

**CALIFORNIA COASTAL COMMISSION**

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**Staff:**  
**Staff Report:**  
**Hearing Date:**

SMR-SF  
January 30, 2004  
February 19, 2004

**FINDINGS FOR CEASE AND DESIST ORDER No. CCC-04-CD-01**

**CEASE AND DESIST ORDER:** CCC-04-CD-01

**RELATED VIOLATION FILE:** V-5-00-048

**PROPERTY LOCATION:** 3335 Ocean Boulevard, Corona del Mar, Orange County, APN 052-120-020 (**Exhibit 1**)

**DESCRIPTION OF PROPERTY:** 8052 square foot (0.18-acre) oceanfront lot, immediately inland of Corona del Mar State Beach

**PROPERTY OWNERS:** Kenneth Battram

**VIOLATION DESCRIPTION:** Unpermitted grading and landform alteration of a coastal bluff and beach; unpermitted construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets

**SUBSTANTIVE FILE DOCUMENTS:** Cease and desist order file No. CCC-04-CD-01  
Background Exhibits 1 through 14

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

## **I. SUMMARY**

Staff recommends that the Commission approve and issue Commission Cease and Desist Order No. CCC-04-CD-01 ("Order") to remove unpermitted development at 3335 Ocean Boulevard, Corona del Mar ("subject property") and to either remove, or submit a Coastal Development Permit (CDP) application to retain the unpermitted stairway. The unpermitted development consists of grading and landform alteration of a coastal bluff and beach and construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets. Mr. Kenneth Battram is the owner of the subject property.

The subject property is located in the Corona del Mar area of Newport Beach, immediately inland of Corona del Mar State Beach. The subject property contains a single family home on the bluff top portion of the lot, and a bluff face that cascades down to the sandy beach. The unpermitted development is located on the bluff face and sandy beach portions of the subject property. Regarding coastal planning and development, Newport Beach has a certified Land Use Plan but does not yet have a certified Local Coastal Program.<sup>1</sup> The Commission therefore has jurisdiction for issuing coastal development permits and for enforcing the provisions of the Coastal Act in this area.

The unpermitted activity that has occurred on the subject property meets the definition of "development" set forth in §30106 of the Coastal Act (Public Resources Code). The development was undertaken without a coastal development permit, in violation of Public Resources Code §30600. Therefore, the Commission may issue a Cease and Desist Order under §30810 of the Coastal Act. The proposed Cease and Desist Order would require the removal of all unpermitted development from the sandy beach portion of the subject property and either removal of the stairway, retaining walls, and other unpermitted development on the bluff face (subject to an approved Bluff Slope Revegetation and Monitoring Plan), or the submittal of a CDP application for retention of the stairway.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a proposed cease and desist order are outlined in Section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

For a cease and desist order 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 speaker. The Commission 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

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<sup>1</sup> The Land Use Plan (LUP) for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on January 9, 1990.

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

### **III. MOTION**

**MOTION:** I move that the Commission issue Cease and Desist Order No. CCC-04-CD-01 pursuant to the staff recommendation.

#### **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the cease and desist order. 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 number CCC-04-CD-01 set forth below and adopts the findings set forth below on grounds that development has occurred without a coastal development permit.

### **IV. PROPOSED FINDINGS**

#### **A. The Development is Unpermitted**

The violation consists of unpermitted grading and landform alteration of a coastal bluff and beach and unpermitted construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets (**Exhibit 2**).

#### **B. Background and Administrative Resolution Attempts**

The original single-family residence on the subject property was constructed in 1957, prior to the enactment of the Coastal Act, and so did not require a CDP. On May 8, 1985, the Commission issued Administrative CDP No. 5-85-218 for additions and remodeling of the original single-family residence on the subject property, including construction of a new roof,

seaward extensions of decks, and maintenance and painting of the private beach stairs (**Exhibit 3**). Aerial photographs of the subject property indicate that a stairway existed on the down coast portion of the subject property in 1972, 1976, and as late as 1978 (**Exhibit 4a-4c**). The 1985 CDP contained no provisions for demolition and construction of a new stairway in a different location on the property. Aerial photographs of the subject property, however, indicate that this stairway was in fact demolished and removed from the subject property, and a new stairway down the bluff was constructed in a different configuration and location as of 1987 (**Exhibit 4d**). This stairway was constructed without the benefit of a CDP and is new unpermitted development.

None of the additional development cited above (chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets on the lower bluff face and beach) was authorized in a CDP either. This development is not visible in the 1972, 1976, 1978 and 1987 aerial photographs of the subject property (**Exhibit 4**), nor was it authorized in the administrative CDP approved in 1985. The proposed Order would require: 1) removal of all of the unpermitted development at the base of the bluff face and on the sandy beach portions of the subject property, or 2) if Mr. Battram chooses to apply for a CDP to retain the stairway, the submittal of a complete CDP application for retention of the unpermitted stairway. Staff strongly recommends that Mr. Battram remove the unpermitted stairway. Commission staff has repeatedly advised Mr. Battram that based on the resource protection policies of Chapter 3 of the Coastal Act, the unpermitted development does not appear to be consistent with the Coastal Act. The stairway does it appear to qualify as a pre-Coastal structure under the Coastal Act since the pre-Coastal stairway was completely demolished and replaced with one in a different location, with much more grading and bluff disturbance, and with substantially different impacts under the Coastal Act. Staff would likely not recommend approval of an after-the-fact application to retain the stairway.

Commission staff first notified Mr. Battram of the violation on the subject property in a letter dated May 7, 2001 (**Exhibit 5**). In this letter, staff informed Mr. Battram that an application to retain the unpermitted development would likely be denied, and recommended that Mr. Battram submit a CDP application for removal of the unpermitted development and restoration of the site, and gave him a deadline to submit a CDP application by June 15, 2001. Mr. Battram failed to submit a CDP application by this deadline. In a letter dated August 31, 2001, staff set a second deadline of September 28, 2001 for submittal of a CDP application, which Mr. Battram also failed to meet (**Exhibit 6**). In a letter dated April 3, 2003, staff set a third deadline of May 12, 2003 for submittal of a CDP application, again recommending that Mr. Battram apply to remove the unpermitted development (**Exhibit 7**). Mr. Battram failed to meet this deadline. South Coast District staff subsequently referred Violation File No. V-5-00-048 regarding this matter to Headquarters enforcement staff and recommended initiation of formal enforcement proceedings. Although over two and a half years have gone by, Mr. Battram has failed to resolve this matter.

In a letter dated December 10, 2003, Commission staff issued a Notice of Intent (NOI) to commence Cease and Desist Order proceedings (**Exhibit 8**). The NOI stated the basis for issuance of the proposed Order, stated that the matter was tentatively being placed on the

Commission's February 2004 hearing agenda, and provided the opportunity for Mr. Battram to respond to allegations in the NOI with a Statement of Defense form.

**C. Basis for Issuance of the Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal, which states, in relevant part:

- (a) *If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that... requires a permit from the Commission without securing the permit, the Commission may issue an order directing that person...to cease and desist.*
- (b) *The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

The unpermitted activity that has occurred on the subject property meets the definition of "development" set forth in §30106 of the Coastal Act (Public Resources Code). The development was undertaken without a coastal development permit, in violation of Public Resources Code §30600. Therefore, the Commission may issue a Cease and Desist Order under §30810 of the Coastal Act.

**D. The Development is Inconsistent with Chapter 3 of the Coastal Act and with the Newport Beach Land Use Plan**

As discussed above, the Commission may issue a Cease and Desist Order under §30810 of the Coastal Act to compel removal of the unpermitted development. A showing of inconsistency with Chapter 3 or the local Land Use Plan is not required for issuance of a Cease and Desist Order, but we provide this information for background purposes.

**1. Scenic Resources**

Section 30251 of the Coastal Act pertains to scenic and visual resources. It states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

The subject property is located along a bluff face immediately adjacent to Corona del Mar State Beach. Corona del Mar State Beach is a public beach that serves as a popular visitor destination point for recreational uses. Several hundred feet southeast (four properties down

coast) of the subject property is a public bluff park known as Inspiration Point, which has a public access way from Inspiration Point to the beach below. The unpermitted development on the subject property is visible from the sandy beach and bluff park.

The general pattern of development along this segment of Ocean Boulevard is such that structures are sited at the top of the bluff, while the bluff face remains largely undisturbed and vegetated except for some private bluff stairways that exist in the area. The Commission has approved only one "new" stairway in the immediate vicinity, and that was in a case where the Commission found that a property had a pre-existing trail that was then formalized with a stairway in the same location. Aerial photographs from 1972 indicate that seven of thirteen properties in the immediate vicinity had pre-Coastal stairways, including, as discussed above in Section B, the subject property.

Although the property owners had a right under the Coastal Act, as noted in the 1985 CDP, to "maintenance and painting of the private beach stairs" in their original location, the demolition and reconstruction of the stairs in a different configuration and location on the bluff face resulted in significant new impacts to the bluff slope and constitutes new development that is not consistent with Section 30251 and not exempt from the permitting requirements of the Coastal Act.<sup>2</sup> Overall, the unpermitted development is inconsistent with Section 30251 because the stairway does not minimize alteration of natural landforms, and together with the shed, storage cabinets, retaining walls, and concrete patio at the base of the bluff, the development adversely affects public views of the vegetated bluff from the adjacent public beach. The new unpermitted stairway was constructed in a different configuration and occupies a larger footprint on the bluff slope than the previously existing stairway that was demolished. The unpermitted development has resulted in a visible intensification of use of the site as compared with its undeveloped state, and effectively discourages the public from using the adjacent public beach because of the perception of privatization.

Over time, incremental impacts from development can have a significant cumulative adverse impact, including visual impacts. If the unpermitted development is not removed, applicants in the vicinity could begin to request similar new construction on the bluff face an/or at the toe of the bluff slope, thus contributing cumulatively to adverse visual impacts. Therefore, staff recommends the issuance of the proposed Order to remove unpermitted development to protect views of the bluff and beach from the adjacent public beach and to minimize landform alteration.

## 2. Bluff Slope Development/Geologic Stability

Section 30253 of the Coastal Act pertains to minimizing adverse impacts of development. Section 30253(2) states:

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<sup>2</sup> Section 30608 of the Coastal Act provides for the retention of pre-Coastal Act development "provided, however, that no substantial change may be made in any such development...". Here the stairway is substantially different (see also discussion in Section D2 of this report).

*New development shall 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.*

In addition, Section 30235 of the Coastal Act states:

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

Section 30235 of the Coastal Act allows for the construction of a cliff retaining wall only when required to serve coastal-dependent uses or to protect existing structures. In addition, Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. Coastal bluffs, such as this one, are unique geomorphic features that are characteristically unstable. By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. The bluffs along this section of the coast are not typically subject to substantial erosion from wave action except during high tide and storm events due to the presence of a moderately wide sandy beach; however, these bluffs are subject to erosion from runoff at the top of the slope. Further, due to geologic structure and soil composition, bluffs are susceptible to surficial failure, especially with excessive water infiltration.

In this case, the unpermitted development is inconsistent with Section 30253 because the unpermitted development on the bluff face, including the retaining walls, has substantially altered the natural landform. Further, the retaining walls on the bluff face are neither required to protect a coastal dependent use nor to protect any authorized existing structures and are, therefore, not consistent with Section 30235. Refer to **Exhibits 4 and 2**. Exhibit 4 depicts several views of the unaltered bluff face, and Exhibit 2 shows the existing unpermitted development. The installation of the new unpermitted stairs in a different location than the previously existing stairs on a coastal bluff slope (which is inherently unstable) required extensive cut grading into the bluff face, creating a series of terraced switchbacks composed of wooden railroad-tie retaining walls and stairs in a previously undisturbed bluff face. The unpermitted grading and development also resulted in the removal of the previously existing bluff vegetation, cutting into the bluff slope and possibly contributing to erosion and instability.

In past permit and enforcement actions, the Commission has found that development on steep bluffs has been found to have the potential to significantly exacerbate the natural processes of erosion. Erosion rates are greater when structures are built on the bluff face. Rainwater

running off such structures over time tend to undercut and erode the area of the bluff immediately behind and down slope of the structure. Additionally, the loss of vegetation through the altering of the natural landforms increases the potential for erosion to occur. In this case, the unpermitted stairway, graded terraces, and retaining walls may result in potential increased erosion of the bluff slope because previously undisturbed bluff vegetation was removed and extensive areas of bare, unanchored sandy soil were exposed on the bluff face. The stairway itself may potentially require the construction of additional bluff slope stabilization devices to protect the stairs.

3. Public Access and Development Adjacent to Recreation Areas

Section 30211 of the Coastal Act contains policies regarding public access to the shoreline. Section 30240 of the Coastal Act addresses appropriate development adjacent to a recreation area.

Section 30211 states:

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

Section 30240(b) states:

*Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The unpermitted development subject to this order is located on the sandy beach and the adjacent bluff slope adjacent to Corona del Mar State Beach. Corona del Mar State Beach is a public beach that serves as a popular visitor destination point for recreational uses. Several hundred feet southeast (four properties down coast) of the subject property is a public bluff park known as Inspiration Point, which has a public access way from Inspiration Point to the beach below. The unpermitted development on the subject property is highly visible from the sandy beach and bluff park.

The unpermitted development is inconsistent with Sections 30211 and 30240 because its presence encroaches seaward and discourages public use of the adjacent sandy beach. In addition to the direct occupation of sandy beach near the toe of the bluff, the unpermitted development has resulted in a visible intensification of use of the site as compared with its undeveloped state, and effectively discourages the public from using the adjacent public beach located seaward of the unpermitted development because of the perception of privatization of the entire area. Beach-goers are less likely to utilize a segment of the beach that is physically



restricted by a neighboring private property owner. The presence of the unpermitted development adversely affects the public's continued use of the beach.

4. Newport Beach Land Use Plan

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982 and updated on January 9, 1990. While the Coastal Commission retains jurisdiction for permitting and enforcement matters in Newport Beach, the LUP provides additional guidance and includes the following policy related to the unpermitted development on the subject property.

Development of Coastal Bluff Sites, Policy 2(b) states:

*Public Views. The location and design of a proposed project shall take into account public view potential.*

*Grading, cutting and filling of natural bluff face or bluff edges shall be prohibited in order to preserve the scenic value of bluff areas, except for the purpose of performing emergency repairs, or for the installation of erosion-preventive devices or other measures necessary to assure the stability of the bluffs.*

The unpermitted development is inconsistent with the LUP because extensive grading of the natural bluff face and beach occurred as a result of the installation of the staircase, retaining walls and other unpermitted development. The scenic value of the bluff is reduced due to the presence of the development. Mr. Battram has never asserted that the retaining walls were installed as an emergency repair measure and neither applied for nor obtained an emergency CDP for any of the unpermitted development. Mr. Battram asserts that the development is not causing any erosion, but has provided no information to staff supporting this assertion and the Commission is unaware of any engineering plans associated with the installation of the unpermitted stairway and retaining walls. The installation of the stairway and retaining walls may, in fact, be contributing to erosion because previously undisturbed bluff vegetation was removed and extensive areas of bare, unanchored sandy soil were exposed on the bluff face.

E. California Environmental Quality Act (CEQA)

The Commission finds that issuance of a Cease and Desist Order to compel the removal of the unpermitted development and restoration of the property is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(3), 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

F. Allegations

The Commission alleges the following:

1. Mr. Kenneth Battram is the owner of the property located at 3335 Ocean Boulevard, Corona del Mar, CA, APN 052-120-20.
2. Unpermitted development consisting of grading and landform alteration of a coastal bluff and beach and construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets has occurred on the subject property.
3. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.
4. In letters dated May 7, 2001, August 31, 2001, and April 3, 2003, Commission staff informed Mr. Battram that development had occurred on the subject property without benefit of a CDP and constitutes an ongoing violation of the Coastal Act and requested he submit a CDP application. The unpermitted development does not appear to be consistent with resource protection policies of Chapter 3 of the Coastal Act.
5. Staff has explained to Mr. Battram that none of the unpermitted development would be likely to receive a staff recommendation for after-the-fact approval. Commission staff has directed Mr. Battram to apply for a CDP to remove the unpermitted development on the subject property and to restore the bluff face. Mr. Battram has failed to do so. Nor has he obtained a CDP that authorizes the development.

The December 10, 2003 NOI included a Statement of Defense form providing Mr. Battram with an opportunity to respond to the allegations contained in the NOI. Mr. Battram did not return the Statement of Defense by the January 7, 2004 deadline. On January 7, 2004, staff received a letter from Mr. Battram requesting additional time to respond to the NOI (**Exhibit 9**). In a letter dated January 9, 2004, staff extended the deadline for Mr. Battram's submittal of a Statement of Defense until January 20, 2004 (**Exhibit 10**). Mr. Battram failed to meet this deadline also. Instead, on January 20, 2004, staff received a letter from Mr. Battram, in which he stated that he is planning on remodeling his home, and requested a postponement of any proposed enforcement action until such time as he submits a CDP application seeking approval for the remodeling plans and of the alleged Coastal Act violations on the subject property (**Exhibit 11**). In a letter dated January 22, 2004, staff reminded Mr. Battram that he would not be likely to obtain a recommendation for after-the-fact approval of any of the unpermitted development on the subject property (**Exhibit 12**). Mr. Battram may indeed apply for a CDP for remodeling his residence, but that is not related to resolving the violation pertaining to the unpermitted development already in place on his property. For these reasons, as well as the substantial time that has passed since Mr. Battram was notified of the unpermitted development and the need to resolve violations expeditiously, the proposed enforcement proceedings were not postponed.

Staff informed Mr. Battram that they could consider his January 20, 2004 letter to comprise a Statement of Defense, because in this letter Mr. Battram stated that he did not in any way agree with staff allegations and outlined several defenses regarding the unpermitted development on

the subject property. The following section presents defenses set forth by Mr. Battram in his January 20, 2004 letter and the Commission's response to each defense. Staff received a letter dated January 28, 2004 from Mr. Battram, stating that in order to comply with staff's request to supply a Statement of Defense he would have to obtain legal counsel (**Exhibit 13**). In a letter dated January 29, 2004, staff responded to Mr. Battram's letter, as well as a voicemail message received from Mr. Battram on January 29, explaining that Mr. Battram was not required to have counsel at Commission proceedings and that staff intended to retain this matter on the agenda for public hearing at the Commission's February 2004 hearing in La Jolla, California. (**Exhibit 14**).

**G. Violator's Defense and Commission Response**

**Owner's Defense:**

1. "My property has been essentially the same as it is today as when I moved in, which was in 1987."

**Commission's Response:**

Mr. Battram asserts that a previous property owner constructed the unpermitted development on the subject property.

Regardless of who performed the development, the persistence of the unpermitted development remains a continuing violation of the Coastal Act and a continuing public nuisance that the current owner is liable for correcting. (*Leslie Salt Co. v. San Francisco Bay Conservation etc. Com.* (1984) 153 Cal. App.3d 605, 618). In *Leslie Salt* (p. 622), the court held that:

*"whether the context be civil or criminal, liability and the duty to take affirmative action [to correct a condition of noncompliance with applicable legal requirements] flow not from the landowner's active responsibility for [that] condition of his land...or his knowledge of or intent to cause such [a condition] but rather, and quite simply, from his very possession and control of the land in question."*

In addition, the Coastal Act represents a legislative declaration that acts injurious to the state's natural resources constitute a public nuisance. (*Leslie Salt Co. v. San Francisco Bay Conservation etc. Com.* (1984) 153 Cal. App.3d 605, 618; *CREED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 318.) The Coastal Act is a "sensitizing of and refinement of nuisance law." (*CREED*, at 319.)

Mr. Battram is liable for actions of previous owners who may have created the public nuisances on the subject property based on Civil Code 3483, which states:

*Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.*

Thus, even if a prior owner constructed the unpermitted development, Mr. Battram's maintenance of that development without a permit constitutes a continuing violation of the Coastal Act. Moreover, a significant amount of the unpermitted development appears to have been put there after Mr. Battram purchased the property.

**Owner's Defense:**

2. "The items...have been here for a long time."

**Commission's Response:**

The length of time that unpermitted development has existed has no bearing on enforcement of the permit requirements of the Coastal Act. The Commission's enforcement program responds to violations as they are brought to its attention. The Commission first learned of this violation in September 2000 and sent formal notice to Mr. Battram in May 2001. Since that time, staff has attempted to resolve this violation administratively before initiating formal enforcement proceedings in December 2003.

**Owner's Defense:**

3. "They [the items of unpermitted development] are not endangering anything or anybody. They are not polluting or causing any erosion."

**Commission's Response:**

Mr. Battram asserts that the development is not causing any erosion, but has provided no information to staff supporting this assertion and the Commission is unaware of any engineering plans associated with the installation of the unpermitted stairway and retaining walls. The installation of the stairway and retaining walls may, in fact, be contributing to erosion because previously undisturbed bluff vegetation was removed and extensive areas of bare, unanchored sandy soil were exposed on the bluff face.

The requirements of the Coastal Act are not merely intended to avoid pollution or erosion. There are a number of resource policies contained in and protected by the Coastal Act, and these policies are largely protected and implemented via the permitting process. The Commission does not have to establish that there has been pollution or erosion, or specific physical harm to people or the environment for it to enforce the permit requirements of the Coastal Act. The fact remains that the unpermitted development on the subject property was constructed without compliance with the permit requirements of the Coastal Act. In the *Ojavan* case (*Ojavan Investors, Inc. v. California Coastal Commission*, (1987) 54 Cal.App.4<sup>th</sup> 373), the Court of Appeal ruled that, even though there was "very little or no physical damage to the properties involved," a judgment for injunctive relief and civil fines for violating the Coastal Act should be upheld,

*“in light of the public interest goals of the TDC (transfer development credits) program, the need for uniform compliance with the program so as to further the Coastal Act’s objectives to protect the coast, and appellants’ blatant disregard of the deed restrictions.”*

In many cases, after a complete application for a CDP is filed, the Commission reviews the consistency of proposed development with the standards and policies of the Coastal Act. In this particular case, as discussed in Section IV.D of these findings, staff has determined that Mr. Battram’s unpermitted development is not consistent with several Chapter 3 policies of the Coastal Act and thus, could potentially be causing adverse impacts to coastal resources, including public views.

In addition, the public resources of access and recreation are in fact endangered by the unpermitted development, because it encroaches seaward and adversely affects the public’s continued use of the beach. The unpermitted development has resulted in a visible intensification of use of the site as compared with its undeveloped state, and effectively discourages the public from using the adjacent public beach because of the perception of privatization. Beach-goers are less likely to utilize a segment of the beach that is physically restricted by a neighboring private property owner.

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

**CEASE AND DESIST ORDER CCC-04-CD-01**

Pursuant to its authority under PRC § 30810, the California Coastal Commission hereby authorizes and orders Kenneth Battram, all his employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondents") to cease and desist from: (1) continuing to maintain any development on his property that violates the California Coastal Act; and (2) engaging in any further development activity on his property without first obtaining a coastal development permit which authorizes such activity. Accordingly, all persons subject to this order shall fully comply the following conditions:

- A. Within 60 days of issuance of the Cease and Desist Order, Respondents shall remove all unpermitted development from the sandy beach portion of the subject property, including concrete patio, storage shed and storage cabinets.
- B. With regard to the stairway, if Respondents wish to seek authorization after the fact, within 60 days of issuance of the Cease and Desist Order, Respondents shall submit a complete CDP application for retention of the unpermitted stairway.
- C. If a CDP application to retain the stairway and its associated retaining walls is denied, or if staff does not obtain a complete CDP application within nine months of the date of issuance of this Order (whichever is shorter), Respondents shall then submit within 60 days for the review and approval of the Executive Director of the Commission a Stairway Removal and Bluff Slope Revegetation and Monitoring Plan for the bluff face portion of the subject property, and comply with all other terms of this Order regarding removal of the stairway. The Revegetation and Monitoring Plan (hereinafter, "Plan") shall be prepared by a qualified restoration professional and shall include the following:
  - a) Goals and Performance Standards. Section A of the Plan shall present the following goals of the revegetation activities.
    1. Revegetation of all graded areas and areas impacted by the removal of major vegetation so that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of revegetation activities.
    2. Eradication of non-native vegetation within the areas subject to revegetation and those areas that are identified as being subject to disturbance as a result of the restoration and revegetation activities. No invasive plants are permitted for revegetation.
    3. Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the revegetation of the impacted areas. The Plan will not be successful until the revegetated areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal.

4. Section A of the Plan shall also include specific ecological performance standards that relate logically to the revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (e.g., specified average height within a specified time for a plant species).
5. Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified. Reference sites shall be located on adjacent vegetated areas vegetated undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar slope, aspect and soil moisture.

If the comparison between the revegetation area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

- b) **Revegetation Methodology.** Section B of the Plan shall describe the methods to be used to revegetate the impacted areas. Section B shall be prepared in accordance with the following directions:
  1. The plan shall be designed to minimize the size of the area and the intensity of the impacts from disturbances caused by the revegetation of the impacted areas. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently vegetated shall not be disturbed by activities related to the Plan.
  2. Specify that the revegetation of the site shall be performed using hand tools wherever possible, unless it has been demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to

geological instability, minimization of landform alteration, erosion and impacts to native vegetation.

3. Describe the methods for revegetation of the site. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using local native drought resistant plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the revegetation area. Invasive plants are not permitted for the revegetation of the site.
- c) Monitoring and Maintenance. Section C of the Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:
1. The respondents shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration professional, evaluating compliance with the performance standards. The annual reports shall include further recommendations and requirements for additional revegetation activities in order for the project to meet the goals and performance standards specified in the Plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of revegetation at the site.
  2. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the revegetation project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the revised or supplemental restoration plan must be processed as a CDP, a new Cease and Desist Order, or modification of Cease and Desist Order CCC-04-CD-01.
- d) Appendix A shall include a description of the education, training and experience of the qualified restoration professional who shall prepare the Plan. A qualified restoration professional for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration or revegetation of coastal bluff habitats.
- e) Interim erosion control plans shall be included in the Plan. Interim erosion control measures shall be prepared by a qualified restoration professional and shall include the following:



1. The following temporary erosion control measures shall be used: hay bales, wattles, silt fences. Erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and resources.
  2. Interim erosion control measures shall include, at a minimum, the following components:
    - a. A narrative describing all temporary runoff and erosion control measures to be used and any permanent erosion control measures to be installed for permanent erosion control.
    - b. A detailed site plan showing the location of all temporary erosion control measures.
    - c. A schedule for installation and removal of temporary erosion control measures, in coordination with the long-term revegetation and monitoring plan.
- D. Within 30 days of the approval by the Executive Director of the documents submitted under paragraph C, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under paragraph C.
- If a CDP application to retain the stairway is denied, or a complete CDP application is not submitted within nine months of the date of issuance of this Order (whichever is shorter):
1. Remove the unpermitted stairway, retaining walls and all other unpermitted development from the bluff face.
  2. Perform grading to restore the bluff slope topography to its pre-development condition.
  3. Revegetate the bluff face as described in paragraph C.
  4. Submit to the Executive Director a report documenting the revegetation of the bluff face. The report shall include photographs that clearly show all portions of the bluff face on the subject property.
- E. Within 60 days of the submittal of the report documenting the revegetation of the bluff face, Commission staff will conduct a site visit to confirm compliance with the terms and conditions of the order.
- F. In accordance with the schedule set forth in the Plan, approved by the Executive Director pursuant to paragraph C above, submit to the Executive Director monitoring reports. For the duration of the monitoring period, all persons subject to the Order shall allow the Executive Director of the Commission, and/or his/her designees to inspect the

subject property to assess compliance with the Order, subject to twenty-four hours advance notice.

#### PERSONS SUBJECT TO THE ORDER

Mr. Kenneth Battram, all his employees, agents, and contractors, and any persons acting in concert with any of the foregoing.

#### IDENTIFICATION OF THE PROPERTY

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

3335 Ocean Boulevard, Corona del Mar, CA, APN 052-120-20

#### DESCRIPTION OF UNPERMITTED DEVELOPMENT

Unpermitted grading and landform alteration and unpermitted construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets.

#### EFFECTIVE DATE AND TERMS OF THE ORDER

The effective date of this order is February 19, 2004. This order shall remain in effect permanently unless and until rescinded by the Commission.

#### FINDINGS

This order is issued on the basis of the findings adopted by the Commission on February 19, 2004, as set forth in the attached document entitled "Findings for Cease and Desist Order No. CCC-04-CD-01."

#### COMPLIANCE OBLIGATION

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order as approved by the Commission will constitute a violation of this order and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which such compliance failure persists.

#### DEADLINES

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

APPEAL

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

Executed in La Jolla on February 19, 2004, on behalf of the California Coastal Commission.

---

Peter Douglas, Executive Director

**Exhibits**

1. Locus map for the subject property.
2. Photographs of unpermitted development on the subject property in 2000, 2001, and 2002.
3. Coastal Development Permit No. 5-85-218.
4. Aerial photographs of the subject property in 1972, 1976, 1978, and 1987.
5. Letter dated May 7, 2001, from Commission staff to Mr. Battram.
6. Letter dated August 31, 2001, from Commission staff to Mr. Battram.
7. Letter dated April 3, 2003, from Commission staff to Mr. Battram.
8. Letter dated December 10, 2003, Commission staff issuing a Notice of Intent (NOI) to commence Cease and Desist Order proceedings
9. Letter dated January 6, 2004, from Mr. Battram to Commission staff, requesting additional time to respond to the NOI.
10. Letter dated January 9, 2004, from Commission to Mr. Battram, extending the deadline for Mr. Battram's submittal of a Statement of Defense until January 20, 2004.
11. Letter dated January 19, 2004, from Mr. Battram to Commission staff, requesting a postponement of any proposed enforcement action.
12. Letter dated January 22, 2004, from Commission staff to Mr. Battram, declining to postpone proposed enforcement action.
13. Letter dated January 28, 2004, from Mr. Battram to Commission staff.
14. Letter dated January 29, 2004, from Commission staff to Mr. Battram.





Exhibit 2a. September 2000 photograph of retaining walls, storage shed and cabinets on subject property.

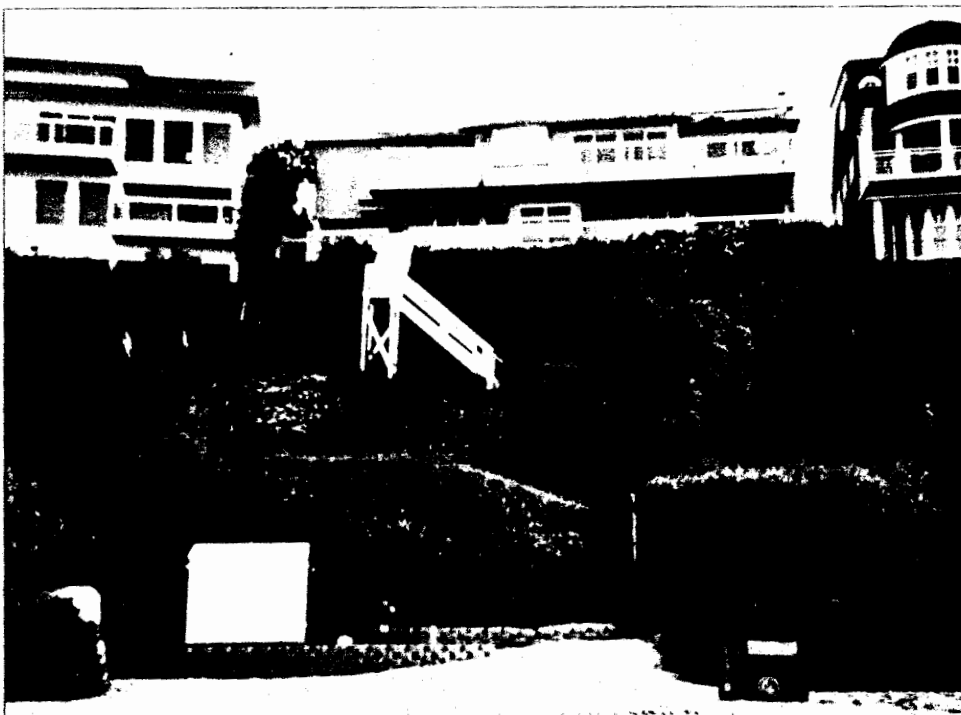


Exhibit 2b. March 2001 photograph of retaining walls, storage shed, stairway, and chain link fence on subject property.



Copyright 2002 Ken Adelman, California Coastal Records Project.

Exhibit 2c. September 2002 photograph of subject property.

California Coastal Commission  
SOUTH COAST DISTRICT  
245 West Broadway, Suite 380  
P.O. Box 1450  
Long Beach, California 90801-1450  
(213) 590-5071

Date: April 26, 1985

Permit Application No. 5-85-218 CK:sjl

ADMINISTRATIVE PERMIT

APPLICANT: Tom Schloessman

PROJECT DESCRIPTION: Additions to a two-story single family residence, which include extensions of the upper and lower floor decks, new roof, entryway, garage door, and the addition of 102 sq. ft. of living area.

PROJECT LOCATION: 3335 Ocean Blvd., Newport Beach

EXECUTIVE DIRECTOR'S DETERMINATION:

Pursuant to PRC Section 30624, the Executive Director hereby determines that the proposed development, subject to Standard and Special Conditions as attached, 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 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.

Additional reasons for this determination, and for any special conditions, may be discussed on the reverse (Page 2).

NOTE: The Commission's Regulations provide that this permit shall be reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, a permit will not be issued for this permit application. Instead, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

Wednesday, May 8, 1985 at 10:00

Redwood Empire Faire, 1055 North State Street, Ukiah

IMPORTANT - Before you may proceed with development the following must occur:

For this permit to become effective you must sign Page 2 of the enclosed duplicate acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgment and evidence of compliance with all special conditions, we will send you an authorization to proceed with development.

MICHAEL L. FISCHER  
Executive Director

by: *Michael Fischer*





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 this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. 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 or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, 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.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

see page 3

SPECIAL CONDITIONS:

None.

ACKNOWLEDGEMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

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

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date of Signing

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

A. Project Description. The project is located at the top of a coastal bluff above Corona del Mar State Park on the seaward side of Ocean Blvd. in Corona del Mar. The proposed development consists of several additions and some remodeling of an existing 2411 sq. ft. single family residence. The project involves removal of the existing roof and construction of a new pitched roof; seaward extensions of the upper and lower floor decks; new entryway and garage door; and maintenance and painting of the private beach stairs. The dining room, kitchen, and master bathroom will be extended three feet seaward onto the existing decks, adding 102 sq. ft. of living area to the residence. The deck extensions would be within the stringline projection established by the adjacent residences.

B. Coastal Views.

The certified Land Use Plan of the City of Newport Beach has designated Ocean Blvd. in Corona del Mar as a "coastal view area". The coastal view policy in the LUP provides that:

Coastal Views

Where coastal views from existing roadways exist, any development on private property within the sight lines from the roadway shall be sited and designed to maximize protection of the coastal view. This policy is not intended to prohibit development on any site.

The residence is situated approximately 20 feet below the grade of Ocean Blvd. with the top of the existing roof approximately 11 feet below grade. The new pitched roof would increase the height of the structure by roughly six feet. The new height, though, would still be below the grade of Ocean Blvd. and would not impact the sight line from that roadway. The Executive Director therefore determines that the proposed project is consistent with the coastal view policy of the certified Land Use Plan and the provisions of Chapter 3 of the Coastal Act.

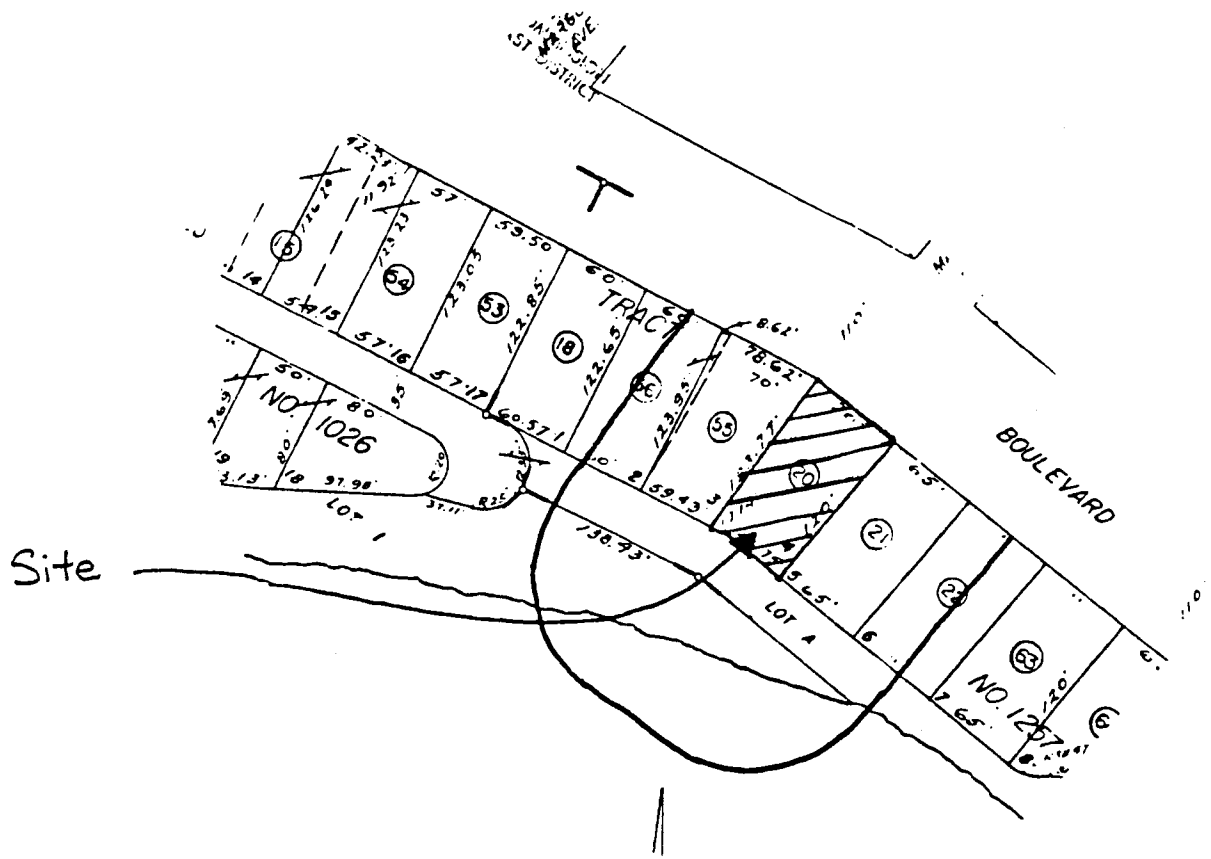
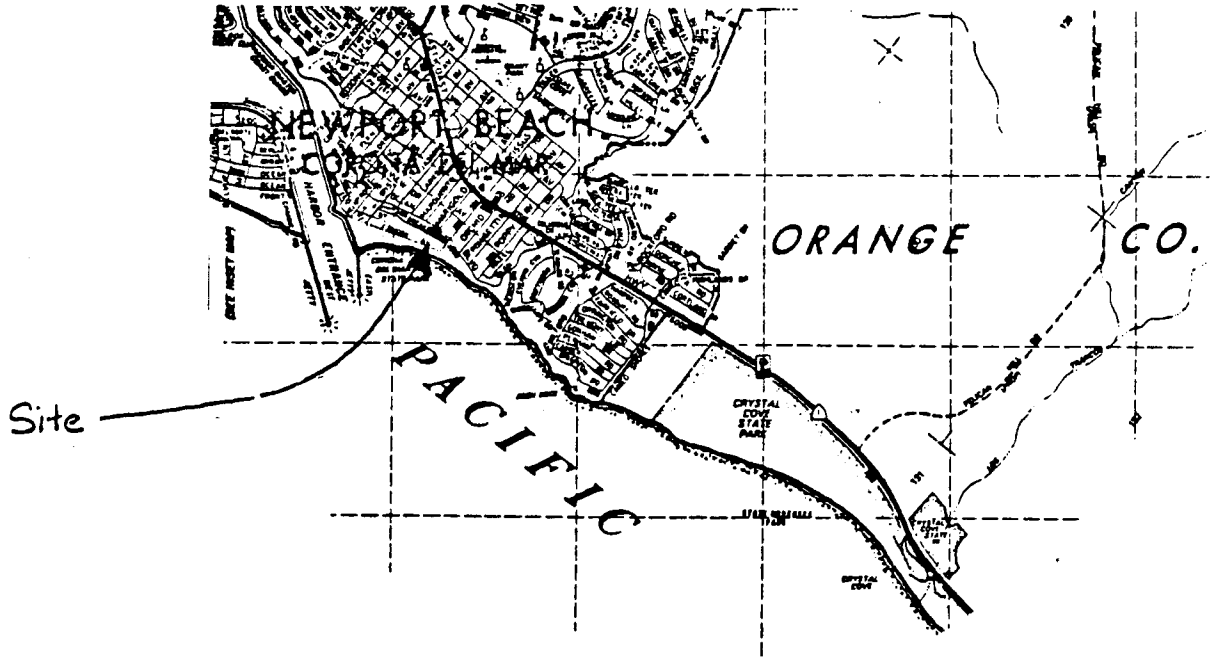


Exhibit 1  
5-85-218  
Site Location

PERMIT AUTHORIZATION

Mr. Tom Schloessman  
P.O. BOX 5665  
Newport Beach, CA 92662-5665

---

Please be advised that you are hereby authorized to proceed with development of your project, permit number 5-85-218, which was reported to the Commission on May 8, 1985. Development of your project is subject to compliance with all terms and conditions specified in the Administrative Permit which was sent to you on April 26, 1985.

Should you have any questions please contact our office.

---

MICHAEL L. FISCHER  
Executive Director

by: 



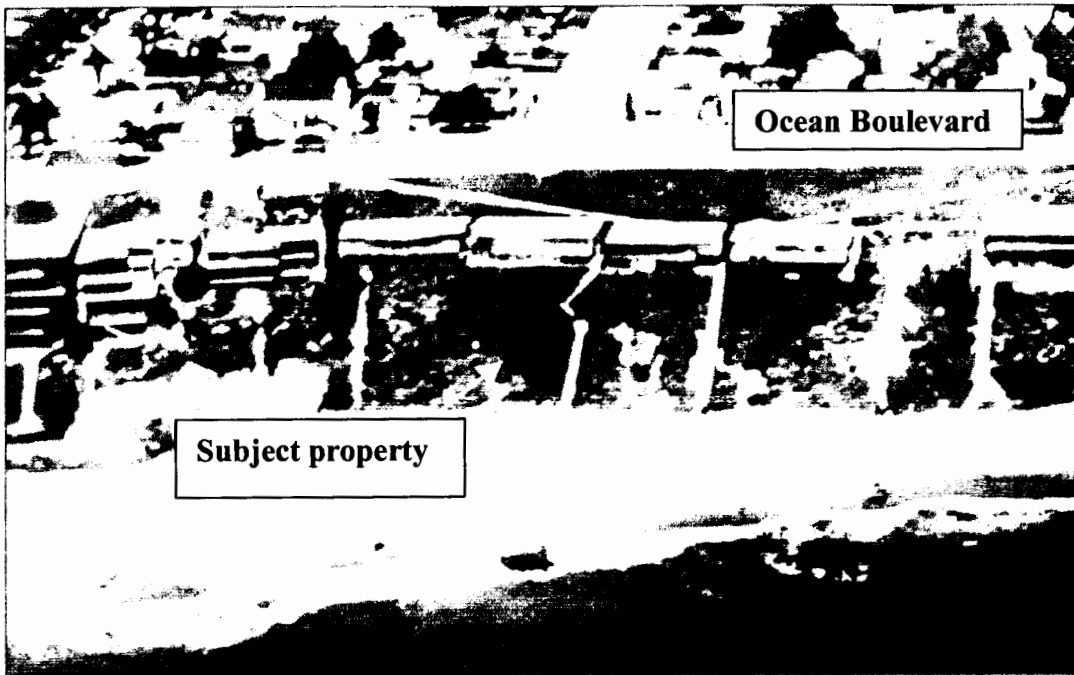


Image 723939, Dept. of Navigation and Ocean Development (now Dept. of Boating and Waterways).

Exhibit 4a. 1972 photograph of subject property.

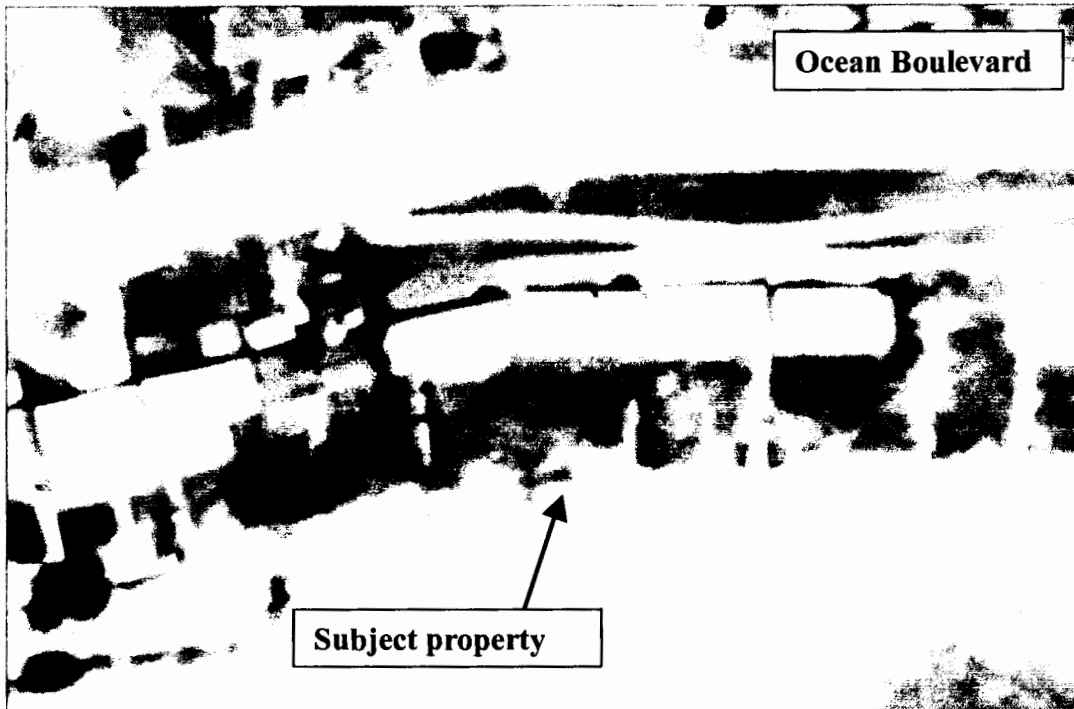


Image 76-1-264

Exhibit 4b. 1976 photograph of subject property.

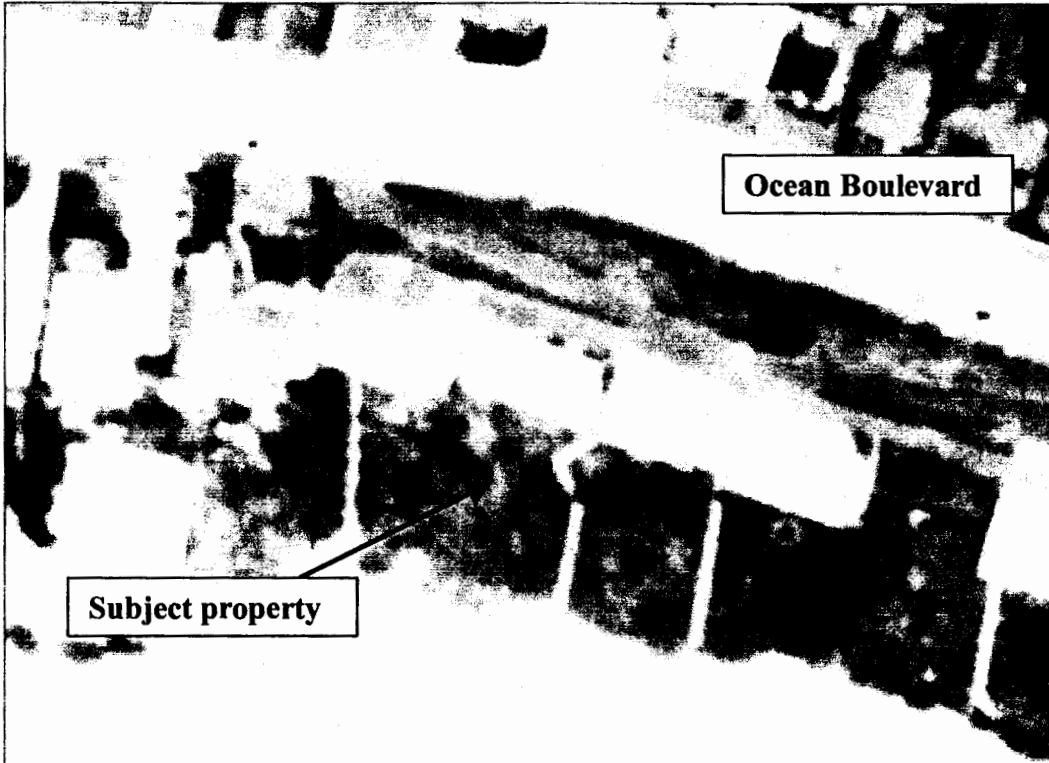


Image 4-23-78#203, California Dept. of Water Resources, April 23, 1978.

Exhibit 4c. 1978 photograph of subject property. Bluff face appears unaltered.

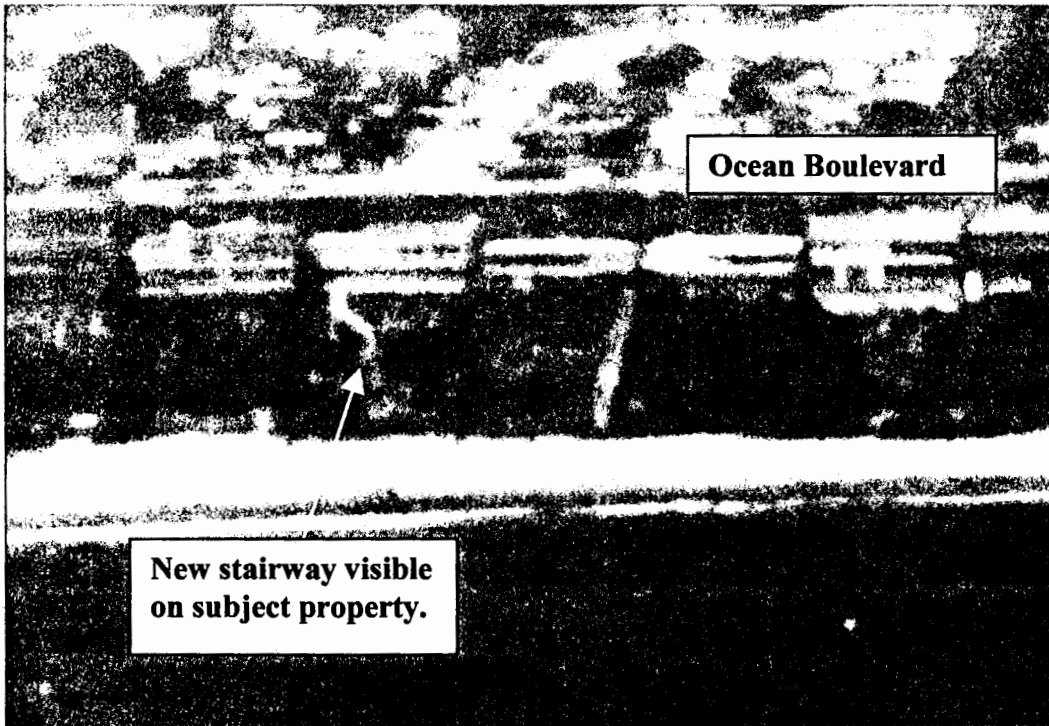


Image 1987-3-92, California Dept. of Water Resources, Summer 1987.

Exhibit 4d. 1987 photograph of subject property. New white stairway is visible.

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT**  
**REGULAR AND CERTIFIED MAIL (Z584862962)**

May 7, 2001

Kenneth Battram  
17985 Skypark Circle #C  
Irvine, CA 92614

Violation File Number: V-5-00-048

Property location: 3335 Ocean Boulevard, Corona del Mar, Orange County

Violation: Grading and construction of a stairway, chain-link fence, retaining wall, concrete patio, and storage shed on the face of a coastal bluff and on the sandy beach.

Dear Mr. Battram:

Our staff has confirmed that development consisting of grading and construction of a stairway, chain-link fence, retaining wall, concrete patio, and storage shed has occurred on the face of a coastal bluff and on the sandy beach on your property, which is located within the Coastal Zone. Commission staff has researched our permit files and concluded that no Coastal Development Permit has been issued for any of the above development. Pursuant to Section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the coastal zone must obtain a Coastal Development Permit, in addition to any other permit required by law.

"Development" is defined by Section 30106 of the Coastal Act as:

***"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....***

Based on a review of historical aerial photographs of your property, Commission staff has determined that although a previously existing stairway was located on the bluff face on your property in 1972; at some point in time between 1972 and 1986, the previously existing bluff face stairway was removed. Further, between 1986 and the present, a new stairway was apparently constructed on the bluff face in a different configuration than the previously existing stairway without the required Coastal Development Permit.

The construction of the new stairway, chain-link fence, concrete patio, storage shed, retaining wall, and related grading constitutes development under the Coastal Act and therefore; requires a

Coastal Development Permit. Any development activity conducted in the coastal zone without a valid Coastal Development Permit constitutes a violation of the Coastal Act.

In most cases, violations involving unpermitted development may be resolved administratively by removal of the unpermitted development and restoration of any damaged resources or by obtaining a Coastal Development Permit authorizing the development after-the-fact. Removal of the development and restoration of the site also requires a Coastal Development Permit. Therefore, in order to resolve this matter administratively, you must submit a complete Coastal Development Permit Application to either retain the development, or to remove the unpermitted development and restore the bluff face to its previous condition.

Although you are entitled to submit a permit application to retain the unpermitted grading, storage shed, retaining wall, patio and stairway improvements, please note that the above development does not appear to be consistent with the Chapter Three policies of the Coastal Act of 1976. Therefore, our staff is likely to recommend denial of this project. If the Commission denies the project, our enforcement staff would work to resolve this violation through the restoration of the site and possible monetary payments. In order to avoid a delay in resolution of this violation, and avoid the possibility of any monetary penalty or fine, we are requesting that you submit a complete Coastal Development Permit Application by **June 15, 2001** for either removal of the unpermitted development and restoration of the site or to authorize the as-built development. For your convenience, a Coastal Development Permit Application has been enclosed.

We hope that you will choose to cooperate in resolving this violation by submitting a permit application. If you do not, we will consider pursuing additional enforcement action against you. You should be aware that the Coastal Act Section 30820 (a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty of up to \$30,000. Section 30820 (b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at 562-590-5071. If you are unable to meet the above deadline for submission of an application, please contact me as soon as possible.

Sincerely,



Grace Noh  
Enforcement Officer

Enclosures: Coastal Development Permit Application

cc: **Steve Hudson, Enforcement Supervisor, Southern California Districts, CCC**  
**Teresa Henry, District Manager, South Coast District, CCC**  
**Steve Rynas, Orange County Area Supervisor, CCC**



**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



August 31, 2001

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT  
REGULAR AND CERTIFIED MAIL (Z584862967)**

Kenneth Battram  
17985 Skypark Circle #C  
Irvine, CA 92614

Violation File Number: V-5-00-048

Property location: 3335 Ocean Boulevard, Corona Del Mar, Orange County

Unpermitted Development: Grading and construction of a stairway, chain-link fence, retaining wall, concrete patio, and storage shed on the face of a coastal bluff and on the sandy beach.

Dear Mr. Battram:

We have verified that you are in receipt of our letter to you dated May 7, 2001, which informed you that: (1) unpermitted development has occurred on your property and (2) in order to resolve this matter administratively and avoid the possibility of court-imposed fines and penalties, the deadline for you to submit a complete Coastal Development Permit Application to either authorize the as-built development or remove the unpermitted development and restore the site was June 15, 2001. As of this date, our office has not received an application for the above unpermitted development.

As previously stated, the unpermitted development consisting of: grading and construction of a stairway, chain-link fence, retaining wall, concrete patio, and storage shed on the face of a coastal bluff and on the sandy beach, which is located in the coastal zone, requires a Coastal Development Permit. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a Coastal Development Permit. Any development performed without a coastal development permit constitutes a violation of the California Coastal Act.

In most cases, violations involving unpermitted development may be resolved administratively, avoiding the possibility of court-imposed fines and penalties, by obtaining a Coastal Development Permit for removal of the unpermitted development and restoration of any damaged resources or by obtaining a Coastal Development Permit authorizing the development after-the-fact.

In order to resolve this matter administratively, you were previously requested to submit an application by June 15, 2001, for approval of the unpermitted development or for removal of the unpermitted development and restoration the site to its previous

condition. Although we would still prefer to resolve this matter administratively, please be aware that if such resolution is not reached in a timely manner, Coastal Act Section 30820 (a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty of up to \$30,000. In addition, to such penalty, Section 30820 (b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

In order to resolve the violation on your property in a timely manner and avoid the possibility of any court-imposed monetary penalty or fine, please submit a complete Coastal Development Permit Application by no later than **September 28, 2001**, for either removal of the unpermitted development and restoration of the site or to authorize the as-built development. Please contact me by no later than **September 14, 2001**, regarding how you intend to resolve this violation. We hope that you will choose to cooperate in resolving this violation by submitting a permit application by **September 28, 2001**. If you do not, we will consider pursuing additional enforcement action against you.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at 562-590-5071.

Sincerely,



Grace Noh  
Enforcement Officer

Enclosure: Coastal Development Permit Application

cc: Steve Hudson, Enforcement Supervisor, Southern Districts, CCC  
Teresa Henry, District Manager, South Coast District, CCC  
Steve Rynas, Orange County Area Supervisor, CCC

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



April 3, 2003

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT  
REGULAR AND CERTIFIED MAIL**

Kenneth Battram  
7241 Garden Grove Blvd., Ste M  
Garden Grove, CA 92841

Violation File Number: V-5-00-048

Property location: 3335 Ocean Boulevard, Corona Del Mar, Orange County

Unpermitted Development: Grading, stairway, chain-link fence, retaining wall, concrete patio, and storage shed on the face of a coastal bluff and on the sandy beach.

Dear Mr. Battram:

We have verified that you are in receipt of our letters to you dated August 31, 2001 and May 7, 2001, which informed you that: (1) unpermitted development has occurred on your property and (2) in order to resolve this matter administratively and avoid the possibility of court-imposed fines and penalties, the deadline for you to submit a complete coastal development permit to resolve the unpermitted development on site was **June 15, 2001**. As of this date, our office has not received an application for the above referenced unpermitted development.

As previously stated, the unpermitted development consisting of: grading, a stairway, chain-link fence, retaining wall, concrete patio, and storage shed on the face of a coastal bluff and on the sandy beach, which is located in the Coastal Zone, requires a coastal development permit. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. Any development performed without a coastal development permit constitutes a violation of the California Coastal Act.

In order to resolve this matter administratively, you were previously requested to submit an application for a coastal development permit for the unpermitted development by June 15, 2001. We would still prefer to resolve this matter administratively. In order to resolve the matter regarding the unpermitted development on the bluff slope in a timely manner and avoid the possibility of a monetary penalty or fine, we are requesting that you submit a complete Coastal Development Permit Application by **May 12, 2003**, for restoration of the graded slope to its previously existing topography, removal of the unpermitted stairway, chain-link fence, retaining wall, concrete patio, and storage shed and revegetation of the bluff slope with native plant species. For your convenience, a coastal development permit application has been enclosed. Please contact me by no later than **April 21, 2003**, regarding how you intend to resolve this violation.

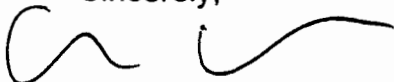
**Page 2 of 2**  
**V-5-00-048 (Battram)**

We hope that you will choose to cooperate in resolving this violation by submitting a permit application by May 12, 2003. If you do not, we will consider pursuing additional enforcement action against you. The Coastal Act contains many enforcement remedies for Coastal Act violations. Section 30803 of the Act authorizes the Commission to maintain a legal action for declaratory and equitable relief to restrain any violation of the Act. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to ensure compliance with the Coastal Act. Moreover, section 30811 authorizes the Commission to order restoration of a site where development occurred without a permit from the Commission, is inconsistent with the Coastal Act, and is causing continuing resource damage. Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in section 30812 of the Coastal Act, to record a Notice of Violation against your property.

In addition, section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit or in a manner that is inconsistent with any coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit or that is inconsistent with any coastal development permit previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30821.6 provides that a violation of either type of cease and desist order or of a restoration order can result in the imposition of civil fines of up to \$6,000 for each day in which the violation persists. Finally, Section 30822 allows the Commission to maintain a legal action for exemplary damages, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (562) 590-5071.

Sincerely,



Andrew Willis  
Assistant Enforcement Officer

## CALIFORNIA COASTAL COMMISSION

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



## VIA CERTIFIED and REGULAR MAIL

December 10, 2003

Mr. Kenneth Battram  
7241 Garden Grove Blvd, Ste. M  
Garden Grove, CA, 92841

Subject: **Notice of Intent to Commence Cease and Desist Order Proceedings**

Violation No.: V-5-00-048

Location: 3335 Ocean Boulevard, Corona Del Mar, Orange County  
(APN 052-120-20)

Violation Description: Unpermitted grading and landform alteration; construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets

Dear Mr. Battram:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order for unpermitted development. The unpermitted development consists of grading and construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets on the face of a coastal bluff and on the sandy beach. This development is located at 3335 Ocean Boulevard, Corona Del Mar, Orange County, APN 052-120-20 ("subject property"). You own the subject property.

The purpose of these enforcement proceedings is to obtain a Cease and Desist Order that directs you to cease and desist from constructing and/or maintaining any unpermitted development and compels the removal of unpermitted development. The proposed Cease and Desist Order is discussed in more detail in the following sections of this letter.

### **History of the Violation Investigation**

In letters from the Commission dated May 7, 2001, August 31, 2001, and April 3, 2003 you were notified that Commission staff had confirmed that unpermitted development consisting of grading and construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets had occurred on the face of a coastal bluff and on the sandy beach on the subject property. Based on a review of Commission records, Commission staff has determined that although a previously existing stairway was located on the bluff face on your property in 1972, at some point in time between 1972 and 1986 the previously existing bluff face stairway was removed. Further, between 1986 and the present, a new stairway was apparently constructed on the bluff face in a different configuration than the previously existing stairway and without the required coastal development permit. The other unpermitted development listed above was also constructed or placed after the enactment of the Coastal Act.

A coastal development permit was neither applied for nor obtained before the unpermitted development was performed on the subject property. According to Commission records, no coastal development permit applications were filed for any of the above-described development on the subject property. Previously issued coastal development permit No. 5-85-218 authorized development on the subject property consisting of additions to a two-story single family residence, which include extensions of the upper and lower floor decks, new roof, entryway, garage door, and the addition of 102 square feet of living area.

In order to try to resolve the matter administratively, Commission staff initially requested that you submit an application for a coastal development permit for the unpermitted development by June 15, 2001. Staff sent you a second letter dated August 31, 2001 and again requested that you submit an application for a coastal development permit for the unpermitted development no later than September 28, 2001. Staff sent you a third letter dated April 3, 2003, and requested that you submit an application for a coastal development permit for the unpermitted development by May 12, 2003. As of this date, we have received no response to these letters and you have not submitted an application for the above-referenced unpermitted development.

### **Cease and Desist Order**

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

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

The Executive Director of the Commission is issuing this notice of intent to commence Cease and Desist Order proceedings since unpermitted development inconsistent has occurred at the subject property. This unpermitted development consists of grading and landform alteration and construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets on the face of a coastal bluff and on the sandy beach. These activities and

construction or placement of these structures constitutes "development" as defined in Section 30106 of the Coastal Act. The development requires a coastal development permit under Section 30600(a) of the Coastal Act. No coastal development permit was applied for nor obtained for the unpermitted development on the subject property.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 for each day in which the violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

In accordance with Section 13181(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Sheila Ryan, no later than January 7, 2004.**

The Commission staff is tentatively scheduling the hearing for the proposed Cease and Desist Order during the February 18-20, 2004 Commission meeting in San Diego. If you have any questions regarding this letter or the enforcement case, please call Sheila Ryan at (415) 597-5894 or send correspondence to her attention at the address listed on the letterhead.

Sincerely,



Peter Douglas  
Executive Director

Encl.: Statement of Defense Form for Cease and Desist Order

cc (without Encl): Sheila Ryan, Headquarters Enforcement Officer  
Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Steve Hudson, Southern California Enforcement Supervisor  
Theresa Henry, South Coast District Manager  
Steve Rynas, Orange County Area Supervisor  
Bill Meyer, Agent for Mr. Battram  
Daniel K. Ohl, Deputy City Attorney, City of Newport Beach

KENNETH BATTRAM

VIA FEDERAL EXPRESS

January 6, 2004

Sheila Ryan – Headquarters Enforcement Officer  
California Coast Commission  
45 Fremont Street  
Suite 2000  
San Francisco, CA 94105

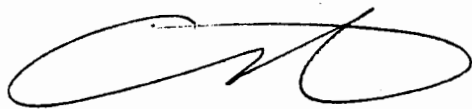
Re: Letter of December 10, 2003  
Noticing the Intent to Commence Cease and  
Desist Order Proceedings (Violation No. V-5-00-048)

Dear Sheila:

I have received the subject letter on December 15, 2003. I feel I must consult an attorney before responding to this letter. Due to the holidays I am unable to meet the deadline of January 7, 2004 set out in your letter. Would you please give me a forty-five day extension of time to obtain an attorney and respond to your letter.

Your cooperation in this matter will be greatly appreciated. I look forward to your response.

Sincerely,



Kenneth Battram

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7241 Garden Grove Blvd., #M  
Garden Grove, CA 92841  
Phone: (714) 379-5433  
Fax: (714) 379-6433

Exhibit 9  
CCC-04-CD-01  
(Battram)



## CALIFORNIA COASTAL COMMISSION

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



## VIA TELECOPY and REGULAR MAIL

January 9, 2004

Mr. Kenneth Battram  
7241 Garden Grove Blvd, Ste. M  
Garden Grove, CA, 92841

**Subject:** Extension Request for Submittal of Statement of Defense Form

**Violation No.:** V-5-00-048

**Location:** 3335 Ocean Boulevard, Corona Del Mar, Orange County  
(APN 052-120-20)

**Violation Description:** Unpermitted grading and landform alteration; construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets

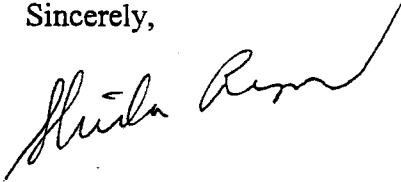
Dear Mr. Battram:

I am in receipt of your January 6, 2004 letter, in which you acknowledge receipt of the Commission's December 10, 2003 Notice of Intent (NOI) letter to you regarding the above-referenced matter. I am responding to your request for an extension of the deadline for submitting a Statement of Defense in response to the NOI.

The Coastal Commission's regulations regarding procedures for the issuance of cease and desist orders (CCR Section 13181) normally provide alleged violators a period of twenty days from the transmittal date of the NOI in which to respond. The January 7, 2004 deadline set in the NOI already factored in additional time for your submittal because of the holidays, which is one of the reasons you cite for requesting an extension.

Staff will grant an extension for your submittal of a Statement of Defense. Please submit the Statement of Defense to my attention no later than **January 20, 2004**, and provide me with the contact information for your attorney as soon as possible. If you have any questions please do not hesitate to contact me at 415-597-5894.

Sincerely,



Sheila Ryan  
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement  
Steve Hudson, Southern California Enforcement Supervisor  
Theresa Henry, South Coast District Manager

**KENNETH BATTRAM**

VIA FEDERAL EXPRESS  
AND FACSMILE

January 19, 2004

Sheila Ryan – Headquarters Enforcement Officer  
California Coast Commission  
45 Fremont Street  
Suite 2000  
San Francisco, CA 94105

Re: Noticing the Intent to Commence Cease and  
Desist Order Proceedings (Violation No. V-5-00-048)

Dear Sheila:

As a follow up to my letter of January 6, 2004, I have located an attorney to represent me, however, because of other commitments he will not be able to undertake my case until later this year.

In previous discussions with Grace Noh, some three years ago now, I told her I was having financial difficulties but when I got them cleared up I was planning a major remodel of my home and backyard. I am now completing my plans and will be starting the permitting process shortly. Since my plans cover the areas that have been troubling the coastal staff, I feel the most time and cost effective way to deal with the coastal staffs alleged violations is to deal with them at the time my plans are being processed for the required permits.

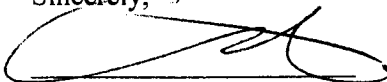
In reflecting on this situation, to urge you to do the above, I offer the following. My property has been essentially the same as it is today as when I moved in, which was in 1987. The items, which the staff finds troubling, have been here for a long time. They are not endangering anything or anybody. They are not polluting or causing any erosion. They are not moving nor am I. I am agreeable to set some time limit on when my plans will be submitted for approval.

Further, I do not want anyone to misconstrue this letter that in anyway I agree with the staff allegations. I do not!

In conclusion, I respectfully request that you hold any contemplated action in abeyance until I file my new plans, at which time we can deal with all issues at one time.

Your cooperation in this matter will be greatly appreciated. I look forward to your response.

Sincerely,



Kenneth Battram

7241 Garden Grove Blvd., #M  
Garden Grove, CA 92841  
Phone: (714) 379-5433  
Fax: (714) 379-6433

Exhibit 11  
CCC-04-CD-01  
(Battram)

## CALIFORNIA COASTAL COMMISSION

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



## VIA TELECOPY and REGULAR MAIL

January 22, 2004

Mr. Kenneth Battram  
7241 Garden Grove Blvd, Ste. M  
Garden Grove, CA, 92841

**Subject:** Request for Postponement of Enforcement Proceedings

**Violation No.:** V-5-00-048

**Location:** 3335 Ocean Boulevard, Corona Del Mar, Orange County  
(APN 052-120-20)

**Violation Description:** Unpermitted grading and landform alteration of a coastal bluff and beach; construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets

Dear Mr. Battram:

I am in receipt of your January 19, 2004 letter, in which you request that the Commission delay an enforcement hearing in the above-referenced matter. You state that you plan to submit a Coastal Development Permit application for a home remodel, and that you wish to address the outstanding Coastal Act violations on your property at that time. Staff is not inclined to postpone an enforcement hearing in this matter for the following reasons.

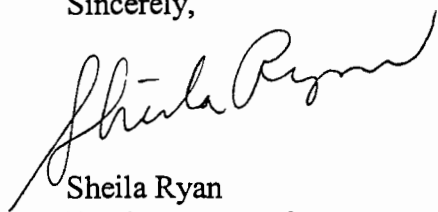
I recently spoke with the South Coast District office staff regarding the Coastal Act violations on your property. The permitting staff is familiar with your property and indicates that they would not recommend that you apply to retain any of the above referenced unpermitted development. Aerial photographs indicate that none of the above referenced unpermitted development existed

on your property as late as 1976, and the Commission has no record of any permits being issued for the cited development. Based on Coastal Act provisions and on previous actions taken by the Commission itself on similar development, the staff recommendation for an application to retain the unpermitted development would most likely be for denial. Staff would not advise that you go to the time and expense of preparing an application seeking to retain the unpermitted development, when it is already very clear that staff would recommend denial of such an application.

Moreover, you have already had more than ample opportunity to apply for a CDP, if that was your desire. As you know, the Commission staff repeatedly requested that, if you wanted to apply to retain or remove the development rather than have this addressed via enforcement, that you do so. Staff gave you deadlines over the last three years to submit a CDP application, but you have failed to do so. Staff is not inclined to delay an enforcement hearing in this matter because we have no assurance that you will comply with a new deadline. Staff first notified you of this violation in May of 2001, and you subsequently failed to meet deadlines of June 2001, September 2001, and May 2003 to submit a Coastal Development Permit application for removal of the unpermitted development. You also failed to meet deadlines of January 7, 2004 and January 20, 2004 for submittal of a Statement of Defense.

In your January 19, 2004 letter you essentially outline a Statement of Defense. You state that you do not in any way agree with staff allegations regarding this matter, and raise issues regarding the length of time the violation has existed and that the violations are not endangering people or the environment. Staff can construe your January 19, 2004 letter to constitute your Statement of Defense. However, if you wish to restate your defenses on the actual form, please submit the Statement of Defense to my attention no later than **January 26, 2004**. Please be aware that the Commission is not barred from proceeding with an enforcement hearing in this matter if you fail to take the opportunity to submit the Statement of Defense form. If you have any questions please do not hesitate to contact me at 415-597-5894.

Sincerely,



Sheila Ryan  
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement  
Steve Hudson, Southern California Enforcement Supervisor  
Theresa Henry, South Coast District Manager

**KENNETH BATTRAM**

VIA FACSMILE

January 28, 2004

Sheila Ryan – Headquarters Enforcement Officer  
California Coast Commission  
45 Fremont Street  
Suite 2000  
San Francisco, CA 94105

Re: Noticing the Intent to Commence Cease and  
Desist Order Proceedings (Violation No. V-5-00-048)


Dear Sheila:

Unfortunately our office closed on Thursday before your fax came through and I did not receive it until late Monday, the 26<sup>th</sup> because the office is closed on Fridays, and I had an emergency that has taken all my time until today. I apologize for the delay in responding, but in any event, I spoke this morning to an attorney, Sherman L. Stacey with the law firm Gaines and Stacey. He said he would let me know today or tomorrow morning if he could represent me.

Regarding my letter of January 19<sup>th</sup>, it was not my intention that this letter be my statement of defense. I further stated in my previous correspondence that to comply with your request to supply a statement of defense that I would have to retain the services of an attorney. Therefore, I want to and will supply a statement of defense shortly when I have an attorney.

I will be in touch with you tomorrow; your patience will be greatly appreciated.

Sincerely,

  
Kenneth Battram

7241 Garden Grove Blvd., #M  
Garden Grove, CA 92841  
Phone: (714) 379-5433  
Fax: (714) 379-6433

## CALIFORNIA COASTAL COMMISSION

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



## VIA TELECOPY and REGULAR MAIL

January 29, 2004

Mr. Kenneth Battram  
7241 Garden Grove Blvd, Ste. M  
Garden Grove, CA, 92841

Subject: **Your letter dated January 28, 2004**

Violation No.: V-5-00-048

Location: 3335 Ocean Boulevard, Corona Del Mar, Orange County  
(APN 052-120-20)

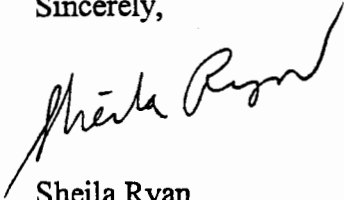
Violation Description: Unpermitted grading and landform alteration of a coastal bluff and beach; construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets

Dear Mr. Battram:

I am in receipt of your January 28, 2004 letter, in which you stated that in order to comply with staff's request to supply a Statement of Defense you would have to obtain legal counsel. I also received a voicemail message from you today, in which you indicated that you have not yet retained legal counsel. As you may know, you are not required to have counsel at Commission proceedings, but you are free to retain counsel if you wish. Staff notes that under the Coastal Act, unlike permitting matters, there is no automatic right of postponement for enforcement matters. This is because, unlike applications to perform development in the future, enforcement proceedings address unpermitted development and other violations of the Coastal Act, and it is important to resolve such matters as expeditiously as possible.

Filing a Statement of Defense in the above referenced matter is voluntary, not required, and staff notes that you have failed to meet three deadlines for submitting a Statement of Defense. Moreover, the enforcement staff put you on notice of the fact this was a violation and needed to be addressed in 2001 and again several times since then. During the last three years we have invited your cooperation to resolve this matter, but these efforts have not met with success. Therefore, Staff is not inclined to grant you any further extensions and we intend to retain this matter on the agenda for public hearing next month at the Commission's February hearing in La Jolla, California, as we indicated to you in our Notice of Intent letter dated December 10, 2003. You will receive a hearing notice and staff report regarding this matter sometime next week. If you still wish to submit a Statement of Defense, staff needs to receive that submission by February 6, 2004, so that we can prepare a formal Addendum to the staff report. Please feel free to call me at 415-597-5894 if you have any questions or would like to discuss this matter.

Sincerely,



Sheila Ryan  
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement  
Steve Hudson, Southern California Enforcement Supervisor  
Theresa Henry, South Coast District Manager