

CALIFORNIA COASTAL COMMISSION

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W-8a

Staff: CLD-SF
Staff Report: April 25, 2003
Hearing Date: May 7, 2003

RECOMMENDED FINDINGS FOR CONSENT CEASE AND DESIST ORDER

CONSENT CEASE AND DESIST ORDER: No. CCC-03-CD-04

RELATED VIOLATION FILE: V-3-01-001

PROPERTY LOCATION: 1 Surf Way, City of Monterey, Monterey County (APNs 011-441-029, 011-441-040)

PROPERTY DESCRIPTION: Ocean Harbor House Condominiums are located in the Del Monte dunes of the City of Monterey, on the upcoast side of Surf Way and fronting on the beach and the Pacific Ocean. This area is in the coastal zone. The City of Monterey does not have a certified LCP, thus all development within the coastal zone must receive a CDP from the Commission.

PROPERTY OWNERS: Ocean Harbor House Homeowners Association.

VIOLATION DESCRIPTION: Violation of the terms and conditions of Coastal Development Permit No. 3-99-090-A1 requiring 1) removal of the temporary riprap structure and 2) submittal of a complete coastal development permit application for a permanent solution.

SUBSTANTIVE DOCUMENTS: Emergency Permit No. 3-98-116-G (EXHIBIT A), Administrative Permit No. 3-99-090 (EXHIBIT B), Coastal Development Permit No.

3-99-090-A1 (EXHIBIT C), and Emergency Permit 3-01-120-G (EXHIBIT D).

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

I. SUMMARY

The owner of the subject property is the Ocean Harbor House Homeowners Association (OHHHA). The condominiums front the beach on Surf Way in the City of Monterey, Monterey County. The Coastal Act violation that is the subject of this consent cease and desist order (CDO) is OHHHA's failure to comply with the terms and conditions of Coastal Development Permit (CDP) Amendment No. 3-99-090-A1 (EXHIBIT C), issued by the Commission on January 31, 2002.

The Amendment authorized an extension of time until November 1, 2002 to retain a temporary riprap bluff stabilization structure originally installed under Emergency CDP No. 3-98-116-G (EXHIBIT A) and extended under Administrative CDP No. 3-99-090 (EXHIBIT B), and to implement sand moving/berming activities. The Amendment required OHHHA to remove the temporary structure by November 1, 2002 if the Commission did not authorize an extension of the temporary riprap structure by October 15, 2002. The Amendment also required OHHHA to submit by April 1, 2002 a complete CDP application for a permanent solution along with a detailed plan for the removal of the temporary riprap structure. Finally, the Amendment required OHHHA to submit to the Executive Director and the City of Monterey by February 1, 2002 a detailed report that provides a description of the permanent solution proposed by OHHHA, a comparative analysis of the full range of alternatives considered in the selection of the permanent solution, including those suggested by the staffs of the Commission and the City of Monterey, and a complete assessment of the environmental impacts posed by the project.

OHHHA has applied for CDP No. 3-02-024 for a permanent vertical seawall, however, the application remains incomplete because it lacks the City of Monterey's Local Discretionary Approval and other project-related information and analysis. OHHHA has indicated that it is prepared to remove the temporary riprap structure as soon as it receives a CDP authorizing the permanent vertical seawall. Nevertheless, OHHHA did not obtain Commission approval to retain the temporary riprap structure by the October 15, 2002 deadline and the riprap was not removed by the November 1, 2002 deadline as required by CDP Amendment No. 3-99-090-A1 (EXHIBIT C).

Commission staff is recommending that the Commission issue a consent cease and desist order pursuant to Coastal Act Section 30810 to resolve this Coastal Act violation.

II. HEARING PROCEDURES

In light of OHHHA's desire to resolve its Coastal Act violation through a consent order, OHHHA has agreed to waive its right to a hearing to contest the violations alleged in the notice of intent to issue a cease and desist order dated March 28, 2003 and agree to a hearing solely for the purpose of considering this consent order. The procedures for a Commission hearing on a proposed cease and desist order are contained in Section 13185 of the California Code of Regulations. The hearing procedure for a cease and desist order is similar in most respects to the procedure the Commission follows for permit and local coastal plan matters.

III. MOTION

MOTION: I move that the Commission issue Consent Cease and Desist Order No. CCC-03-CD-04 pursuant to the Commission staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Commission staff recommends a **YES** vote. Passage of this motion will result in issuance of Consent Order No. CCC-03-CD-04. The motion passes only by an affirmative vote of a majority of Commissioners present.

RESOLUTION TO ISSUE CONSENT CEASE AND DESIST ORDER

The Commission hereby issues Consent Order No CCC-03-CD-04 set forth below and adopts the proposed findings set forth below on grounds that the property owners have undertaken development in violation of the terms and conditions of CDP Amendment No. 3-99-090-A1.

IV. PROPOSED FINDINGS

A. Alleged Coastal Act Violation

OHHHA's Coastal Act violation consists of OHHHA's failure to comply with the terms and conditions of CDP No. 3-99-090-A1 (EXHIBIT C) issued by the Commission on January 31, 2002. The Amendment required removal by November 1, 2002 of a temporary riprap shoreline protection structure originally installed under Emergency CDP No. 3-98-116-G (EXHIBIT A) and extended under Administrative CDP No. 3-99-090 (EXHIBIT B). It also required them to implement sand moving/berming activities.

Special Condition 2(a) of the Amendment required OHHHA to submit to the Executive Director and the City of Monterey by February 1, 2002 a detailed report that provides a description of the permanent vertical seawall proposed by

OHHHA, a comparative analysis of the full range alternatives considered in the selection of the permanent solution, including those suggested by the staffs of the Commission and the City of Monterey, and a complete assessment of the environmental impacts posed by the project.

Special Condition 2(b) of the Amendment requires OHHHA to submit by April 1, 2002 a complete CDP application for a permanent solution to any erosion problem on the subject property along with a detailed plan for the removal of the riprap. Special Condition 2 provides:

Failure to submit the required materials by the specified dates, unless extended by the Executive Director for good cause, shall be grounds for the Executive Director to require immediate removal of the temporary riprap structure.

Special Condition 2(c) of the Amendment provided that if the Commission does not authorize retention of the temporary riprap structure by October 15, 2002, OHHHA was required to remove the riprap by November 1, 2002. Special Condition 1(a) provides:

Failure to remove the temporary riprap structure by November 1, 2002, unless otherwise approved by the Commission, shall be considered a violation of the Coastal Act and subject to enforcement action and potential civil penalties pursuant to Chapter 9, Article 2 of the Coastal Act.

OHHHA has applied for CDP No. 3-02-024 for a permanent vertical seawall but the application remains incomplete because it is missing the City of Monterey's Local Discretionary Approval of the project and other project-related information and analysis. Furthermore, OHHHA did not obtain Commission approval to retain the temporary riprap structure by the October 15, 2002 deadline and the riprap was not removed by the November 1, 2002 deadline as required by CDP Amendment No. 3-99-090-A1 (EXHIBIT C).

OHHHA asserts that it has not violated the Coastal Act because it has complied with every requirement imposed upon it but that time extensions were required due to the City of Monterey's reevaluation of the potential environmental impacts of the proposed permanent solution.

B. Basis for Issuance of the Cease and Desist Order

The statutory authority for the issuance of this consent cease and desist order is provided in Section 30810 of the Coastal Act, which states, in relevant part:

(a) If the Commission, after public hearing, determines that any person... has undertaken, or is threatening to undertake, any activity that... (2)

is inconsistent with any permit previously issued by the Commission; the Commission may issue an order directing that person... to cease and desist.

- (b) *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.*

The Commission finds that Respondent has violated the terms and conditions of CDP Amendment No. 3-99-90-A1 (EXHIBIT C) by failing to submit a complete CDP application for a permanent shoreline protection solution by April 1, 2002 and by failing to remove the temporary riprap structure from the beach by November 1, 2002. OHHHA has indicated that it is prepared to remove the temporary riprap structure as soon as the Commission approves a CDP for the permanent solution. OHHHA's CDP application for the permanent solution remains incomplete because it is missing Local Discretionary Approval from the City of Monterey and other project-related information and analysis.

C. Background and Administrative Resolution Attempts

On December 24, 1998, the Commission issued Emergency CDP 3-98-116-G (EXHIBIT A) for the placement of a temporary riprap structure on the beach seaward of the Ocean Harbor House Condominiums to protect Building 4 and an associated sewer line from shoreline erosion. The Emergency CDP required the removal of the riprap by May 23, 1999.

In July 2000, OHHHA applied for CDP No. 3-99-090 (EXHIBIT B) to construct a 480 ft. long sand berm on the beach in front of the condominium complex to provide temporary erosion protection for the condominium complex. Commission staff informed OHHHA that they were still required to remove the temporary riprap structure authorized under Emergency CDP 3-98-116-G (EXHIBIT A). Commission staff advised OHHHA to revise the CDP application to include both the sand berm and retention of the temporary riprap structure until November 1, 2001.

On August 8, 2000, the Executive Director issued Administrative CDP No. 3-99-090 (EXHIBIT B) to allow OHHHA to retain the temporary riprap structure until November 1, 2001 and construct the sand berm. The CDP required OHHHA to submit a project description and an environmental review of a permanent solution by February 1, 2001 and apply for a CDP to authorize the permanent solution by April 1, 2001. The special conditions also included construction standards and reporting requirements for sand moving and berming on the beach.

On September 12, 2001, Commission staff sent a letter to OHHHA (EXHIBIT E) informing it that it was in violation of the above-described terms and conditions of CDP 3-99-090 (EXHIBIT B), which required removal of the temporary riprap structure by November 1, 2001, unless otherwise approved by the Commission.

On October 24, 2001, Commission staff met with OHHHA, its consultants and the City of Monterey to discuss the timing for OHHHA's CDP application in 2002 for the permanent solution. Commission staff worked with OHHHA to agree on a new schedule for them to comply with the requirements of Emergency CDP No. 3-01-120-G (EXHIBIT D).

On December 13, 2001, the Commission approved CDP Amendment No. 3-99-090-A1 (EXHIBIT C) with certain special conditions. The CDP amended CDP No. 3-99-090 (EXHIBIT B) and authorized OHHHA to retain the temporary riprap structure until November 1, 2002. Similar to the underlying CDP, the Amendment contained conditions that required OHHHA to submit a permanent project description and an environmental review and apply for a CDP for a permanent solution by April 1, 2002. The special conditions also included construction standards and reporting requirements for sand moving and berming on the beach.

On February 5, 2002, Nicole Cartier, President of OHHHA signed a Waiver of Legal Argument and expressed her desire to work with Commission staff to resolve OHHHA's Coastal Act violation.

On March 28, 2002, OHHHA submitted to the Commission an incomplete CDP application for a permanent vertical seawall to replace the temporary riprap structure in compliance with the requirements of CDP Amendment No. 3-99-090-A1 (EXHIBIT C). The application remains incomplete and cannot be filed until the City of Monterey approves the project.

Concurrently with Commission staff's review of OHHHA's CDP application for the vertical seawall, the City of Monterey is processing the local permits for the project. In August 2002, the City Attorney informed OHHHA that the City required an EIR in order to approve the local permits. The EIR process can be lengthy and complex.

On August 21, 2002, Commission staff sent OHHHA a second letter regarding (EXHIBIT F) their non-compliance with the terms and conditions of CDP Amendment No. 3-99-090-A1 (EXHIBIT C).

On October 3, 2002, Commission staff met with OHHHA's consultants to discuss OHHHA's request to submit an application for another CDP amendment to extend again the deadline for removing the temporary riprap structure. Commission staff refused to accept an application for another amendment to

CDP 3-99-090 (EXHIBIT B) to extend the deadline for removal of the temporary riprap structure and submittal of a complete CDP application for a permanent solution.

On March 24, 2003, Commission staff telephoned OHHHA's agent to discuss negotiating a consent cease and desist order for the purpose of resolving its Coastal Act violation. OHHHA's agent agreed to recommend that OHHHA enter into a consent cease and desist order providing that the order provides adequate time for the completion of the EIR process and does not require OHHHA to remove the temporary riprap structure during the winter season.

On March 28, 2003, Commission staff sent OHHHA a notice of intent to commence cease and desist order proceeding (EXHIBIT G) pursuant to California Code of Regulations Title 14, Section 13181(a). The letter indicated that Commission staff would schedule a public hearing on the order at the May 2003 Commission meeting in Monterey.

D. Resource Impacts

The temporary riprap structure raises issues under Coastal Act Sections 30253, 30221 and 30251.

- (1) Section 30253 provides that the Commission is required to find that the development does not contribute to erosion, geologic instability, or destruction of the site or surrounding area in any way that may require future construction of shoreline protective devices. The temporary riprap structure has the potential to affect the shoreline configuration, the beach profile (slope and width of the beach) and the amount of sand on the beach. The reflected wave energy in combination with the incoming wave energy increases scour and accelerates erosion in front and at either end of the riprap structure.
- (2) The temporary riprap structure is inconsistent with Coastal Act Section 30221 because the erosion discussed in (1) above has the potential to threaten the beach and any potential recreational use and development of the beach. Section 30221 provides:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

- (3) Section 30251 requires the Commission to take into account aesthetic values when considering coastal development projects. Section 30251 provides:

The scenic and visual qualities 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, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas.

Viewed from the beach, the temporary riprap structure is visually obtrusive and incompatible with the character of the surrounding area.

E. Admissions

OHHHA is the legal owner of Ocean Harbor House Condominiums located at 1 Surf Way, City of Monterey, Monterey County (APNs 011-441-029, 011-441-040)

OHHHA failed to complete CDP Application No. 3-02-024 for the permanent solution by the April 1, 2002 deadline specified in CDP Amendment No. 3-99-090-A1 (EXHIBIT C).

OHHHA failed to remove the temporary riprap structure from the beach by the November 1, 2002 deadline specified in CDP Amendment No. 3-99-090-A1 (EXHIBIT C).

F. Respondent's Defenses and Commission Staff's Response

In recognition of the value of resolving this Coastal Act violation through settlement, OHHHA has agreed to waive its right to assert a statement of defense pursuant to California Code of Regulations Title 14, Section 13181. Moreover, OHHHA has also agreed to waive its right under Section 13185 to raise contested allegations, defenses, mitigating factors, rebuttal evidence and other unresolved issues at the public hearing on the issuance of this consent order.

V. CEQA COMPLIANCE

The Commission finds that issuance of this consent order to Respondents for failure to comply with the terms and conditions of CDP Amendment No. 3-99-090-A1 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 consent order is exempt from the requirement for the preparation of an Environmental Impact Report, based upon Sections 15060(c)(2) and (3), 15307, 15308 and 15321 of CEQA Guidelines.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863



EMERGENCY PERMIT

Issue Date: **December 24, 1998**Emergency Permit No. **3-98-116-G**

Ronald F. Wiele, Association Manager
Ocean Harbor House Homeowners Association
125 Surf Way #445
Monterey, CA 93940

LOCATION OF EMERGENCY

Along the seaward side of Unit 4 of the Ocean Harbor House Condominiums, in the City of Monterey, Monterey County (APNs: 011-441-029 & 011-441-040).

WORK PROPOSED

Installation of a temporary rip rap seawall, as described in the plans by Haro, Kasunich and Associates Inc, dated December 24, 1998.

This letter constitutes approval of the emergency work that you and your representative have requested, as described above. I understand from the information that you submitted that an unexpected occurrence in the form of beach erosion threatens Ocean Harbor House residences and represents "a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services." (Definition of "emergency" from § 13009 of the California Administrative Code of Regulations.) Therefore, the Executive Director of the Coastal Commission hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of this permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) As conditioned, the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the attached pages.

Sincerely,

Peter M. Douglas
Executive Director


By: **Lee Otter**
District Chief Planner

Enclosures: Emergency Permit Acceptance Form

cc: John Kasunich, Haro Kasunich and Associates
Mike Stone, City of Monterey
Scott Kathey, Monterey Bay National Marine Sanctuary
U.S. Army Corps of Engineers

EXHIBIT A
CCC-03-CD-04
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CONDITIONS OF APPROVAL

1. The enclosed emergency permit acceptance form must be signed by the **property owner** and returned to the California Coastal Commission's Central Coast District Office, accompanied by the \$200 emergency permit application fee, within 15 days of the date of this permit (i.e., **by January 8, 1999**). This emergency permit is not valid unless and until the acceptance form and application fee has been received in the Central Coast District Office.
2. Only that work specifically described in this permit and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the date of this permit (i.e., **by January 23, 1999**) unless extended for good cause by the Executive Director.
4. The measures authorized by this emergency permit are only temporary. Within 60 days of the date of this permit (i.e., **by February 22, 1999**), the permittee shall submit a complete application for a regular coastal development permit (or waiver thereof) to have the emergency work be considered permanent. The emergency work shall be removed in its entirety within 150 days of the date of this permit (i.e., **by May 23, 1999**) unless before that time the California Coastal Commission has issued a regular permit for the development authorized by this emergency permit.
5. In exercising this permit, the permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g., U.S. Army Corps of Engineers, California State Lands Commission, Regional Water Quality Control Board, Monterey Bay National Marine Sanctuary, Monterey County, City of Monterey).
7. Permittee shall insure that the work authorized by this permit complies with all applicable ordinances, easements, and permit requirements imposed by the City of Monterey; permittee shall submit to the Executive Director copies of all local approvals and easements upon issuance by the City.
8. Permittee shall engage in no activity that results in pollution of the adjacent marine environment (concurrently comprising a portion of the Monterey Bay National Marine Sanctuary). Such pollution includes, but is not limited to, petroleum residues and increased turbidity. Construction equipment shall not come into contact with Bay waters.
9. Permittee shall insure that heavy equipment operations on and adjacent to Del Monte Beach are kept to the absolute minimum necessary to install the temporary emergency measures authorized by this emergency permit. Project staging areas shall be kept to the minimum size necessary, and shall be restored to their pre-existing condition immediately upon completion of the emergency work. All leaks, drips, and other spills shall be cleaned up immediately and contaminated materials properly disposed of at an off-site location. Equipment shall not be refueled on beach areas.

10. Any dewatering required to install the emergency protection measures shall be coordinated with the Executive Director of the Coastal Commission, the Monterey Bay National Marine Sanctuary, the Central Coast Regional Water Quality Control Board, and the City of Monterey, to the greatest degree feasible. All water discharges shall conform to requirements of these agencies.
11. Within 60 days of the date of this permit (i.e., **by February 22, 1999**), permittee shall submit to the Executive Director for review and approval a Restoration and Mitigation Plan which provides for: (a) reestablishment of natural beach contours within the project area; (b) protection of lateral beach access and visual resources by maintaining a sand covering over the rip rap structure; (c) revegetation of any native dune vegetation disturbed during installation of the emergency protection measures; and, (d) complete restoration of beach sand quality through removal of all stray rock fragments, debris, and concentrations of sediment fines emanating from the project.
12. Failure to comply with the conditions of this approval will result in enforcement action under the provisions of Chapter 9 of the Coastal Act.
13. The issuance of this emergency permit does not constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit and shall be without prejudice to the California Coastal Commission's ability to pursue any remedy under Chapter 9 of the Coastal Act.

As noted in Condition 4 above, the emergency work carried out under this permit is considered to be **temporary** work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a coastal development permit (or waiver thereof) must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly.

If you have any questions about the provisions of this emergency permit, please contact the Commission's Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

640 CAPITOLA ROAD

SANTA CRUZ, CA 95062

879.3511



RECEIVED

JUL 28 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

OFFICE OF

EMERGENCY PERMIT ACCEPTANCE FORM

Emergency Permit No. 3-98-116-6

Instructions: After reading the attached Emergency Permit, please provide the following information, sign this form and return within 15 working days.

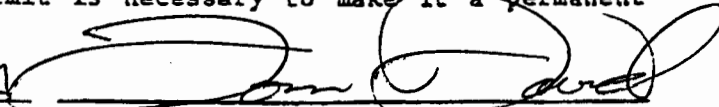
Provide a written report of the following: **SEE ATTACHED MEMO AND GRAPHICS FROM HARO KASUNICH & ASSOCIATES**

1. The nature of the emergency.
2. The cause of the emergency, insofar as this can be established.
3. The location of the emergency.
4. The remedial, protective or preventive work required to deal with the emergency.
5. The circumstances during the emergency that appeared to justify the course(s) of action taken, including the probable consequences of failing to take action.

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them. I understand that the emergency work is temporary and a regular Coastal Permit is necessary to make it a permanent installation.

Ocean Harbor House HOA

Name


Signature of property owner or
authorized representative
1-125 Surfway

Street Address

Monterey, CA 93940

City/State/Zip

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

427-4863

HEARING IMPAIRED: (415) 904-5200

Th 3c



ADMINISTRATIVE PERMIT NUMBER 3-99-090

Applicant.....**Ocean Harbor House Homeowner's Association**

Project location.....The temporary rock seawall is located along the seaward side of Unit 4 of the Ocean Harbor House, including on lands owned by the City of Monterey (APNs 011-441-028, 011-441-046). The sand berming activities are proposed for the entire beach frontage of the Ocean Harbor House, above the mean high tide line. Ocean Harbor House is located in the Del Monte Beach area of the City of Monterey, Monterey County.

Project descriptionRetain temporary rip-rap bluff stabilization structure installed under Emergency Permit 3-98-116-G until November 1, 2001, and implement sand moving/berming program during this time.

Note: Public Resources Code Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs. This permit will be reported to the Commission at the following time and place:

August 10, 2000
9:00 A. M.

Waterfront Hilton Beach Resort
21100 Pacific Coast Highway
Huntington Beach CA 92648
(714) 960-7873

IMPORTANT: Before you may proceed with development, the following must occur: You must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return to our office (Title 14, California Code of Regulations, Sections 13150(b) and 13158). Following the Commission's meeting, and once we have received the signed acknowledgment and evidence of compliance with all special conditions, if applicable, we will send you a Notice of Administrative Permit Effectiveness. **Before you can proceed with development, you must have received both your administrative permit and the notice of permit effectiveness from this office.**

PETER DOUGLAS
Executive Director

By: Charles Lester
Central Coast District Manager



California Coastal Commission
August 10, 2000 Meeting in Huntington Beach
Staff: S. Monowitz, Approved by:
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EXHIBIT B
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STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

EXECUTIVE DIRECTOR'S DETERMINATION

The Executive Director hereby determines that the proposed development is a category of development which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an administrative permit. Subject to standard and special conditions as attached, the development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, will not prejudice the ability of the City of Monterey to implement a Local Coastal Program that is in conformity with the provisions of Chapter 3, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act.

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION

The proposed project is primarily procedural in nature, as it seeks to extend the timeframe for retaining a temporary seawall installed pursuant to an emergency permit, and to formalize a sand berming program authorized by the Commission on two previous occasions via *de minimus* waiver. These developments are being pursued as *interim* measures to protect the Ocean Harbor Development from erosion and wave runup while a permanent solution is being identified and pursued by the Homeowner's Association.

Ocean Harbor House is located in the Del Monte dunes of the City of Monterey, on the upcoast side of Surf Way and fronting on the beach and Pacific Ocean (Exhibit 1). The construction of this development, which occurred around 1972 - 1974, appears to have undertaken pursuant to a vested right, although staff has been unable to track down the paper work officially establishing such a right. In 1992, the Commission reviewed and approved a coastal development permit for the conversion of Ocean Harbor House from apartments to condominiums (CDP 3-92-28), which included measures intended to protect the units from shoreline hazards by installing concrete pilings.

In December 1998, the Ocean Harbor House applied for and obtained an Emergency Permit (3-98-116-G) to protect a portion of the development (Building No. 4), and an associated sewer line, from shoreline erosion by installing a temporary rip rap seawall (Exhibit 2). The terms of this permit required that the emergency work be removed in its entirety by May 23, 1999. This has not occurred.

The applicant has, however, been diligently pursuing a permanent resolution of the shoreline hazards problem at Ocean Harbor House. As the Commission is well aware, the issues involved in such situations are quite complex, and the applicant has been attempting to address these issues to the satisfaction of Commission and City staff. Numerous meetings have been conducted, and various reports submitted. Yet, as has been discussed at these meetings, critical issues remain to be resolved.

The applicant has recently hired new consultants, for among other reasons, to try to better respond to the City and Commission staffs' questions and concerns. The consultants are in the process of updating the previous reports, which, in the opinion of Commission staff, did not adequately address alternatives and environmental impacts. The applicant has estimated that 6 months will be needed for the consultants to complete the technical analyses, address the relevant planning issues, and come to an agreement with the City of Monterey regarding what, if any, encroachment onto City lands will be allowed by the City.

While the Homeowners Association attempts to develop a long-term resolution of the shoreline hazard problem, the shorefront portions of the Ocean Harbor House development not protected by the temporary rip rap seawall remains exposed to beach erosion and wave hazards. The applicant and their engineers submit that periodic changes in beach profile may undermine the structures' foundations and leave the development and sewer line subject to damage from ocean waves. To minimize these risks while avoiding the installation of additional rock as a potential emergency response, the applicant has built a sand berm in front of the unprotected units as an interim measure. This sand berm needs to be replenished on a periodic basis in order to account for the movement of the sand associated with wave action, wind, and beach use.

Construction vehicles (e.g., a bulldozer) would be used to rebuild the sand berm by moving sand from the lower beach area to the upper beach and base of the structures. This activity would be limited to the area of the beach directly in front of the existing structures and above the mean high tide line (Exhibit 3). As authorized by this permit, Ocean Harbor House could continue to replenish the sand berm during the period in which permanent resolution of the Ocean Harbor House problem is being developed, subject to conditions that regulate the timing and implementation of the sand moving activities detailed below.

The Coastal Act sets forth policies for shoreline development that allows for the construction of shoreline protection structures in very limited circumstances, and where adverse environmental impacts are avoided and mitigated to the fullest extent possible (Section 30253). In addition, such development must protect public access and recreation opportunities (Sections 30211 and 30221). The temporary seawall installed under the emergency situation does not comply with these standards because, among other reasons, it consumes a large amount of public beach area that would otherwise be available for recreational use. The large stack of rocks also represents a visual eyesore in a scenic coastal area that is generally free of such unnatural shoreline structures. In addition, the periodic use of the beach and beach sand for the creation of a sand berm interferes with the public's use and enjoyment of this highly used shoreline area. Finally, there are outstanding questions regarding whether a seawall is allowed at the site based on previous permit actions and additional data needed to resolve actual risks and available alternatives. It is clear that the proposed construction of a permanent seawall on the site, if any, will be subject to rigorous review to eliminate and minimize its impact on coastal resources.

Notwithstanding these outstanding issues, the retention of the temporary structure and the periodic replenishment of the sand berm, for a limited period of time is an appropriate course of action. This will allow the additional information needed to resolve these issues to be assembled and analyzed without putting the existing structures and the safety of the residents and beach-goers in jeopardy. **By allowing this to occur, the Commission makes no commitment as to whether a permanent seawall is allowable under the Coastal Act, or what its design and implementation should entail.**

To ensure that the resolution of the permanent solution proceeds in a timely manner, and the adverse impacts associated with the existing temporary structure and sand moving activities are kept to a minimum, Special Conditions have been attached to this permit. These conditions establish a timeline to ensure that the temporary structure is removed no later than November 1, 2001, unless the retention of this structure is approved by the Commission through the regular permit process. In addition, the conditions institute specific construction operation procedures and reporting requirements to ensure that sand moving activities are conducted in a manner that will not have a significant adverse impact on public access and recreation. With these conditions, the permit is consistent with the Chapter 3 policies of the Coastal Act.

SPECIAL CONDITIONS

1. Scope of Permit. The development authorized by this permit is limited to the following:
 - a. Temporary Retention of Rip-Rap Structure. The rock seawall installed pursuant to emergency permit 3-98-116-G may be retained during the period that the applicant diligently pursues a permanent solution to shoreline hazards, but in no case beyond **November 1, 2001** unless authorized by the Commission through the regular permit process. Failure to remove the temporary rip-rap structure by November 1, 2001, unless otherwise approved by the Commission, shall be considered a violation of the Coastal Act and subject to enforcement action and potential civil penalties pursuant to Chapter 9, Article 2 of the Coastal Act. Any addition, alteration, or maintenance of the existing temporary structure shall be subject to separate review and approval by the Coastal Commission or its Executive Director.
 - b. Sand Moving and Berming Activities. Ocean Harbor House may conduct the sand moving and berming activities, according to the plans submitted by Ocean Harbor House and Haro, Kasunich and Associated Inc. dated September 3, 1999, during the period between the effective date of this permit and November 1, 2001. Sand moving/berming activities shall be subject to the construction standards specified in Special Condition 3, below, as well as the reporting requirements identified in Special Condition 4.
2. Permit Timelines. The permittee shall observe and comply with all of the following timelines. Failure to submit the required materials by the specified dates, unless extended by the Executive Director for good cause, shall be grounds for the Executive Director to require immediate removal of the temporary rip-rap structure.
 - a. Permanent Project Description, Alternatives Analysis, and Environmental Review. By **February 1, 2001**, the permittee shall submit, to the Executive Director and the City of Monterey, a detailed report that provides:
 - the plans and description of the permanent resolution proposed by the Ocean Harbor House;
 - a comparative analysis of the full range of alternatives considered in the selection of the proposed resolution, including a thorough evaluation of all alternatives that the staffs of the Coastal Commission and City of Monterey have requested to be considered in various meetings and correspondence (e.g., use of concrete pilings, relocation of threatened units, etc.); and,
 - a complete assessment of the environmental impacts posed by the project, including but not limited to, the impacts of the selected alternative on sand supply, dune habitats, public access and recreation, visual resources, and the stability of adjacent properties.

In the event that the Executive Director or the City of Monterey is not satisfied with the contents of the required report, the permittee shall respond to a request for additional information within **30 days** of receiving such a request.

- b. Coastal Development Permit Application for Permanent Solution. The permittee shall be responsible for submitting a complete Coastal Development Permit application for the proposed permanent solution no later than **April 1, 2001**. In addition to providing the full range of information required by Exhibit 4 of this report, the application shall include a detailed construction operations plan for the removal of the temporary rip rap structure which minimizes impacts to dune habitats, water quality, and public access and recreation to the greatest degree feasible.
 - c. Removal of Temporary Rip-Rap Structure. Unless retention of the temporary rip-rap structure is authorized by the Coastal Commission prior to October 15, 2001, the permittee shall be responsible for the **complete removal** of this temporary structure, in accordance with the construction operations plan required above (which may be modified by the Coastal Commission or Executive Director), by **November 1, 2001**.
3. Construction Standards for Sand Moving and Berming. The sand moving and berming program authorized for the period between the effective date of this permit and November 1, 2001 shall be subject to the following requirements:
- a. The area of sand moving and berming shall be limited to the beach area between the existing Ocean Harbor House buildings and landward of the mean high tide line. No sand shall be removed from, or deposited on, State Park land, vegetated dune habitats, or areas within the jurisdiction of the Monterey Bay National Marine Sanctuary.
 - b. Construction vehicles and equipment shall not come in contact with ocean waters, and shall be cleaned and maintained at an offsite location prior to construction to prevent the discharge of any harmful or foreign materials on the beach or in the ocean.
 - c. Sand moving and berming shall take place only when the low tide is at or below an elevation of 1.0 feet above mean sea level, and where there is adequate space for lateral public access between the ocean and the mean high tide line. Sand moving and berming **shall not** take place on weekends or holidays.
 - d. The permittee and construction operators shall ensure safe lateral access during construction activities. Methods to achieve safe lateral access shall include:
 - the provision of adequate construction personnel to direct or escort beach users across the construction area; and/or
 - temporarily staking the construction area with orange safety netting during the construction period.
4. Reporting Requirements for Sand Moving and Berming. At least 10 working days prior to conducting any sand moving or berming activities, the permittee shall inform and request authorization of the proposed action and its timeline from the Executive Director of the Coastal Commission, and the Public Works Director of the City of Monterey. Significant conflicts with public access, coastal recreation, or sensitive habitats shall be grounds for not authorizing proposed sand moving and berming.

ACKNOWLEDGEMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS

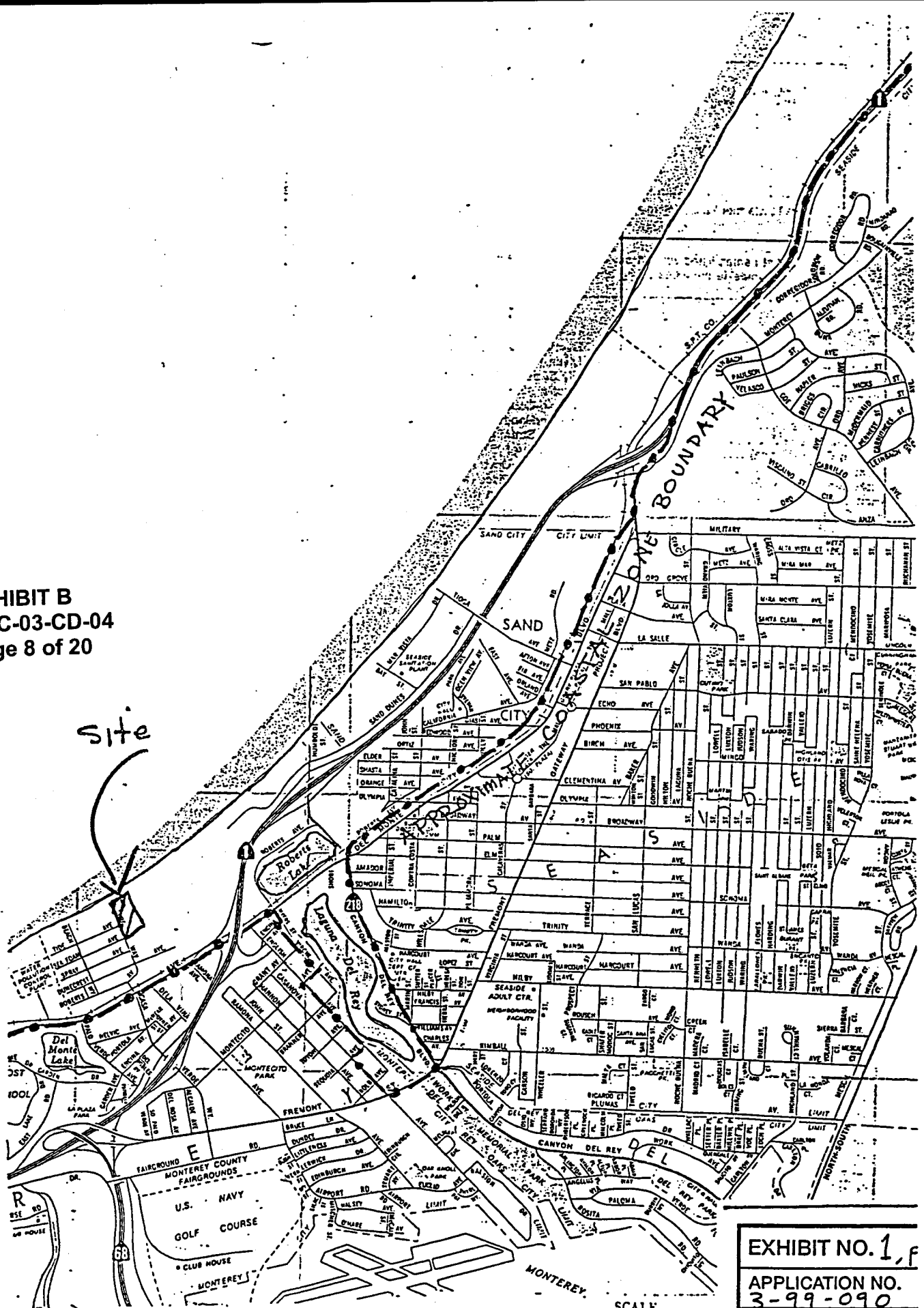
I acknowledge that I have received a copy of this permit and have accepted its contents including all conditions.

Applicant's Signature

Date of Signing

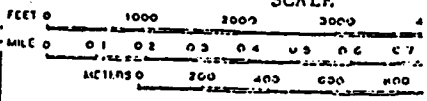


site



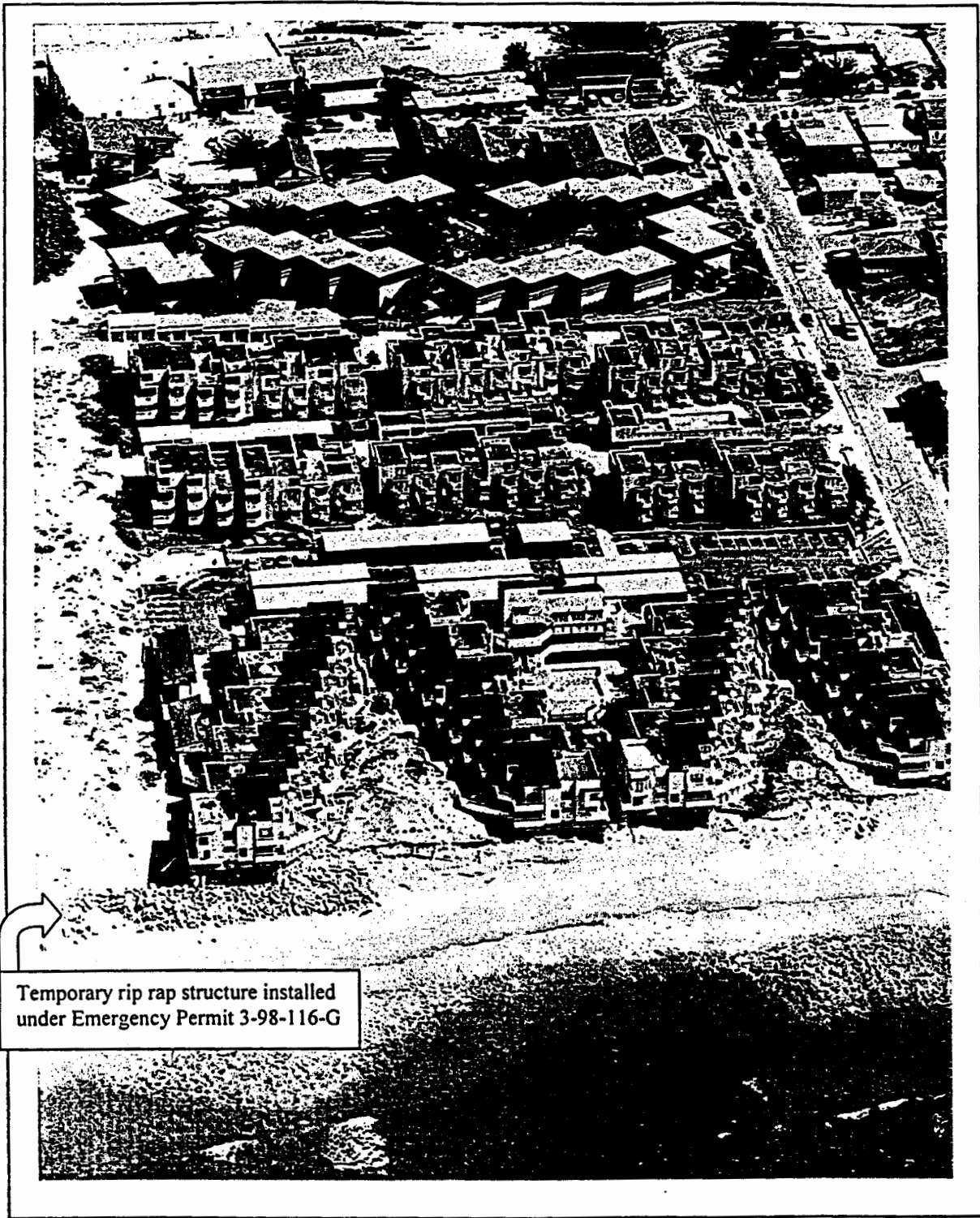
Del Monte Lake
 MONTEREY COUNTY FAIRGROUNDS
 U.S. NAVY GOLF COURSE
 CLUB HOUSE
 MONTEREY

EXHIBIT NO. 1, f
 APPLICATION NO.
 3-99-090
 Ocean Harbor
 House Location



SEASIDE - SAND CITY - MONTEREY

1:10,000



Temporary rip rap structure installed under Emergency Permit 3-98-116-G

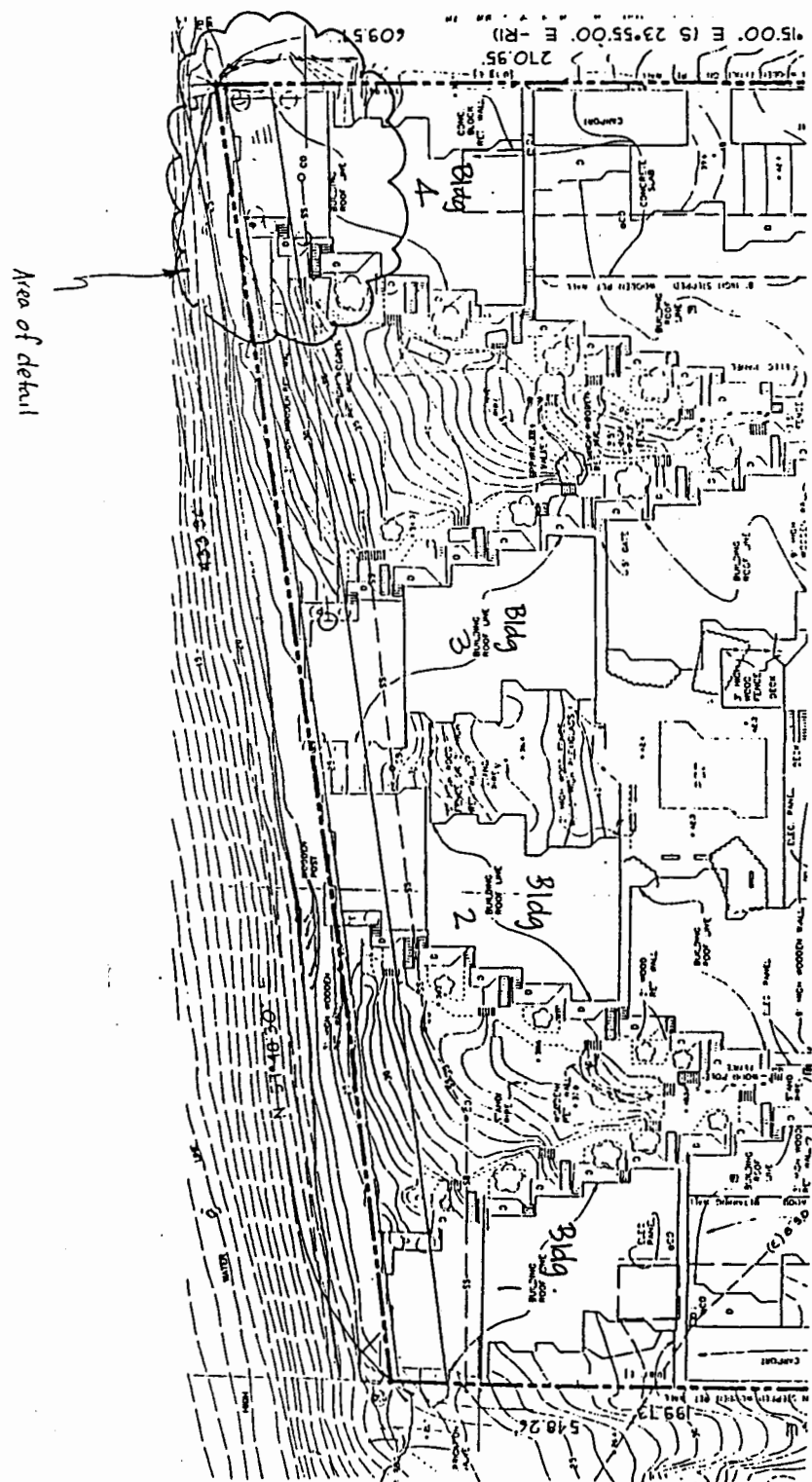
EXHIBIT B
CCC-03-CD-04
Page 9 of 20

3-99-090

Ocean Harbor House

Exhibit 1, p.2

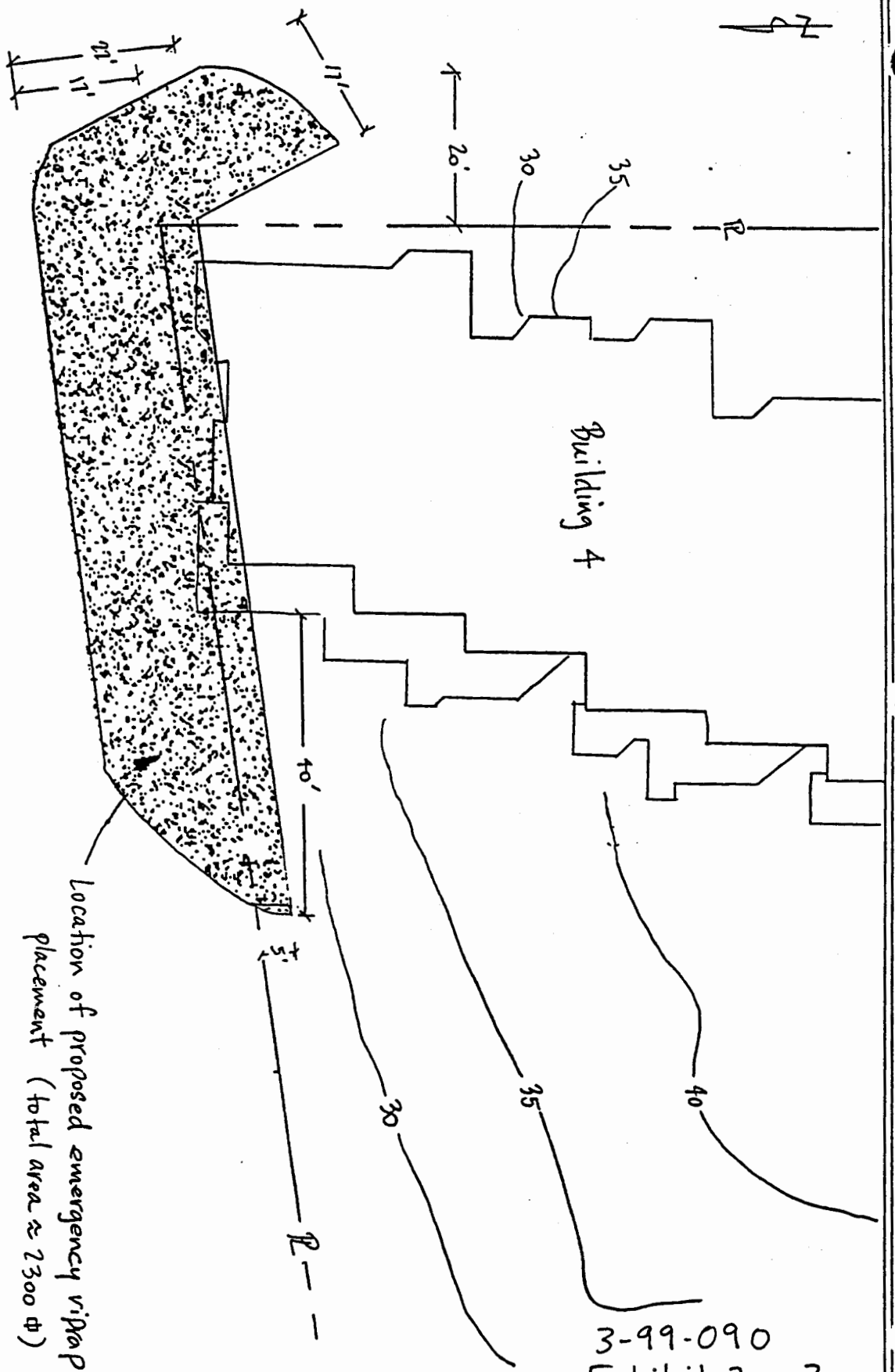
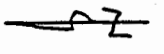
This photograph, taken on May 31, 1999, shows the location of the Ocean Harbor House in relation to Del Monte Beach and the Pacific Ocean, and the temporary seawall installed in 1998/1999 as an emergency measure. Upcoast (to the left of the residential development as shown in this photo) is State Park land. Seaward of the residential development is land owned by the City of Monterey. The sand moving activities will take place between the upcoast and downcoast limits of the existing residential development, above the mean high tide line.



Project No:	M2519	SITE PLAN SHOWING AREA OF DETAIL OCEAN HARBOR HOUSE MONTEREY, CALIFORNIA
Date:	24 DEC 98	
Scale:	1" = 40'	
Drawn by:	JT	
HARO, KASUNICH & ASSOCIATES		FIGURE NO.

EXHIBIT B
 CCC-03-CD-04
 Page 10 of 20

EXHIBIT NO. 2, P
 APPLICATION NO.
 3-99-090
 Existing Tempora
 Seawall Plans



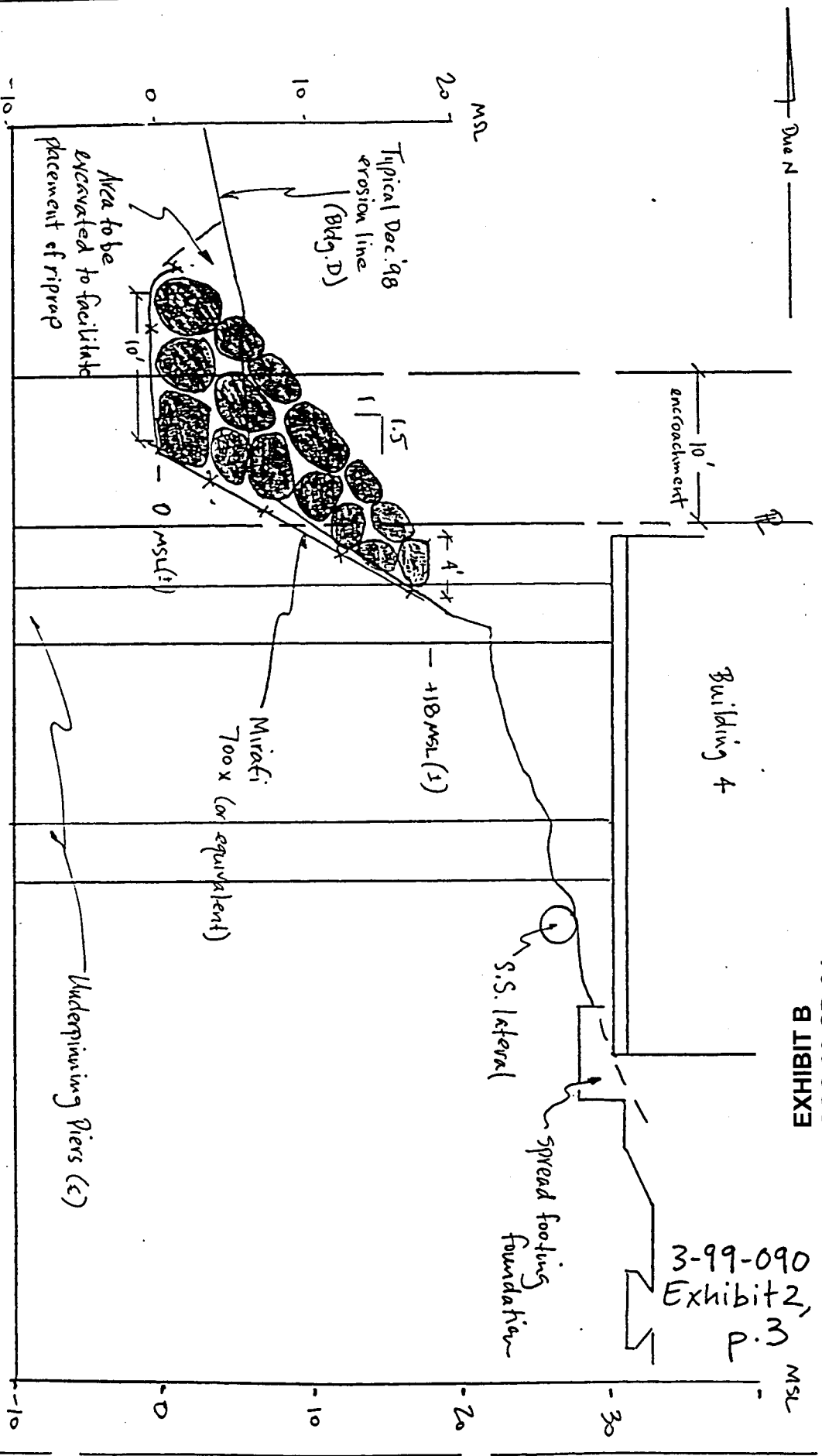
Location of proposed emergency riprap placement (total area \approx 2300 ft²)

Building 4

3-99-090
Exhibit 2, p. 2

Volume of riprap
500 cubic yards
 \approx 825 tons

PROJECT No:	M12519	PROPOSED EMERGENCY RIPRAP BLUE PROTECTION OCEAN HARBOR HOUSE MONTEREY, CALIFORNIA
DATE:	24 DEC 98	
SCALE:	1" = 20'	
DRAWN BY:	JT	
HARO KASLINICH & ASSOCIATES		Engr. No. N/A



Note:

The armor rock:

max wt = 6 tons
 min wt = 4 tons

Other armor rock:

max wt = 2 tons
 min wt = 2 tons

75% to exceed mean wt.

PROJECT NO:	M2519
DATE:	24 DEC 98
SCALE:	1" = 10', H = V
DRAWN BY:	JT

HARO, KASUNICH & ASSOCIATES

TYPICAL EMERGENCY RIPRAP
 PLACEMENT SECTION
 OCEAN HARBOR HOUSE
 MONTEREY, CALIFORNIA

Figure No.

3-99-090
 Exhibit 2,
 P. 3

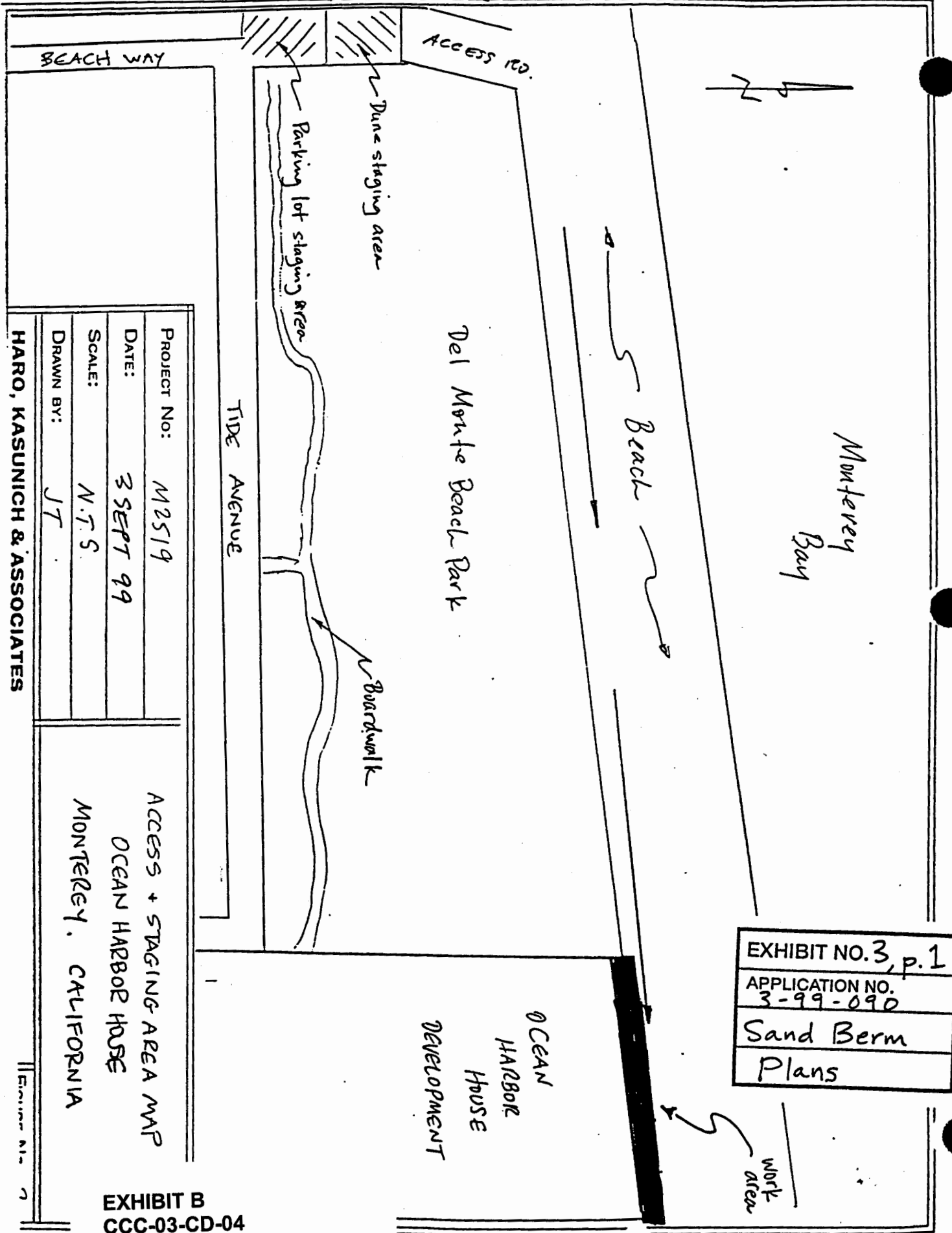
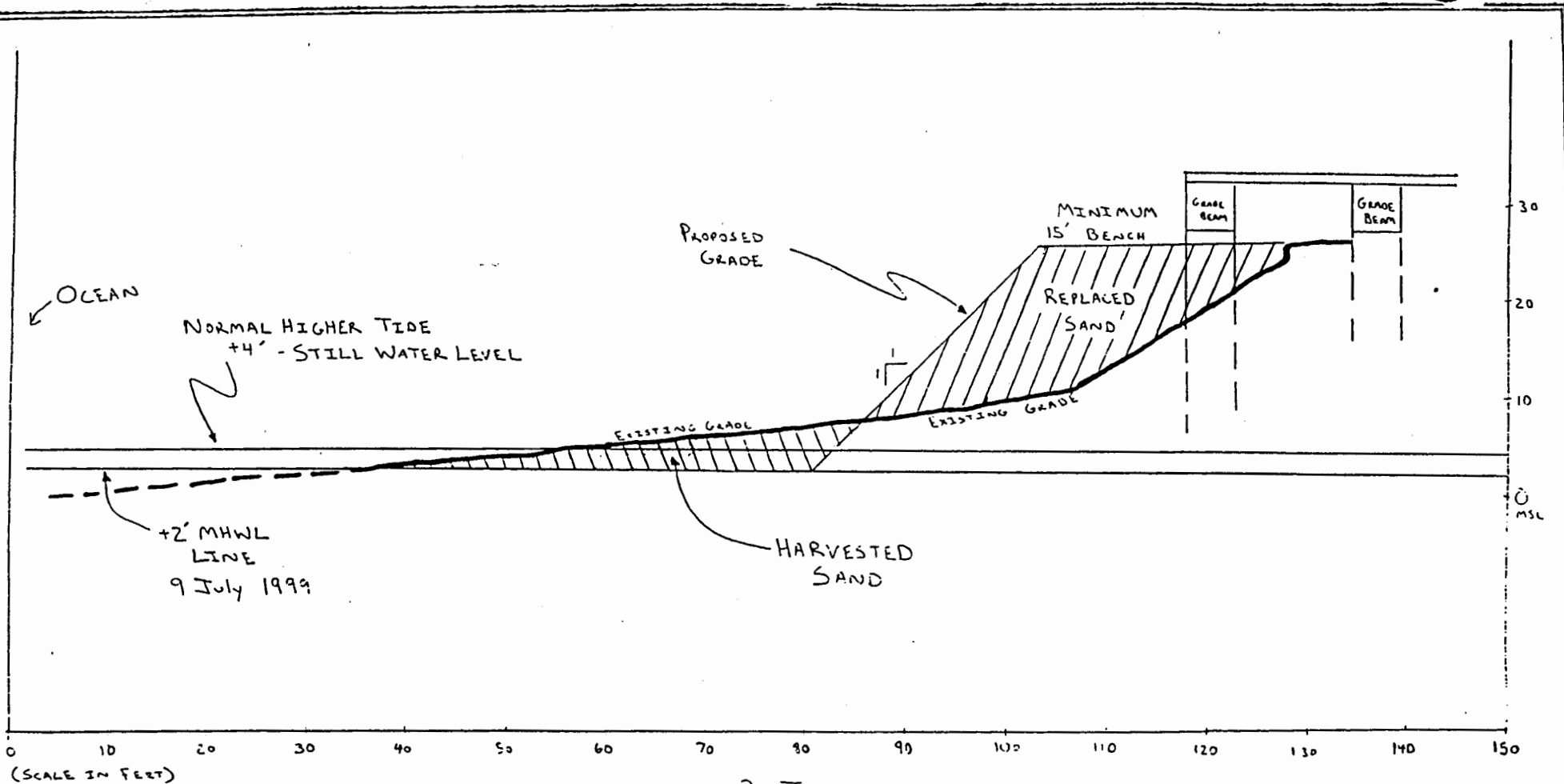


EXHIBIT NO. 3, p. 1
APPLICATION NO. 3-99-090
Sand Berm
Plans

PROJECT NO:	M2519
DATE:	3 SEPT 99
SCALE:	N.T.S.
DRAWN BY:	JT

HARO, KASUNICH & ASSOCIATES

ACCESS + STAGING AREA MAP
OCEAN HARBOR HOUSE
MONTEREY, CALIFORNIA



CROSS SECTION 3 - TYPICAL
 SCALE: 1" = 10'
 V = H

PROJECT NO: M2519
DATE: 19 July 1999
SCALE: 1" = 10'
DRAWN BY: J. COOK
HARO, KASUNICH & ASSOCIATES

TYPICAL CROSS SECTION
 PROPOSED EMERGENCY MEASURES
 OCEAN HARBOR HOUSE
 MONTEREY CITY, CA
 || FIGURE No.

3-99-09
 Exhibit
 P. 2

Exhibit 4. Technical Information Requirements for Ocean Harbor House Shoreline Protection Proposal

1. Project description

The application shall include a comprehensive project description providing details about the proposed temporary and permanent development, including:

- the kind of device that is proposed and where it will be located

- length (or shoreline length) of protection
- seaward encroachment of protection.

Regional Location Map: The applicant shall provide a regional map that shows the site. Copies of a Thomas Brothers map or USGS Quad sheet can often provide this. In addition, the applicant should provide a map of the site.

- US Army Corps of Engineers
- US Fish and Wildlife Service
- National Marine Fisheries Service
- California Department of Fish and Game
- California Department of Parks and Recreation
- State Lands Commission (repeated as Item #5)
- State or Regional Water Quality Control Board.

7. Effects on Public Access and Recreation

The applicant shall provide the following information:

- location of nearest vertical access points, up and down coast
- location of any lateral access between nearest up and down coast access points
- graphic depiction of proposed shoreline protection project on a current beach profile(s)
- discussion or evaluation of the effects of the proposed shoreline protection project upon the public's ability to walk the shoreline, as well as impact of the project upon recreational use of the beach and near shore during the entire year.

8. Monitoring Plan

The applicant shall provide a preliminary monitoring plan that includes:

- objectives listing the specific aspects or effects of the proposed project to be monitored
- success standards to evaluate the performance of the proposed project
- monitoring techniques and schedule
- reporting techniques and schedule
- expertise and professional qualifications for persons performing the monitoring.

9. Other Required Information

9.A. Effects on Sensitive Marine and Shoreline Habitat

The applicant shall provide a Biological Impact Analysis prepared by a qualified professional, containing the following information:

- a biological survey of the habitats found at the project site and in nearby areas prepared by a biologist that includes a map of habitat areas, a narrative description of the habitat types, a list of species present, and a quantification of the amount and density of habitat and species types
- a discussion or evaluation of the impacts of the construction and maintenance of the proposed shoreline protection project on the habitat areas identified in the biological survey
- a mitigation plan
- professional qualifications of the biological experts who prepared the plan and who will implement the proposed mitigation.

- samples that show the color and texture of the permanent shoreline structures and any drainage devices that will be visible
- a narrative analysis of the permanent visual impact of the proposed project in light of Coastal Act concerns for protecting public views, minimizing landform alteration, and keeping new development visually compatible with the character of the surrounding area.

9.C. *Effects of Shoreline Protection Project on Dunes*

The applicant shall provide an analysis of the possible impacts to dunes, including:

- a map of the proposed project in relation to the dune complex around the site
- an analysis of how wave energy, currents, wind and other forces that shape the existing dune complex would be altered and what the resulting effects on the dunes would be
- description of any proposed landscaping and analysis of the interaction of the landscaping plants with native dune vegetation.

9.D. *Construction Description, with maps*

The applicant shall provide information on the construction activities, covering all aspects of the proposed project. The discussion should identify:

- types of mechanized equipment which will be on the beach
- anticipated noise levels during different phases of construction
- plans for placing material on the beach or in the near shore, including stockpiling plans
- access plans
- staging areas
- maps or plans showing all areas to be used for construction activities (in blueprint format if available (for project review) and in reduced 8-1/2" x 11" format (for use as exhibits for the staff report))
- maps of any areas which will have temporary or permanent access restrictions
- schedule of all construction activities, including anticipated starting dates, duration and indications if there is any flexibility in each activity
- timing for all activities (e.g. 8 AM to 5 PM work day; 12 hours a day; 24 hours a day; Monday through Friday; just weekends; every day; etc. and indications if there is any flexibility in each activity).

12 ft from support

site -> within urbanized area

access, way for access to NC.

adjacent to S.P. property which is now
natural

dev. has already encroached into area that SP
would use

RECEIVED

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

JAN 31 2002

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

DATE: December 21, 2001

Permit Amendment No: 3-99-90-A1

issued to: Ocean Harbor House Homeowner's Assoc., Attn: Ronald Wiele, Assoc. Manager

for **Extension of time period to retain temporary coastal bluff protection structure and continue sand moving/berming activities.**
at **Surf Way (along seaward side of Unit 4 of the Ocean Harbor House condominiums), Monterey, Monterey County.**

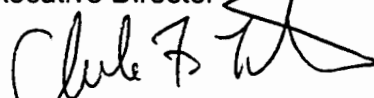
has been amended to include the following changes:

Retain temporary rip-rap bluff stabilization structure originally installed under Emergency Permit 3-98-116-G and extended under Administrative Permit 3-99-090, until November 1, 2002 and implement sand moving/berming activities during this time.

This amendment will become effective upon return of a signed copy of this form to the Central Coast Area office. Please note that the original permit conditions are still in effect.

Sincerely,

PETER M. DOUGLAS
Executive Director



By: CHARLES LESTER
District Manager

ACKNOWLEDGMENT:

I have read and understand the above amendment and agree to be bound by its conditions and the remaining conditions of Permit No: 3-99-090.

Date:

January 29, 2002

Signature:

Ronald F. Wiele

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

DATE: December 21, 2001

Permit Amendment No: 3-99-090-A1

issued to: Ocean Harbor House Homeowner's Assoc., Attn: Ronald F. Wiele, Association Manager

Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit amendment is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
4. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

Special Conditions

1. **Scope of Permit.** The development authorized by this permit is limited to the following:
 - a. **Temporary Retention of Rip-Rap Structure.** The rock seawall installed pursuant to emergency permit 3-98-116-G may be retained during the period that the applicant diligently pursues a permanent solution to shoreline hazards, but in no case beyond November 1, 2002 unless authorized by the Commission through the regular permit process. Failure to remove the temporary rip-rap structure by November 1, 2002, unless otherwise approved by the Commission, shall be considered a violation of the Coastal Act and subject to enforcement action and potential civil penalties pursuant to Chapter 9, Article 2 of the Coastal Act. Any addition, alteration, or maintenance of the existing temporary structure shall be subject to separate review and approval by the Coastal Commission or its Executive Director.
 - b. **Sand Moving and Berming Activities.** Ocean Harbor House may conduct the sand moving and berming activities, according to the plans submitted by Ocean Harbor House and Haro, Kasunich and Associated Inc. dated September 3, 1999, during the period between the effective date of this permit and November 1, 2002. Sand moving/berming activities shall be subject to the construction standards specified in Special Condition 3, below, as well as the reporting requirements identified in Special Condition 4.

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

DATE: December 21, 2001

Permit Amendment No: 3-99-090-A1

issued to: Ocean Harbor House Homeowner's Assoc., Attn: Ronald F. Wiele, Association Manager

Special Conditions (Continued)

2. Permit Timelines. The permittee shall observe and comply with all of the following timelines. Failure to submit the required materials by the specified dates, unless extended by the Executive Director for good cause, shall be grounds for the Executive Director to require immediate removal of the temporary rip-rap structure.

a. Permanent Project Description and Environmental Review. By February 1, 2002, the permittee shall submit, to the Executive Director and the City of Monterey, a detailed report that provides:

- the plans and description of the permanent resolution proposed by the Ocean Harbor House;
- a comparative analysis of the full range of alternatives considered in the selection of the proposed resolution, including a thorough evaluation of all alternatives that the staffs of the Coastal Commission and the City of Monterey have requested to be considered in various meetings and correspondence (e.g., use of concrete pilings, relocation of threatened units, etc.); and
- a complete assessment of the environmental impacts posed by the project, including but not limited to, the impacts of the selected alternative on sand supply, dune habitats, public access and recreation, visual resources, and the stability of adjacent properties.

In the event that the Executive Director or the City of Monterey is not satisfied with the contents of the required report, the permittee shall respond to a request for additional information within **30 days** of receiving such a request.

b. Coastal Development Permit Application for Permanent Solution. The permittee shall be responsible for submitting a complete Coastal Development Permit application for the proposed permanent solution no later than April 1, 2002. In addition to providing the full range of information required by Exhibit 1 pp. 15-20 of this report, the application shall include a detailed construction operations plan for the removal of the temporary rip rap structure which minimizes impacts to dune habitats, water quality, and public access and recreation to the greatest degree feasible.

c. Removal of Temporary Rip-Rap Structure. Unless retention of the temporary rip-rap structure is authorized by the Coastal Commission prior to October 15, 2002, the permittee shall be responsible for the complete removal of this temporary structure, in accordance with the construction operations plan required above (which may be modified by the Coastal Commission or Executive Director), by November 1, 2002.

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

DATE: December 21, 2001

Permit Amendment No: 3-99-090-A1

issued to: Ocean Harbor House Homeowner's Assoc., Attn: Ronald F. Wiele, Association Manager

Special Conditions (Continued)

- 3. Construction Standards for Sand Moving and Berming.** The sand moving and berming program authorized for the period between the effective date of this permit and November 1, 2002 shall be subject to the following requirements:
- a. The area of sand moving and berming shall be limited to the beach area between the existing Ocean Harbor House buildings and landward of the mean high tide line. No sand shall be removed from, or deposited on, State Park land, vegetated dune habitats, or areas within the jurisdiction of the Monterey Bay National Marine Sanctuary.
 - b. Construction vehicles and equipment shall not come in contact with ocean waters, and shall be cleaned and maintained at an offsite location prior to construction to prevent the discharge of any harmful or foreign materials on the beach or in the ocean.
 - c. Sand moving and berming shall take place only when the low tide is at or below an elevation of 1.0 feet above mean sea level, and where there is adequate space for lateral public access between the ocean and the mean high tide line. Sand moving and berming shall not take place on weekends or holidays.
 - d. The permittee and construction operators shall ensure safe lateral access during construction activities. Methods to achieve safe lateral access shall include:
 - the provision of adequate construction personnel to direct or escort beach users across the construction area; and/or
 - temporarily staking the construction area with orange safety netting during the construction period.
- 4. Reporting Requirements for Sand Moving and Berming.** At least 10 working days prior to conducting any sand moving or berming activities, the permittee shall inform and request authorization of the proposed action and its timeline from the Executive Director of the Coastal Commission, and the Public Works Director of the City of Monterey. Significant conflicts with public access, coastal recreation, or sensitive habitats shall be grounds for not authorizing proposed sand moving and berming.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863



Adopted

Filed: 11/13/01
49th Day: 1/1/02
Staff: SC
Staff Report: 11/19/01
Hearing Date: 12/13/01
Item Number: Th9a
Commission Action:

PERMIT AMENDMENT

Application number.....3-99-090-A1

Applicant.....Ocean Harbor House Homeowners Association

Project Location.....The temporary rock seawall is located along the seaward side of Unit 4 of the Ocean Harbor House condominiums, including on lands owned by the City of Monterey (APNs 011-441-028, 011-441-046). The sand berming activities are proposed for the entire beach frontage of the Ocean Harbor House condominiums, above the mean high tide line. Ocean Harbor House is located in the Del Monte Beach area of the City of Monterey, Monterey County.

Project Description.....Retain temporary rip-rap bluff stabilization structure originally installed under Emergency Permit 3-98-116-G and extended under Administrative Permit 3-99-090, until November 1, 2002 and implement sand moving/berming activities during this time.

File documents:..... 3-98-116-G; 3-99-090; Report on Repair/Mitigation Alternatives to Address the Bluff Retreat Erosion Problems with the Monterey Ocean Harbor House Development (Prepared by Steven E. O'Connor, P.E. and Reinhard E. Flick, Ph.D.)

Staff Recommendation.....Approval with Conditions

**EXHIBIT C
CCC-03-CD-04
Page 5 of 13**



California Coastal Commission

Staff Report Contents

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I. EXECUTIVE SUMMARY

The applicant is requesting an amendment to Coastal Development Permit 3-99-090, which allowed for retention of a rip-rap seawall in front of a portion of the Ocean Harbor House condominium complex and continued sand berming activities in front of the entire condominium complex until November 1, 2001 (see Exhibit 2). This amendment would extend that timeline by one year until November 1, 2002. In addition, the applicant would be responsible for submitting a complete Coastal Development Permit application for a proposed permanent solution to the bluff erosion problems no later than April 1, 2002. Although the Ocean Harbor House Homeowners Association (OHHHA) has been working toward a long-term solution to the bluff erosion problem, the process of designing a permanent erosion protection measure has taken more time than originally anticipated by the OHHHA. The OHHHA has made progress recently (although it has been nearly three years since the original emergency rip-rap approval) and has requested that the original deadline for addressing the erosion problem at the Ocean Harbor House be extended. To the extent that the OHHHA may be at risk from wave run-up this winter, retention of the rip-rap and continuation of sand berming activities will protect the condominium development against this winter’s storms and associated beach erosion. Staff recommends **approval** of the coastal development permit amendment to allow the OHHHA one more year to complete the required coastal development permit process.

II. STAFF RECOMMENDATION ON AMENDMENT

The staff recommends that the Commission, after public hearing, **approve** the proposed amendment subject to the standard and special conditions below. Staff recommends a **YES** vote on the following motion:

Motion: I move that the Commission approve Coastal Development Permit Number 3-99-



090-A1 subject to the conditions below and that the Commission adopt the following resolution:

Staff Recommendation of Approval. Staff recommends a YES vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit Amendment. The Commission hereby approves the coastal development permit amendment on the grounds that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

III. CONDITIONS OF APPROVAL

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
4. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Scope of Permit.** The development authorized by this permit is limited to the following:
 - a. **Temporary Retention of Rip-Rap Structure.** The rock seawall installed pursuant to emergency permit 3-98-116-G may be retained during the period that the applicant diligently pursues a permanent solution to shoreline hazards, but in no case beyond November 1, 2002 unless authorized by the Commission through the regular permit process. Failure to remove the temporary rip-rap structure by November 1, 2002, unless otherwise approved by the Commission, shall be considered a violation of the Coastal Act and subject to enforcement action and potential civil penalties pursuant to



Chapter 9, Article 2 of the Coastal Act. Any addition, alteration, or maintenance of the existing temporary structure shall be subject to separate review and approval by the Coastal Commission or its Executive Director.

- b. **Sand Moving and Berming Activities.** Ocean Harbor House may conduct the sand moving and berming activities, according to the plans submitted by Ocean Harbor House and Haro, Kasunich and Associated Inc. dated September 3, 1999, during the period between the effective date of this permit and November 1, 2002. Sand moving/berming activities shall be subject to the construction standards specified in Special Condition 3, below, as well as the reporting requirements identified in Special Condition 4.

2. **Permit Timelines.** The permittee shall observe and comply with all of the following timelines. Failure to submit the required materials by the specified dates, unless extended by the Executive Director for good cause, shall be grounds for the Executive Director to require immediate removal of the temporary rip-rap structure.

- a. **Permanent Project Description and Environmental Review.** By February 1, 2002, the permittee shall submit, to the Executive Director and the City of Monterey, a detailed report that provides:
- the plans and description of the permanent resolution proposed by the Ocean Harbor House;
 - a comparative analysis of the full range of alternatives considered in the selection of the proposed resolution, including a thorough evaluation of all alternatives that the staffs of the Coastal Commission and the City of Monterey have requested to be considered in various meetings and correspondence (e.g., use of concrete pilings, relocation of threatened units, etc.); and
 - a complete assessment of the environmental impacts posed by the project, including but not limited to, the impacts of the selected alternative on sand supply, dune habitats, public access and recreation, visual resources, and the stability of adjacent properties.

In the event that the Executive Director or the City of Monterey is not satisfied with the contents of the required report, the permittee shall respond to a request for additional information within 30 days of receiving such a request.

- b. **Coastal Development Permit Application for Permanent Solution.** The permittee shall be responsible for submitting a complete Coastal Development Permit application for the proposed permanent solution no later than April 1, 2002. In addition to providing the full range of information required by Exhibit 1 pp. 15-20 of this report, the application shall include a detailed construction operations plan for the removal of the temporary rip rap structure which minimizes impacts to dune habitats, water quality, and public access and recreation to the greatest degree feasible.
- c. **Removal of Temporary Rip-Rap Structure.** Unless retention of the temporary rip-rap structure is authorized by the Coastal Commission prior to October 15, 2002, the



permittee shall be responsible for the complete removal of this temporary structure, in accordance with the construction operations plan required above (which may be modified by the Coastal Commission or Executive Director), by November 1, 2002.

3. **Construction Standards for Sand Moving and Berming.** The sand moving and berming program authorized for the period between the effective date of this permit and November 1, 2002 shall be subject to the following requirements:
- a. The area of sand moving and berming shall be limited to the beach area between the existing Ocean Harbor House buildings and landward of the mean high tide line. No sand shall be removed from, or deposited on, State Park land, vegetated dune habitats, or areas within the jurisdiction of the Monterey Bay National Marine Sanctuary.
 - b. Construction vehicles and equipment shall not come in contact with ocean waters, and shall be cleaned and maintained at an offsite location prior to construction to prevent the discharge of any harmful or foreign materials on the beach or in the ocean.
 - c. Sand moving and berming shall take place only when the low tide is at or below an elevation of 1.0 feet above mean sea level, and where there is adequate space for lateral public access between the ocean and the mean high tide line. Sand moving and berming shall not take place on weekends or holidays.
 - d. The permittee and construction operators shall ensure safe lateral access during construction activities. Methods to achieve safe lateral access shall include:
 - the provision of adequate construction personnel to direct or escort beach users across the construction area; and/or
 - temporarily staking the construction area with orange safety netting during the construction period.
4. **Reporting Requirements for Sand Moving and Berming.** At least 10 working days prior to conducting any sand moving or berming activities, the permittee shall inform and request authorization of the proposed action and its timeline from the Executive Director of the Coastal Commission, and the Public Works Director of the City of Monterey. Significant conflicts with public access, coastal recreation, or sensitive habitats shall be grounds for not authorizing proposed sand moving and berming.

IV. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Location and Background

Ocean Harbor House condominiums are located in the Del Monte dunes of the City of Monterey, on the upcoast side of Surf Way and fronting on the beach and the Pacific Ocean (see Exhibit 1, pp. 8). This area of the City of Monterey falls within the coastal zone, but the City does not have a fully certified LCP. Furthermore, this permit addresses development on the beach, which falls within the



Commission's original jurisdiction. Therefore the standard of review for the project is the Coastal Act.

The construction of the condominiums, which occurred in 1972, appears to have been undertaken pursuant to a vested right, although staff has been unable to track down the paperwork officially establishing such a right. In 1992, the Commission reviewed and approved a Coastal Development Permit (CDP 3-92-28) for the conversion of Ocean Harbor House from apartments to condominiums, which included measures intended to protect the units from shoreline hazards by installing concrete pilings.

In December 1998, Ocean Harbor House applied for and obtained an Emergency Permit (3-98-116-G) to protect a portion of the development (Building No. 4), and an associated sewer line, from shoreline erosion by installing a temporary rip rap seawall (Exhibit 1, pg. 9). The terms of this permit required that the emergency work be removed in its entirety by May 23, 1999. This removal did not occur. In July 1999, Commission staff received a request from Ocean Harbor House Homeowners Association (OHHHA) for authorization of construction of a berm of beach sand against the existing dune erosion scarp in front of the entire Ocean Harbor House development for a distance of approximately 480 feet. The purpose of this berm was to provide a temporary protection measure for the upcoming fall/winter season. At that time, Commission staff notified OHHHA that emergency permit 3-98-116-G required that the temporary rip-rap structure be removed in its entirety by May 23, 1999, unless prior to that date the permittee applied for and obtained a regular Coastal Development Permit for the structure to remain beyond that date. Commission staff met with the City, OHHHA, and other interested parties on the site to discuss longer-term solutions to the erosion hazard. At that time OHHHA, in coordination with various consultants, was working on a submittal for a regular permit application to include, among other things, an analysis of a full range of alternatives for a long-term solution. To provide protection for the 1999/2000 winter rainy season, however, OHHHA applied for a new coastal development permit to include retention of the rip-rap structure past the May 23, 1999 date, along with the proposal for construction of a sand berm. Administrative Coastal Development Permit 3-99-090 was granted on August 10, 2000, which included conditions that the permittee submit a complete CDP application for the proposed permanent solution no later than April 1, 2001 and that the sand berming activities would cease and the rip-rap structure would be completely removed by November 1, 2001 (see Exhibit 1 for complete staff report for CDP 3-99-090). These conditions have not been met.

B. Request for Time Extension

OHHHA is requesting, through this permit amendment, that the Commission grant a one-year extension of all permit timelines included as Special Conditions in CDP 3-99-090 (see Exhibit 1, pp. 5-6). Specifically, this would allow retention of the rip-rap seawall in front of Building No. 4 and continued sand berming activities in front of the entire condominium complex until November 1, 2002 (see Exhibit 1, pg. 3 for a description of sand berming activities). By November 1, 2002, the permittee would be responsible for complete removal of the temporary rip-rap structure. In addition,



the applicant would be responsible for submitting a complete Coastal Development Permit application for the proposed permanent solution no later than April 1, 2002.

C. Reason for Delay

Since approval of CDP 3-99-090 in August 2000, OHHHA has been working toward a long-term solution to the bluff erosion problem. However, it has taken much longer than anticipated to resolve the differences between what OHHHA proposed as a permanent solution and what the City would accept as a permanent solution. During this time, OHHHA representatives and consultants had many meetings with City of Monterey staff. In January 2001 a document entitled "Report on Repair/Mitigation Alternatives to Address the Bluff Retreat Erosion Problems with the Monterey Ocean Harbor House Development," by Steve O'Connor, P.E. and Ron Flick, Ph.D., was completed. This report analyzed numerous possible solutions to the erosion problem. The OHHHA preferred alternative, however, included a permanent encroachment onto City of Monterey property. The City did not want the structure to encroach upon City property. Thus, the City asked for additional information and analysis, which took several more months to complete. The Board of Directors of OHHHA realized that its proposal was not moving forward within the timeline required by CDP 3-99-090. OHHHA then hired two permit-coordinating consultants to address the numerous and complex issues related to the project. Since August 2001, the consultants have researched relevant information and coordinated with the City, Coastal Commission staff, and others to move forward on meeting the Coastal Act and CDP 3-99-090 requirements to submit a Coastal Development Permit application for a permanent solution and remove the rip-rap that was originally installed in December 1998.

As the Commission is well aware, the issues involved in shoreline erosion situations are quite complex. On October 24, 2001 Commission staff met with members of OHHHA, City staff, and the OHHHA permit-coordinating consultants to discuss various alternative responses to the shoreline erosion problem at Ocean Harbor House. The OHHHA is working on an alternative that eliminates all encroachments onto City property, except for an overhead "wave recur" that will protrude over City property at limited locations and by no more than the existing encroachments of the decks. City staff has indicated that this refined alternative addresses their main concern, which is encroachment of the structure onto City property (see pg. 2 of Exhibit 3). OHHHA needs time to finalize the details of this refined alternative, present the plan to the City for its approval and ultimately to the Coastal Commission for review, develop bid documents and construct the improvements. If all necessary approvals are forthcoming, OHHHA believes it will be able to begin construction by Labor Day of 2002. In the meantime, OHHHA is requesting permission to extend the life of their temporary encroachment permit to allow the rip-rap protection to remain in place at the easterly end of the development and allow the construction of a sand berm along the entire development until November 1, 2002. On November 6, 2001, the City of Monterey granted an extension of the City's existing temporary encroachment permit until November 2002.

Construction of a permanent seawall on the site, if any, will be subject to rigorous future review to minimize any impact on coastal resources. In light of the productive and cooperative nature of the October 24, 2001 meeting, it is apparent that OHHHA is making appropriate progress in determining



a permanent solution to the bluff erosion problem. The above-mentioned alternative may address Commission concerns about encroachment onto public property, sand supply issues, and visual impact issues. Therefore, the temporary retention of the rip-rap structure and the periodic replenishment of the sand berm is an appropriate course of action and staff recommends that these activities be allowed until November 1, 2002. This extension would also give the applicant time to determine if the construction of the condominium complex was undertaken pursuant to a vested right, as discussed above.

This permit amendment could be denied. This could, however, adversely affect the Ocean Harbor House homeowners' ability to protect the development against this winter's storms and associated beach erosion. Such action could also result in the loss of the private sewer line that runs underneath the oceanfront buildings, thereby unintentionally discharging raw sewage into the ocean as well as rendering the front units uninhabitable. Furthermore, if this amendment for a time extension were not approved, OHHHA would be in violation of CDP 3-99-090. Pursuing a violation, including possibly assessing fines and penalties, would not be the most productive course of action given the recent progress that OHHHA has made in determining a permanent solution. Given this and the fact that OHHHA is making demonstrable progress toward a permanent solution, it is reasonable that this permit amendment be approved.

D. Coastal Act Issues

The Coastal Act sets forth policies for shoreline development that allows for the construction of shoreline protection structures in very limited circumstances, and where adverse environmental impacts are avoided and mitigated to the fullest extent possible (Section 30253). In addition, such development must protect public access and recreation opportunities (Sections 30211 and 30221). The temporary seawall installed under the emergency situation does not comply with these standards because, among other reasons, it consumes a large amount of public beach area that would otherwise be available for recreational use. The large stack of rocks also represents a visual eyesore in a scenic coastal area that is generally free of such unnatural shoreline structures. In addition, the periodic use of the beach and beach sand for the creation of a sand berm interferes with the public's use and enjoyment of this highly used shoreline area. It is clear that the proposed construction of a permanent solution to bluff erosion on this property will be subject to rigorous review to eliminate and minimize its impact on coastal resources.

Notwithstanding these outstanding issues, the retention of the temporary structure and the periodic replenishment of the sand berm, for a limited period of time, are appropriate courses of action to protect the condominium development and the sewer line that runs underneath the oceanfront buildings against this winter's storms. The additional time will allow OHHHA the additional information needed to resolve these issues to be assembled and analyzed without putting the existing structures and the safety of the residents and beach-goers in jeopardy. **By allowing this to occur, the Commission makes no commitment as to whether a permanent seawall is allowable under the Coastal Act, or what its design and implementation should entail.**



To ensure that the resolution of the permanent solution proceeds in a timely manner, and the adverse impacts associated with the existing temporary structure and sand moving activities are kept to a minimum, Special Conditions have been attached to this permit. These conditions establish a timeline to ensure that the temporary structure is removed no later than November 1, 2002. In addition, the conditions institute specific construction operation procedures and reporting requirements to ensure that sand-moving activities are conducted in a manner that will not have a significant adverse impact on public access and recreation. With these conditions, the permit is consistent with the Chapter 3 policies of the Coastal Act.

V. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary for Resources as being the functional equivalent of environmental review under CEQA. Accordingly, the Commission finds that as conditioned the proposed project will not have significant adverse effects on the environment within the meaning of CEQA; that there are no feasible alternatives that would significantly reduce any potential adverse effects; and, accordingly, the proposal, as conditioned is in conformance with CEQA requirements.





CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(408) 427-4863



Emergency Permit

Ocean Harbor House Homeowners Association
c/o Mr. Ron Wiele
125 Surf Way, #445
Monterey, CA 93940

Date: December 13, 2001
Emergency Permit No. 3-01-120-G

Location of Emergency Work:

Ocean Harbor House Condominiums, 1 Surf Way (City of Monterey, Monterey County)

Work Proposed:

Temporary additional rip-rap placement on City beach property fronting the Ocean Harbor House condominiums, and operation of earth-moving equipment on the beach.

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information that an unexpected occurrence in the form of high waves has caused further erosion and destruction of the existing sand berm on the ocean side of Ocean Harbor House and that loss of a sewer line is imminent, and that immediate action is required to prevent or mitigate loss or damage to life, health, property or essential public service (as defined by 14 Cal. Administrative Code Section 13009).

- a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of this permit;
- b) Public comment on the proposed emergency action has been reviewed if time allows;
- c) As conditioned, the work would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the attached page.

PETER M. DOUGLAS
Executive Director

By: CHARLES LESTER
Acting Deputy Director

cc: City of Monterey, attn: W.E. Reichmuth, Public Works Director
Deirdre Hall, Monterey Bay National Marine Sanctuary
Victor Roth, California Department of Parks & Recreation
City of Monterey, attn: Bill Fell, Chief of Planning

Emergency Permit Number: 3-01-120-G

Date: 12/13/01

Page 1 of 2

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by the PROPERTY OWNER and returned to our office within 15 days.
2. Only that work specifically described in this permit and shown on the Engineered Soil Repairs, Inc. site plan dated December 5, 2001 and for the specific property listed above, is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of this permit.
4. In exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
5. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
6. Pursuant to CDP 3-99-090-A1, the permittee shall be responsible for submitting a complete Coastal Development Permit application for the proposed permanent solution no later than April 1, 2002.
7. Pursuant to CDP 3-99-090-A1, the rock seawall installed under this emergency permit may be retained during the period that the applicant diligently pursues a permanent solution to shoreline hazards, but in no case beyond November 1, 2002 unless authorized by the Commission through the regular permit process. Failure to remove the temporary rip-rap structure by November 1, 2002, unless otherwise approved by the Commission, shall be considered a violation of the Coastal Act and subject to enforcement action and potential civil penalties pursuant to Chapter 9, Article 2 of the Coastal Act.

If you have any questions about the provisions of this emergency permit, please call Susan Craig at (831) 427-4891.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(408) 427-4863

HEARING IMPAIRED: (415) 904-5200



Sent via by Regular and Certified Mail (Receipt P 437 924 280)

September 12, 2001

Ocean Harbor House Homeowners' Association
125 Surf Way, Suite 445
Monterey, CA 93940
Attention: Ronald F. Wiele, Manager

Property Location: Seaward Side of Ocean Harbor House Condominiums, Monterey,
Monterey County

Violation File No.: ~~V-3-00-001~~ V-3-01-001

Permit File No.: 3-99-090

Dear Mr. Wiele,

Staff of the California Coastal Commission has determined that Special Conditions attached to Coastal Development Permit (CDP) 3-99-090 (regarding installation of a temporary rock seawall and sand berming activities at the above described property) have not been met by the applicant. Specifically, Special Condition 2a states:

2. Permit Timelines. The permittee shall observe and comply with all of the following timelines. Failure to submit the required materials by the specified dates, unless extended by the Executive Director for good cause, shall be grounds for the Executive Director to require immediate removal of the temporary rip-rap structure.
 - a. Permanent Project Description, Alternatives Analysis, and Environmental Review. By **February 1, 2001**, the permittee shall submit, to the Executive Director and the City of Monterey, a detailed report that provides:
 - the plans and description of the permanent resolution proposed by the Ocean Harbor House;
 - a comparative analysis of the full range of alternatives considered in the selection of the proposed resolution, including a thorough evaluation of all alternatives that the staffs of the Coastal Commission and City of Monterey have requested to be considered in various meetings and correspondence (e.g., use of concrete pilings, relocation of threatened units, etc.); and,
 - a complete assessment of the environmental impacts posed by the project, including but not limited to, the impacts of the selected alternative on sand supply, dune habitats, public access and recreation, visual resources, and the stability of adjacent properties.

In the event that the Executive Director or the City of Monterey is not satisfied with the contents of the required report, the permittee shall respond to a request for additional information within **30 days** of receiving such a request.

As stated above, Special Condition 2a requires submission of a report that includes a complete assessment of the environmental impacts posed by the different alternatives considered in the selection of the proposed resolution. Special Condition 2a required that the report be submitted by February 1, 2001. Apparently a report was prepared and dated January 30, 2001. Commission staff did not actually receive the report from the permittee until staff requested it directly from your representatives, Engineered Soil Reports, Inc. in May 2001. We have now reviewed the report and find that the submitted report, "Report on Repair/Mitigation Alternatives to Address Bluff Retreat Erosion Problems with the Ocean Harbor House Development," does not contain a complete assessment of the visual impacts and impacts on sand supply/stability of adjacent properties posed by each alternative. Please supply report addenda that address the impact each alternative will have on visual resources and sand supply/stability of adjacent properties.

Special Conditions 2b and 2 c state:

- b. Coastal Development Permit Application for Permanent Solution. The permittee shall be responsible for submitting a complete Coastal Development Permit application for the proposed permanent solution no later than **April 1, 2001**. In addition to providing the full range of information required by Exhibit 4 of this report, the application shall include a detailed construction operations plan for the removal of the temporary rip rap structure which minimizes impacts to dune habitats, water quality, and public access and recreation to the greatest degree feasible.
- c. Removal of Temporary Rip-Rap Structure. Unless retention of the temporary rip-rap structure is authorized by the Coastal Commission prior to October 15, 2001, the permittee shall be responsible for the **complete removal** of this temporary structure, in accordance with the construction operations plan required above (which may be modified by the Coastal Commission or Executive Director), by **November 1, 2001**.

As stated above, Condition 2b of your permit required you to submit a complete CDP application for a proposed permanent solution no later than April 1, 2001. As of the date of this letter, we have not received a complete CDP application from you for a proposed permanent solution. Since we have not yet received the necessary CDP application for a permanent solution and it is now September 10, 2001, it will not be possible for the Commission to authorize the construction of a permanent solution by October 15, 2001. Thus, as Condition 2c of CDP 3-99-090 states, you need to remove the temporary riprap structure by **November 1, 2001**.

Before you can remove the riprap structure, consistent with Condition 2b of your permit, the Commission's Executive Director needs to review and approve a detailed construction

operations plan for the removal of the riprap structure to ensure that the plan minimizes impacts to dune habitats, water quality, and public access and recreational opportunities to the greatest degree feasible.

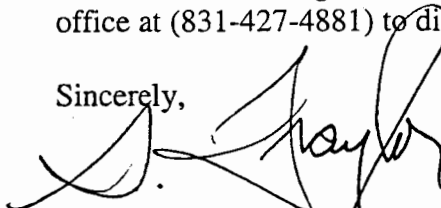
Please submit a detailed construction operations plan as soon as possible and no later than **September 27, 2001** regarding removal of the temporary rip-rap.

Your failure to comply with the terms and conditions of an approved Coastal Development Permit constitutes a violation of the California Coastal Act (PRC Section 30000 et seq.).

Coastal Act section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Section 30820(b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

Please send your removal plan to Susan Craig at our Central Coast District office (831-427-4863) to comply with CDP 3-99-090. If you would like to discuss the pending Coastal Act enforcement investigation into this matter please contact me also at the Central Coast District office at (831-427-4881) to discuss the resolution of this matter.

Sincerely,



Sharif Traylor
Enforcement Officer
Central Coast District Office

Enclosure: Coastal Development Permit No. 3-99-090

cc: Debra Wright
City Attorney's Office
399 Madison Avenue
Monterey, CA 93940

Mary Seiersen, President, Homeowner's Association
1 Surf Way, #234
Monterey, CA 93940

Victor Roth
California State Parks
600 Ocean St.
Santa Cruz, CA 95060



CALIFORNIA COASTAL COMMISSION

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



Sent via Regular and Certified Mail (7000 1530 0003 5913 9682)

August 21, 2002

Ocean Harbor House Homeowners' Association
Attention: Ronald F. Wiele, Manager
125 Surf Way - Suite 445
Monterey, CA 93940

Property Location: Seaward side of Ocean Harbor House Condominiums, City & County of Monterey

Violation File No.: V-3-01-001

Dear Mr. Wiele,

This letter is concerning the need for Ocean Harbor House Homeowners' Association ("OHHHA") to meet condition compliance deadlines of amended Coastal Development Permit ("CDP") No. 3-99-090-A1. This letter shall also serve as notice of our intent to proceed to the appropriate enforcement order proceeding in a public hearing before the Commission if OHHHA fails to remove the existing rock riprap by November 1, 2002, as required by CDP No. 3-99-090-A1.

As approved by the Coastal Commission, CDP No. 3-99-090-A1 required OHHHA to submit a **complete** CDP application to the Coastal Commission for a permanent solution to shoreline protection no later than April 1, 2002 (Special Condition No. 2b), and to remove the temporarily permitted rock riprap by November 1, 2002 (Special Condition No. 2c). As of the date of this letter, the Coastal Commission has not yet received a complete CDP application from OHHHA as required by CDP 3-99-090-A1. Further, it appears that OHHHA did not apply for a local permit for their desired permanent solution to the City of Monterey in a timely fashion. The City has not yet acted on OHHHA's application for a permanent solution and it appears that OHHHA will not be able to comply with special condition No. 2c of CDP 3-99-090-A1, requiring removal of the rock riprap by November 1, 2002. We are very concerned by the repeated failure of OHHHA to abide by permit conditions. For the last three years OHHHA has not abided by conditional deadlines contained in permits required by the Commission. OHHHA's continued failure to abide by these conditional requirements is a knowing and intentional violation of CDP No. 3-99-090-A1.

Commission staff has attempted to be very flexible and patient working with OHHHA and its representatives in an attempt to bring OHHHA into compliance with CDP Nos. 3-98-116-G, 3-99-090 and 3-99-090-A1. As noted in previous letters, in July 1999, OHHHA requested a CDP to build a sand berm fronting the entire condominium development stretching approximately 500 feet to provide *temporary* protection against storm waves during the 1999-2000 winter season. At that time, Commission staff informed OHHHA that the riprap authorized by CDP No. 3-98-116-G on a temporary basis still needed to be removed, and advised OHHHA to apply for a regular CDP for both the berm and to extend temporary authorization for the riprap placement.

EXHIBIT F
CCC-03-CD-04
Page 1 of 3

In August 2000 the Commission approved CDP No. 3-99-090 for the berm and to allow the riprap to stay until November 1, 2001. The Commission required OHHHA to submit a CDP application for a permanent solution by April 1, 2001 so that the riprap could be removed no later than November 1, 2001. OHHHA failed to abide by the condition deadline requirements.

In the fall of 2001, Commission enforcement staff was made aware of OHHHA's failures to meet the conditional requirements of CDP No. 3-99-090. OHHHA members informed Commission staff that they were still working on a permanent solution for shoreline protection and that it had taken much longer than anticipated to resolve differences between the City of Monterey and OHHHA on the appropriate design. OHHHA also asked about applying for a CDP amendment to allow the riprap to stay beyond November 1, 2001. Prior to applying for this amendment, a meeting was held between Commission enforcement and planning staff, OHHHA, and City of Monterey staff to discuss OHHHA's desire for a permanent shoreline protection solution, the Commission's concern that previously imposed conditional deadlines had been violated by OHHHA, and how to avoid future possibilities of missed conditional deadlines. During this meeting Commission enforcement staff informed OHHHA that they should meet all deadlines imposed by the Commission in subsequent permit actions to avoid further enforcement action. OHHHA assured Commission staff that they intended to abide by deadlines imposed in any future CDP to allow the rock riprap to stay in place an additional year.

Based in part on these representations by OHHHA, the Commission conditionally approved CDP 3-99-090-A1 which allows the rock riprap to stay in place until November 1, 2002. It also required OHHHA to submit a complete CDP application for a permanent solution no later than April 1, 2002, so that the Commission would have adequate time to process such a request and still ensure that the rock riprap could be removed before November 1, 2002.

We are very concerned and disappointed to discover that OHHHA has once again not complied Commission CDP deadlines. OHHHA has had more than enough time to meet CDP No. 3-99-090-A1's conditional deadlines. By all accounts, at the time the Commission approved CDP No. 3-99-090-A1 last fall, OHHHA was well aware of the need to allow sufficient time for the local approval process by the City of Monterey for the permanent solution, and should have worked from a timeframe that would have allowed for local permit consideration and still would have enabled OHHHA to meet the Commission's permit requirements to submit a complete CDP application by April 1, 2002 and to remove the rock riprap by November 1, 2002. OHHHA did submit a CDP application on March 28, 2001. The CDP application was deemed incomplete by Commission staff in a letter to OHHHA dated April 25, 2002. The Commission letter detailed what was needed to complete the CDP application. Despite this notification, OHHHA has not yet completed the pending CDP application. Thus, OHHHA has not yet received local approvals for its permanent solution and appears unable to meet its requirement to remove the rock riprap by November 1, 2002.

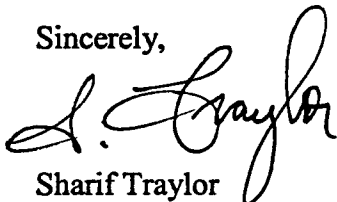
Due to the failure of OHHHA to meet past CDP permit deadlines, Commission staff believes it is appropriate to include monetary penalty compensation in any final resolution of this long outstanding Coastal Act violation case. As you may be aware, the Coastal Act contains many enforcement remedies for Coastal Act violations. Section 30803 and 30805 of the Act authorize the

Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount not to exceed \$30,000. Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists. Pursuant to sections 30809, 30810 and 30811, the Commission may issue a cease-and-desist or restoration order to halt the continuing nature of this violation and to bring the matter to final resolution. The Commission's enforcement orders are subject to daily penalties not to exceed \$6,000 for every day the order is violated, in accordance with section 30821.6 of the Act.

As stated in CDP No. 3-99-090-A1, OHHHA's failure to remove the temporary riprap revetment by November 1, 2002, unless otherwise approved by the Commission, is a violation of the Coastal Act and subject to enforcement action and potential civil penalties pursuant to Chapter 9 of the Coastal Act. Thus, if the wall is not removed by November 1, 2002, OHHHA will face the likelihood of the Commission issuing a cease-and-desist or a restoration order pursuant to Chapter 9 of the Coastal Act, for removal of the rock riprap and restoration of the impacted sandy beach. Any order issued by the Commission would include deadlines for compliance subject to a daily penalty for violation of the terms of the enforcement order.

In closing, we note that we have been working with OHHHA for many years to bring this matter to closure. We are very anxious to have OHHHA remove the rock as they committed to do four years ago when OHHHA received emergency CDP permit No. 3-98-116-G from the Commission. If you have any questions concerning completion of your pending CDP application, please contact Susan Craig of our Central Coast Commission staff. If you have any concerns related to this letter, please contact me at your earliest convenience at 831-427-4881.

Sincerely,



Sharif Traylor
Enforcement Officer
Central Coast District Office

Cc: Nicole Cartier
Bud Carney
Susan Craig
Nancy Cave



CALIFORNIA COASTAL COMMISSION

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



VIA REGULAR AND CERTIFIED MAIL

March 28, 2003

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

Ocean Harbor House Homeowners Association
Attn. Nicole Cartier, President
125 Surf Way, Suite 445
Monterey, CA 93940

Subject: Coastal Act Violation File No. V-3-01-001

Property Location: Seaward of Ocean Harbor House
Condominiums, Surf Way, Monterey, Monterey
County (APNs 011-441-029, 011-441-040).
This area is in the coastal zone and within the
Commission's area of original jurisdiction.

Alleged Coastal Act Violation: Violation of the terms and conditions of
Coastal Development Permit Amendment No.
3-99-90-A1.

Dear Ms. Cartier:

Pursuant to the requirements of California Code of Regulations Title 14, Section 13181(a), I am writing to inform the Ocean Harbor House Homeowners Association (OHHHA) of my intent to commence a cease and desist order proceeding against OHHHA to resolve the coastal development permit (CDP) violations referenced above. Violation of the terms and conditions of a previously approved CDP can subject the violator to orders, penalties and other legal remedies.

Description of Coastal Act Violation

The basis for this enforcement action is OHHHA's violation of the terms and conditions of CDP Amendment No. 3-99-90-A1 issued by the Commission on January 31, 2002. The Amendment authorized: (1) an extension until November 1, 2002 of a deadline for removal of a temporary rip-rap bluff stabilization

structure originally installed under Emergency CDP No. 3-98-116-G and Administrative CDP No. 3-99-090, and (2) implementation of sand moving/berming activities. The Special Conditions of the Amendment clearly require the removal of the temporary rip-rap structure by November 1, 2002. Special Condition 1(a) of the Amendment states:

Failure to remove the temporary rip-rap structure by November 1, 2002, unless otherwise approved by the Commission, shall be considered a violation of the Coastal Act and subject to enforcement action and potential civil penalties pursuant to Chapter 9, Article 2 of the Coastal Act.

Furthermore, Special Condition 2 sets out a timeline for submittal of a project description and environmental review and a CDP application for a permanent solution to protect the condominium complex. Special Condition 2(a) requires OHHHA to submit to the Executive Director and the City of Monterey by February 1, 2002: (1) the plans and description of the resolution proposed by OHHHA, (2) a thorough analysis of the full range of alternatives considered in the selection of the proposed solution, and (3) a complete assessment of the environmental impacts posed by the project. Special Condition 2(b) requires OHHHA to submit to the Commission by April 1, 2002, a complete CDP application for a permanent solution. Finally, Special Condition 2 requires the OHHHA to completely remove the temporary rip-rap structure by November 1, 2002.

To date, the temporary rip-rap structure approved under the emergency and administrative permits over four years ago is still in place even though it is now four months beyond the deadline for removal and OHHHA has not even submitted a complete CDP application to the Commission for a permanent solution. Special Condition 2 of CDP Amendment No. 3-99-090-A1 clearly states:

Failure to submit the required materials by the specified dates, unless extended by the Executive Director for good cause, shall be grounds for the Executive Director to require immediate removal of the temporary rip-rap structure.

In addition, the temporary rip-rap structure appears to be having an adverse impact on the shoreline by accelerating erosion of the beach seaward of the structure as a result of wave action, causing end erosion at either end of the rip-rap structure, and blocking the sand supply to the beach from the bluff behind the temporary rip-rap structure.

Cease and Desist Order Proceeding

Section 30810 of the Coastal Act provides that "(a) If the Commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that... (2) is inconsistent

with any permit previously issued by the Commission, the Commission may issue an order directing that person or governmental agency to cease and desist." Section 30810 also provides that a 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 CDP.

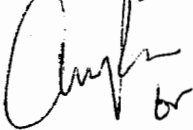
The cease and desist order will require OHHHA to resolve the Coastal Act violation by fully complying with the terms and conditions of CDP Amendment No. 3-99-90-A, which requires the removal of the temporary rip-rap structure from the beach. The cease and desist order will be effective upon its issuance by the Commission.

Please be advised that if the Executive Director or the Commission issues a cease and desist order, Section 30821.6(a) of the Coastal Act authorizes the Commission to seek monetary daily penalties for any intentional or negligent violation of the 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.

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 May 6-9, 2003 in Monterey. In accordance with California Code of Regulations Title 14, Section 13181(a), OHHHA has the opportunity to respond to staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. The completed Statement of Defense must be received by this office no later than April 17, 2003.

If you have any questions regarding the completion of the Statement of Defense or this Notice or if you would like to discuss resolution of this matter, please contact Headquarters Enforcement Officer Chris Darnell at 415-904-5295.

Sincerely,



PETER M. DOUGLAS
Executive Director

Enclosure

cc: Lisa Haage, Chief of Enforcement
Amy Roach, Deputy Chief Counsel

Nancy Cave, Northern California Enforcement Supervisor
Anthony J. "Bud" Carney, California Land Planning

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
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**CONSENT CEASE AND DESIST ORDER NO. CCC-03-CD-04****1.0 TERMS AND CONDITIONS**

Pursuant to its authority under Public Resources Code Section 30810, the California Coastal Commission hereby orders and authorizes Ocean Harbor House Homeowners Association, its members and staff (hereinafter referred to as "Respondent") to cease and desist from undertaking or maintaining on the Property identified in section 2.0 development that violates the terms and conditions of Coastal Development Permit (CDP) Amendment No 3-99-090-A1. Accordingly, Respondents shall take the following actions in the manner specifically required by this consent cease and desist order (hereinafter referred to as "Consent Order"). By its execution of this Consent Order, Respondent agrees to comply with terms and condition contained herein.

- 1.1 Within 45 days of the City of Monterey's Local Discretionary Approval of Respondent's permanent shoreline protection solution Respondent shall submit to the Executive Director the additional materials necessary to complete CDP Application No. 3-02-024. A description of the missing materials was provided in a letter from Commission staff to Respondent's agent, Anthony J. "Bud" Carney dated April 25, 2002. A final copy of the environmental report shall also be submitted with the CDP application.
- 1.2 Within 45 days of the City of Monterey's Local Discretionary Approval of Respondent's permanent shoreline protection solution, Respondent shall submit to the City of Monterey and the Executive Director a plan for the removal of the existing temporary riprap structure from the beach and disposal outside of the coastal zone. The plan shall consist of a description of the removal of the riprap and measures to minimize disturbance to the bluff, the tidal zone, and the adjacent dune system, including any dune vegetation. The plan must also specify where the riprap will be disposed of.
- 1.3 Removal of the temporary riprap structure should be timed so as to be consistent with the sequencing necessary for replacement of the temporary riprap structure with a permanent shoreline protection solution approved by the Commission and the City of Monterey. In any event, however, Respondent shall carry out the complete removal of the temporary riprap structure according to the plan

approved by the City of Monterey and the Executive Director by no later than October 1, 2004.

- 1.4 Within 30 days of the completion of the removal of the temporary riprap structure, Respondent shall provide to the Executive Director photographic evidence that the temporary riprap structure has been removed.

2.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of this Consent Order is described as follows:

Ocean Harbor House Condominiums, 1 Surf Way, City of Monterey, Monterey County (APNs 011-441-029, 011-441-040)

3.0 PERSON SUBJECT TO THIS ORDER

Persons subject to this Consent Order consist of the membership and staff of Ocean Harbor House Homeowners Association.

4.0 DESCRIPTION OF COASTAL ACT VIOLATION

Failure to comply with the terms and conditions of CDP Amendment No. 3-99-090-A1, which required submission of a complete CDP application for a permanent shoreline protection solution by April 1, 2002, and removal of a temporary riprap structure by November 1, 2002. It is acknowledged that a portion of the riprap in the vicinity of the temporary riprap structure is owned by the City of Monterey and not a part of said temporary structure.

5.0 COMMISSION JURISDICTION

The City of Monterey does not have a certified LCP, thus all development within the coastal zone must receive a CDP from the Commission. The City of Monterey, however, has jurisdiction over the land use permit required to carry out development on its property. The Commission is issuing this Consent Order pursuant to authority provided in Section 30810 of the Coastal Act.

6.0 STATEMENT OF DEFENSE

In light of the intent of the parties to resolve this Coastal Act violation through settlement, Respondent agrees to waive its right to assert a statement of defense pursuant to California Code of Regulations Title 14, Section 13181.

7.0 HEARING

In light of the intent of the parties to resolve this Coastal Act violation through settlement, Respondent agrees to waive its right to a public hearing before the Commission under California Code of Regulations Title 14, Section 13185 for the purpose of contesting the legal and factual basis, terms and issuance of this Consent Order, including the allegations of Coastal Act violations contained in the notice of intent to issue a cease and desist order dated March 28, 2003.

8.0 FINDINGS

This Consent Order is issued on the basis of the findings adopted by the Commission on May 7, 2003 as set forth in the attached document entitled "Findings for Consent Cease and Desist Order No. CCC-03-CD-04," and exhibits attached thereto.

9.0 EFFECTIVE DATE

This Consent 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.

10.0 INSPECTIONS

Respondents hereby grant Commission staff access at all reasonable times to the property identified in section 2.0 for the purpose of overseeing and inspecting work being done pursuant to this Consent Order.

11.0 COMPLIANCE OBLIGATION

Strict compliance with this Consent Order by all parties subject thereto is required. Parties agree that if Respondent fails to comply with the requirements of Section 1.0 of this order, including any deadline contained in Section 1.0, Respondent shall pay stipulated penalties in the amount of \$1,000 per day for each day in which such compliance failure persists. Respondent shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties. Nothing in this section or this order shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Section 30821.6, 30822, and 30820 as a result of the lack of compliance with the Consent Order and for the underlying Coastal Act violation described herein.

12.0 EXTENSION REQUESTS

If Respondent is unable to comply with the requirements of Section 1.3 of this Consent Order, including any deadlines contained therein, through no fault of Respondent, Respondent may request and the Executive Director may grant, for good cause, extensions of the deadline for removal of the temporary riprap structure. In evaluating whether to grant extensions of the deadline, the Executive Director shall in good faith consider the progress Respondent has made in removing the temporary riprap structure and the extent to which Respondent has exercised due diligence in moving the permanent shoreline protection solution forward.

13.0 APPEAL AND STAY RESOLUTION

Persons against whom the Commission issues a cease and desist order have the right to seek a stay of the order pursuant to Coastal Act Section 30803(b). The Commission and Respondent, however, agree that this Consent Order settles all unresolved issues related to Respondent's Coastal Act violation. Accordingly, Respondent agrees to waive whatever right it may have to challenge in a court of law the legal basis, issuance and enforceability of this cease and desist order.

14.0 GOVERNMENT LIABILITY

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Coast or their agents in carrying out activities pursuant to this Consent Order. Coast acknowledges and agrees (a) that the site may be subject to hazards from waves, storm waves, landslide, erosion and earth movement; (b) to assume the risks to the property that is the subject of this Consent Order and damage from such hazards in connection with carrying out activities pursuant to this Consent Order; and (c) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents and employees for injury or damage from such hazards.

15.0 SUCCESSORS AND ASSIGNS

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

Consent Cease and Desist Order CCC-03-CD-04
May 7, 2003
Page 5

16.0 MODIFICATIONS AND RESCISSION

This Consent Order may be modified or rescinded only in accordance with the standards and procedures set forth in section 13188(b) of the Commission's administrative regulations, and with the consent of both parties.

17.0 GOVERNING LAW

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

18.0 LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing in this Consent 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 Consent Order.

19.0 INTEGRATION

This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this Consent Order.

20.0 STIPULATION

Respondent and its officers and employees attest that they have reviewed the terms of this Consent Order, understand that its consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

Nicole Cartier, President
Nicole Cartier, President
Ocean Harbor House Homeowners Association

April 24, 2003
Dated

Peter M. Douglas, Executive Director
California Coastal Commission

Dated

