

CALIFORNIA COASTAL COMMISSION

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**W-6**

Staff Report: October 1, 2004
Hearing Date: October 13, 2004
Staff: CLD-SF

STAFF REPORT FOR COMMISSION CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-04-CD-10

RELATED VIOLATION FILE: V-4-02-051

PROPERTY DESCRIPTION: 19061 Pacific Coast Highway, Malibu, Los Angeles County (APN 4449-003-027). This property fronts onto Topanga Beach.

PROPERTY OWNER: David Harner

VIOLATION DESCRIPTION: Maintaining development without a coastal development permit in violation of the requirements of Coastal Development Permit No. 5-83-456 (Friedman) and in violation Coastal Act. The unpermitted development consists of a locked gate, wooden stairway, part of a timber bulkhead on the beach, and concrete caissons that form a return wall. This unpermitted development is located in vertical public access easement.

SUBSTANTIVE DOCUMENTS: Staff Report for Coastal Development Permit No. 5-83-456 (Friedman) (EXHIBIT A); Irrevocable Offer to Dedicate (Los Angeles County Recorded Document No. 84 199298) (EXHIBIT B)

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

I. Summary

David Harner (hereinafter "Harner") is the owner of the property at 19061 Pacific Coast Highway in Malibu, Los Angeles County (hereinafter "Subject Property") (See Map, EXHIBIT C). The Subject Property contains unpermitted development that is blocking a vertical public access easement that runs along the western boundary of the property extending from Pacific Coast Highway to the mean high-tide line. The unpermitted development in the easement consists of a locked gate at the landward entrance to the easement, a wooden stairway, part of a timber bulkhead on the beach, and concrete caissons that form a return wall (See Photographs, EXHIBIT D). The property was purchased with the recorded irrevocable offer-to-dedicate (OTD) the public access easement in place and the easement specifies that the OTD shall run with the land binding successors and assigns of the applicants or landowners (EXHIBIT B).

In February 1984 the previous property owner (Dorothy Freidman) recorded the OTD in compliance with the requirements of Special Condition 2 of Coastal Development Permit (CDP) No. 5-83-456, which authorized construction of the single-family residence on the property. The unpermitted development described above is not authorized by CDP No. 5-83-456 and does not comply with the approved plans for the house. Although the unpermitted development was installed by Friedman, maintenance of the unpermitted development continues to be a violation of the Coastal Act and a violation of CDP No. 5-83-456, which also constitutes a Coastal Act violation. On June 10, 2004, Access For All, a California non-profit organization, recorded a Certificate of Acceptance of the OTD (EXHIBIT E) and the Executive Director has approved a management plan for the access way (EXHIBIT F).

This proposed Cease and Desist Order (CDO) would require Harner to cease and desist from maintaining the unpermitted development in the easement and upon notification by Commission staff, to remove all of the unpermitted development except any portion identified in an approved plan for improvements to the easement as development that may remain.

II. Hearing Procedures

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

For a CDO hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the

record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

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

III. Motion

MOTION 1: I move that the Commission issue Cease and Desist Order No. CCC-04-CD-10 pursuant to the Staff recommendation and Findings.

Staff Recommendation of Approval:

Commission staff recommends a **YES** vote. Passage of the motion results in adoption of the following resolution and findings and the issuance of Cease and Desist Order No. CCC-04-CD-10. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to issue Cease and Desist Order:

The Commission hereby issues Cease and Desist Order No. CCC-04-CD-10 set forth below and adopts the proposed findings set forth below on the grounds that Harner is maintaining development without a coastal development permit and in direct conflict with the terms of the CDP and recorded OTD, and thus has violated the Coastal Act.

IV. Proposed Findings

A. Coastal Act Authority

This CDO is being issued pursuant to Section 30810 of the Coastal Act, which provides in relevant parts:

- (a) If the Commission, after public hearing, determines that any person... has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (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.*
- (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.*

B. Unpermitted Development

Coastal Act Section 30600(a) requires that any person wishing to undertake development in the coastal zone shall obtain a CDP from the Commission. "Development" is defined in Section 30106 of the Coastal Act as "on land, in or under water, the placement or erection of any solid material or structure;" and "construction, reconstruction, demolition, or alteration of the size of any structure." The unpermitted development in the easement consists of a locked gate at the landward entrance to the easement, a wooden stairway, part of a timber bulkhead on the beach, and concrete caissons that form a return wall. The unpermitted development blocks an easement that provides public access from Pacific Coast Highway to the shoreline. Thus, pursuant to CCR, Title 14, Article 5, Section 13166, even if Harner had applied for an amendment to authorize the unpermitted development after-the-fact, the Executive Director would be required to reject the application because such an amendment would "lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted."

C. Irrevocable Offer to Dedicate Vertical Public Access Easement

In August 1983, the Commission approved CDP No. 5-83-456 for construction of a single-family residence on an oceanfront lot in Malibu. Special Condition 2 of the permit required the applicant, Friedman, to record an irrevocable offer-to-dedicate a 3-foot wide vertical access easement from Pacific Coast Highway to the shoreline. On February 16, 1984, the offer was recorded as Instrument No. 84 199298 in the Los Angeles County Records Office. The Offer provides that the easement shall "provide public access to the shore line." As noted, the unpermitted development blocks the easement and prevents the public from using the access way. The unpermitted development in the easement is clearly inconsistent with the intent of the Commission in CDP No. 5-83-456 to establish a vertical public access way from Pacific Coast Highway to shoreline.

D. Background and Administrative Resolution Attempts

(1) Initial Contacts

On May 12, 2003, Commission staff sent Harner a Notice of Violation regarding the unpermitted development in the easement. The notice stated that the unpermitted development is a Coastal Act violation and could not be authorized through an amendment to CDP No. 5-83-456 because the development is inconsistent with the Chapter 3 policies of the Coastal Act and the conditions of the permit. The letter notes that CCR, Title 14, Article 5, Section 13166 requires the Executive Director to reject an application for an amendment to a previously approved CDP if such an amendment would lessen or avoid the intended effect of any condition of that permit. In this case the unpermitted development in the easement clearly prevents it from being used as a vertical public access way to get to and from the shoreline from Pacific Coast Highway, and allowing the unpermitted development to remain would lessen and avoid the intended effect of Special Condition 2 of CDP No. 5-83-456. The letter directed Harner to remove the unpermitted development from the easement by June 11, 2003.

No response to the Notice of Violation was received from Harner. Therefore, on January 30, 2004, Staff sent a second letter to Harner regarding the Coastal Act violations on the Subject Property. The letter requested that Harner respond by March 1, 2004 and indicate whether he had removed the unpermitted development or was willing to do so.

On June 15, 2004, Staff still had not received any response from Harner. Therefore, Staff sent Harner a Notice of Intent to Issue a Cease and Desist Order (EXHIBIT G). In the notice Staff noted that the development in the easement was unpermitted, was inconsistent with the approved plans for CDP No. 5-83-456 and the Special Conditions attached to the permit, and therefore constituted

violations of the Coastal Act. Staff informed Harner that the OTD had been accepted by Access for All on June 10, 2004 and that the unpermitted development must be removed so that improvements can be made to the easement and it can be opened for public use. Staff indicated a desire to work cooperatively with Harner to resolve the Coastal Act violations on the Subject Property and open the public access way. In accordance with the requirements of the timelines set forth in CCR, Title 14, Article 5, Section 13181 Staff directed Harner to return the completed statement of defense form by July 6, 2004 if he opposed issuance of the CDO. Lastly, Staff indicated its intention to schedule a public hearing on the CDO at the August 2004 Commission meeting.

(2) Telephone Call of July 8, 2004

On July 8, 2004, Harner telephoned Staff to discuss the Notice of Intent to Issue a CDO dated June 15, 2004. During the call, Harner expressed several concerns regarding opening the public access way and the potential impacts of improvements to the easement that Access for All is contemplating:

- a. Harner expressed concern that the wave uprush under his house and in the easement during high tide and storm events could be hazardous to pedestrians using the public access way.
- b. Harner expressed concern that a concrete stairway in easement would function as a ramp that would allow waves to wash over his return wall and under the Subject Property and damage his septic system.
- c. Harner expressed concern regarding the potential for crime and vandalism of the Subject Property due to the presence of the public access way adjacent to the front door of his house.
- d. Harner inquired about legal liability for the easement and expressed concern about the potential for vandalism of the Subject Property by people using the public accessway.
- e. Harner noted that the California Department of Transportation (hereinafter "Caltrans") owns a narrow strip of land nearby where a drainage culvert under Pacific Coast Highway drains onto the beach and suggested that it might be a more suitable location for public access way because it is adjacent to a bus stop.

Staff Responses:

- a. California Civil Code Section 846 provides that an owner of any estate or other interest in real property, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose. The code defines "recreational purpose" broadly, and specifically includes water sports, sightseeing, picnicking, nature study and viewing or enjoying science and natural sites. Furthermore, Signs could be posted at the entrance to the access way to caution pedestrians about the use of the access way during such times and under such conditions.
- b. Any design for public access improvements in the easement approved by the Executive Director would take into consideration protection of the Subject Property.
- c. Access for All has also proposed installing a time lock gate at the entrance to the access way that would automatically unlock and lock at sunrise and sunset.
- d. The holder and manager of the easement, Access for All, is responsible for the easement and is fully insured through a commercial policy with the Chubb Insurance Company.
- e. There is no space for a public access way at the Caltrans property. In addition, a public access stairway from Pacific Coast Highway to the beach directly in front of the outfall of the culvert would clearly be undesirable, inconsistent with the drainage of the culvert, and potentially hazardous when water is running through the culvert.

As noted elsewhere, Harner neglected to submit a statement of defense as required by CCR, Title 14, Article 5, Section 13181. Although he did not timely raise issues in a statement of defense, as a courtesy, Staff has provided legal and factual responses to some of the concerns raised by Harner in the July 8, 2004 telephone discussion.

Staff further notes, however, that the objections raised by Harner during the call were objections to the permit condition requiring recordation of the public access OTD, and the time for objecting to the condition ran in 1983 and such objection cannot be heard now. The law regarding this is well established and has been recently affirmed. The permit condition became final and binding in 1983 when Friedman failed to challenge them and accepted the permit benefits. Abundant case authority establishes that Harner is bound by the conditions of the 1983 permit and that they may not relitigate those permit conditions now. (See, e.g.,

Serra Canyon Company Ltd. v. California Coastal Commission (2004) 120 Cal.App.4th 663, *County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510 [terms and conditions of a land use permit run with the land]; *Ojavan Investors, Inc. v. California Coastal Commission* (1997) 24 Cal.App.4th 516, 527 [predecessors in interest cannot transfer any legal rights greater than they themselves possess and successors obtain property with the same limitations and restriction which bound their predecessors].)

(3) Subsequent Contacts

On July 15, 2004, Staff sent a letter to Harner following-up on the telephone discussion on July 8, 2004 and a voicemail message left for him on July 9, 2004 (EXHIBIT H). Staff suggested that Harner consult an engineer regarding the location of the septic tank under his house and the feasibility of constructing a concrete stairway in easement. Staff also enclosed another copy of the Notice of Intent to Issue a Cease and Desist Order and a statement of defense form, a copy of the Approved Management Plan for the easement, and information about Access for All, the non-profit corporation that accepted the OTD. In addition, Staff indicated that Staff had rescheduled the Commission hearing on the proposed CDO at the Commission meeting scheduled for September 8-10, 2004 in Eureka and that Staff was extending the deadline for submitting his statement of defense to August 16, 2004.

Despite the extension of the deadline, Harner had not submitted a statement of defense by September 3, 2004. Staff telephoned Harner and left a message on his voicemail stating that Staff had not received a statement of defense by the August 16, 2004 deadline and that the Commission hearing on the CDO had been postponed until the October 2004 Commission meeting. Staff requested that Harner contact Staff regarding the proposed CDO, however, no response was received.

On September 27, 2004, Staff contacted Harner on the telephone to confirm that he had received the Notice of Intent to Commence Cease and Desist Order Proceedings and other correspondence from Staff. Harner stated that he wanted to submit a statement of defense even though the deadline had long since passed and that he was trying to hire an agent. Staff indicated that it would accept his statement of defense if it was submitted by September 30, 2004. Despite this final extension, which required this report to be sent in the "Late Mailing," as of September 30, 2004 no statement of defense from Harner had been received.

E. Determinations of Fact

- (1) On August 25, 1983 the Commission issued CDP No. 5-83-456. Special Condition 2 of the CDP required Friedman to record an Irrevocable Offer to Dedicate a 3-foot wide vertical public access easement along the western boundary of the Subject Property extending from Pacific Coast Highway to the shoreline. In February 1984, Friedman recorded the OTD. The OTD explicitly provides that the offer shall run with the land, binding all successors and assigns of the applicants and landowners. In 1997 Harner purchased the Subject Property, which was subject to the requirements of the CDP and the recorded OTD. On June 10, 2004, Access for All recorded a Certificate of Acceptance of the Irrevocable Offer to Dedicate.
- (2) The development both lacks a CDP, which is a violation of the Coastal Act, and is inconsistent with the approved plans for CDP No. 5-83-456 and thus a violation of the permit, which is also a violation of the Coastal Act.
- (3) Harner has maintained development without a CDP in a portion of his property that was subject to an irrevocable offer-to-dedicate a 3-foot wide vertical public access easement along the western boundary of the property extending from Pacific Coast Highway to the mean high tide line.
- (4) The maintenance of development that is blocking a public access easement on the Subject Property is a violation of the terms of CDP No. 5-83-456 (Friedman), which is also a violation of the Coastal Act.

F. Violators' Defenses and Commission's Response

As of the date of this report, Harner has not submitted the statement of defense form setting forth his response to Staff's allegations as set forth in the June 15, 2004 Notice of Intent to Commence Cease and Desist Order Proceedings. The Notice of Intent established a deadline of July 6, 2004 for submittal of the statement of defense form. Staff subsequently extended this deadline to August 16, 2004. Since the completion of the statement of defense form is mandatory, Harner has failed to raise and preserve any defenses that he may have.

The State legislature explicitly granted the Commission the right to "adopt or amend...rules and regulations to carry out the purposes and provisions of [the Coastal Act], and to govern procedures of the Commission." (Pub. Res. Code Section 30333.) Relying on such powers, the Commission promulgated Section 13181 entitled "Commencement of Cease and Desist Order Proceeding before the Commission," which became operative on September 3, 1992. (See CCR,

Title 14, Section 13181, and historical comments thereto.) Subdivision (a) of Section 13181 provides in relevant part:

"If the executive director believes that the results of an enforcement investigation so warrant, he or she shall commence a cease and desist order proceeding before the commission by providing any person whom he or she believes to be engaging in development activity as described in Section 30810(a) of the Public Resources Code with notice of his or her intent to do so...The notice of intent shall be accompanied by a "statement of defense form" that conforms to the format attached to these regulations as Appendix A. The person(s) to whom such notice is given shall complete and return the statement of defense form to the Commission by the date specified therein, which date shall be no earlier than 20 days from transmittal of the notice of intent." (CCR, Title 14, Section 13181, subd. (a); emphasis added.)

The statement of defense form requirement serves an important function. (See, e.g., *Horack v. Franchise Tax Board* (1971) 18 Cal.App.3d 363, 368) ("Where administrative machinery exists for resolution of differences, such procedures must be "fully utilized and exhausted"). The Commission's cease and desist hearings are "quasi-judicial." Thus, if the Commission is to make findings of fact and conclusions at law in the form of an adopted Staff Report, Harner must inform the Commission, precisely and in writing, which defenses he wishes the Commission to consider. The statement of defense form has six categories of information that Harner should have provided to the Commission: (1) facts or allegations contained in the cease and desist order or the notice of intent that are admitted by respondent; (2) facts or allegations contained in the cease and desist order or the notice of intent that are denied by respondent; (3) facts or allegations contained in the cease and desist order or the notice of intent of which the respondent has no personal knowledge; (4) facts and/or a description of any documents, photographs or other physical evidence that may exonerate the respondent; (5) any other information, statement, etc. that respondent desires to make; and (6) a listing of any documents, exhibits, declarations or other materials that are being attached by respondent to the statement of defense form.

The Commission should not be forced to guess which defenses Harner wants the Commission to consider and which defenses they may have raised informally prior to the hearing but now wish to abandon. Section 13181, subdivision (a) is specifically designed to serve this function of clarifying the issues to be considered and decided by the Commission. (See *Bohn v. Watson* (1954) 130 Cal.App.2d 24, 37 ("It was never contemplated that a party to an administrative hearing should withhold any defense then available to him or make only a perfunctory or 'skeleton' showing in the hearing...The rule compelling a party to present all legitimate issues before the administrative tribunal is required...to

preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play").)

Despite this, as a courtesy, Staff has attempted to address any potential issues or concerns expressed by Harner herein (See Section (4)d.

V. California Environmental Quality Act

The Commission finds that issuing an order to cease and desist from maintaining unpermitted development in violation of the Coastal Act and CDP No. 5-83-456, and to remove of such development is consistent with the requirements of the California Environmental Quality Act (CEQA) of 1970 and will have no significant adverse effects on the environment, within the meaning of CEQA. The proposed CDO and RO are exempt from the requirements for the preparation of an environmental impact report based upon sections 15060(c)(3), 15061(b)(2), 15307, 15308, and 15321 of CEQA Guidelines.

VI. Exhibits

- A. Staff Report for Coastal Development Permit No. 5-83-456 (Friedman), August 25, 1983.
- B. Irrevocable Offer to Dedicate, Los Angeles County Recorded Instrument No. 84 199298, February 16, 1984.
- C. Map showing location of the Subject Property.
- D. Photographs showing development blocking the public access easement taken by Staff on March 11, 2004 and April 14, 2004.
- E. Certificate of Acceptance and Acknowledgement by California Coastal Commission of Acceptance of Irrevocable Offer to Dedicate, Los Angeles County Recorded Instrument No. 04 1490729.
- F. Public Vertical and Lateral Access Easement Management Plan, June 5, 2004, Access for All.
- G. Notice of Intent to Commence Cease and Desist Order Proceeding, June 15, 2004.
- H. Letter from Staff to David Harner dated July 15, 2004.

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

5-83-456

FILED: 7-12-83
49TH DAY: 8-30-83
180TH DAY: 1-8-84
STAFF REPORT: 8-12-83
MEETING OF: 8/23-26/83
STAFF: LF - C

*Approved per
Staff 8/25/83*

STAFF REPORT

ADMINISTRATIVE ITEM

APPLICATION NUMBER: 5-83-456 (Friedman)
APPLICANT: Dottie Friedman AGENT: Kenneth Moulder
PROJECT LOCATION: 19016 Pacific Coast Highway, Malibu, Los Angeles
PROJECT DESCRIPTION: Construction of a three story, 2602 square foot,
single-family residence on a vacant oceanfront lot.

LOT AREA	<u>2,550 sq.ft</u>	LANDSCAPE COVERAGE	<u>N/A</u>	PROJECT DENSITY	<u>N/A</u>
BLDG. COVERAGE	<u>1,502 sq.ft</u>	ZONING	<u>R-3-3000</u>	HEIGHT ABOVE AVERAGE FINISH	<u>0.</u>
PAVEMENT COVERAGE	<u>N/A</u>	PLAN DESIGNATION	<u></u>	GRADE	<u>...35.ft....</u>

LOCAL APPROVALS RECEIVED Approval in concept in Los Angeles County, Approval in
Concept Department of Health Services.

EXECUTIVE DIRECTOR DETERMINATION. Pursuant to PRC Sec. 30604, the Executive Director hereby issues a permit for the proposed development, subject to Standard Conditions adopted by the Commission and Special Conditions below, on the grounds that, as conditioned, the development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act. Any development located between the nearest public road and the sea is in conformity with the public access and public recreation policies of Chapter 3.

Cease and Desist Order
CCC-04-CD-10 (Harner)

I. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. 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 on which the Commission voted on the application. 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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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.

II. SPECIAL CONDITIONS

1. Lateral Access. Prior to the transmittal of a permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission, irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The easement shall include all area from the mean high tide line landward to the dripline of the most seaward extent of the structure. The document submitted for recording shall include a record of survey illustrating the easement and shall include legal descriptions of both the applicant's entire parcel and the easement area. Such offer of dedication shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicants or landowners. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Vertical Access. Prior to transmittal of a permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public access to the shoreline. Such easement shall be described as from Pacific Coast Highway along the western property line to the mean high tideline. The easement shall be 3 feet in width. Said easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicants or landowners. The offer of dedications shall be irrevocable for a period of 21 years, such period running from the date of recording.

3. Applicant's Assumption of Risk. Prior to the issuance of a coastal permit, the applicant shall submit to the Executive Director an executed deed restriction for recordation free of prior liens and encumbrances, except for tax liens, that binds the applicant and all successors in interest to the development property. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director and shall state the following:
 - a. The applicant has requested coastal development period number 5-83-456 from the California Coastal Commission to authorize the construction of a single family residence.
 - b. The applicant has retained a registered civil engineer and certified engineering geologist to study the site for the presence of seismic, geologic, erosion, wave runup, and other hazard(s).
 - c. The expert's observations, conclusions and recommendations are contained in a report entitled Updated Geologic and Soils Engineering Report Plan Review and Revised Foundation Recommendations, dated March 8, 1983 by Kovacs-Byer-Robertson, Inc. and Foundation Investigation Proposed Single Family Residence dated July 28, 1977 by Kovacs-Byer- and Assoc., Inc.
 - d. Based upon information contained in the above-referenced reports and the findings of the Coastal Commission in granting the permit, the applicant understands that the site is subject to extraordinary hazard from ground shaking from a seismic event including liquefaction and tsunami, landslides, floods, creep, consolidation and surficial failure, and scour and erosion from wave runup.

- e. By accepting the permit, the applicant recognizes the risk he is taking and assumes the liability for harm to life or damage to property that may result from the hazards described in (d) above due to pre-existing conditions, natural causes, or the applicant's development activities.
 - f. The applicant agrees to waive unconditionally any potential claim of liability against and to hold harmless the California Coastal Commission and any other public agency which authorized this development for any damage, loss of property or life which may arise as a result of the design, the construction or the placement of materials on the development property as authorized by this coastal permit, excepting however, any claims of indemnification that the applicant may assert under the terms of any existing agreement with a public agency.
 - g. The applicant understand that construction in the face of these known hazards may make him ineligible for public disaster funds or loans for the repair, replacement or rehabilitation of the property or development in the event of seismic ground shaking, floods, landslides, creep, consolidation or surficial failure, or scour and erosion from wave run-up.
4. Revised Plans. Prior to the transmittal of the permit, the applicant shall submit revised plans indicating no walls or other structures or landscaping which would block the area identified as the vertical access easement in Condition 2 above.
- III. Additional Findings. The Executive Director determines and finds as follows:
- A. Project Description. The applicant proposes to construct a three-story, 2,602 square foot single family residence on a 2,550 square foot vacant oceanfront lot at Las Tunas Beach in Malibu. The structure includes a bulkhead located 13 feet to the oceanside of the adjoining property bulkhead to the west, and a septic system.
 - B. Public Access. Sections 30210, 30211 and 30214 of the Coastal Act provide that maximum public access be provided and that development not interfere with the public's right of access to the sea. In addition, Section 30212 of the Act provides, in parts, that:

(a) Public access from the nearest public roadway to shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

The applicant proposes to develop a single family residence on an oceanfront parcel on Las Tunas Beach.

The development as proposed will result in commitment of an beachfront area to private residential use. Section 30212 requires that public access be provided in new development except for exceptions set forth in 30212(a)(1-3) In this case those exceptions do not apply. The Commission has concluded in past actions that provision of lateral access is necessary to assure maximum access to and along the shoreline in this area. Condition 1 to provide lateral public access is therefore required to offset the burden of private development on the public's ability to use the shoreline.

The nearest vertical public access easement is located approximately one half mile away at Topanga State Beach. The lack of nearby vertical access does not allow the public reasonable and maximum access to the shoreline. Provision of vertical access as provided by Condition 2 is required by Section 30212 in order to maximize access and mitigate for the burden the proposed development places on the public's ability to reach the shoreline.

However, as proposed the project would also construct a wall extending from the structure to the property line in the area required for the vertical access easement thus effectively precluding use of the easement. Condition 4 is thus necessary to delete the wall from the proposed easement area in order to find the project consistent with Section 30212 of the Act.

In addition, the property is on a sand promontory. To the west, upcoast existing SFDs are generally developed on a common line. However downcoast to the east the existing structures have substantially varied setbacks on the oceanside and a vacant lot is immediately adjacent.

As proposed, the structure will be located with a setback more closely conforming to existing development pattern upcoast. In this case application of the stringline is not required to assure that development will not encroach substantially on beach area beyond existing development. Further, since structures downcoast are older and have greater setbacks, application of the stringline would result in greater restrictions on adjacent properties. Therefore, since development as proposed will not encroach further on the beach, the development as conditioned is consistent with the public access and recreation policies of the Act.

HAZARDS

The development is proposed on a sand promontory in an area subject to hazards from wave run up, scour and erosion. Damage to adjacent structures occurred from the past winter's heavy surf and high tides. The applicant's geotechnical report identifies potential hazards noting that scour and erosion of the highway fill slope on the site has occurred. A six to seven foot high vertical slope has been created by wave attack on site and the beach profile has been lowered. The report recommends measures to minimize risks from potential wave run-up hazards and scour which have been incorporated into the project.

At Section 30001.5 of the Coastal Act, the legislature has stated that one of the basic goals of the state for the coastal zone is to:

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

Given the fact that there is evidence that a geologic and erosion hazard exists in the area where this development is proposed, other sections of the Coastal Act regarding that specific hazard applies.

Section 30253 of the Coastal Act states, in part:

New development shall:

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

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

Under Section 30253 new development in areas of high geologic, flood, and fire hazard may occur so long as risks to life and property are minimized and the other policies of Chapter 3 are met. Likewise, new developments shall not interfere with the geologic integrity of natural landforms, shall be stable in and of themselves, and shall not require the construction of shoreline protective devices that would eventually alter natural landforms along bluffs and cliffs. The Coastal Act recognizes that new development may involve the taking of some risk, but require the Commission to establish the appropriate degree of risk acceptable for the proposed development. The Commission must also determine who should assume that risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

The geotechnical report has proposed mitigation measures incorporated into the project design including recommendations on foundation and lateral design, bulkhead construction, temporary cut slope stability and the design and location of the septic system and drainage controls.

The Commission notes that these structural solutions have been known to fail. For example, many geologic studies are based on the risks which might be caused by an "average event". An event of greater than average magnitude may very likely occur. Such an "extraordinary" event occurred in February, 1983, when a combination of high tides and stormy seas accelerated coastal erosion and inundated developments.

Although a structure may be engineered to withstand a certain statistical risk of harm, when the hazardous event actually does occur, it may not survive. The applicant's geotechnical report notes that, "Beachfront developments involve risk that are not found in conventional flatland developments and these risks can never be eliminated."

The applicant may decide that the economic benefits of development outweigh the risk of harm which may occur from the identified hazards. Neither the Commission nor any other public agency that permits the development should be held liable for the applicant's decision to develop. Therefore, the applicant is required to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the decision to develop.

The orderly use of the State's limited economic resources also requires the developer to assume the economic burdens in case the hazard occurs, and not to seek public relief. The Commission is aware that local, state, and federal programs may provide assistance to property owners and others who suffer from the types of hazard found on the site. These programs may contain policies which disallow disaster relief in certain cases.

The Comptroller General recently published a report on the National Flood Insurance Program in response to a request by a Senate subcommittee (publication number #GAO/CED-82-105). The General Accounting Office... "observed also that providing flood insurance and other Federal assistance in extremely hazardous coastal areas subject to wave damage may be undesirable public policy because of the high potential for loss of life and destruction of property." On page 14, the report stated, "The policy question involved is whether the Federal Government, through its assistance programs and tax laws, should share in the risks or whether individuals who build in coastal high hazard areas in the future should assume the full risks of losses."

This is the same policy question addressed by Section 30001.5 of the Coastal Act. The Commission must assure that the economic needs of the people of the State are not prejudiced by permitting a structure to be built that foreseeably requires repairs at public expense if disaster relief is granted.

The permit Condition 3 notifies the applicant of him/her potential ineligibility for public disaster relief funds and thereby encourages him/her to seek insurance from private indemnity companies. The applicant may find that private industry will carefully analyze the probability and degree of harm; it may be reluctant to insure the proposed development, or do so at a considerable cost. This business judgment would encourage the developer to consider alternatives to the proposed development to minimize the risks to life and property created by the development.

Assuming a decision by a private insurance company not to insure, or to do so at a cost that is infeasible to the applicant, that would constitute considerable evidence that the risks to life and property created by the proposed development have not been minimized. In that case, the development would not be consistent with the mandate of Section 30253 of the Coastal Act. Even though the Commission had granted the applicant the coastal permit, the applicant may choose not to proceed with the development given the knowledge that risks to his investment have not been minimized.

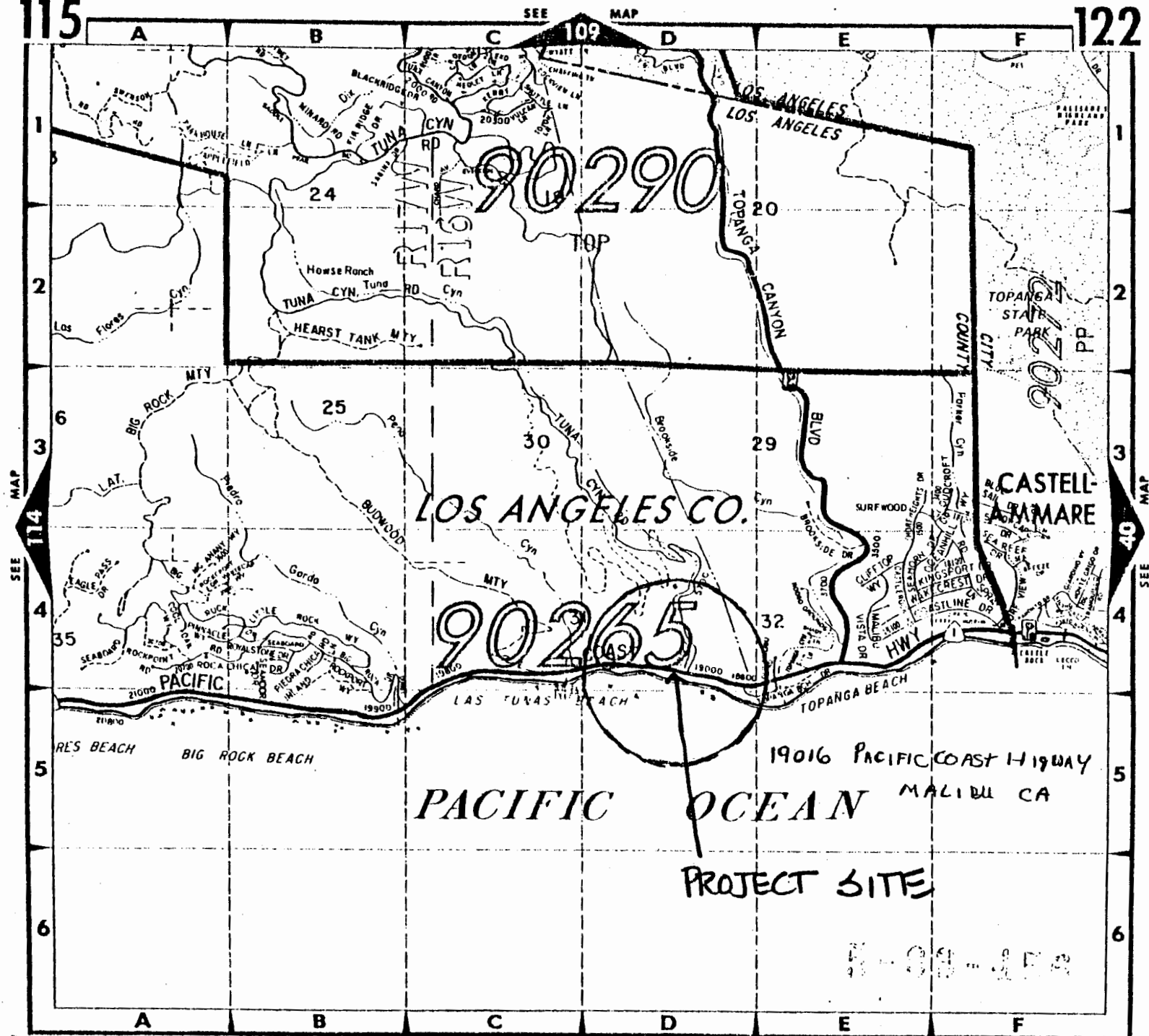
The Commission finds that this condition is consistent with, and necessary to carry out, one of the State's basic goals for the coastal zone, i.e.,

consideration of the economic needs of the people of the State. The condition is also needed to implement Section 30253 of the Coastal Act.

115

SEE MAP

122



Cease and Desist Order
CCC-04-CD-10 (Harner)

Exhibit A 9 of 9

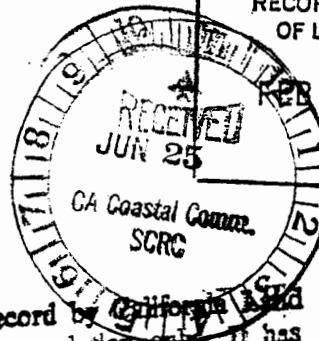
84 199298

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

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA

16 1984 AT 8 A.M.

Recorder's Office



FREE S

This document filed for record by California State
This Company as an accommodation only. It has
not been examined as to its execution or as to its
effect upon the title.

IRREVOCABLE OFFER TO DEDICATE

I. WHEREAS, (1) Dorothy J. Friedman is/are
the record owner(s), hereinafter referred to as "owner(s)", of the real
property located at (2) 19016 Pacific Coast Highway, Malibu, County,
of Los Angeles

California, legally described as particularly set forth in attached (3)
Exhibit A hereby incorporated by reference and hereinafter referred to as
the "subject property"; and

II. WHEREAS, the California Coastal Act of 1976 (hereinafter referred
to as the "Act") creates the California Coastal Commission (hereinafter
referred to as the "Commission") and requires that any coastal development
permit approved by the Commission or local government as defined in Public
Resources Code Section 30109 must be consistent with the policies of the
Act set forth in Chapter 3 of Division 20 of the Public Resources Code; and

III. WHEREAS, the People of the State of California have a legal
interest in the lands seaward of the mean high tide line; and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the
owner(s) applied to the Commission for a coastal development permit for (4)
Construction of a three story, 2602 square foot, single family
Residence on a vacant ocean front lot
on the subject property; and

V. WHEREAS, a coastal development permit no. (5) 5-83-456 was

1 granted on (6) 25, August, 19 83 by the Commission in accordance
2 with the provisions of the Staff Recommendation and Findings (7) (Exhibit
3 B) attached hereto and hereby incorporated by reference, subject to the
4 following condition: (8) Vertical Access. Prior to transmittal of a
5 permit, the Executive Director shall certify in writing that the following
6 condition has been satisfied. The applicant shall execute and record a
7 document, in a form and content approved by the Executive Director of the
8 Commission, irrevocably offering to dedicate to an agency approved by the
9 Executive Director, an easement for public access to the shoreline. Such
10 easement shall be described as from Pacific Coast Highway along the
11 western property line to the mean high tideline. The easement shall be
12 3 feet in width. Said easement shall be recorded free of prior liens
13 except for tax liens and free of prior encumbrances which the Executive
14 Director determines may affect the interest being conveyed.

15
16 The offer shall run with the land in favor of the People of the State
17 of California, binding successors and assigns of the applicants or
18 landowners. The offer of dedications shall be irrevocable for a period
19 of 21 years, such period running from the date of recording.

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

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

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

1 California Coastal Act of 1976 and that therefore in the absence of such a
2 condition, a permit could not have been granted;

3 NOW THEREFORE, in consideration of the granting of permit no.
4 (9) 5-83-456 to the owner(s) by the Commission, the owner(s) hereby
5 offer(s) to dedicate to the People of California an easement in perpetuity
6 for the purposes of (10) Public access to the shore line

7
8
9 located on the subject property (11) Along the westerly property line to
10 the mean high tide line an easement three feet in width
11 and as specifically set forth by attached Exhibit C (12) hereby
12 incorporated by reference.

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

21 //

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1 Acceptance of the offer is subject to a covenant which runs with
2 the land, providing that any offeree to accept the easement may not abandon
3 it but must instead offer the easement to other public agencies or private
4 associations acceptable to the Executive Director of the Commission for the
5 duration of the term of the original offer to dedicate. The grant of
6 easement once made shall run with the land and shall be binding on the
7 owners, their heirs, and assigns.

8 Executed on this 3 day of January 1984, at Los Angeles
9 County, California.

10 Dated: January 13 1984

11 Signed Dorothy J. Friedman

12 Dorothy J. Friedman

13 Type or Print Name of Above

14 Signed _____

15 _____
16 Type or Print Name of Above
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84 199298

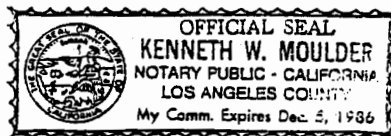
Cease and Desist Order
CCC-04-CD-10 (Harner)

Exhibit B 4 of 6

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

State of California,)
Los Angeles County)SS
County of Los Angeles)

On this 12 day of November 1984, in the year 1984, before me Kenneth W. Moulder, a Notary Public, personally appeared Doctor I. Friedman, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is subscribed to this instrument, and acknowledged that he/she/they executed it.



Kenneth W. Moulder
NOTARY PUBLIC IN AND FOR SAID COUNTY AND
STATE

84 199298

Cease and Desist Order
CCC-04-CD-10 (Harner)

Exhibit B 5 of 6

1 This is to certify that the Offer to Dedicate set forth above is
2 hereby acknowledged by the undersigned officer on behalf of the California
3 Coastal Commission pursuant to authority conferred by the California
4 Coastal Commission when it granted Coastal Development Permit
5 No. 5-83-456 on August 25, 1983 and the California
6 Coastal Commission consents to recordation thereof by its duly authorized
7 officer.

8 Dated: January 4, 1984

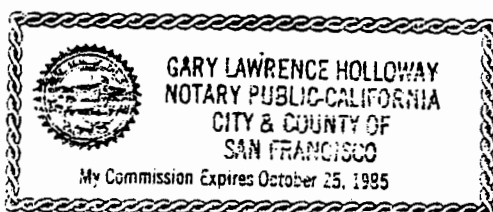
9 Cynthia K Long
10 CYNTHIA K LONG STAFF COUNSEL
11 California Coastal Commission

12
13 STATE OF California)
14)SS

15 COUNTY OF San Francisco)

16 On 4 January 1984, before me Gary Lawrence Holloway
17 a Notary Public, personally appeared Cynthia K. Long, personally
18 known to me to be (or proved to me on the basis of satisfactory evidence)
19 to be the person who executed this instrument as the Staff Counsel
20 TITLE

21 and authorized representative of the California Coastal Commission and
22 acknowledged to me that the California Coastal Commission executed it.



Gary Lawrence Holloway
Notary Public in and for said County and
State

Cease and Desist Order
CCC-04-CD-10 (Harner)

84 199298

EXHIBIT "A"

Legal Description:

Parcel 62, as shown on Licensed Surveyors Map filed in Book 26, Pages 43 and 44 of record of surveys, in the County of Los Angeles, State of California, in the office of the County Recorder of said County.

Also that portion of Lot 8, Section 31, Township 1 South, Range 16 West, San Bernardino Meridian, in said County, bounded Northerly by the center line of present highway improvement as the same appears on map attached to first amended and supplemental complaint filed in Case No. 352603, Superior Court of said County bounded Southerly by the Northerly line of said Parcel 62 bounded Westerly by the Northerly prolongation of the Westerly line of said Parcel 62 bounded Easterly by the Northerly prolongation of the Easterly line of said Parcel 62.

EXCEPT any portion of said land which at any time was title land which was not formed by the deposit of alluvion from natural causes and by imperceptible degrees.

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

FILED: 7-12-83
49TH DAY: 8-30-83
180TH DAY: 1-8-84
STAFF REPORT: 8-12-83
MEETING OF: 8/23-26/83
STAFF: LF - C

AUG 19 1983

STAFF REPORT
ADMINISTRATIVE ITEM

APPLICATION NUMBER: 5-83-456 (Friedman)
APPLICANT: Dottie Friedman AGENT: Kenneth Moulder
PROJECT LOCATION: 19016 Pacific Coast Highway, Malibu, Los Angeles
PROJECT DESCRIPTION: Construction of a three story, 2602 square foot,
single-family residence on a vacant oceanfront lot.

LOT AREA	<u>2,550 sq.ft</u>	LANDSCAPE COVERAGE	<u>N/A</u>	PROJECT DENSITY	<u>N/A</u>
BLDG. COVERAGE	<u>1,502 sq.ft</u>	ZONING	<u>R-3-3000</u>	HEIGHT ABOVE AVERAGE FINISH	<u>0</u>
PAVEMENT COVERAGE	<u>N/A</u>	PLAN DESIGNATION	<u>.....</u>	GRADE	<u>...35.ft.....</u>

LOCAL APPROVALS RECEIVED Approval in concept in Los Angeles County, Approval in
Concept Department of Health Services

EXECUTIVE DIRECTOR DETERMINATION. Pursuant to PRC Sec. 30604, the Executive Director hereby issues a permit for the proposed development, subject to Standard Conditions adopted by the Commission and Special Conditions below, on the grounds that, as conditioned, the development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act. Any development located between the nearest public road and the sea is in conformity with the public access and public recreation policies of Chapter 3.

84 199298

I. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. 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 on which the Commission voted on the application. 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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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.

II. SPECIAL CONDITIONS

1. Lateral Access. Prior to the transmittal of a permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission, irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The easement shall include all area from the mean high tide line landward to the dripline of the most seaward extent of the structure. The document submitted for recording shall include a record of survey illustrating the easement and shall include legal descriptions of both the applicant's entire parcel and the easement area. Such offer of dedication shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicants or landowners. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Vertical Access. Prior to transmittal of a permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public access to the shoreline. Such easement shall be described as from Pacific Coast Highway along the western property line to the mean high tideline. The easement shall be 3 feet in width. Said easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed,

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3. Applicant's Assumption of Risk. Prior to the issuance of a coastal permit, the applicant shall submit to the Executive Director an executed deed restriction for recordation free of prior liens and encumbrances, except for tax liens, that binds the applicant and all successors in interest to the development property. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director and shall state the following:
- a. The applicant has requested coastal development period number 5-83-456 from the California Coastal Commission to authorize the construction of a single family residence.
 - b. The applicant has retained a registered civil engineer and certified engineering geologist to study the site for the presence of seismic, geologic, erosion, wave runup, and other hazard(s).
 - c. The expert's observations, conclusions and recommendations are contained in a report entitled Updated Geologic and Soils Engineering Report Plan Review and Revised Foundation Recommendations, dated March 8, 1983 by Kovacs-Byer-Robertson, Inc. and Foundation Investigation Proposed Single Family Residence dated July 28, 1977 by Kovacs-Byer- and Assoc., Inc.
 - d. Based upon information contained in the above-referenced reports and the findings of the Coastal Commission in granting the permit, the applicant understands that the site is subject to extraordinary hazard from ground shaking from a seismic event including liquefaction and tsunami, landslides, floods, creep, consolidation and surficial failure, and scour and erosion from wave runup.

- Doc. 177
JACK S. [unclear]
- e. By accepting the permit, the applicant recognizes the risk he is taking and assumes the liability for harm to life or damage to property that may result from the hazards described in (d) above due to pre-existing conditions, natural causes, or the applicant's development activities.
 - f. The applicant agrees to waive unconditionally any potential claim of liability against and to hold harmless the California Coastal Commission and any other public agency which authorized this development for any damage, loss of property or life which may arise as a result of the design, the construction or the placement of materials on the development property as authorized by this coastal permit, excepting however, any claims of indemnification that the applicant may assert under the terms of any existing agreement with a public agency.
 - g. The applicant understand that construction in the face of these known hazards may make him ineligible for public disaster funds or loans for the repair, replacement or rehabilitation of the property or development in the event of seismic ground shaking, floods, landslides, creep, consolidation or surficial failure, or scour and erosion from wave run-up.

- 4. Revised Plans. Prior to the transmittal of the permit, the applicant shall submit revised plans indicating no walls or other structures or landscaping which would block the area identified as the vertical access easement in Condition 2 above.

III. Additional Findings. The Executive Director determines and finds as follows:

- A. Project Description. The applicant proposes to construct a three-story, 2,602 square foot single family residence on a 2,550 square foot vacant oceanfront lot at Las Tunas Beach in Malibu. The structure includes a bulkhead located 13 feet to the oceanside of the adjoining property bulkhead to the west, and a septic system.
- B. Public Access. Sections 30210, 30211 and 30214 of the Coastal Act provide that maximum public access be provided and that development not interfere with the public's right of access to the sea. In addition, Section 30212 of the Act provides, in parts, that:

(a) Public access from the nearest public roadway to shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

The applicant proposes to develop a single family residence on an oceanfront parcel on Las Tunas Beach.

The development as proposed will result in commitment of an beachfront area to private residential use. Section 30212 requires that public access be provided in new development except for exceptions set forth in 30212(a)(1-3). In this case those exceptions do not apply. The Commission has concluded in past actions that provision of lateral access is necessary to assure maximum access to and along the shoreline in this area. Condition 1 to provide lateral public access is therefore required to offset the burden of private development on the public's ability to use the shoreline.

The nearest vertical public access easement is located approximately one half mile away at Topanga State Beach. The lack of nearby vertical access does not allow the public reasonable and maximum access to the shoreline. Provision of vertical access as provided by Condition 2 is required by Section 30212 in order to maximize access and mitigate for the burden the proposed development places on the public's ability to reach the shoreline.

However, as proposed the project would also construct a wall extending from the structure to the property line in the area required for the vertical access easement thus effectively precluding use of the easement. Condition 4 is thus necessary to delete the wall from the proposed easement area in order to find the project consistent with Section 30212 of the Act.

In addition, the property is on a sand promontory. To the west, upcoast existing SFDs are generally developed on a common line. However downcoast to the east the existing structures have substantially varied setbacks on the oceanside and a vacant lot is immediately adjacent.

As proposed, the structure will be located with a setback more closely conforming to existing development pattern upcoast. In this case application of the stringline is not required to assure that development will not encroach substantially on beach area beyond existing development. Further, since structures downcoast are older and have greater setbacks, application of the stringline would result in greater restrictions on adjacent properties. Therefore, since development as proposed will not encroach further on the beach, the development as conditioned is consistent with the public access and recreation policies of the Act.

HAZARDS

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At Section 30001.5 of the Coastal Act, the legislature has stated that one of the basic goals of the state for the coastal zone is to:

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

Given the fact that there is evidence that a geologic and erosion hazard exists in the area where this development is proposed, other sections of the Coastal Act regarding that specific hazard applies.

Section 30253 of the Coastal Act states, in part:

New development shall:

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

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

Under Section 30253 new development in areas of high geologic, flood, and fire hazard may occur so long as risks to life and property are minimized and the other policies of Chapter 3 are met. Likewise, new developments shall not interfere with the geologic integrity of natural landforms, shall be stable in and of themselves, and shall not require the construction of shoreline protective devices that would eventually alter natural landforms along bluffs and cliffs. The Coastal Act recognizes that new development may involve the taking of some risk, but require the Commission to establish the appropriate degree of risk acceptable for the proposed development. The Commission must also determine who should assume that risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

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The Commission notes that these structural solutions have been known to fail. For example, many geologic studies are based on the risks which might be caused by an "average event". An event of greater than average magnitude may very likely occur. Such an "extraordinary" event occurred in February, 1983, when a combination of high tides and stormy seas accelerated coastal erosion and inundated developments.

Although a structure may be engineered to withstand a certain statistical risk of harm, when the hazardous event actually does occur, it may not survive. The applicant's geotechnical report notes that, "Beachfront developments involve risk that are not found in conventional flatland developments and these risks can never be eliminated."

The applicant may decide that the economic benefits of development outweigh the risk of harm which may occur from the identified hazards. Neither the Commission nor any other public agency that permits the development should be held liable for the applicant's decision to develop. Therefore, the applicant is required to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the decision to develop.

The orderly use of the State's limited economic resources also requires the developer to assume the economic burdens in case the hazard occurs, and not to seek public relief. The Commission is aware that local, state, and federal programs may provide assistance to property owners and others who suffer from the types of hazard found on the site. These programs may contain policies which disallow disaster relief in certain cases.

The Comptroller General recently published a report on the National Flood Insurance Program in response to a request by a Senate subcommittee (publication number #GAO/CED-82-105). The General Accounting Office... "observed also that providing flood insurance and other Federal assistance in extremely hazardous coastal areas subject to wave damage may be undesirable public policy because of the high potential for loss of life and destruction of property." On page 14, the report stated, "The policy question involved is whether the Federal Government, through its assistance programs and tax laws, should share in the risks or whether individuals who build in coastal high hazard areas in the future should assume the full risks of losses."

This is the same policy question addressed by Section 30001.5 of the Coastal Act. The Commission must assure that the economic needs of the people of the State are not prejudiced by permitting a structure to be built that foreseeably requires repairs at public expense if disaster relief is granted.

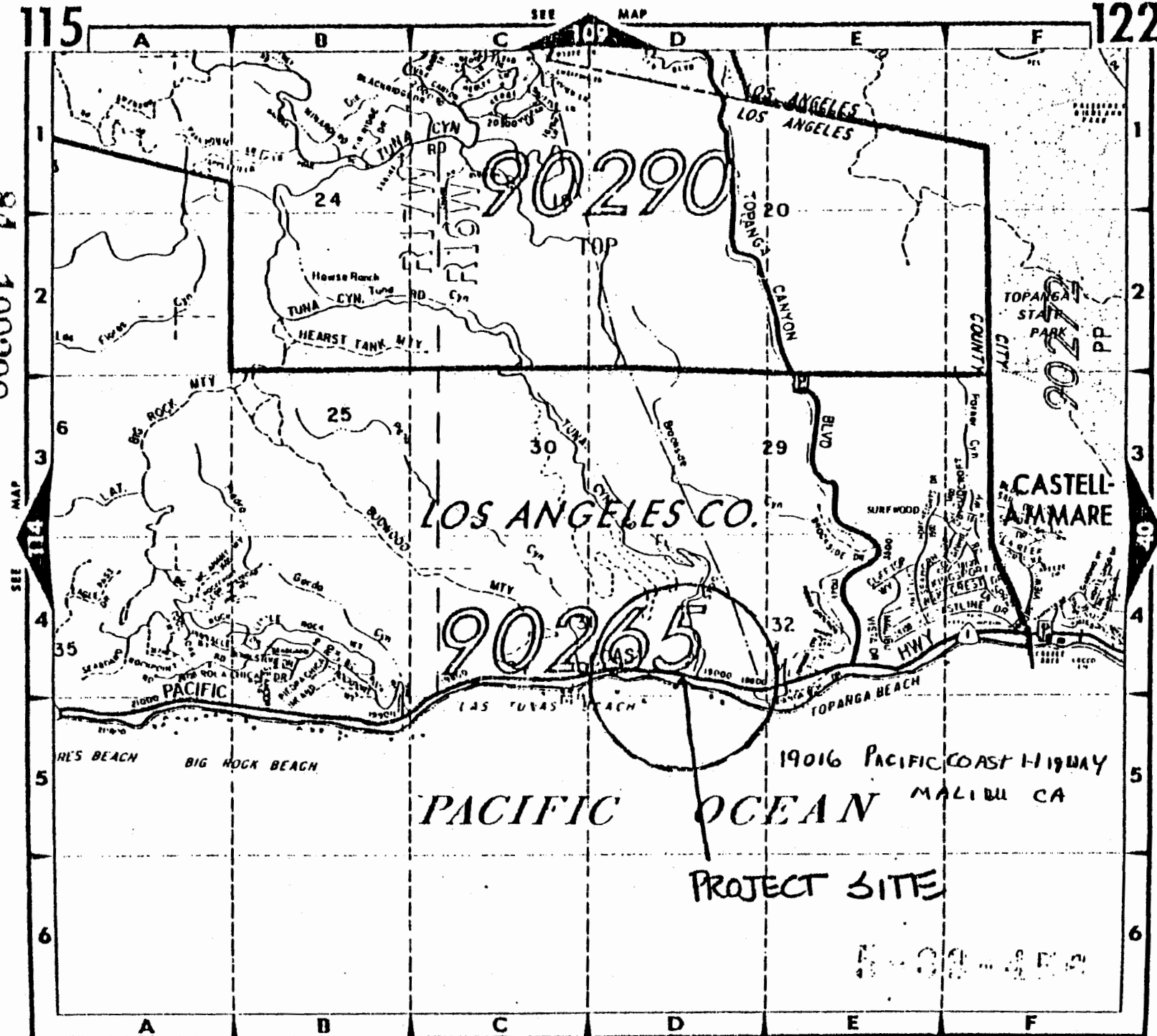
The permit Condition 3 notifies the applicant of him/her potential ineligibility for public disaster relief funds and thereby encourages him/her to seek insurance from private indemnity companies. The applicant may find that private industry will carefully analyze the probability and degree of harm; it may be reluctant to insure the proposed development, or do so at a considerable cost. This business judgment would encourage the developer to consider alternatives to the proposed development to minimize the risks to life and property created by the development.

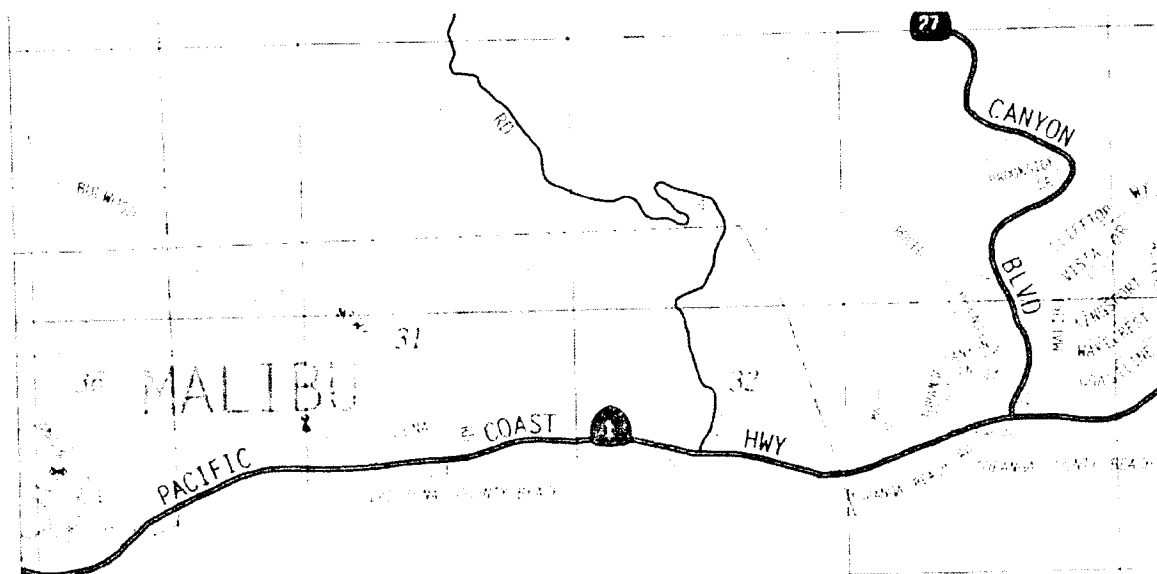
Assuming a decision by a private insurance company not to insure, or to do so at a cost that is infeasible to the applicant, that would constitute considerable evidence that the risks to life and property created by the proposed development have not been minimized. In that case, the development would not be consistent with the mandate of Section 30253 of the Coastal Act. Even though the Commission had granted the applicant the coastal permit, the applicant may choose not to proceed with the development given the knowledge that risks to his investment have not been minimized.

The Commission finds that this condition is consistent with, and necessary to carry out, one of the State's basic goals for the coastal zone, i.e.,

consideration of the economic needs of the people of the State. The condition is also needed to implement Section 30253 of the Coastal Act.

84 199298





PAC1

Map showing the location of 19061 Pacific Coast Highway, Malibu, Los Angeles County

Cease and Desist Order
CCC-04-CD-10 (Harner)

Exhibit C 1 of 1



Entrance to the public access easement viewed from Pacific Coast Highway showing the locked gate blocking the access way.



View of the public access easement between the Harner and Gilmartin houses looking north from the beach towards Pacific Coast Highway.



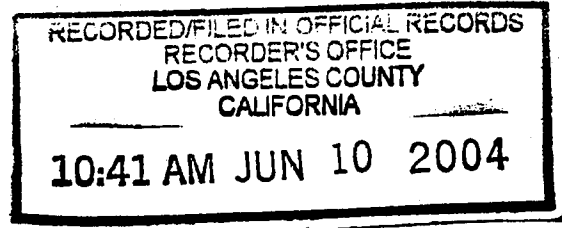
View of unpermitted gate, stairway, and return wall in the public access easement Looking north towards the entrance on Pacific Coast Highway.



View of the southern (seaward) end of the public access easement looking north towards Pacific Coast Highway, showing the unpermitted timber bulkhead on the beach.

This page is part of your document - DO NOT DISCARD

04 1490729



TITLE(S) : _____



FEE

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FREE L

CODE
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Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

THIS FORM NOT TO BE DUPLIC

Cease and Desist Order
CCC-04-CD-10 (Harner)

Exhibit E 2 of 6

Recording Requested by and
When Recorded Return to:
California Coastal Commission
89 S. California St., Suite 200
Ventura, CA 93001-2801

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
Pursuant to Government Code §27383

CDP 5-83-456
Friedman (Vertical)

CERTIFICATE OF ACCEPTANCE

AND

**ACKNOWLEDGMENT BY CALIFORNIA COASTAL COMMISSION
OF ACCEPTANCE OF IRREVOCABLE OFFER TO DEDICATE**

THIS CERTIFICATE OF ACCEPTANCE AND ACKNOWLEDGMENT acknowledges and certifies the acceptance by Access For All, a private nonprofit corporation, of an Irrevocable Offer to Dedicate executed by Dorothy J. Friedman on January 13, 1984, and recorded on February 16, 1984 as Instrument Number 84 199298 of the Official Records of Los Angeles County (hereinafter the "Offer to Dedicate"), and sets forth conditions of that acceptance with respect to the management and future disposition of the dedicated easement. It is the intention of the California Coastal Commission (hereinafter the "Commission") and Access For All to ensure that the purposes, terms and conditions of the Offer to Dedicate be carried out within a framework established by and among the Commission, Access For All and the State Coastal Conservancy (hereinafter the "Conservancy") in order to implement the Commission's Coastal Access Program pursuant to the California Coastal Act of 1976, Public Resources Code Sections 30000 et seq. (hereinafter the "Coastal Act").

I. **WHEREAS**, the Commission is an agency of the State of California established pursuant to Public Resources Code Section 30300 and is charged with primary responsibility for implementing and enforcing the Coastal Act; and

II. **WHEREAS**, the Conservancy is an agency of the State of California existing under Division 21 of the California Public Resources Code, which serves as a repository for interests in land whose reservation is required to meet the policies and objectives of the Coastal Act or a certified local coastal plan or program; and

III. **WHEREAS**, Access For All is a private nonprofit corporation existing under Section 501(c)(3) of the United States Internal Revenue Code and having among its principal charitable purposes the preservation of land for public access, recreation, scenic and open space purposes; and

IV. **WHEREAS**, as a condition to its approval of Coastal Development Permit Number 5-83-456, the Commission required recordation of the Offer to Dedicate pursuant to Sections 30210-30212 of the Coastal Act; and

V. **WHEREAS**, terms and conditions of the Offer to Dedicate provide, among other things, that (A) the People of the State of California shall accept this offer through the local government in whose jurisdiction the subject property lies, or through a public agency or a private association acceptable to the Executive Director of the Commission; and (B) acceptance of the Offer is subject to a covenant, providing that any offeree to accept the easement may not abandon it but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director of the Commission; and (C) the grant of easement once made shall run with the land and shall be binding on the owners, heirs, and assigns; and

VI. **WHEREAS**, Access For All desires to accept the Offer to Dedicate and accordingly has requested that the Executive Director of the Commission approve it as an acceptable management agency; and

VII. WHEREAS, Access For All is acceptable to the Executive Director of the Commission to be Grantee under the Offer to Dedicate provided that the easement will be transferred to another qualified entity or to the Conservancy in the event that Access For All ceases to exist or is otherwise unable to carry out its responsibilities as Grantee, as set forth in a management plan approved by the Executive Director of the Commission.

NOW, THEREFORE, this is to certify that Access For All is a private nonprofit corporation acceptable to the Executive Director of the Commission to be Grantee under the Offer to Dedicate, on the condition that should Access For All cease to exist or fail to carry out its responsibilities as Grantee to manage the easement for the purpose of allowing public access to the shoreline, then all of Access For All's right, title and interest in the easement shall vest in the State of California, acting by and through the Conservancy or its successor, upon acceptance thereof; provided, however, that the State, acting through the Executive Officer of the Conservancy or its successor agency, may designate another public agency or private association acceptable to the Executive Director of the Commission, in which case vesting shall be in that agency or organization rather than the State. The responsibilities of Access For All to manage the easement shall be those set forth in the Management Plan dated June 5, 2004 and maintained in the offices of the Commission and the Conservancy (and as the Management Plan may be amended from time to time with the written concurrence of the Executive Director of the Commission, the Executive Officer of the Conservancy, and Access For All). Notwithstanding the foregoing, the right, title and interest of Access For All in the easement may not vest in the Conservancy or another entity except upon (1) a finding by the Conservancy, made at a noticed public hearing, that Access For All has ceased to exist or failed to carry out its responsibilities as set forth in the Management Plan; and (2) recordation by the State or another designated agency or entity of a Certificate of Acceptance, substantially in the form set forth in California Government Code §27281. Nothing herein shall prevent Access For All from transferring the easement to a qualified entity pursuant to the Offer to Dedicate

thereby relieving itself of the obligation to manage the easement in accordance with the Management Plan.

This document further certifies that Access For All, a private nonprofit corporation, hereby accepts the Offer to Dedicate pursuant to authority conferred by Resolution No. 2004-2 of the Board of Directors of Access For All adopted on June 1, 2004, and Access For All consents to recordation thereof by its duly authorized officer. In accepting the Offer to Dedicate, Access For All covenants and agrees to the conditions set forth in the Offer to Dedicate and in this Certificate.

IN WITNESS WHEREOF, the Commission and Access For All have executed this
CERTIFICATE OF ACCEPTANCE and ACKNOWLEDGMENT OF ACCEPTANCE OF
IRREVOCABLE OFFER TO DEDICATE as of the dates set forth below.

Dated: June 7, 2004

Dated: June 10, 2004

CALIFORNIA COASTAL COMMISSION

ACCESS FOR ALL

By: John Bowers

John Bowers, Staff Counsel

By: Steve Hove

Steve Hove, Executive Director

Cease and Desist Order
CCC-04-CD-10 (Harner)

Exhibit E 5 of 6

STATE OF CALIFORNIA

COUNTY OF San Francisco

On June 7, 2004, before me, Jeff G. Staben, a Notary Public personally appeared John Bowers, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Jeff G. Staben

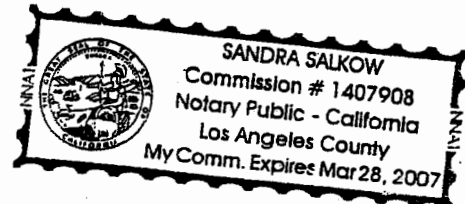
STATE OF CALIFORNIA

COUNTY OF Los Angeles

On June 10, 2004, before me, Sandra Salkow, a Notary Public personally appeared Steve Hays, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Sandra Salkow

Access for All
PO Box 1704
Topanga, California 90290

June 5, 2004

PUBLIC VERTICAL AND LATERAL ACCESS EASEMENT MANAGEMENT PLAN

By this agreement, Access for All, a California nonprofit corporation incorporated and qualified as a 501(c)(3) organization, undertakes to manage a vertical and a lateral public access easement offered for dedication within the City of Malibu, Los Angeles County. These easements are located at 19016 Pacific Coast Highway, Malibu, CA 90265, and were required pursuant to Coastal Development Permit #5-83-456, Friedman.

Background :

To permanently protect the public's right to access State Tidelands and to mitigate the impact of private development upon public access, the California Coastal Commission required that an offer to dedicate a vertical and lateral public access easement be recorded on this site.

Directly upcoast and contiguous with the 3 ft. wide Friedman easement is a 3 ft. wide vertical Deed Restricted area recorded by Hundley, #P-77-376 at 19020 PCH. The Hundley Deed Restriction also provides for lateral access 25 ft inland from the mean high tide line. The terms of the Hundley Deed Restriction provides only for passive recreational use, not for physical improvements. Therefore Access for All will strictly limit all future public access improvements to the 3ft wide Friedman site.

Purpose/ Area Description

The purpose of this easement is to provide vertical and lateral public pedestrian access to and along the Tuna Canyon beach area. The nearest public vertical accessway in this area is located downcoast at Topanga State Beach, approximately 2000 feet to the east, where there are also public restroom facilities and lifeguards. Currently, the public informally accesses this Tuna Canyon beach area from the inland side of PCH at the intersection with Tuna Canyon Boulevard. There is a homemade ladder that the public uses to drop down about six ft. from the road to the Tuna Canyon drainage. They then walk through a large drainage culvert, hoping to avoid stepping into the dirty drainage water, pass under PCH and arrive at the beach. The beach in this area is relatively narrow, depending upon the tide and season. Off shore rocks provide tide-pooling opportunities.

Cease and Desist Order
CCC-04-CD-10 (Harner)

Easement Description/ Public Improvements

The vertical easement is 3 feet wide and is located along the western boundary of the property line, extending from the northerly property line to the mean high tide line. The lateral easement is located the width of the property, from the mean high tide line landward to the drip line of the most seaward extent of the structure.

The easement begins at the sidewalk adjacent to PCH, and then drops down about 15 ft. to the beach. A 6 ft. high, solid fence blocks viewing of the easement from PCH. When viewing the 3 ft. wide easement from the beachside, private development has been constructed including at least the following: a gate at the sidewalk, private bluff stairway, concrete pad, septic system and bulkhead. Given the existing private encroachments, it is not possible for Access for All to develop a plan to open this easement for public use until a survey of the easement is completed and the encroachment issue is resolved by the Coastal Commission. Therefore, development of the accessway will be accomplished in two phases.

Phase 1: Access for All will accept the vertical and lateral OTDs. Upon acceptance, Access for All will hire a surveyor to locate the boundaries of the easements and identify the encroachments within the easement areas. Once the encroachments are identified, Access for All will submit the information to the Coastal Commission staff for review and action.

Phase 2: Once the issue of encroachments has been resolved, Access for All intends to install a see-through gate at the sidewalk adjacent to PCH and construct a stairway down to the beach. Access for All will work with the property owner to design these improvements. Once Access for All designs the final improvements, they will be submitted to the Coastal Commission and Coastal Conservancy staffs for review and approval and subsequent amendment to this Management Plan, prior to placement of any improvements on the site.

Operation and Maintenance

Access for All intends to operate this vertical easement from sunrise to sunset daily, consistent with Los Angeles County beach opening hours, as soon as possible. A trash receptacle will be placed by the gate and will be emptied weekly. A public access sign will be installed on the entrance gate at PCH.

Monitoring/Annual Report

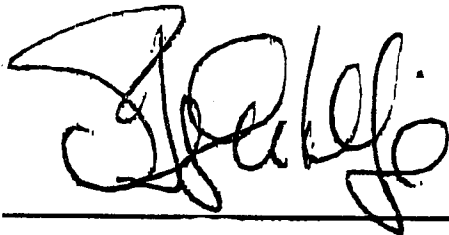
An evaluation report shall be submitted to the Coastal Commission and Coastal Conservancy by February 1 of each year. This report shall describe the status of the easements, note any new signs or other developments that may have occurred, identify when trash has been removed, and any other activities that affect the public's use of the easements.

Amendment

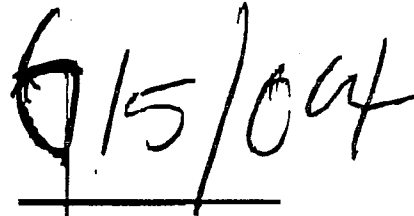
This plan may be amended, as deemed appropriate, with concurrence of all three signatories.

Agreement

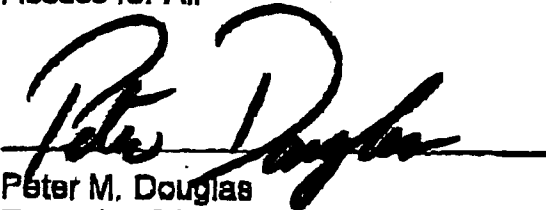
Should Access for All cease to exist or fail to carry out its responsibilities pursuant to the approved management plan, then all right, title, and interest in the easement shall be vested in the State of California, acting by and through the State Coastal Conservancy or its successor in interest, or in another public agency or nonprofit organization designated by the State Coastal Conservancy and approved by the Executive Director of the California Coastal Commission. This right of entry is set forth in the Certificates of Acceptance/Certificates of Acknowledgment by which Access for All has agreed to accept the OTDs. The foregoing is agreed to by and between Access for All, the California Coastal Commission and the State Coastal Conservancy.



Steve Hoyer
Executive Director
Access for All



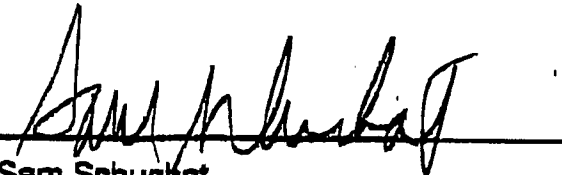
Date



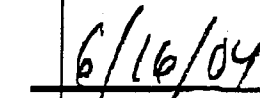
Peter M. Douglas
Executive Director
California Coastal Commission



Date



Sam Schuchat
Executive Officer
State Coastal Conservancy



Date

Cease and Desist Order
CCC-04-CD-10 (Harner)

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

NOTICE OF INTENT TO ISSUE CEASE AND DESIST ORDER

June 15, 2004

Mr. David Harner
1130 Dearborn Avenue, Apt. 1308
Chicago, IL 60610

Subject: Coastal Act Violation File No. V-4-02-051

Property: 19061 Pacific Coast Highway, Malibu, Los Angeles County (APN 4449-003-027). This property fronts onto Topanga Beach.

Description of Violations: Unpermitted development in a recorded vertical public access easement consisting of a locked gate, stairway, a portion of the bulkhead on the beach on the seaward portion of the lot, and a concrete return wall. This unpermitted development is inconsistent with requirements of Coastal Development Permit No. 5-83-456 (Friedman).

Dear Mr. Harner:

I am writing to you as the owner of the property at 19061 Pacific Coast Highway, Malibu, CA ("subject property") to notify you that I am preparing to recommend that the Commission issue a cease and desist order pursuant to Section 30810 of the Coastal Act to you for maintaining development on your property without a coastal development permit (CDP), and your failure to comply with the requirements of CDP No. 5-83-456, approved by the Coastal Commission on August 25, 1983 (copy attached).¹ The restrictions on the deed run with the land and apply to all subsequent owners like you.

The unpermitted development consists of a locked gate, a portion of a wooden bulkhead on the beach and a concrete walkway. Special Condition 2 of the CDP required the permittee, Dorothy Friedman, to record an irrevocable offer to

¹On August 25, 1983, the Commission issued CDP No. 5-83-456 to Dorothy Friedman to authorize construction of a 3-story, 2,602 square foot, single-family residence on a vacant oceanfront lot in Malibu.

Cease and Desist Order
CCC-04-CD-10 (Harner)

dedicate (OTD) a 3-foot wide easement for a vertical public access way between Pacific Coast Highway and the beach. On June 10, 2004, Access for All, a California non-profit corporation, recorded an acceptance of the OTD (copy attached). The Commission is working with Access for All to develop a plan that will make improvements in the easement, including construction of a stairway from the entrance to the access way on Pacific Coast Highway to the beach, so the access way can be opened for public use. The stairway is necessary because there is a vertical drop of approximately 6 feet from the road to the sandy beach.

The development identified above was not authorized in CDP No. 5-83-456 and as noted is inconsistent with the conditions of the CDP. Accordingly, the presence and maintenance of this unpermitted development is a violation of the Coastal Act.

We previously sent you correspondence dated May 12, 2003 and January 30, 2004 regarding these violations. Despite our repeated requests that you contact us regarding the steps you plan to take to resolve the violations, we have not received a response. We would prefer to work cooperatively with you to resolve the violations, and get the access way opened.

Unpermitted Development

Section 30600(a) of the Coastal Act provides that any person wishing to perform or undertake development in the coastal zone must obtain a CDP in addition to any other permits required by law. "Development" is defined by Section 30106 of the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure...

The locked gate, the stairway, the upcoast portion of the wooden bulkhead on the seaward side of the house in the public easement, and the concrete return wall in the easement constitute development that requires a CDP. According to Commission records, no CDP was applied for or obtained for this development. Development conducted in the coastal zone without a CDP is a violation of the Coastal Act.

Violation of CDP No. 5-83-456

In addition, the gate, a portion of the wooden bulkhead in the public easement and a concrete walkway in the easement area is inconsistent with the approved plans for CDP No. 5-83-456 and therefore constitutes a violation of the Coastal Act.

Cease and Desist Order
CCC-04-CD-10 (Harner)

Standard Condition 3 of the permit provides:

All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

Special Condition 4 of CDP No. 5-83-456 provides:

Revised Plans. Prior to the transmittal of the permit, the applicant shall submit revised plans indicating no walls or other structures or landscaping which would block the area identified as the vertical access easement in Condition 2 above.

The approved final plans for CDP No. 5-83-456 indicate that no development was proposed by the applicants or authorized by the Commission within the 3-foot wide easement that was the subject of the OTD.

Special Condition 2 of CDP No. 5-83-456 provides:

The applicant shall execute and record a document... irrevocably offering to dedicate... an easement for public access to the shoreline. Such easement shall be described as from Pacific Coast Highway along the western property line to the mean high tideline. The easement shall be 3 feet in width...

The offer shall run with the land in favor of the People of the State of California, binding all successors and assigns of the applicants or landowners. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

As I indicated, this OTD was accepted by Access for All on June 10, 2004 and the OTD is now an easement. The unpermitted development in the easement is inconsistent with the terms and conditions of CDP No. 5-83-456. In order to resolve this violation, the unpermitted development in the easement must be removed. In order to ensure both public access and safety, we would like to coordinate this removal with any necessary improvements to open the access way. Removal of the gate before the improvements are completed would create a public safety hazard because of the elevation difference between the road and the beach. We will request that the CDO include a schedule for removal of the locked gate and other unpermitted development that is coordinated with construction of the improvements to the public access way.

We would like to work cooperatively with you to resolve the Coastal Act violations on your property and open the public access way. For example, we are willing to

consider alternative proposals that might allow you to retain a portion of the unpermitted development in the easement as long as it does not block public access.

Cease and Desist Order

Pursuant to Section 30810 of the Coastal Act, the Commission, after a public hearing, has the authority to issue a CDO to any person who performed development inconsistent with a permit or the Chapter 3 policies of the Coastal Act. In addition to requiring you to refrain from conducting any further development on your property without a CDP, the CDO would require you to remove the unpermitted development that impedes the public's ability to use the vertical access way. The CDO would provide you with the authority to remove the unpermitted development and avoid the necessity for you to obtain another CDP for the work.

In addition, the Commission may issue either a unilateral order or a consent order. Under both types of order, removal of the unpermitted development is required. A consent order is similar to a settlement agreement. A consent order would provide you with an opportunity to have input into the process and timing of removal of the unpermitted development and, if appropriate, would allow you to negotiate a penalty amount with Commission staff. If you are interested in negotiating a consent order, please contact my staff when you receive this letter to discuss options to resolve this case.

Please be advised that Coastal Act Section 30820 authorizes the Commission to seek penalties for violations of the Coastal Act and daily penalties for knowing and intentional violations of the Coastal Act. Section 30820(a) provides that a penalty of up to \$30,000 may be imposed on any person who undertakes development without a permit or development inconsistent with a permit previously issued by the Commission. Section 30820(b) provides that a penalty of up to \$15,000 per day may be imposed on any person for knowing and intentional violation of the Coastal Act. Section 3021.6 provides that a penalty of up to \$6,000 per day may be imposed on any person for knowing and intentional violation of a cease and desist order for as long as the violation persists. Also, Section 30822 enables the Commission to bring an action for exemplary damages where a person has knowingly and intentionally violated the Coastal Act or any order issued by the Commission.

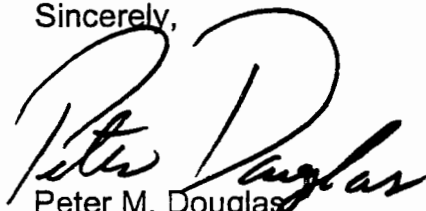
In accordance with the California Code of Regulations, Title 14, Section 13181(a), you have the opportunity to respond to Commission staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. The regulations require that you be provided at least 20 days from the date of this notice to return the completed Statement of Defense to the Commission

staff. Please return the completed Statement of Defense by no later than July 6, 2004.

If you decide that you would prefer to negotiate a consent order, your completion of the Statement of Defense form is unnecessary since you would be required to stipulate to the facts. Regardless of which option you choose, Commission staff intends to schedule a public hearing on the CDO at the Commission meeting to be held August 11-13, 2004 in San Pedro.

If you have any questions regarding this letter or would like to discuss a consent order, please contact Headquarters Enforcement Specialist Chris Darnell at 415-904-5294.

Sincerely,



Peter M. Douglas
Executive Director

Enclosure

cc: Lisa Haage, Chief of Enforcement
Steve Hudson, Southern California Enforcement Supervisor
Linda Locklin, Public Access Coordinator
Steve Hoye, Access for All

CALIFORNIA COASTAL COMMISSION

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



July 15, 2004

David Harner
19061 Pacific Coast Highway
Malibu, CA 90265-5406

Re: Coastal Act Violation File No. V-4-02-051, 19061 Pacific Coast Highway
Malibu, Los Angeles County, APN 4449-003-027

Dear Mr. Harner:

Thank you for speaking with me on July 8, 2004 regarding the unpermitted development that is blocking the vertical public access easement on your property and constitutes a violation of the Coastal Act.

I have enclosed another copy of the Notice of Intent to Issue a Cease and Desist Order dated June 15, 2004 that was mailed to you at 1130 Dearborn Avenue, Apt. 1308, Chicago, IL 60610 along with another Statement of Defense form for you to submit if you decide to do so. We have rescheduled the Commission hearing on the proposed unilateral cease and desist order until the Commission meeting scheduled for September 8-10 in Eureka. Please note that the new deadline for receipt of the completed Statement of Defense form is August 4, 2004.

I hope that you received my voicemail message on July 9, 2004. As I indicated in my voicemail message, I was unable to schedule the meeting with Staff at the site that we discussed on July 8, 2004. Since you are currently working overseas and are frequently absent from Malibu, you may want to consider hiring an agent to represent you. Since you also may be required to either remove or modify the development in the easement to accommodate improvements to the vertical public accessway, we would encourage you to consult with a licensed engineer. Specifically, it would be helpful to have more information regarding the location of the septic tank under your house and the feasibility of constructing a concrete stairway in the easement.

For your information, I have also enclosed a copy of the Approved Management Plan for the easement dated June 5, 2004 and information about Access for All, the non-profit corporation that has accepted the offer-to-dedicate the easement.

Cease and Desist Order
CCC-04-CD-10 (Harner)

We remain very interested in working out an amicable resolution of this matter if it can be done in a timely fashion and we look forward to working with you to accomplish this. If you have any questions regarding this letter, please contact me at 415-904-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Darnell". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Chris Darnell
Headquarters Enforcement Specialist

Attachments

CALIFORNIA COASTAL COMMISSION

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

**COMMISSION CEASE AND DESIST ORDER NO. CCC-04-CD-10**

Pursuant to authority in Section 30810 Title 14 California Code of Regulations, the Commission hereby orders David Harner (hereinafter "Harner"), owner of the property described in Section 3.0 of this Cease and Desist Order (hereinafter "Subject Property"), to cease and desist from maintaining development without a coastal development permit (hereinafter "CDP") in violation of the Coastal Act and in violation of the terms of a previously approved CDP, the violation of which is also a violation of the Coastal Act. Harner is also hereby ordered to remove the unpermitted development from the easement, with the exception of any portion of the development identified in a plan approved by the Executive Director as development that may remain. Lastly, Harner is ordered allow Access for All, a California non-profit corporation and the holder of the easement on the Subject Property, and its employees to make certain improvements to the public access easement necessary to facilitate use of the public accessway, subject to the plan to be prepared by Access for All and approved by the Executive Director of the California Coastal Commission.

1.0 PUBLIC ACCESS EASEMENT

Special Condition 2 of CDP No. 5-83-456¹ required the applicant (Dorothy Friedman) to record an irrevocable offer-to-dedicate a 3 foot wide vertical public access easement extending from Pacific Coast Highway to the mean high tide line along the western boundary of the Subject Property. On February 16, 1984, the applicant Dorothy Friedman (hereinafter "Friedman") recorded the irrevocable offer-to-dedicate in the Los Angeles Recorder's Office as Document No. 84 199298. On June 10, 2004, Access for All, a California non-profit corporation, recorded a Certificate of Acceptance of the Irrevocable Offer to Dedicate as Document No. 04 1490729.

2.0 UNPERMITTED DEVELOPMENT

The unpermitted development on the Subject Property consists of a locked gate, a wooden stairway, part of a timber bulkhead, and concrete caissons forming a return wall. In 1984, Friedman recorded an irrevocable offer-to-dedicate a public access easement across the Subject Property. In 2004 Access for All recorded a Certificate of Acceptance of the offer and is willing to open the easement for public use but the unpermitted development is blocking the easement and thus is

¹ On August 25, 1983, the Commission issued CDP No. 5-83-456 to Dorothy Friedman to authorize construction of a 3 story, 2,602 square foot, single-family residence on a vacant oceanfront lot in Malibu, Los Angeles County.

preventing Access for All from opening the easement and the public from using the recorded public accessway.

2.0 REMOVAL OF DEVELOPMENT

Upon notification by the Commission staff, Harner shall remove the unpermitted development from the easement (with the exception of any portion of the development identified in a plan approved by the Executive Director as development that may remain). To eliminate any hazard which might be caused by a delay between removal of the illegal development and construction of the public access improvements, the removal shall take place concurrently with construction of the improvements to the public access way. If he so chooses, Harner may hire the same contractor employed by Access for All to make the improvements to the public access way to remove the illegal development.

3.0 PROPERTY DESCRIPTION

The Subject Property is identified as 19016 Pacific Coast Highway, Malibu, Los Angeles County (APN 4449-003-027). The Subject Property is a beachfront lot and is between the first public road and the sea. The lot contains a single-family residence. There is a 3 foot wide deed restricted vertical public access way on the lot adjoining the western boundary of the Subject Property that runs parallel and adjacent to the easement on the Subject Property.²

4.0 PERSONS SUBJECT TO THIS CEASE AND DESIST ORDER

Persons subject to this Cease and Desist Order are David Harner, his agents and employees, and contractors, and any persons acting in concert with any of the foregoing.

5.0 COMMISSION AUTHORITY TO ACT

The Commission is issuing this Cease and Desist Order pursuant to its authority under Section 30810 of the Public Resources Code.

6.0 FINDINGS

This Cease and Desist Order is being issued on the basis of the Findings adopted by the Commission on October 8, 2004, as set forth in the attached document entitled Staff Report for Cease and Desist Order No. CCC-04-CD-10.

² 19020 Pacific Coast Highway, Malibu, Los Angeles County. The owner of the property is Mark B. Gilmartin. The deed restriction was recorded on April 28, 1977 as Document No. 77-435422 by the previous property owner in compliance with a condition attached to the original coastal permit that approved construction of Gilmartin's house.

7.0 EFFECTIVE DATE

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

8.0 COMPLIANCE OBLIGATION

Strict compliance with the terms and conditions of this Cease and Desist Order is required. If Harner fails to comply with the requirements of this Order, it will constitute a violation of the Order and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which compliance failure persists pursuant to Section 30821.6(a) of the Coastal Act.

9.0 SITE ACCESS

Harner shall provide Access for All and its employees access to the Subject Property at all reasonable times for the purpose of designing, constructing and maintaining the public access improvements to the easement. Harner shall also provide Commission staff access to the Subject Property at all reasonable times to verify compliance with the requirements of this Cease and Desist Order and inspect the progress of the improvements.

10.0 APPEALS AND STAY RESOLUTION

Pursuant to Title 14 Public Resources Code Section 30803(b), Harner against whom this Cease and Desist Order is issued may file a petition with the Superior Court for a stay of the Order.

11.0 GOVERNMENT LIABILITY

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

12.0 SUCCESSORS AND ASSIGNS

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

13.0 GOVERNING LAW

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

14.0 NO LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing herein 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 Cease and Desist Order.

Issued this 13th day of October 2004.

Peter M. Douglas, Executive Director
California Coastal Commission

Date