall constructed of a concrete footing and railroad ties located on a vacant beachfront parcel south of 42500 Pacific Coast Highway. No coastal development permit has been applied for or obtained to authorize this development. The unpermitted seawall extends approximately 100 feet from the concrete seawall under the single-family residence at 42500 Pacific Coast Highway along the beach at the toe of the bluff and wraps around the bluff into the mouth of Little Sycamore Canyon Creek.

Coastal Act Section 30600(a) provides that any person wishing to undertake development in the coastal zone shall obtain a CDP from the Commission or local government in addition to any other permit required by law. Development is defined as "on land, in or under water, the placement or erection of any solid material or structure; [and] grading, removing, dredging or extraction of any materials." Undertaking development without a permit is a violation of the Coastal Act and can subject persons undertaking such unpermitted development to orders, penalties and other legal remedies.

In addition, Commission staff could not recommend approval of a CDP to authorize the unpermitted seawall because it is not consistent with the Chapter 3 policies of the Coastal Act. The seawall does not meet the requirements for approval in Section 30235 of the Coastal Act because it neither serves a coastal dependent use, nor protects existing structures or public beaches in danger from erosion, and it was not designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The seawall may also negatively impact the public beach in the intertidal zone by accelerating erosion in front of the seawall and blocking the sand supply to the beach from the coastal bluff.

Moreover, the unpermitted seawall is adjacent to a coastal bluff, which is an environmentally sensitive habitat area as defined in Coastal Act Section 30107.5. Section 30240 of the Coastal Act provides that environmentally sensitive habitat (ESHA) be protected against any significant disruption of habitat values. Finally, Section 30231 provides that productivity and the quality of coastal waters and streams be protected by maintaining natural vegetation buffer areas and minimizing alteration of natural streams. The railroad ties, which are impregnated with creosote, may impact the quality of Little Sycamore Canyon Creek that flows across the beach and into the ocean.

EXECUTIVE DIRECTOR CEASE AND DESIST ORDER

Section 30809(a) of the Coastal Act provides that "If the Executive Director determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) may require a permit from the commission without securing a permit... the executive director may issue an order directing that person or governmental agency to cease and desist." Pursuant to Section 30809, the Executive Director Cease and Desist Order may be subject to such terms and conditions as I may determine are necessary to avoid irreparable injury to the area pending the issuance of a Cease and Desist Order by the Commission.

I intend to issue a Cease and Desist Order against you unless you respond to this letter in a "satisfactory manner", as that term is defined in Section 13180 of the Commission's administrative regulations (Title 14, Division 5.5, California Code of Regulations (CCR)) by close of business Friday, March 14, 2003. In this case, such a satisfactory response should include an assurance that no further development will be undertaken at the site unless specifically authorized by a permit granted by the Commission. Such response should be made by telephone to Headquarters Enforcement Officer Chris Darnell by close of business Friday, March 14 at 415-924-5294 and followed by a written confirmation mailed to Mr. Darnell at the following address: **California Coastal Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94925 and faxed to 415-904-5235 by close of business tomorrow.**

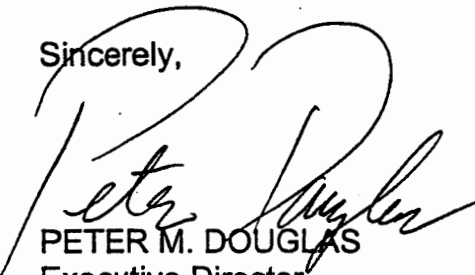
The Executive Director Cease and Desist Order will require you to halt all development activity at the site and refrain from undertaking any development on the property not specifically approved by the Commission. No effort should be made to remove the existing development without Commission authorization.

Please be advised that Coastal Act Section 30820 provides for penalties for violations of the Coastal Act and Section 30821.6 authorizes the Commission to seek daily penalties for any intentional or negligent violation of a Cease and Desist Order for each day in which the violation persists. The penalty for intentionally and negligently violating a Cease and Desist Order or a Restoration Order can be as much as \$6,000 per day for as long as the violation persists. Section 30822 of the Coastal Act enables the Commission to bring an action, in addition to Section 30803 or 30805, for exemplary damages where it can be shown that a person has intentionally and knowingly violated the Coastal Act or any order issued pursuant to the Coastal Act.

The Cease and Desist Order will be effective upon its issuance and a copy will be mailed to you. If you provide a fax number, we will also fax a copy of the Cease and Desist Order to you. A Cease and Desist Order issued by the Executive Director is effective for 90 days. The Commission may also elect to issue a Cease and Desist Order or Restoration Order to you, which has no time limit and may also require you to remove the seawall in order to resolve the violation.

If you have any questions regarding this notice, please contact Headquarters Enforcement Officer Chris Darnell at 415-904-5294.

Sincerely,



PETER M. DOUGLAS
Executive Director

Enclosure

cc: Lisa Haage, Chief of Enforcement
Amy Roach, Deputy Chief Counsel
Steve Hudson, Southern California Enforcement Supervisor

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**VIA CERTIFIED MAIL AND HAND DELIVERED**

March 19, 2003

Mr. William Lynch and Ms. Elizabeth Harrington
42500 Pacific Coast Highway
Malibu, CA 90265-2220

Subject: Executive Cease and Desist Order No. ED-03-CD-01

Date Issued: March 18, 2003

Expiration Date: June 16, 2003

Violation File No.: V-4-03-014 (Lynch)

Property Location: Vacant parcel adjacent to 42500 Pacific Coast Highway,
Malibu, Ventura County, APN 700-0-080-305

Alleged Coastal Act Violation: Construction of an approximately 100 foot long timber retaining wall/seawall with a concrete footing without a coastal development permit, grading and excavation of the adjacent beach and Little Sycamore Canyon Creek.

I. ORDER

Pursuant to my authority under California Public Resources Code (PRC) Section 30809, I hereby order you, as the legal owners of the property identified below, your employees, agents and contractors, and any other persons acting in concert with you to cease and desist from violating the Coastal Act by undertaking development without a coastal development permit (CDP), including the construction of a timber retaining wall/seawall and concrete footing on the beach, grading and excavation of the adjacent beach and Little Sycamore Canyon Creek.

II. IDENTIFICATION OF THE PROPERTY

The property that is the subject of this cease and desist order is a vacant lot, southeast of 42500 Pacific Coast Highway, adjacent to the mouth of Little Sycamore Canyon Creek, Ventura County. The entire beachfront property is located in the coastal zone, and the unpermitted timber retaining wall/seawall is located within the Commission's permit jurisdiction.

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT D

Page 1 of 5

III. DESCRIPTION OF ACTIVITY

The activity that is the subject of this order consists of the unpermitted construction of a timber retaining wall/seawall at the base of a coastal bluff, construction of an adjacent retaining wall within the banks of Little Sycamore Canyon Creek, grading and excavation of the beach in front of the wall, and grading in the mouth of Little Sycamore Canyon Creek. The unpermitted timber retaining wall/seawall extends approximately 100 feet, from the adjoining property line of 42500 Pacific Coast Highway, and wraps around into the mouth of Little Sycamore Canyon Creek.

IV. FINDINGS

A. On March 11, 2003, Commission staff discovered unpermitted development consisting of construction of a timber retaining wall/seawall at the base of a coastal bluff, and an adjacent retaining wall within the banks of Little Sycamore Canyon Creek. Commission staff contacted William Lynch, the owner of the property. Mr. Lynch informed Commission staff that there were erosion problems along the bluff and that the retaining wall/seawall was for the purpose of protecting his property. Commission staff explained to Mr. Lynch that the Coastal Act requires persons performing development in the coastal zone to obtain a CDP and that the Coastal Act has specific provisions as to when seawalls are permitted. Commission staff advised Mr. Lynch and his contractor Greg George that the timber retaining wall/seawall was in violation of the California Coastal Act, and that all work on the project must stop immediately, and that a CDP was required for any further work, including removal of the unpermitted development.

Mr. Lynch indicated that Ventura County Building inspector Steve McAtee had been out to the site and advised him that none of the work, including the retaining wall/seawall, required a CDP because it was no higher than 3 feet tall. Mr. Lynch stated that although the timbers were over 6 feet tall, he intended to cut it down to 3 feet and backfill it. Mr. Lynch stated that the inspector said that the walls were exempt but that "Coastal would have issues," and that Mr. Lynch should contact the Commission.

Commission staff instructed Mr. Lynch and his contractor not to complete any further construction on the retaining wall/seawall, and to remove any loose timber and construction debris from the creek. Mr. Lynch and the contractor indicated that they understood these instructions and agreed to follow Commission staff's direction.

B. On March 13, 2003, Commission staff conducted a site visit to the property. Commission staff observed that construction of the retaining wall/seawall was continuing with the use of heavy equipment on the beach.

Commission staff observed two wooden pallets of approximately 100 bags of dry concrete on the property.

C. On March 13, 2003, in accordance with the provisions of Coastal Act Section 30809(b), Commission staff hand delivered a Notice of Intent to Issue an Executive Director Cease and Desist Order (NOI) to Mr. Lynch and Ms. Harrington at their residence at 42500 Pacific Coast Highway. The NOI specifically required cessation of all unpermitted work at the site. It stated that the Executive Director intends to issue a CDO against you unless you respond to this letter in a satisfactory manner. The NOI specifically stated:

Such a satisfactory response must include an assurance that no further development will be undertaken at the site unless specifically authorized by a permit granted by the Commission.

Commission staff spoke with Ms. Harrington by intercom and informed her of the purpose of their visit. Ms. Harrington stated that she could not come to the door and requested that the NOI be placed in the mailbox. During the visit, Commission staff observed that the concrete was no longer visible and that additional work had occurred on the retaining wall/seawall since the previous site visit.

D. On March 14, 2003, Mr. Lynch contacted Commission staff by telephone in response to the directions in the NOI. He also faxed a letter dated March 16, 2003 and a copy of Ventura County Document SBD B 12 (dated October 1996) regarding the CDP exemption for 3 ft. retaining walls. In his letter, Mr. Lynch asserts that he is constructing a 3 ft. high planter and that it is exempt from the requirement for a CDP. He also restated his understanding that the project is in the jurisdiction of Ventura County not the Commission since it is above the mean high tide line. The letter did not contain any assurances that no further development will be undertaken at the site unless specifically authorized by a permit granted by the Commission, as required by the NOI to avoid issuance of an EDCDO.

E. On March 17, 2003, Commission staff observed a large dump truck depositing several cubic yards of soil and a backhoe grading the beach seaward of the retaining wall/seawall and backfilling the space behind the wall. Commission staff observed evidence of grading in the stream channel of the creek. Commission staff contacted Mr. Lynch via intercom at the front gate of 42500 Pacific Coast Highway. Commission staff again advised Mr. Lynch that he was violating the Coastal Act and directed him to stop work on the project immediately. Mr. Lynch declined to do so, asserting that Mr. McAtee told him that the project was in the Ventura County jurisdiction and that the Commission had no authority to regulate the activity. Mr. Lynch also stated that the work was landscaping and declined to stop work. Commission staff repeatedly advised Mr.

Lynch that the work was not exempt and that he must stop work immediately. He indicated that he did not intend to stop work on the project. Later the same day, Commission staff conducted another site visit and observed continued construction above and below the retaining wall/seawall, and in the mouth of Little Sycamore Canyon Creek.

F. Also on March 17, 2003, Nancy Francis of the Ventura County Planning Department confirmed to Commission staff that a CDP is required for any development on the beach and that the 3 ft. permit exemption for retaining walls does not apply to development between the mean high tide line and the first coastal bluff. The County also agreed that the unpermitted retaining wall/seawall is located in the Commission's original jurisdiction. Commission staff conveyed this information to Mr. Lynch.

G. On March 18, 2003 Commission staff contacted Mr. Lynch regarding the decision to issue this order in light of the failure to provide adequate assurances, as defined in the NOI, that he would perform no further unpermitted development and to propose a restoration order as a potential way to remove the unpermitted development. Commission staff informed Mr. Lynch that it is very unlikely that Commission staff would recommend that the Commission approve a CDP to authorize the retaining wall/seawall given the provisions of Coastal Act section 30235. Section 30235 provides that seawalls "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."

H. The activities referenced herein are within the coastal zone and within the Commission's original jurisdiction. Any development conducted therein requires a CDP from the Commission. No CDP was obtained. Failure to obtain a CDP is a violation of the Coastal Act and can subject persons performing such development to remedies in Chapter 9 of the Coastal Act, including the issuance of Executive Director cease and desist orders under Section 30809 of the Coastal Act.

V. COMPLIANCE OBLIGATION

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order may result in the imposition of civil penalties up to Six Thousand Dollars (\$6,000) per day for each day in which such compliance failure persists and other such penalties and relief as provided for in the Coastal Act. In addition, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in section 30812 of the Coastal Act, to record a Notice of Violation against your property.

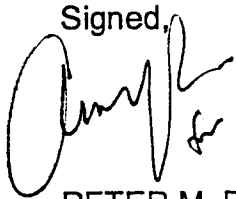
VI. APPEAL

Pursuant to PRC section 30803(b), any person or entity against whom this order is issued may file a petition with the Superior Court seeking a stay of this order.

Should you have any questions regarding this matter, please contact Mr. Chris Darnell, Headquarters Enforcement Officer, at 415-904-5294.

Executed at San Francisco, California on March 19, 2003.

Signed,

A handwritten signature in black ink, appearing to read "Peter M. Douglas", written over a large, stylized initial "P".

PETER M. DOUGLAS
Executive Director
California Coastal Commission

South Central Coastal Information Center
Orange, Los Angeles, Ventura Counties
California Historical Resources-Inventory System
Info.

California State University, Fullerton, Department of Anthropology, 800 North State College, Fullerton, CA 92834

RECEIVED
JUN 23 2003
CALIFORNIA
COASTAL COMMISSION

University of California

11,318765E,
3769825N.

ARCHAEOLOGICAL SITE SURVEY RECORD

- 1. Site Ven-06 2. Map Triunfo Pass 7.5' 1949 3. County Ventura
- 4. Twp. 1 S Range 20 W; SE 1/4 of NW 1/4 of Sec. 27
- 5. Location west bank of Little Sycamore Creek (at mouth), south side of hwy. US 101 &, 50 SW of bridge
- 6. On contour elevation 25'
- 7. Previous designations for site none
- 8. Owner Malibu Realty 9. Address Malibu Beach, Calif.
- 10. Previous owners, dates ---
- 11. Present tenant none
- 12. Attitude toward excavation ---
- 13. Description of site small shell midden on bluff above, creek mouth almost on beach. Very dark midden...high percentage shell
- 14. Area 50' diameter 15. Depth 2' 16. Height none
- 17. Vegetation clover, reeds, grass, cacti, shrub 18. Nearest water Little Sycamore Creek 10' E
- 19. Soil of site dark, loose midden 20. Surrounding soil type sand
- 21. Previous excavation none
- 22. Cultivation none 23. Erosion minimal
- 24. Buildings, roads, etc. US 101-A 30' N, house -- 120' W
- 25. Possibility of destruction imminent -- land for lease
- 26. House pits none
- 27. Other features none
- 28. Burials ---
- 29. Artifacts manos, choppers -- seems rich

30. Remarks Ven-1. Across creek, may be part of same occupation

31. Published references k possibly Little Sycamore site report

32. Accession No. --- 33. Sketch map back

34. Date 1/20/66 35. Recorded by

CCC-03-CD-07 (Harrington & Lynch)

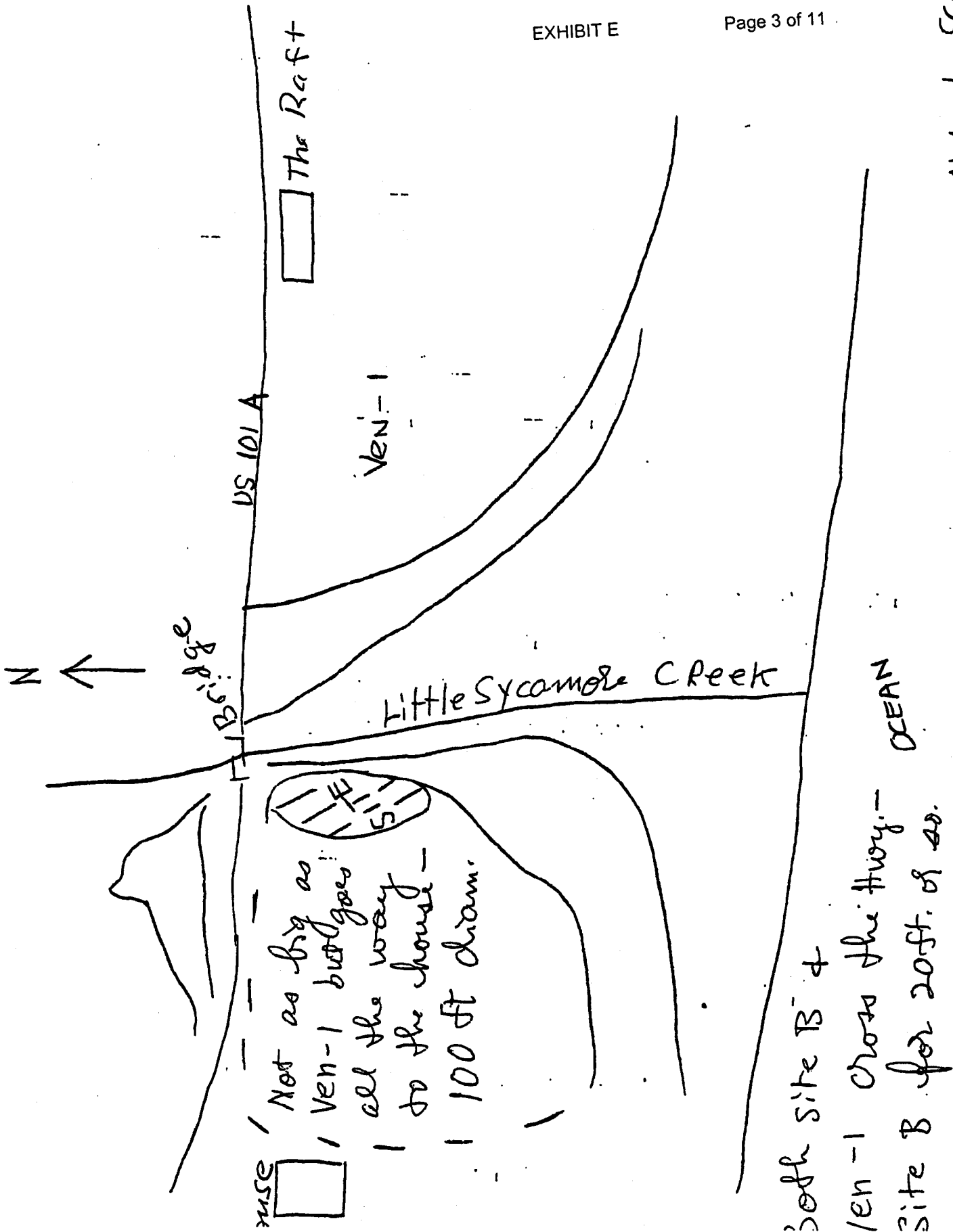
EXHIBIT E

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT E

Page 3 of 11

Not to SCALE



update

DEPARTMENT OF PARKS AND RECREATION
ARCHEOLOGICAL SITE RECORD

Permanent Trinomial:
Other Designations: Ven-86

Page 1 of 5

1. County: Ventura
2. USGS Quad: Triunfo Pass 7'5" Revised 1967
3. UTM Coordinates: Zone 11; 318,720 m East; 3,769,540 m North.
4. Township: South, Range: East, Base Mer.:
In 1/4 of 1/4 of 1/4 of 1/4 of Section
5. Map Coordinates: 331 mm S, and 140 mm E from NW corner of map.
6. Elevation: 25 feet.
7. Location: The site is on the ocean side of Pacific Coast Highway. When going north from the Ventura-Los Angeles County line, cross the Little Sycamore Creek bridge (this is just north of Yerba Bueno Road). The site is on the north bank of the creek, while Ven-1 is across the creek on the south bank. The site is on a 15-20' bluff top covered by wind blown sand stabilized by a planting of ice plant.
8. Prehistoric: x Historic: or Protohistoric:
9. Site Description: The site consists of finely fractured shell in a matrix of dark brown sandy silt. A fenced lot and house made it impossible to determine site boundaries up coast. The site does not appear in the eroded bank of Little Sycamore Creek inland across the highway bridge.
10. Area: 80 m N/S, 65+ m E/W (access limited) Area: 5000 m².
Method of determination: Paced.
11. Depth: 50-75 cm.
Method of Determination: Exposure on eroding bluff bank. 1959 excavation report indicated 2 m to sterile soil.
12. Features: None seen.
13. Artifacts: Broken cobbles suitable for opportunistic manos, one possible comal fragment.
14. Non-Artifactual Constituents and Faunal Remains: Predominantly Mytilus sp., also a few Haliotis sp., Chione sp., Pollicipes sp. Shell fragments are larger than at Ven-1.
15. Date Recorded: February 9, 1990
16. Recorded By: Eloise Richards Barter, Philip Hines, State Archeologists.
17. Affiliation: Cultural Heritage Section, California Department of Parks and Recreation, P.O. Box 942896, Sacramento, CA 94296.

**DEPARTMENT OF PARKS AND RECREATION
ARCHEOLOGICAL SITE RECORD****Permanent Trinomial:****Other Designations: Ven-86**

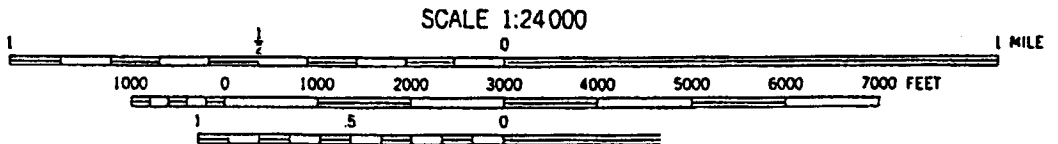
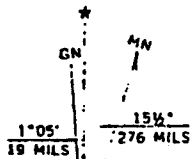
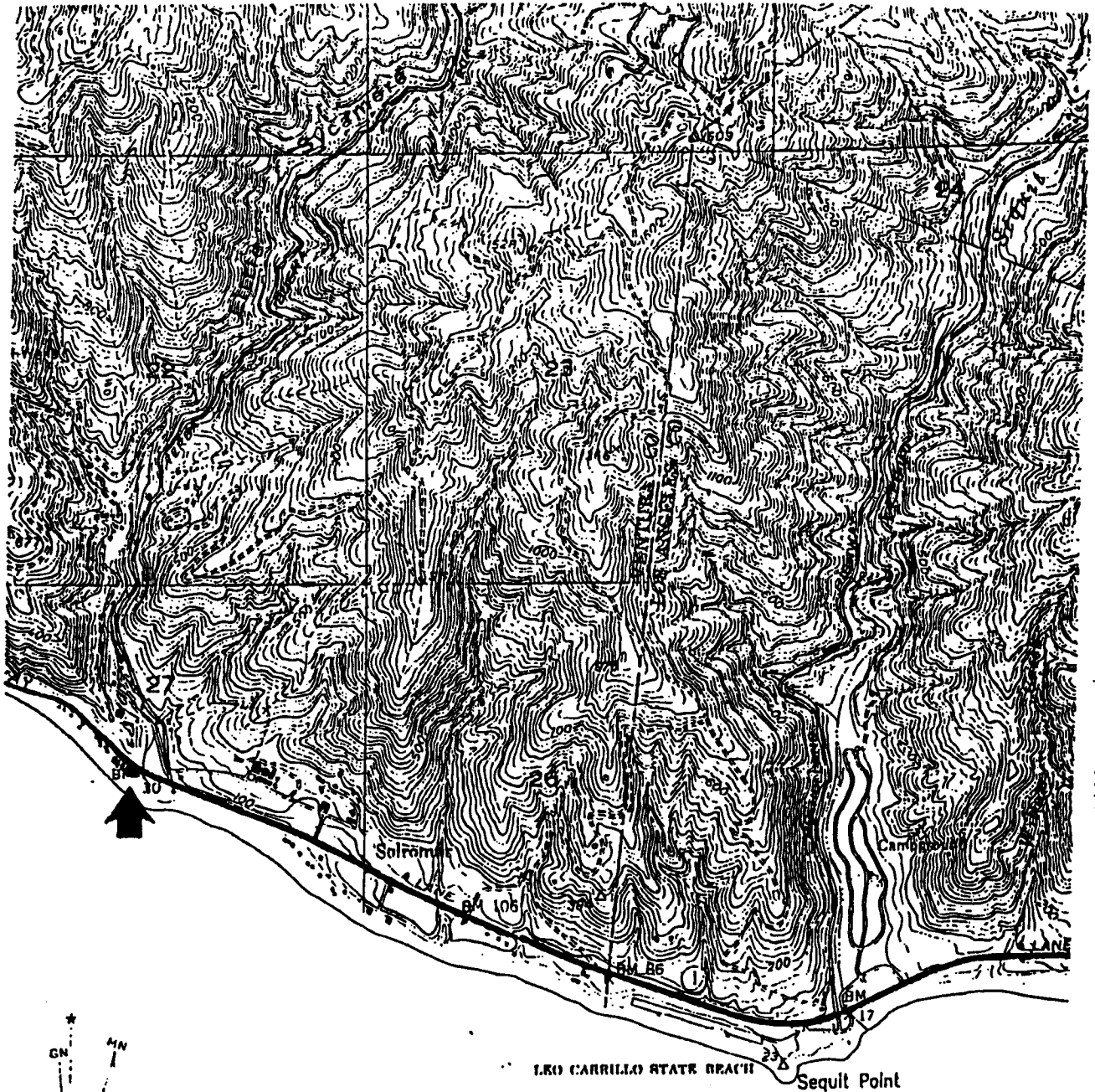
Page 2 of 5

18. **Human Remains:** None observed.
19. **Site Disturbances:** Informal trails, ground squirrels. Some bank slumping.
20. **Nearest Water:** Little Sycamore Creek, adjacent on south.
21. **Vegetation Community (site vicinity):** Coastal Sage Scrub
22. **Vegetation (on site):** Introduced ice plant
23. **Site Soil:** dark brown sandy silt and wind blown sand.
24. **Surrounding Soil:** Reddish brown sandy silt
25. **Geology:** midden rests directly on cobble layer of old beach terrace.,
26. **Landform:** ocean fronting bluff
27. **Slope:** flat to 2°
28. **Exposure:** open
29. **Remarks:** The land is called County Line or County Line Beach.
30. **Landowner:** Privately owned; considered for acquisition by California Department of Parks.
31. **References:** Excavated in 1952 by W. J. Wallace (Sand Dune Site). Untitled student paper by G.K. Coon was provided the LA County Museum by Dr. Wallace through Dr. Rozier.
32. **Name of Project:** Statewide Resource Management Program
33. **Type of Investigation:** Site re-recording
34. **Site Accession Number:** None, no collections.
35. **Photos:** Black and white prints attached, by Phil Hines. Negatives have been filed at DPR's Archeology Laboratory, catalog numbers 43236, 43238.

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
ARCHEOLOGICAL SITE LOCATION
MAP

Permanent Trinomial: _____ Mo. Yr. 5 90
Other Designations: CA-Ven-86

Page 3 of 5



TRIUNFO PASS, CALI
CONTOUR INTERVAL 25 FEET

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT E

Page 6 of 11

QUADRANGLE LOCATION

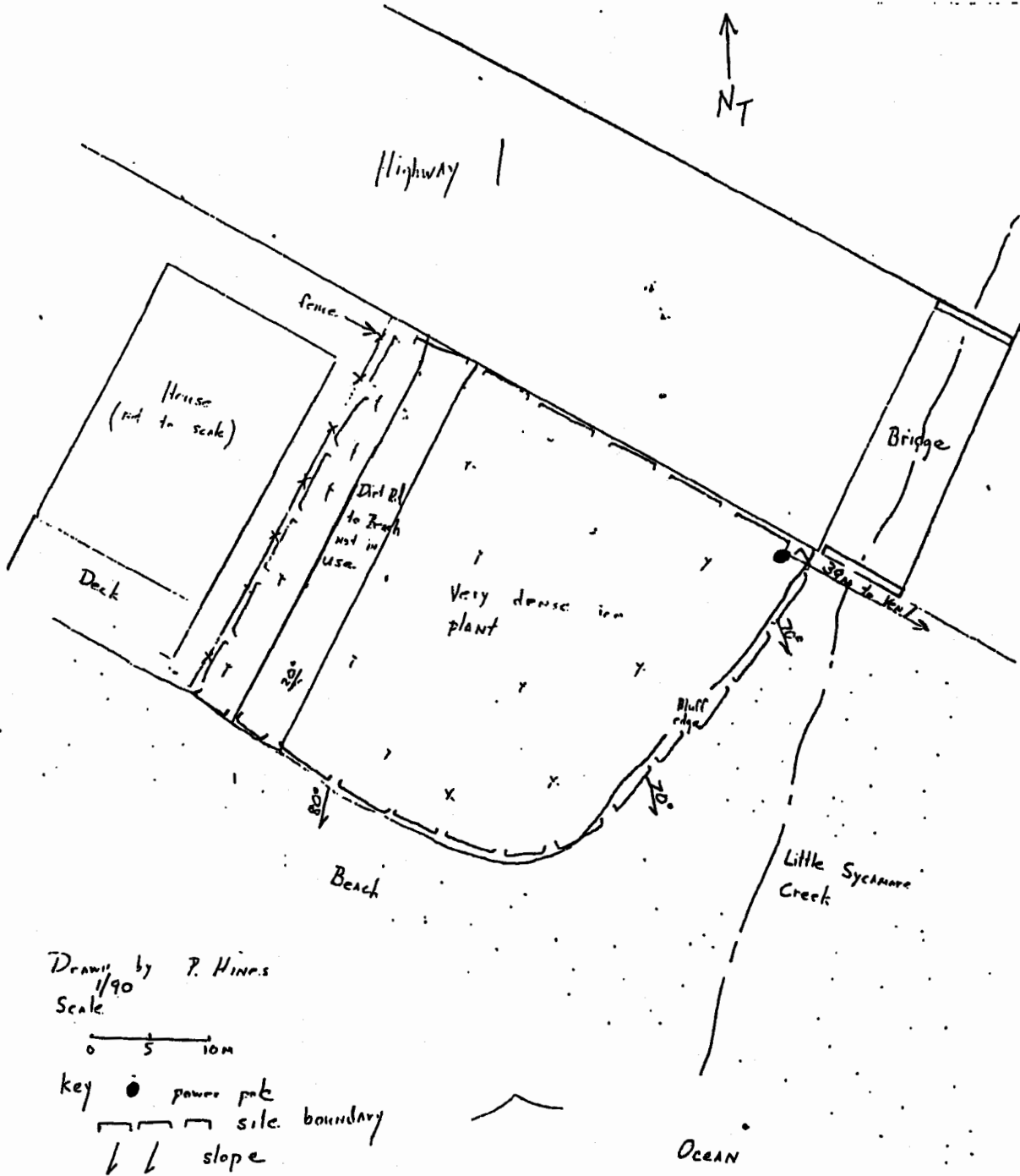
State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
ARCHEOLOGICAL SITE LOCATION
MAP

Permanent Trinomial: _____

5 190
Mo. Yr.

Other Designations: CA-Ven-86

Page 4 of 5



Drawn by P. Hines
1/90
Scale

0 5 10m

key ● power pnt
[] site boundary
↓ ↓ slope

State of California - The Resources Agency
 DEPARTMENT OF PARKS AND RECREATION
ARCHEOLOGICAL SITE RECORD
 Continuation Sheet

Permanent Trinomial: _____ / 5 96
mo. yr.

Temporary Number: CA-Ven-86

Page 5 of 5

Agency Designation: _____

Item No.

Continuation



CA-Ven-86, looking northwest from Ven 1. Little Sycamore Creek bridge across Pacific Coast Highway at right. Site is on bluff in center, and perhaps continues under the house. DPR 43236

DATE:

ASSIGNMENT:

FILE NO:

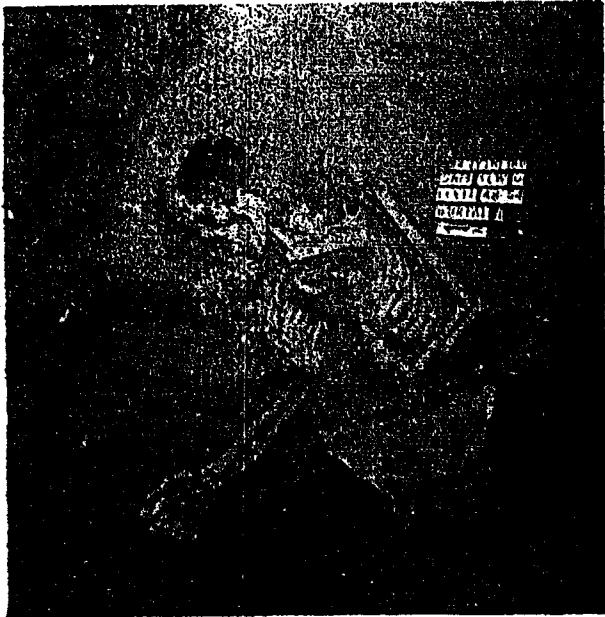
CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT E

Page 9 of 11

HYEN 86

SLW 6 - 48/54



12613571
1971/15 #4 (#3 gamma) Aug 5 1971

BURIAL #1

HYEN 86

SLW 5 ENT. 484-24



1971/14 #1

KEN + JOHN

HYEN 86

SLW 5 ENT. 484 Level



1971/14 #2

HYEN 86

SLW 6 - 48-54 #1



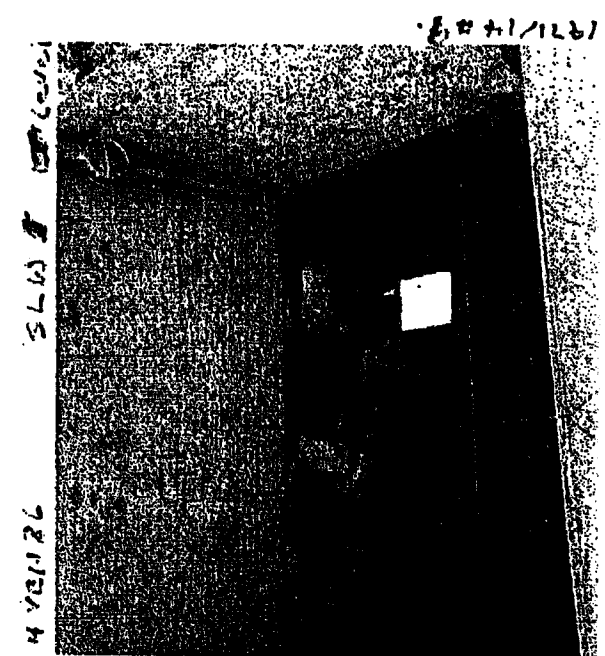
1971/15 #1
12613571

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT E

Page 11 of 11

STYLE NO. 35-8P



P.O. BOX 607488 • ORLANDO, FL 32860 • (407) 886-3100

Print File ARCHIVAL PRESERVERS

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

**CONFIDENTIAL**

April 14, 2003

Ms. Nancy Francis
Manager, Land Use Permits/Programs Section
Resource Mgt. Agency, Planning Division, Ventura County
800 S. Victoria Avenue, L#1740
Ventura, CA 93009

Re: Notice of California Coastal Commission Violation File No. V-4-03-014 (Lynch/Harrington) and request to Ventura County to pursue a joint enforcement action of the unpermitted development at 42500 Pacific Coast Highway, Malibu, Ventura County.

Dear Ms. Francis:

The purpose of this letter is to coordinate with the County of Ventura in resolving the above referenced violation of the County's certified Local Coastal Program. Pursuant to our telephone conversation on Wednesday, March 26, 2003, the California Coastal Commission ("Commission") has confirmed that unpermitted development has occurred at the above referenced site and that although a portion of the unpermitted development is located within the Commission's retained permit issuance jurisdiction, a portion of the unpermitted development is also located within the jurisdiction of Ventura County's certified Local Coastal Program. The Commission is currently pursuing enforcement action to resolve Coastal Act violations and obtain removal of unpermitted development and restoration of damaged or destroyed resources within the Commission's retained coastal development permit jurisdiction on parcels 700-0-080-305, 700-0-080-365, and adjacent public lands, including the mouth of Little Sycamore Canyon Creek.

Coastal Act violations within the Commission's retained jurisdiction include, but are not limited to the following:

- Unpermitted construction of an approximately 100 foot long, six foot tall, timber seawall, constructed of creosote soaked railroad ties anchored by several tons of concrete, at the toe of a coastal bluff.
- Grading, including excavation of sand, cobble, and boulder materials, placement of imported fill material, and unpermitted use of heavy machinery on the beach.

- Failure to cease and desist from unpermitted development activities despite verbal and written instructions by Commission staff that such unpermitted development was a violation of the Coastal Act and could subject those performing such work to penalties and other remedies under the Coastal Act.

In addition, unpermitted development has also occurred on these same properties that are subject to the County of Ventura's Certified Local Coastal Plan ("LCP"). Coastal Act violations within the County of Ventura's LCP jurisdiction, as well as the Commission's appeal jurisdiction include, but are not limited to the following:

- Unpermitted construction of a retaining wall, constructed of creosote-soaked railroad ties, and backfilled with imported soil material, within the banks of Little Sycamore Canyon Creek.
- Grading and alteration of the streambed and mouth of little Sycamore Canyon Creek, including excavation of sand, cobble and boulder material, and the unpermitted use of heavy machinery in the streambed.
- Construction of a six (6) foot tall, chain link fence with green fabric, and placement of numerous non-native, invasive species of trees, which obstruct public views of the ocean from Pacific Coast Highway.

As background on this violation case, enclosed are relevant documents from the Commission's violation file for this case. Some or all of these materials are confidential and exempt from public disclosure under the Public Records Act (Government Code Section 6254(f)), which pertains to law enforcement investigatory files. Providing these materials to you does not waive their confidentiality. Section 6254.5(e) of the Government Code requires that an agency that receives confidential documents agree to treat the documents as confidential, in order for the documents to continue to be exempt from disclosure. If you do not agree to treat the material as confidential and to limit further disclosure and use as required under Section 6254.5(e) of the Government Code, please return these materials to my attention. Section 6254.5(e) of the Government Code limits the use of such confidential information disclosed to a government agency, as follows: "[o]nly persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information."

We are planning to take enforcement action regarding the above referenced violations within our jurisdiction, and would like to coordinate with you on possible additional enforcement of the violations falling within your jurisdiction. On March 19, 2003, the Commission issued an Executive Director Cease and Desist Order to the property owners of the above referenced properties ordering them to stop all unpermitted development activities on the site. In addition, the Commission is currently pursuing additional formal enforcement action which may include the issuance of a Commission Cease and Desist Order and/or Restoration Order to remove the unpermitted

Nancy Francis
April 14, 2003

Page 3

development and restore the portion of the site within the Commission's retained permit jurisdiction area. Pursuant to our discussion on Wednesday, March 26, 2003, the Commission is offering to assist the County of Ventura in the enforcement of the County's LCP by addressing the unpermitted development that has occurred within the County's LCP jurisdiction also as part of our pending formal enforcement action.

While Enforcement action by the Commission does not preclude the County from pursuing resolution of violations of LCP policies, the Commission may assume primary responsibility for enforcement of Coastal Act violations pursuant to Section 30810(a) of the Act. Section 30810(a) provides that the Commission may issue an order to enforce the requirements of certified local coastal program in the event that the local government requests the Commission to assist with or assume primary responsibility for issuing such order, or if the local government declines to act or fails to act in a timely manner to resolve the violation. As such, please notify me regarding whether the County intends to take separate enforcement action to resolve the above referenced violations that are located within the County's LCP jurisdiction or if the County would prefer the Commission to assist in the resolution of the violations as part of the Commission's pending enforcement action. If the County requests the Commission's assistance in this matter, the Commission will pursue further enforcement action which may include the issuance of a cease and desist and restoration order for all unpermitted development, including development within the County's LCP jurisdiction, that has occurred on site. If we do not receive a response from you by Monday, April 21, 2003, we will assume that the County declines to take enforcement action on this violation case at this time, and the Commission shall assume primary responsibility to resolve all Coastal Act violations on the above-mentioned properties.

Thank you very much for your cooperation. We look forward to working with your staff to resolve this matter. Should you have questions regarding this matter, or if you require additional information, please contact me at my office at (805) 585-1800.

Sincerely,



Tom Sinclair
Enforcement Officer

CC: Todd Collart, Zoning Administration Section Manager, Ventura County
Lisa Haage, Enforcement Chief, CCC
Steve Hudson, Enforcement Supervisor, CCC
Chris Darnell, Enforcement Officer, CCC

Enclosures: Notice of Intent for ED-03-CD-01, 3/13/2003
CCC Violation Investigation Notes, 3/18/2003
CCC telephone log, Sinclair-Melugin 3/24/2003
Executive Director Cease & Desist Order ED-03-CD-01, 3/19/2003
Declaration of Service, Sinclair, 3/19/2003
Photographs (21 total) 3/11/2003 - 3/20/2003

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT F

Page 3 of 3

RECEIVED

APR 21 2003

CALIFORNIA
COASTAL COMMISSION

April 16, 2003

Mr. Peter Douglas,
Executive Director
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Dear Mr. Douglas:


Subject: Coastal Act Violation File No. V-4-03-014 (Lynch)
APN 070-0-080-030
42500 Pacific Coast Highway, Ventura Co.

In an April 14, 2003 letter to Nancy Francis, Tom Sinclair of the Coastal Commission's Ventura office asked if the County Planning Division could assist in the administration of the subject case. As the Supervisor of the Code Enforcement Section of the County Planning Division I am hereby informing you that the County Planning Division is unable to provide the requested assistance at this time because the code enforcement officer for this area has retired and there is no immediate replacement.

Should Mr. Lynch attempt to remedy the three noted violations: 1) railroad tie retaining wall, 2) grading and alteration of a stream bed, and 3) installation of a fence with screening which blocks public views, he should contact Nancy Francis of the Planning Division. She can be reached (805) 654-2461. I also suggest that your code enforcement staff coordinate with her relative to any the permits (if any) necessary to remedy the above violations.

If you have any questions, please contact me at (805) 654-2468.

Sincerely,



Todd Collart, Manager Zoning Administration Section

C: Nancy Francis
Chris Darnell

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT G

Page 1 of 1

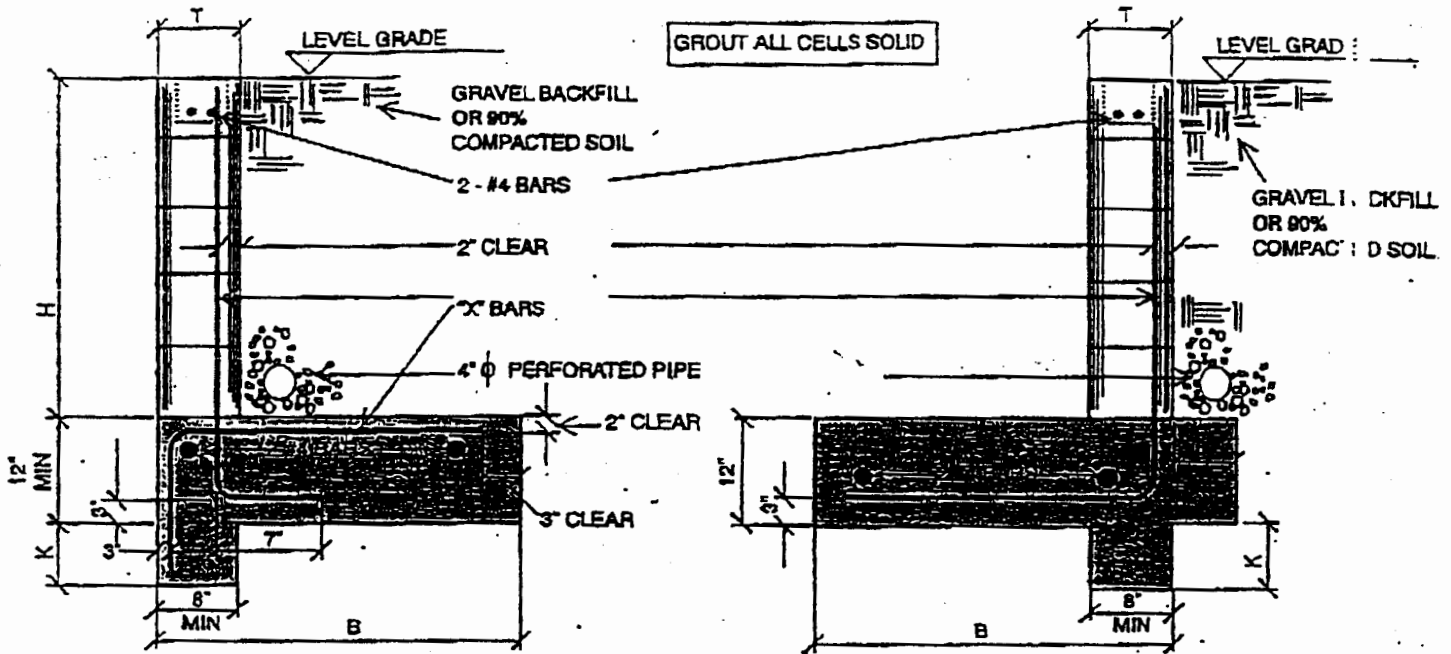


county of ventura

DIVISION OF BUILDING AND SAFETY
 Jack Phillips
 Building Official

DETACHED RETAINING WALL - LEVEL GRADE

Building Permit Required For "H" 3' or less, Building permit is not required



H	B	T	"X" BARS	K
2'-0"	1'-6"	6"	#3 @ 48" O.C.	6"
3'-0"	2'-0"	6"	#3 @ 24" O.C.	12"
4'-0"	3'-0"	8"	#4 @ 24" O.C.	18"

General Notes:

- Concrete - 2000 p.s.i. Min. @ 28 days.
- Reinf. Steel - Grade 40. $f_s=20,000$ p.s.i.
- Reinf. Steel Laps - Min. 1'-8".
- Concrete Masonry Units with type "M" mortar $f_m=1500$ p.s.i.
- Grout - 1 part cement (plastic cement not permitted) 2 1/4 to 3 parts sand, 2 parts pea gravel.
- Mortar type "M" or "S" - 1 part cement, 1/4 part hydrated lime or lime putty, sand 2 1/4 - 3 times the sum of cement and lime.
- Soil - Max. 1000 p.s.f. bearing pressure.
- Backfill - sand or gravel soil.
- All workmanship and materials to conform with the UNIFORM BUILDING CODE.
- No surcharge on wall. Consult a professional Civil or Structural Engineer for design of retaining wall having:
 - a height greater than 4 feet and/or
 - any surcharge. (Vehicle loading, adjacent footings; etc.)
- Compaction report is not required for the backfill behind the wall only.

Jack Phillips
 BUILDING OFFICIAL
 S.D. B-12
 Sheet 1 of 2
 October 1996

CCC-03-CD-07 (Harrington & Lynch)

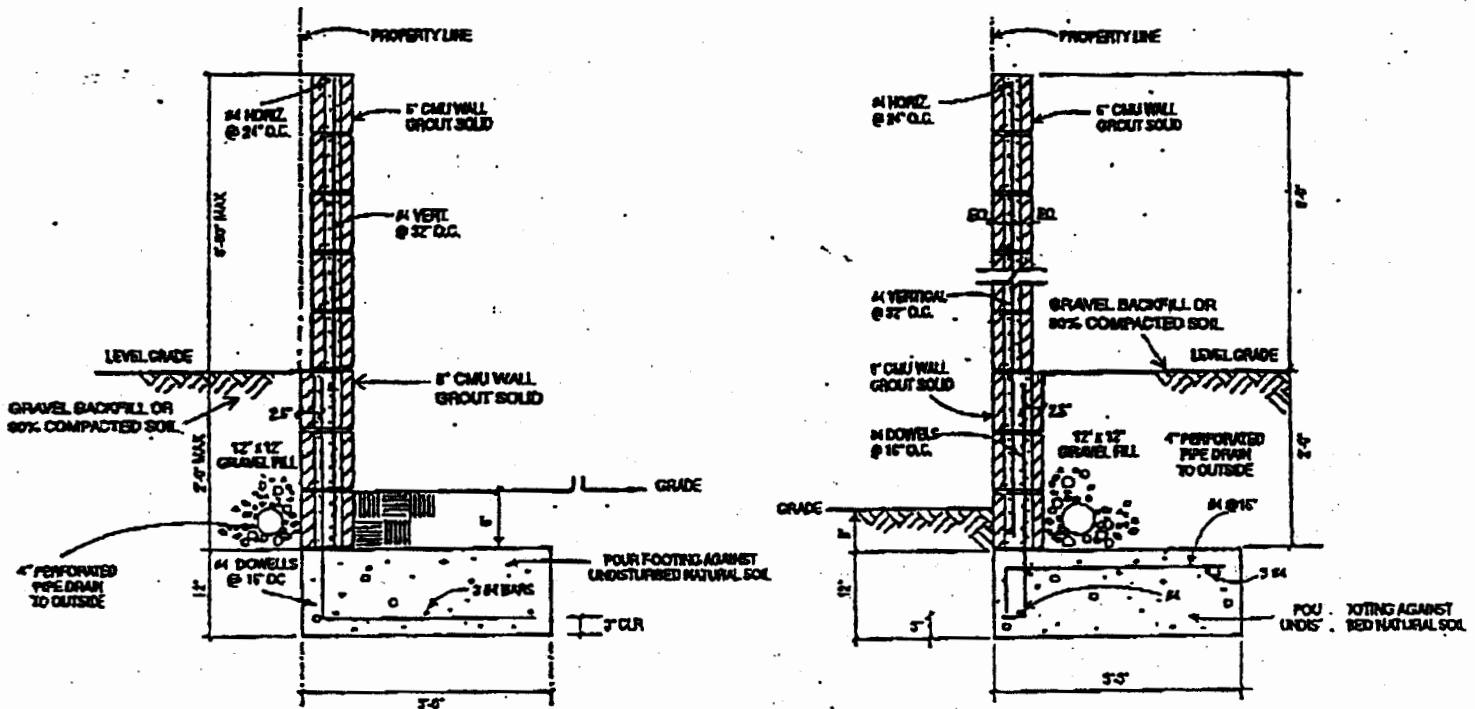
EXHIBIT H

county of ventura

DIVISION OF BUILDING / I.D. SAFETY
Jack Phillips
Building Official

FENCE WITH RETAINING WALL

Building Permit Required



General Notes:

1. Concrete - 2000 p.s.i. Min. @ 28 days.
2. Reinf. Steel - Grade 40. $f_s=20,000$ p.s.i.
3. Reinf. Steel Laps - Min. 1'-8".
4. Concrete Masonry Units with type "M" mortar $f_m=1500$ p.s.i.
5. Grout - 1 part cement (plastic cement not permitted) 2 1/4 to 3 parts sand, 2 parts pea gra. $\#1$.
6. Mortar type "M" or "S" - 1 part cement, 1/4 part hydrated lime or lime putty, sand 2 1/4 - 3 times the sum of cement and lime.
7. Soil - Max. 1000 p.s.f. bearing pressure.
8. Backfill - sand or gravel soil.
9. All workmanship and materials to conform with the UNIFORM BUILDING CODE.
10. No surcharge on wall. Consult a professional Civil or Structural Engineer for design of retaining wall having:
 - a) a height greater than 2 feet and/or
 - b) any surcharge. (Vehicle loading, adjacent footings, etc.)
11. Compaction report is not required for the backfill behind the wall only.

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT H

Page 2 of 2

Jack Phillips
BUILDING OFFICIAL

D. B-12
Sheet 2 of 2
October 1996

REVISED OCT. 1996

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



VIA REGULAR MAIL AND CERTIFIED MAIL NO. 70022410000137581599

April 17, 2003

**NOTICE OF INTENT TO COMMENCE CEASE AND
DESIST ORDER PROCEEDING**

Mr. Bill Lynch and Ms. Elizabeth Harrington
42500 Pacific Coast Highway
Malibu, CA 90265-2220

Subject: Coastal Act Violation File No. V-4-03-014 (Lynch)

Property: Vacant parcel adjacent to 42500 Pacific Coast Highway, Malibu
Ventura County, APN 0700-80-0305

Coastal Act Violation: Undertaking development without obtaining a coastal
development permit.

Dear Mr. Lynch and Ms. Harrington:

Pursuant to the requirements of California Code of Regulations Title 14, Division 5.5, Section 13181(a), I am writing to inform you of my intent to commence a Commission cease and desist order (CDO) proceeding against you in order to resolve the Coastal Act violations referenced above. As you know, on March 19, 2003, I issued to you Executive Director Cease and Desist Order No. ED-03-CD-01, which will remain in effect until June 16, 2003. In a manner similar to the Executive Director CDO, the Commission CDO if issued will require you to cease and desist from violating the Coastal Act by conducting any further development on the property without a coastal development permit (CDP).

The unpermitted development is located on a vacant beachfront parcel south of 42500 Pacific Coast Highway. A portion of the unpermitted development lies within the Commission's original jurisdiction and other portions lie within the jurisdiction of Ventura County's Coastal Plan. The unpermitted development within the Commission's jurisdiction is a vertical retaining wall/seawall constructed of railroad ties with a concrete footing extending approximately 100 feet along the toe of the coastal bluff and into the mouth of Little Sycamore Canyon Creek. The unpermitted development within the County's jurisdiction consists of a second horizontal railroad tie retaining wall closer to the highway

and above the bank of Little Sycamore Canyon Creek, a chain link fence adjacent to the highway with a visually impermeable mesh screen, and removal of native vegetation and landscaping with non-native and invasive vegetation. No CDP from the Commission or Ventura County has been applied for or obtained to authorize any of this development.

Pursuant to Coastal Act 30810(a)(1), Ventura County has formally requested the Commission to take enforcement action to resolve these Coastal Act violations. I have enclosed a letter from the Ventura County Planning and Zoning Department requesting Commission assistance.

Coastal Act Section 30600(a) provides that any person wishing to undertake development in the coastal zone shall obtain a CDP from the Commission or local government in addition to any other permit required by law. Development is defined as "on land, in or under water, the placement or erection of any solid material or structure; [and] grading, removing, dredging or extraction of any materials." Undertaking development without a CDP is a violation of Section 30600 of the Coastal Act and can subject persons undertaking such unpermitted development to orders, penalties and other legal remedies.

The retaining wall/seawall does not meet the requirements for approval in Section 30235 of the Coastal Act because it neither serves a coastal dependent use, nor protects existing structures or public beaches in danger from erosion, and it was not designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The seawall may also result in potential adverse impacts to the public beach in the intertidal zone by accelerating erosion in front of the seawall and blocking the sand supply to the beach from the coastal bluff. Moreover, the unpermitted seawall is adjacent to a coastal bluff, which is an environmentally sensitive habitat area as defined in Coastal Act Section 30107.5. Section 30240 provides that environmentally sensitive habitat (ESHA) be protected against any significant disruption of habitat values. Section 30231 provides that productivity and the quality of coastal waters and streams be protected by maintaining natural vegetation buffer areas and minimizing alteration of natural streams. The railroad ties, which are impregnated with creosote, may impact the quality of Little Sycamore Canyon Creek that flows across the beach and into the ocean. For the reasons discussed above, it is unlikely that the Commission staff would recommend approval of a CDP to authorize the retaining wall/seawall.

It does not appear that the second retaining wall, which is located above the bank of Little Sycamore Canyon Creek, meets the requirements for approval set out in Section C, Policy 2 of the South Coast chapter on "Environmentally Sensitive Habitats" in Ventura County's Coastal Plan, which provides:

- 2. All projects on land either in a stream or creek corridor or within 100-feet of such corridor, shall be sited and designed to prevent impacts*

which would significantly degrade riparian habitats, and shall be compatible with the continuance of such habitats.

Further, the chain link fence with the mesh screen and unpermitted landscaping improvements along Pacific Coast Highway block public views of the ocean from the highway and do not appear to meet the scenic and visual quality requirements of Ventura County's Coastal Plan. For example, Section D, Policy 7 of the South Coast chapter on "Environmentally Sensitive Habitats" provides:

Scenic and Visual Qualities:

- 7. New development shall be sited and designed to protect public views to and from the shoreline and public recreational areas. Where feasible, development on sloped terrain shall be set below road grade.*

COMMISSION CEASE AND DESIST ORDER

Pursuant to Section 30810(a) of the Coastal Act, the Commission has the authority to issue an order directing any person to cease and desist if the Commission, after a public hearing, determines that any person has engaged in any activity that requires a permit from the Commission without securing a permit. Pursuant to Section 30810(b), the CDO may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division. As previously stated, because the unpermitted development is inconsistent with the requirements for approval in Chapter 3 of the Coastal Act, it is unlikely that the Commission staff could recommend approval of any of the unpermitted development.

In addition to requiring you to cease and desist from conducting any further development on your property without a CDP in violation of the Coastal Act, if issued the CDO will require the immediate removal of the unpermitted development and restoration of the property to its pre-violation condition.

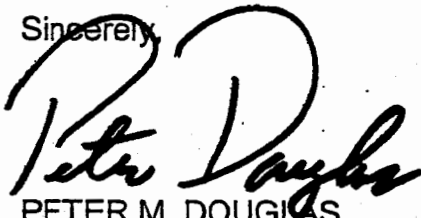
Please be advised that Coastal Act Sections 30820 and 30821.6 authorize the Commission to seek, respectively, penalties for violations of the Coastal Act and daily penalties for any intentional or negligent violation of a CDO for each day in which the violation persists. The penalty for intentionally and negligently violating a CDO can be as much as \$6,000 per day for as long as the violation persists. Finally, Coastal Act Section 30822 enables the Commission to bring an action, for exemplary damages where it can be shown that a person has intentionally and knowingly violated the Coastal Act or any order issued pursuant to the Coastal Act.

At this time, the Commission is planning to hold a hearing on the issuance of a cease and desist order in this matter at the Commission meeting that is scheduled for the week of June 10-13, 2003 in Long Beach. If issued, the Commission CDO will be effective upon its issuance and a copy will be mailed to you.

In accordance with the California Code of Regulations, Title 14, Section 13181(a), you have the opportunity to respond to staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. The regulations require that you be provided 20 days from the date of this notice to return the completed Statement of Defense to the Commission staff. Since you have notified Commission staff that you will be in overseas until the end of the April, I have extended the deadline for receipt of the Statement of Defense until May 14, 2003.

If you have any questions regarding this notice, please contact Headquarters Enforcement Officer Chris Darnell at 415-904-5294.

Sincerely,



PETER M. DOUGLAS
Executive Director

Enclosures

cc: Lisa Haage, Chief of Enforcement
Amy Roach, Deputy Chief Counsel
Steve Hudson, Southern California Enforcement Supervisor
Tom Sinclair, Enforcement Officer

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



STATEMENT OF DEFENSE FORM

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

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

This form is accompanied by either a cease and desist order issued by the Executive Director or a notice of intent to initiate cease and desist order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation (may have) occurred, and other pertinent information about the (possible) violation.

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

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

Chris Darnell
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

If you have any questions, please contact Chris Darnell, 415-904-5294.

1. Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in the order):

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

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

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

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

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

Attachment A
STATEMENT OF DEFENSE FORM
Coastal Act Violation File No.: V-4-03-014 (Lynch)
Vacant parcel adjacent to 42500 Pacific Coast Highway
Malibu, Ventura County, APN 0700-80-0305

1. Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in the order.)

Response: Owner admits to the partial construction of a 36 inch high planter for native California plants along the base on his lot within the jurisdiction of the County of Ventura. This development was given approval by the County as well as during on-site inspections by the County inspector. The county specifically stated that no permit was needed and provided owner with documentation of the same. (Attached hereto as Exhibit 1, County of Ventura, Division of Building and Safety specifications sheet, SBD.B-12, detached retaining wall, 3' or less, no permit required.)

Owner admits to the partial construction of a 36 inch high planter for native California plants along the side of his property within the jurisdiction of the County of Ventura. This development was given prior approval by the County as well as during on-site inspections by the County inspector. The county specifically stated that no permit was needed and provided owner with documentation of the same. (Exhibit 1)

Owner admits to the removal of approximately 1 ton of trash and debris along the side of Pacific Coast Highway with prior approval and inspection by the California Department of Transportation.

Owner admits to the addition of sun shade fabric interwoven into the existing chain link fence with prior approval and inspection by the California Department of Transportation. There are many such sun shade fabrics interwoven into fences on properties to the north and south of owner including State parks and beaches.

Owner admits to the careful planting of native California species of plants along the side of Pacific Coast Highway with prior approval and inspection by the California Department of Transportation.

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

Owner specifically denies that he constructed a "seawall". The "unpermitted development" allegedly within the jurisdiction of the Coastal Commission was a 36 inch tall planter, not a retaining wall or a seawall. The County of Ventura specifically exempted the planter from a permit, inspected the planter and approved the work in progress. The County of Ventura specifically informed Owner that the work was within the jurisdiction of the County and specifically informed Owner that the work was not within the jurisdiction of the Coastal Commission. (paragraph 2, page 1.)

With respect to the allegation that "unpermitted development" took place within the County's jurisdiction, the claim is unfounded that a permit was required. The County specifically informed Owner that a permit was not required for a 36 inch tall planter, inspected the construction of the planter, determined that the work was appropriate and informed Owner that Coastal had no authority over the work in progress and to finish the work. (paragraph 2, page 1.)

No native vegetation other than weeds were removed, however approximately three truck loads of trash (one ton of trash and garbage), including animal carcasses, cans, bottles, car parts, oil containers, gas cans, dog and human waste were removed from the right-of-way parallel to Pacific Coast Highway. The existing condition was both unsafe and unsanitary. Owner, at his expense, removed the debris and landscaped the narrow strip of CalTrans right of way. This work was inspected by the California Department of Transportation and approved. No non-native, invasive plant species were introduced to the area. (Paragraph 2, page 1, continuing to page 2.)

With respect to the fence which is parallel to Pacific Coast Highway and within the jurisdiction of the California Department of Transportation, Owner admits to the addition of sun shade fabric interwoven into the existing chain link fence with prior approval and inspection by the California Department of Transportation. There are many such sun shade fabrics interwoven into fences on properties to the north and south of owner including State parks and beaches.

Owner denies that Ventura County is unable to take enforcement action or that it has declined to act. Owner will testify that he obtained approval for the limited work that was performed on the property, that the County inspected the work, that County took the position that it was the authority with jurisdiction over the work, and that County will not act or take enforcement action because they specifically approved the work in progress. (paragraph 1, page 2)

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

Owner had no personal knowledge that the Coastal Commission had jurisdiction over the work in progress as the County of Ventura specifically informed owner that it had jurisdiction and specifically stated that the Coastal Commission did not have jurisdiction. With respect to the right-of-way, parallel to Pacific Coast Highway, CalTrans specifically informed owner that it had jurisdiction.

Owner had no personal knowledge that the Coastal Commission would consider a 3 foot high, approved work by the County of Ventura as an "unpermitted development" consisting of a "retaining wall/seawall." Owner maintains that he consulted other governmental agencies before commencing work, had the work inspected by other government agencies, including the County of Ventura and CalTrans and both agencies authorized, inspected and approved the work in progress.

With respect to the shade screen interwoven into the chainlink fence, Owner had no knowledge that this was a "view" issue as almost 200 feet of the same lot provides the public with unobstructed views of the Pacific Ocean. This work was authorized and inspected by CalTrans.

////

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

Owner had no personal knowledge that the Coastal Commission had jurisdiction over the work in progress as the County of Ventura specifically informed owner that it had jurisdiction and specifically stated that the Coastal Commission did not have jurisdiction. With respect to the right-of-way, parallel to Pacific Coast Highway, CalTrans specifically informed owner that it had jurisdiction.

Owner had no personal knowledge that the Coastal Commission would consider a 3 foot high, approved work by the County of Ventura as an "unpermitted development" consisting of a "retaining wall/seawall." Owner maintains that he consulted other governmental agencies, (including Fish & Game, US. Fish & Wildlife Service and the U.S. Corp of Engineers) before commencing work, and all agencies indicated that they had "no issues" and "no problems" with the construction of a planter, including the County of Ventura and California State Department of Transportation which authorized, inspected and approved the work in progress.

With respect to the shade screen interwoven into the chainlink fence, Owner had no knowledge that this was a "view" issue as almost 200 feet of the same lot provides the public with unobstructed views of the Pacific Ocean. This work was authorized and inspected by CalTrans.

Coastal has determined that the work in progress, removal of native vegetation occurred in an "environmentally sensitive habitat area" (May 5, 2003 letter by Chris Darnell to owner) and that "the unpermitted seawall is adjacent to a coastal bluff, which is an environmentally sensitive habitat area as defined in Coastal Act Section 30107.5. (March 13, 2003 letter by Peter Douglas to Owner) Owner was apprised, and has a copy of the Coastal Administrative Hearing of April 21, 1989 in which it was determined that the subject residence at 42500 Pacific Coast Highway "is not located near an

environmentally sensitive habitat.” (Attached hereto as Exhibit 2). Owner also has in his possession a July 1, 1999 finding from another Coastal Administrative Hearing in which the finding was made that “between 42000 and 43000 Pacific Coast Highway” (the subject area) “is not located in or near any designated sensitive habitat areas.” (Attached hereto as Exhibit 3). Thus, it is Owner’s position that Coastal Commission’s reliance upon an argument that the area is near or within an ESHA is misplaced as there have been repeated findings that the area is not near or within an ESHA.

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

Owner has been a resident of Chicago, Illinois for much of his adult life. He recently purchased the subject property with his wife. As a good, responsible citizen before commencing any work on the property, he contacted the County of Ventura to determine whether any permits were needed to build the subject 36 inch planter. He was specifically informed that they had jurisdiction over the project and that no permits were needed. With respect to the clean up along Pacific Coast Highway, he was informed that CalTrans had jurisdiction. He then contacted CalTrans and they authorized the work he performed, inspected it and approved it. They thanked him for his effort to clean up that trash-strewn section of highway.

After having been contacted by the Coastal Commission with respect to the subject work, he indicated his willingness to remove the planters. If Owner received misinformation from the County, that seems to be a miscommunication between governmental entities and he has apparently become caught in the middle. Owner doesn’t want to be in this position, hence his willingness to remove the work that was in progress. However, his earlier efforts to have any meaningful communication with Coastal were met with ever increasing threats of fines and litigation. As he was specifically informed by the County of Ventura and the California Department of Transportation that they respectively had jurisdiction over the planters and the right-of-way along the highway, any fines or penalties are inappropriate.

////

Statement of Defense Form, Attachment
Coastal File No.: V-4-03-014 (Lynch)
May 21, 2003
Page 6 of 6:

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

Exhibit 1, copy of County of Ventura, Department of Building & Safety, specification sheet, SBD.B-12 (undated, revision date of October 1996.)

Exhibit 2, copy of Coastal Administrative Hearing, dated April 21, 1989

Exhibit 3, copy of Coastal Administrative Hearing, dated July 1, 1999

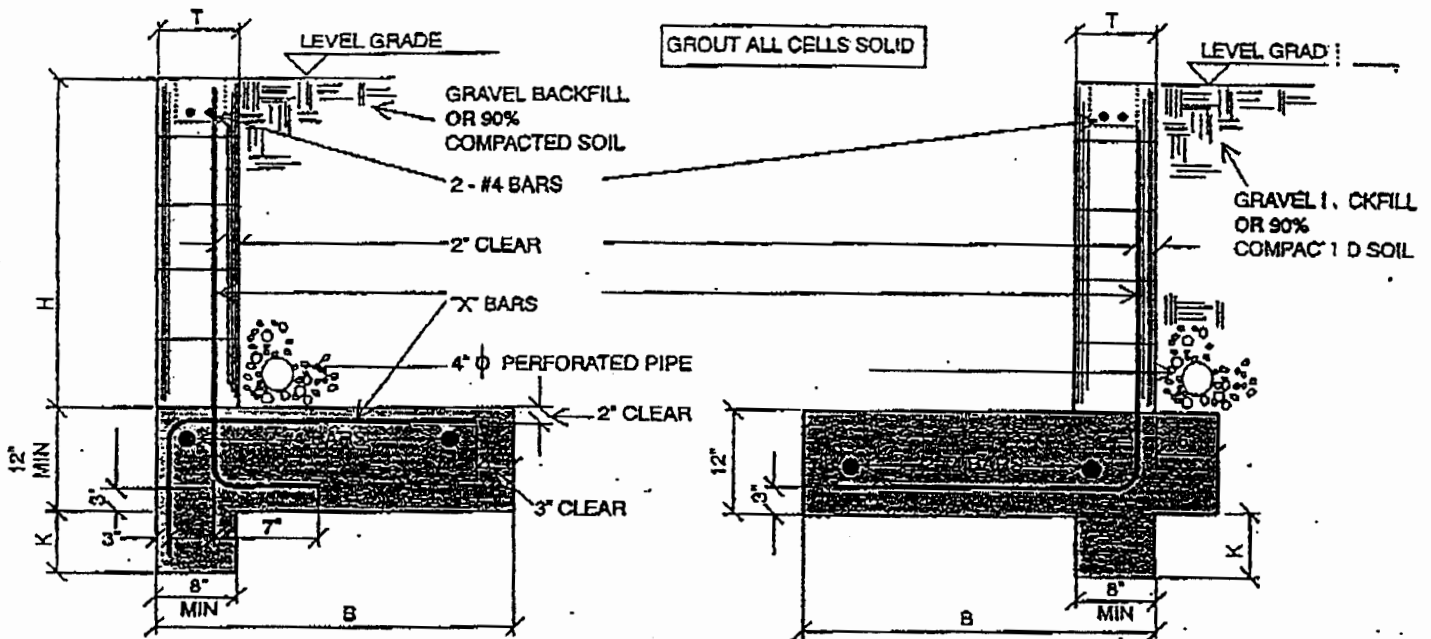
Exhibit 4, copy of Mr. William Lynch letter of March 16, 2003 to Chris Darnell

Exhibit 5 copy of April 10, 2003 letter by Mr. William Lynch to Peter M Douglas.

Exhibit 1

DETACHED RETAINING WALL - LEVEL GRADE

Building Permit Required For "H" 3' or less, Building permit is not required



H	B	T	"X" BARS	K
2'-0"	1'-6"	6"	#3 @ 48" O.C.	6"
3'-0"	2'-0"	6"	#3 @ 24" O.C.	12"
4'-0"	3'-0"	8"	#4 @ 24" O.C.	18"

General Notes:

- Concrete - 2000 p.s.i. Min. @ 28 days.
- Reinf. Steel - Grade 40. fs=20,000 p.s.i.
- Reinf. Steel Laps - Min. 1'-8".
- Concrete Masonry Units with type "M" mortar f'm=1500 p.s.i.
- Grout - 1 part cement (plastic cement not permitted) 2 1/4 to 3 parts sand, 2 parts pea grave.
- Mortar type "M" or "S" - 1 part cement, 1/4 part hydrated lime or lime putty, sand 2 1/4 - 3 times the sum of cement and lime.
- Soil - Max. 1000 p.s.f. bearing pressure.
- Backfill - sand or gravel soil.
- All workmanship and materials to conform with the UNIFORM BUILDING CODE.
- No surcharge on wall. Consult a professional Civil or Structural Engineer for design of retaining wall having:
 - a height greater than 4 feet and/or
 - any surcharge. (Vehicle loading, adjacent footings; etc.)
- Compaction report is not required for the backfill behind the wall only.

Jack Phillips
 BUILDING OFFICIAL
 S.D. B-12
 Sheet 1 of 2
 October 1996

REVISED OCT. 1996

(CCC-03-CD-07 (Harrington & Lynch))

EXHIBIT J

05/21/2003 01:57 3104574000

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PAGE 13/26

Exhibit 2

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT J

Page 12 of 25

VENTURA COUNTY
COASTAL ADMINISTRATIVE HEARING
STAFF REPORT AND RECOMMENDATIONS
Meeting of April 21, 1989

SUBJECT:

Planned Development Permit No. PD-1290

APPLICANT/PROPERTY OWNER:

Alex Karras/Susan Clark
7943 Woodrow Wilson Dr.
Los Angeles, CA 90046

REQUEST:

The applicant is requesting demolition of an existing single-family dwelling and construction of a new, approximately 5,600 square foot single-family dwelling with attached garage (400 square feet).

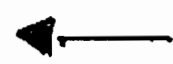
A. BACKGROUND:

1. Location and Parcel Number: The project site, approximately 11,800 square feet in area, is located at 42500 Pacific Coast Highway (Hwy. 1), approximately 400 feet west of the intersection of Yerba Buena Road and Pacific Coast Highway, Solromar. The Assessor's Parcel Number is 700-0-080-36 (see Exhibits "3" and "4").
2. General Plan and Zoning: The General Land Use Map of the Ventura County General Plan designates the site as "Existing Community." The Coastal Land Use Plan designates the project site as "Residential High Density" which allows 6.1 to 36 dwelling units per acre. The zoning of the Solromar area is "C-R-2" (Coastal Two-Family Residential). The project is a use permitted in the "C-R-2" zone and is consistent with the provisions of the goals and policies of all pertinent plans and zones.

B. EVIDENCE REGARDING REQUIRED PERMIT FINDINGS:

Certain findings specified by the County Coastal Zoning Ordinance must be made to determine that the proposed project is consistent with the Ordinance and the Coastal Plan (Land Use Element for the Coastal Zone). The proposed findings and the project information and evidence to support them are presented below:

1. Consistency with the Intent and Provisions of the County Local Coastal Program: The Local Coastal Plan provides objectives and policies for the designated coastal areas of Ventura County and specific communities. The subject site is located in the Solromar area. As discussed above in A-2, the zoning of the site is "C-R-2". The purpose of the "C-R-2" zone is to provide for development and preservation of unique beach oriented residential communities with small lot subdivision patterns.
 - (a) Environmentally Sensitive Habitats - Protection of Coastal Dunes and Wetlands: The project is not located near coastal sand dunes and will therefore have no impact on this habitat. The subject project is not located near an environmentally sensitive habitat.
 - (b) Protection of Archaeological and Paleontological Resources: The project site is developed with an existing single-family dwelling, and there is no evidence of any Archaeological or Paleontological Resources on the site.
 - (c) Recreation and Access: The proposed project will have no effect



Ventura County Coastal Administrative Hearing
 Staff Report and Recommendations
 Meeting of April 21, 1989
 Page 3

2. The proposed development is compatible with the character of surrounding development (Section B2);
3. The proposed development would not be obnoxious or harmful, or impair the utility of neighboring property or uses (Section B3);
4. The proposed development would not be detrimental to the public interest, health, safety, convenience or welfare (Section B4).

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE:

The proposed construction of a single detached dwelling is exempt from the provisions of the California Environmental Quality Act (CEQA) under Class 3A (Section 15303), New Construction. A Notice of Exemption will be filed with the Clerk of the Board following action on this permit (Exhibit "7"). Filing of the Notice establishes a 35-day statute of limitations on legal challenges to the decision that this project is exempt from CEQA.

E. CITY AND JURISDICTIONAL COMMENTS:

The project is outside the Area of Interest of the City of Thousand Oaks.

F. PUBLIC COMMENTS:

On or about April 7, 1989, legal notices were sent to all property owners within 300 feet of the subject property and to residents within 100 feet. A notice was also published in the Star-Free Press. To date, two phone calls have been received from neighbors inquiring about the proposed project.

RECOMMENDED ACTION:

1. Find that the project will not have a significant effect on the environment and direct that a Notice of Exemption be prepared and filed in compliance with the California Environmental Quality Act and Guidelines issued thereunder; and
2. Adopt the proposed findings and APPROVE Planned Development Permit No. PD-1290, subject to the conditions in Exhibit "2".

Prepared by:

Reviewed by:

Nancy Butler Francis
 Case Planner

Jeff Walker, Supervisor
 Residential Land Use Section
 Coastal Administrative Officer

JW:ms/D153

Attachments:

Exhibit "2" - Conditions of Approval
 Exhibit "3" - Location Map
 Exhibit "4" - Assessor's Parcel Map

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT J

Page 14 of 25

05/21/2003 01:57 3104574000

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PAGE 16/26

Exhibit 3

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT J

Page 15 of 25

VENTURA COUNTY
COASTAL ADMINISTRATIVE HEARING
STAFF REPORT AND RECOMMENDATIONS
Meeting of July 1, 1999

SUBJECT:

Planned Development Permit No. PD-1738

APPLICANT

Gary Lebowitz
2225 Sperry Avenue
Ventura, CA 93003

PROPERTY OWNER:

Malibu Beach House, Inc.
(Same Address)

STAFF TESTIMONY AND PROPOSED FINDINGS

A. REQUEST:

The applicant is requesting a Planned Development Permit (PD-1738) for a 1217 sq. ft., single-family residential structure on a 4,560 square foot beach-front lot. (See Exhibit "3" and "4")

B. LOCATION AND PARCEL NUMBERS:

Between 42000 and 43000 Pacific Coast Highway, in the Solromar Beach Community (Malibu) on the south coast of Ventura County. APN 700-0-080-035. (see Exhibit "2")

C. BACKGROUND:

The project site is a relatively steep vacant beachfront lot sloping toward the ocean.

D. EVIDENCE AND PROPOSED PERMIT FINDINGS:

Certain findings specified by Section 8181-3.5 of the Ventura County Coastal Zoning Ordinance must be made to determine that the proposed project is consistent with the Ordinance and with the Land Use Element of the Local Coastal Program (LCP). The proposed findings and the project information and evidence to support them are presented below:

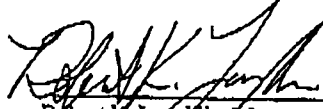
1. Proposed Finding: The project is consistent with the intent and provisions of the County Local Coastal Program.

Evidence:

- (a) General Plan and Zoning: The property is zoned "CR-2" (Coastal Two-Family Residential) which is consistent with the General Plan land use designation of "Existing Community" and with the Coastal Plan designation of "Residential-High Density, 6.1-36 DU/Ac".
- (b) Protection of Environmentally Sensitive Habitats: The proposed single-family dwelling is not located in or near any designated sensitive habitat areas. Therefore, the proposed project will not have an adverse impact on this resource.

Ventura County Coastal Administrative Hearing, PD-1738
Staff Report and Recommendations
Meeting of July 1, 1999
Page 4 of 4

Project and conditions approved or denied on 7-1-99



Robert K. Laughlin, Manager
Commercial/Industrial Land Use Section
Coastal Administrative Officer

pm/coastqf3

Exhibit 4



WILLIAM F. LYNCH

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Via Fax & E-Mail

March 16 2003

Mr. Chris Darnell
Enforcement Officer
California Coastal Commission
San Francisco CA 94108

Re: Coastal Act Violation File V 4 03 014

Dear Mr. Darnell,

This letter accompanies the document you requested from Ventura County.

Many thanks for your courteous phone calls late Friday afternoon regarding my attempt to settle this matter. Please understand I did not receive Director Douglas' letter via certified mail or hand delivery but rather it was lodged in my rural mailbox, without envelope, and found on Friday at 3:30 pm allowing me about sixty minutes to respond to its contents as directed (in my judgement an unreasonable time deadline).

It would appear from the fax markings on each page of the letter that it was prepared at your head office and faxed elsewhere for delivery to me. Thus it would appear that the document was prepared based on the visit of three Commission employees to my property, several days ago.

It is very important to immediately advise Director Douglas, Ms. Haage, Ms. Roach, Mr. Hudson, and you that the contents of the letter are inaccurate, incorrect and incomplete.

Here are the facts:

1. I am not constructing a seawall on my property but rather a 3 foot planter which will hold native California species of plants. Your employees were advised of this.
2. The planter in question falls under Ventura County Document SBD B 12 (dated October 1996) signed by Mr. Jack Phillips, detached retaining wall-building permit not required . A copy of this document was shown to your employees during their visit. A copy has also been sent via fax to you.
3. A Ventura County Inspector had already visited my property prior to the visit by your employees. He approved the project and advised that the final height of the planter must not exceed three feet. Your employees were advised of the Inspector's visit and told of his decision. Further your people stated that I needed a Coastal Commission Permit to do this work and "they would never grant me one." I advised them that I was told that Ventura County had been assigned permitting authority landward of the mean high tide line.

page 2

4. One of your people who identified himself as a geologist, indicated that I was building on public property. I advised him that I had numerous surveys and reports commissioned and that I was building on my own private property and within my rights as the Inspector advised

5. On Thursday, the day following the visit by your employees, the Ventura County Inspector paid a second visit to my property. He once again approved the work and the project insisting on a height of three feet. The inspector advised me that the Coastal Commission should contact him if they had any questions.

6. I have been advised as follows, "The California Coastal Commission has approved and accepted the Ventura County Coastal Plan. Included in which the Commission has ceded permitting authority landward of the mean high tide line to Ventura County". Therefore Ventura County has permitting authority.

7. Prior to beginning work on the planter I have had excellent relations with Ventura County Building Department, The Department of Fish and Game (Mr. Morgan), Department of Fish & Wildlife (Mr. Faris) and the U.S. Army Corps of Engineers.

I have a 35 year career in leadership in international business, foreign affairs and senior government service, thus I am wondering if perhaps the three commission employees who visited my property are newly hired or newly assigned to the Ventura office of your organization.

By way of background I feel that I should advise you that some of the Boards I sit on are involved with the conservancy of wildlife and places and that I have never received a violation from any governmental body in my entire life.

Please understand that this letter is intended to immediately inform you of the true facts in this case, and does not constitute my official response to the Statement of Defense form.

I respectfully request that Director Douglas cease his planning to issue the Order described in the March 13 letter.

Respectfully,


William F. Lynch

cc: Ms. Haaga, Ms. Roach

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PAGE 22/26

Exhibit 5

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT J

Page 21 of 25



WILLIAM F. LYNCH

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CONFIDENTIAL

Thursday, April 10, 2003

Peter M. Douglas
Executive Director
California Coastal Commission
San Francisco, California

Dear Mr. Douglas

This confirms my excellent telephone conversation with Ms. Haage and Mr. Darnell regarding your Cease and Desist Order. ED-03-CD-01

However, it appears to me that a small matter concerning my property (in Ventura County) has gotten completely "out of hand," and blown way "out-of-proportion." A great deal has to do with an apparent complete breakdown of your inter-agency / governmental communications.

I look forward to settling this matter quickly and efficiently in an amicable manner.

Because the contents of your CDO are incomplete and inaccurate I want you and your staff to have the true facts in your possession as we move forward.

It is important for the legal record and other government offices that you indeed have all the facts.

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT J

Page 22 of 25

42500 PACIFIC COAST HIGHWAY . MALIBU . CALIFORNIA . USA. 90265. 310 . 589 . 9994

Page 2

INTRODUCTION

My wife and I own a home on the coast in Ventura County with adjacent property that I have owned for one year. I have a severe disability as a transplant patient (multiple transplant / liver & kidney transplants) and am under constant medical care. I have been enjoying growing native California species of plants, as it is quiet and lovely here.

BACKGROUND

I sought to build a 3 ft planter for native plants on my property. I called the Ventura County Planning Department and they told me I did not need a permit and that it was permissible to use railroad ties for the planter. I secured a copy of the Ventura County Form (SBD-B12, Oct 1996) - which said **no permit required**.

On March 6th I began work on the planter. On the second day of work we were visited by a Ventura County inspector. He inspected the site; said the project needed no permit and stressed keeping the height strictly below 36 ". He stated all this to my contractor (and witnesses) and advised him to have me telephone him.

On the morning of March 11th I personally spoke to the Ventura County Inspector by telephone. He repeated his comments to me, gave me strict instructions to stay below 3 feet and said "keep the Coastal Commission advised ". He also stated that Ventura County had permitting authority landward of the mean high tide line and Ventura County's Coastal Plan was approved.

Less than 2 hours later, three members of your staff appeared. I told them about the Ventura County inspector. They told me to shut down all work. I ceased all work immediately.

On March 12th I was out of town for meetings in Santa Barbara.

On the morning of the March 13th the Ventura County inspector once again visited my property and advised me to begin work. He also told me to disregard orders from the Coastal Commission and said "have the Coastal Commission contact me."

On the morning of March 14th we received a weather report that 5-7" inches of rain were expected for the following day, March 15th. I ordered a load of sand and we received 150 sand-bags from the Ventura County Fire Department. We spent Friday protecting my property with sand-bags and tarps from the upcoming heavy rain storm.

Late in the afternoon I received your N.O.I. and immediately called Mr. Darnell of your staff (and wrote to him). I advised Mr. Darnell that a Ventura County Inspector had told me on several specific occasions to (1) **continue the work** (2) **disregard the Coastal Commission** and (3) **"have your staff contact him"**. Mr. Darnell said he would contact me the following week.

On Saturday, March 15th, it rained more than 5 inches. Heavy rain damaged the planter causing the rail road ties to fall over. (**It was never, and is not a seawall**).

On Monday morning, March 17th, at 8:00 am I called the Ventura County inspector and advised him that I received your Notice of Intent. **He repeated that he had jurisdiction.** He also stated the following:

1. "The Coastal Commission does not like rocks in front of your planter; so "feather out" the dirt in front of the planter immediately".
2. "Ventura County has jurisdiction for permits".
3. "Tell the Coastal Commission to contact me".

At my own expense I directed that the dirt be smoothed as I understood that your own Commission desired.

Later in the morning (March 17th), Mr. Sinclair of your staff rang my intercom, he stated a CDO had been issued against me. (I told him it had not.) I told him a Ventura County Inspector, that morning, **directed me to continue work and smooth out the dirt.** I asked him if he had contacted the Ventura County inspector as I had requested. He replied "I do not need to." I told him I was in contact with Mr. Darnell in San Francisco and asked if he had been in contact with Mr. Darnell. He replied, "I don't need to."

I advised him that I was having discussions with Mr. Darnell following this conversation. I immediately called Mr. Darnell. He advised me that no CDO had been issued. I told him about Mr. Sinclair's comments to me. I asked Mr. Darnell why Mr. Sinclair (and your Ventura office) did not contact the Ventura County Inspector. Mr. Darnell replied, **"this is one of the weaknesses of the Coastal Commission System" (!).**

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT J

Page 24 of 25

There is a final note which requires mentioning. Witnesses have advised that certain employees in your Ventura office have stated that "they are going after Bill Lynch big time and are really going to throw the book at him." Any form of vindictive behavior is unacceptable, intolerable and as you know unlawful. I ask that you insure this does not happen. My neighbors and employees reported to me that Mr. Sinclair has been in my neighborhood asking them to report on my behavior. One 30 year resident suggests you transfer him to an area where his investigating skills might be fully utilized.

My career includes 35 years in international business, foreign affairs and senior government service and I have never received a violation from any government entity. Further more, in all candor I must tell you that I have rarely seen a poorer example of government communications between agencies which results in unsatisfactory service to taxpayers.

I would like to settle all of this amicably, quickly and in a mutually satisfactory manner. I would like to suggest that you withdraw the Cease & Desist order and I will arrange for an immediate, approved, satisfactory removal of the planter.

I look forward to working with Ms. Haage and Mr. Darnell to make this happen.

Kindest personal regards,

William F. Lynch

cc: Ms. L. Haage
Mr. C. Darnell

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT J

Page 25 of 25

From: George Carroll [gcaroll@earthlink.net]
Sent: Sunday, June 08, 2003 9:35 PM
To: pdouglas@coastal.ca.gov
Cc: aroach@coastal.ca.gov; L Haage
Subject: Letter from William F. Lynch

CCC-03-CD-07 (Harrington & Lynch)

EXHIBIT K

Page 1 of 5



WILLIAM F. LYNCH

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June 9, 2003

Peter Douglas
Executive Director
California Coastal Commission

Dear Mr. Douglas,
Thank you for taking time from your schedule to read this note.

I have received your April 17th letter and unfortunately its contents are incorrect and incomplete. Your local enforcement staff has failed to supply you with the accurate facts. Also your local people have taken a small matter and inflated it entirely out of proportion.

I would like to settle this matter amicably and quickly allowing both of us to achieve our objectives.

Therefore, once again, I propose the following;
I will remove the partially constructed planter along the beach side of my property, at my expense, while admitting no wrong doing because Ventura County, who holds the permitting authority had approved it several times (and reserving my right to recover costs and damages from Ventura County). In exchange you will drop all action by the Coastal Commission since my wife and I never knowingly or intentionally violated any regulation or direction.

It appears that your local staff has a myriad of communication and coordination issues with government agencies and citizens. I am advised that your people have rejected a significant number of Ventura Counties coastal projects and "appealed them against themselves". My wife and I should not be the brunt of these interagency problems.

We support the preservation - beautification of the California coastline. That is why we purchased a

home in the state. We will continue to work positively with all government agencies and citizens to achieve these goals.

I look forward to hearing from you.

Respectfully,



William F. Lynch

cc: L. Haage
A. Roach

**42500 PACIFIC COAST HIGHWAY . MALIBU . CALIFORNIA . USA . 90265 . 310 . 589 .
9994**

**42500 PACIFIC COAST HIGHWAY . MALIBU . CALIFORNIA . USA . 90265 . 310 . 589 .
9994**



WILLIAM F. LYNCH

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June 9, 2003

Ms. Lisa Haage
California Coastal Commission
San Francisco, CA.

Dear Ms. Haage,

This confirms a portion of our latest telephone conference call. In this call I pointed out specific and numerous instances of the widespread use of green shade coverings on fences along the coast.

You requested proof regarding these fences. Here is a listing and photo's.

First, the facts; The fence on my property dates from 1952. This predates the Coastal Commission and current coastal acts (I retained proof on the site).

Please keep in mind that my wife and I recently moved here from Chicago, Illinois and have observed the widespread use of this material all along the coast. On our property the material is to provide shade and protect sensitive native plants from high wind and weather, including Santa Anna winds.

Accompanying this letter are current photograph's of green shade material, on fences, on the ocean side of Pacific Coast Highway.

Just some of the addresses include;

1. 33618-33934 Pacific Coast Highway (green)
2. 33146-33148 Pacific Coast Highway (green)
3. 32630 Pacific Coast Highway (Ventana project- green)
4. 25142 Pacific Coast Highway (new 9 foot wall)
5. 24832 Pacific Coast Highway (new 6 foot tan wall)
6. 24836 Pacific Coast Highway (new concrete wall)
7. Pacific Coast Highway & Malibu Road intersection (to the east) (green)
8. Pacific Coast Highway & Latigo Shore Road (green)

CCC-03-CD-07 (Harrington & Lynch)

9. 42600 Pacific Coast Highway (green covering on new fence) 150 ft from my home

Some of the addresses have "concertina razor wire" above the green shade material and none include view corridors (!)

It is important to point out that east of Sunset Boulevard . (on Pacific Coast Highway), towards Santa Monica, is a very significant stretch of Pacific Coast Highway containing a six foot chain link fence completely covered by green shade material running many hundreds of feet placed there by the Bel Aire beach club.

Regarding my property;

1. The eastern beach portion of my property is currently completely visible from Pacific Coast Highway. (This is approximately 100 feet).
2. My property along Pacific Coast Highway is protected by a State of California, Department of Transportation crash rail which makes it impossible for citizens to stop and / or park along its length.
3. At an average speed of 55 mph (speed limit) the roadside on my property is traveled in .89 seconds.
4. Beginning with the 100 foot of eastern beach front of my property there is open viewing of the ocean for approximately one mile to the east.

In view of all these facts I believe your local office is attempting to penalize me on a selective and arbitrary basis. This is not acceptable. Certainly their enforcement practices are incomplete, inaccurate and not practical. Rules are rules, however the true test is the wise and practical application of them. Their actions are not wise or practical.

Specifically regarding your previous correspondence, I hereby formally request you provide me in writing, with the following;

1. P. Douglas letter of April 17; Coastal Act Section 30810 (A) (2)- complete copy of the section, copy pursuant order and specific process by which it is created and enforced.
2. What reasons did Ventura County give for relinquishing their permit authority to the Coastal Commission? Please provide a copy of the counties written release. Please provide a copy of your ordinance that details the exact procedure for the county to relinquish their authority.
3. Regarding P. Douglas letter March 13, (section IV, Para F). A written copy of sections of the Coastal Act which clearly states, "that the area between mean high tide line and first coastal bluff is in the Commission's jurisdiction".

Perhaps you may recall I advised you (both in a letter to Mr. Douglas and telephone call to you) a witness had come forward stating that persons in your Ventura enforcement office had stated "we are going after Bill Lynch, big time". In reviewing your correspondence we note that without notification or discussion the charges were increased from one to four in several weeks. Thus unfortunately this report appears to be true. As a citizen my rights will be protected. Thus it may become necessary to have my security advisors enter the case. (They are the finest in the world and experts at investigating government misconduct and white collar crime.)

I would like to settle this matter quickly and have communicated my offer to the Executive Director.

Respectfully,



William F. Lynch

cc: P. Douglas
A. Roach
C. Darnell

**42500 PACIFIC COAST HIGHWAY . MALIBU . CALIFORNIA . USA . 90265 . 310 . 589 .
9994**

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



BY FACSIMILE AND REGULAR MAIL

July 29, 2003

Mr. John Fletcher
Fletcher, White & Adair
28925 Pacific Coast Highway
Malibu, CA 90265

RE: Cease and Desist Order Proceeding against William Lynch and Elizabeth Harrington, Violation File No. V-4-03-014

Dear John:

Despite repeated representations of your client's willingness to settle and after our agreement to postpone the matter from the July Commission meeting to obtain final signatures on the settlement document that William Lynch and Elizabeth Harrington agreed to, last evening we were informed that your clients were no longer willing to accept the terms of the settlement. I am writing to inform you that we have no choice but to withdraw our settlement offer, and to issue a unilateral cease and desist order against Mr. Lynch and Ms. Harrington. If the Commission issues the cease and desist order, we also intend to request that the Attorney General file litigation against Mr. Lynch and Ms. Harrington to seek civil fines and penalties, as provided for in Chapter 9 of the Coastal Act.

We are also forced to remove from the August Commission meeting agenda Commission action on this matter and postpone Commission consideration of the cease and desist order until the September meeting scheduled to be held from September 9-12, 2003 in Eureka. The reason for postponing the hearing is that at your request and based upon your office's representations and those of your client, we noticed the public hearing as a consent order and we mailed out the consent order version of the staff report along with the settlement document.

I would also note that based upon your stated inability to reach your clients on July 17, 2003 in order to obtain their signatures on the agreed upon settlement document, we were forced to delay mailing the settlement document and accompanying staff report with the regular Commission mailing. Even by the late Commission mailing deadline on July 24, 2003, we still did not have the necessary signatures. Based upon your office's assurance that the signatures were forthcoming, however, we sent out a staff report and the settlement document with only your signature. I would further note that we have repeatedly communicated to you and your clients our desire to resolve this matter as quickly as possible. It is now 15 weeks since we sent your clients the notice of intent for

a hearing to resolve this matter and 7 weeks since the matter was originally scheduled for hearing before the Commission.

In the next few weeks I will send you and your clients a new hearing notice for the September meeting and a revised copy staff report and proposed cease and desist order.

Kindly provide me with written confirmation that you have received this letter and that you have advised your clients that the cease and desist order hearing has been postponed until the September Commission meeting.

If you have any questions regarding this letter, please call me at 415-904-5220.

Sincerely,



CHRIS DARNELL
Headquarters Enforcement Officer

cc: Mary Nichols, Secretary of the Resources Agency
Peter Douglas, Executive Director
Amy Roach, Deputy Chief Counsel
Lisa Haage, Chief of Enforcement
Steve Hudson, Southern California Enforcement Supervisor
William Lynch and Elizabeth Harrington



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Stanley W. Lampert
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slampert@coxcastle.com

File No. 43684

August 20, 2003

Via Facsimile

Lisa Haage
Christopher Darnell
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 91405

Re: **Consent Cease and Desist Order CCC -3-CD-07**
Elizabeth Harrington and William Lynch

Dear Ms. Haage and Mr. Darnell:

I have had extensive discussions with my clients regarding your request that they offer to pay a higher amount than is in the Consent Order now. Based on our conversations this week as well as our conversation on August 13, 2003, I understand that the Commission will not agree to a Consent Order unless my clients offer to pay the Commission a sum which the Commission finds acceptable. I also understand from our telephone conversation yesterday that you will not discuss the proposed terms I sent you until there is an agreement on a monetary payment to the Commission.

My clients are agreeing to remove the unpermitted development referenced in the Consent Order in the manner specified section 1.3(a)-(c) in the Consent Order. They are not agreeing to pay any sums to the Commission as a condition of doing so.

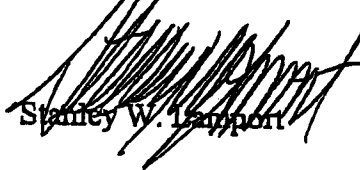
In my telephone conversation with Mr. Darnell this morning, I have suggested that the Commission agree to sever the removal and restoration issues from the monetary payments issues. My clients would agree to a Consent Order that requires removal and restoration of the items in question (subject to final agreement on the settlement wording). Each side would reserve their rights and defenses with respect to civil penalties, which would leave the Commission free to pursue civil penalties in court. In this way we would at least resolve the removal and restoration issues, which nobody is disputing and which advances the Commission's interest in removing what it considers unpermitted development.

I again reiterate that my clients have been offering to remove the unpermitted development referenced in the Consent Order since March. As you have acknowledged in our conversations, the Commission maintains that my clients cannot remove the items in question without the Commission's consent, which is the only reason those items remain on the property

Lisa Hegge
August 20, 2003
Page 2

today. The parties' respective differences over the payment of money to the Commission is unnecessarily keeping us from reaching an agreement on removing the items in question and restoring the site. My clients ask that you consider their proposal with this in mind.

Very truly yours,



Stanley W. Harrington

SWL/rl

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cc: Mr. William Lynch
Ms. Elizabeth Harrington

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**COMMISSION CEASE AND DESIST ORDER NO. CCC-03-CD-07****1.0 TERMS AND CONDITIONS**

Pursuant to its authority under Public Resources Code Section 30810, the California Coastal Commission hereby orders and authorizes William Lynch and Elizabeth Harrington, as owners of the property described in Section 2.0 of this Order (hereinafter referred to as "Subject Property"), their agents and employees and any persons acting in concert with the foregoing (hereinafter referred to as "Respondents") to:

- 1.1 Cease and desist from maintaining unpermitted development on the Subject Property in violation of the Coastal Act. For the purposes of this Order, "development" is defined in Section 30106 of the Coastal Act.
- 1.2 Refrain from conducting any future development on the Subject Property not authorized by a coastal development permit.
- 1.3 Remove the unpermitted development described in Section 4.0 of this Order and restore the site to its pre-violation condition in accordance with the following requirements:
 - (a) Within 30 days of the Commission's issuance of this Order, Respondents shall submit for the Executive Director's approval a plan, prepared by a certified restoration consultant, for the complete removal of said unpermitted development and restoration of the site. In addition to describing the process for removal of said unpermitted development, the plan shall provide for:
 - (i) Measures to prevent damage to the existing coastal bluff and stabilization of the banks of Little Sycamore Canyon Creek during the removal of the unpermitted development;
 - (ii) Protection of the water quality and natural flow of Little Sycamore Canyon Creek through the use of sediment fencing;

- (iii) Protection of existing native California vegetation on the property;
- (iv) Replacement of any displaced native California vegetation on the bluff and in the creek channel;
- (v) Restorative grading on the beach; and
- (vi) Protection and conservation of any Native American human remains or artifacts that may be excavated in the process of implementing said restoration plan. Discoveries of human remains are required to be reported to the County Coroner. Any Native American human remains or artifacts must be handled in accordance with relevant law, including California Public Resources Code Section 5097.9.

The Plan must be sent to the attention of Southern California Enforcement Supervisor Steve Hudson in the Commission's South Central District office at 89 S. California Street, Suite 300, Ventura, CA 93001-2801. If the Executive Director determines that any modifications or additions to the plan are necessary, he shall notify Respondents, and Respondents shall modify the plan and resubmit the plan with 10 days.

- (b) Within 60 days of the approval of said plan by the Executive Director, Respondents shall complete removal of said unpermitted development and remediation of the Subject Property, in accordance with the approved plan and this Order. No railroad ties or portions of the concrete footing shall be left on the beach or within the banks of Little Sycamore Canyon Creek.
- (c) Within 10 days of completing the removal of said unpermitted development and restoration of the Subject Property in accordance with the approved plan, Respondents shall provide photographic documentation of the completion of the work required under this section. These photographs shall be sent to the attention of Southern California Enforcement Supervisor Steve Hudson in the Commission's South Central District office at the address provided in Subsection (a).

2.0 IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is the subject of this Order is described as an undeveloped lot adjacent to 42500 Pacific Coast Highway in Malibu, Ventura County (APN 0700-80-0305).

3.0 PERSONS SUBJECT TO THIS ORDER

Persons subject to this Order consist of Elizabeth Harrington, the owner of the Subject Property, her husband William Lynch, their agents and employees, and any persons acting in concert with the foregoing.

4.0 DESCRIPTION OF UNPERMITTED DEVELOPMENT

The unpermitted development consists of (a) construction of a 6 foot high railroad tie seawall/planter with a concrete footing, (b) construction of an rail road tie retaining wall on the upper section of the bank of Little Sycamore Canyon Creek, (c) installation of a chain link fence with a visually impermeable shade fabric along Pacific Coast Highway that blocks ocean views from Pacific Coast Highway, and (d) landscaping, including non-native and invasive species that blocks ocean views from Pacific Coast Highway.

5.0 COMMISSION JURISDICTION

A portion of the unpermitted development lies within the Commission's retained jurisdiction and the remainder is in the jurisdiction of the Ventura County Local Coastal Plan (LCP). The Commission requested the County to enforce the unpermitted development in the LCP jurisdiction and the County declined due to a lack of resources. Pursuant to Coastal Act Section 30810(a)(2), the Commission is authorized to issue a cease and desist order to enforce the provisions of an LCP in cases where the local jurisdiction either declines to take action or is unable to take action.

6.0 FINDINGS

This Cease and Desist Order is being issued on the basis of the findings adopted by the Commission on November 7, 2003, as set forth in the attached document entitled Recommended Findings for Cease and Desist Order No. CCC-03-CD-07.

7.0 EFFECTIVE DATE

This Order shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

8.0 COMPLIANCE OBLIGATION

Strict compliance with this Order by Respondents is required. If Respondents fail to comply with the requirements of Section 1.0 of this Order, including any deadline contained therein, it will constitute a violation of this Order and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which such compliance failure persists. The deadlines

contained in Section 1.3 of this Order may be extended by the Executive Director for a showing of good cause. Any extension requests must be made in writing to the Executive Director and received by the Commission staff at least 10 days prior to the expiration of the deadlines contained herein.

9.0 APPEALS AND STAY RESOLUTION

Pursuant to Public Resources Code Section 30803(b), Respondents against whom this Order is issued may file a petition with the Superior Court for a stay of this Order.

10.0 GOVERNMENT LIABILITY

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to this Order.

11.0 SUCCESSORS AND ASSIGNS

This Order shall run with the land, binding all successors in interest, future owners of the property, heirs and assigns of Respondents. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this Order.

12.0 GOVERNING LAW

This Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

13.0 LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing in this Order shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Order.

Issued this 6th day of November, 2003.

Peter M. Douglas, Executive Director