

CALIFORNIA COASTAL COMMISSION

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RECORD PACKET COPY**F10**

Staff:
Staff Report:
Hearing Date:

SMR-SF
February 27, 2004
March 19, 2004

FINDINGS FOR CONSENT AGREEMENT AND 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 9

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 Consent Agreement and Cease and Desist Order No. CCC-04-CD-01 ("Consent Order") to remove unpermitted development at 3335 Ocean Boulevard, Corona del Mar ("subject property") and to 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, 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. Regarding coastal planning and development, Newport Beach has a certified Land Use Plan but does not yet have a certified Local Coastal Program.¹ 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 Consent Order would require the removal of all unpermitted development from the flat/sandy beach portion of the subject property and the submittal of a CDP application for retention of the stairway, retaining walls, and grading on the bluff slope. If the Commission denies the CDP application for after-the-fact authorization of the stairway, retaining walls, and grading on the bluff slope, or if staff does not obtain a complete CDP application within nine months of the date of issuance of this Order (whichever is shorter), Mr. Battram shall then be required to submit, 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 that provides for removal of all unpermitted development and revegetation of the bluff slope within 30 days of the Executive Director's approval of such plan.

¹ 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.

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 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 Consent Agreement and 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 Consent 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 Consent Agreement and Cease and Desist Order No. 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. Description of Unpermitted Development

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 (eastern) portion of the subject property in 1972 and in 1978 (**Exhibit 4a-4b**).

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 4c**). The 1985 CDP contained no provisions for demolition and construction of a new stairway in a different location on the property. The new 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, 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 removal of all of the unpermitted development on the flat/sandy beach portions of the subject property, and the submittal of a complete CDP application for retention of the unpermitted stairway and retaining walls. Commission staff has advised Mr. Battram that the permit application may be denied by the Commission based on its application of Chapter 3 policies of the Coastal Act.

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.

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.

In telephone conversations with Mr. Battram's representative on February 6 and 13, 2004, staff determined that it was possible to resolve the violation through a Consent Order. Mr. Battram is willing to remove unpermitted development from the flat/sandy beach portion of the subject property and to submit a CDP application requesting after-the-fact authorization of the unpermitted stairway, retaining walls, and grading on the bluff slope. In the event that the Commission denies the CDP application for after-the-fact authorization of the stairway, retaining walls, and grading on the bluff slope, or if staff does not obtain a complete CDP application within nine months of the date of issuance of this Order (whichever is shorter), Mr. Battram shall then submit, 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 that provides for removal of all unpermitted development and revegetation of the bluff slope within 30 days of the Executive Director's approval of such plan. Consequently, Mr. Battram has not filed a Statement of Defense, but rather has signed a Waiver of Defenses form that notes his intent to resolve the Coastal Act violation through settlement with the Coastal Commission. Staff received the signed Waiver of Defenses form on February 27, 2004 (**Exhibit 9**).

C. Basis for Issuance of the Cease and Desist Order

The statutory authority for issuance of a proposed 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. California Environmental Quality Act (CEQA)

The Commission finds that issuance of a Consent 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 Consent 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.

E. Consent Agreement: Settlement

Section 30820(a)(1) of the Coastal Act provides that "civil liability may be imposed by the superior court in accordance with this article on any person who performs or undertakes development that is in violation of this division or that is inconsistent with any coastal development permit previously issued by the commission...in an amount that shall not exceed thirty thousand dollars (\$30,000) and shall not be less than five hundred dollars (\$500)." Mr. Battram is willing to resolve the violation administratively and through a settlement process. To that end, Mr. Battram has stated his intent to comply with the Consent Order. Additionally, in light of the intent of the parties to resolve these matters in a timely fashion and through settlement, Mr. Battram has agreed to pay a monetary settlement in the amount of \$4,000 (see Section 9.0 of the attached Consent Order).

F. Waiver of Defenses

In recognition of the value of resolving this matter in a timely manner and for the purposes of agreeing to the issuance and enforcement of the Consent Order, the parties agree not to raise contested allegations, defenses, mitigating factors, rebuttal evidence and other unresolved issues pursuant to California Code of Regulations Section 13183.

Staff recommends that the Commission issue the following Consent Order:

CONSENT AGREEMENT AND 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) engaging in any further development on his property unless authorized pursuant to the Coastal Act and (2) continuing to maintain any development on his property that violates the Coastal Act, except as authorized herein. Accordingly, through the execution of this Consent Order, the Respondents agree to comply with the terms of the above-stated order and with the following terms and conditions.

1.0 TERMS AND CONDITIONS

- 1.1 Within 60 days of issuance of the Consent Order, Respondents shall remove all unpermitted development from the flat/sandy beach portion of the subject property, including concrete patio, storage shed and storage cabinets.
- 1.2 Within 60 days of issuance of the Consent Order, Respondents shall submit a complete CDP application for retention of the unpermitted stairway and retaining walls on the subject property. If the Commission denies a CDP application for after-the-fact retention of unpermitted development on the subject property, Respondents shall remove the remaining unpermitted development on the subject property according to Sections 1.3 and 1.4 of the Consent Order. If the Commission denies a CDP application for after-the-fact retention of unpermitted development on the subject property and the Respondents decide to challenge such a denial without first implementing Sections 1.3 and 1.4 of the Consent Order, the Commission shall have the full right to seek penalties for Respondents' failure to remove unpermitted development under Chapter 9 of the Coastal Act.
- 1.3 If a CDP application to retain the stairway, retaining walls, grading and any other unpermitted development on the bluff slope 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

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 or modification of Consent Agreement and 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.
- 1.4 Within 30 days of the approval by the Executive Director of the documents submitted under Section 1.3, 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 Section 1.3.

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 Consent 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 condition prior to the unpermitted development.

3. Revegetate the bluff face as described in Section 1.3.
 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.
- 1.5 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 Consent Order.
 - 1.6 In accordance with the schedule set forth in the Plan, approved by the Executive Director pursuant to Section 1.3 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 Consent Order, subject to twenty-four hours advance notice.

2.0 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.

3.0 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

4.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

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

5.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Section 30810, and the Respondents have elected to not challenge the Commission's jurisdiction over this matter in the interest of settling and resolving it. Therefore, for the purposes of issuance and enforceability of this Consent Order, the Commission has jurisdiction to act as set forth in this Consent Order, and Respondents agree to not contest the Commission's jurisdiction to issue or enforce this Consent Order.

6.0 WAIVER OF DEFENSES

In light of the intent of the parties to resolve these matters in settlement, Respondents have waived their right to contest the legal and factual basis and the terms and issuance of this Consent Order, including the allegations of Coastal Act violations contained in the Notice of Intent to issue a Cease and Desist Order dated December 10, 2003. Specifically, Respondents decided not to file a statement of defense and to waive their right to present defenses or evidence at a public hearing to contest the issuance of the Consent Order. Respondents are not contesting the Commission's jurisdiction and basis for the purposes of adoption, issuance and enforcement of this Consent Order. Respondents' waiver herein is limited to a hearing on the Commission's adoption, issuance and enforcement of this Consent Order and no other hearing or proceeding.

7.0 EFFECTIVE DATE AND TERMS OF THE ORDER

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

8.0 FINDINGS

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

9.0 SETTLEMENT/COMPLIANCE OBLIGATION

- 9.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the amount of \$4,000. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823). Respondents shall submit the settlement payment amount by April 30, 2004 to the attention of Sheila Ryan of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account.
- 9.2 Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director grants an extension, will constitute a violation of this Consent Order and shall result in respondents being liable for stipulated penalties in the amount of \$500 per day per violation. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties. If Respondents violate this Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public

Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Order and for the underlying Coastal Act violations as described herein.

10.0 DEADLINES

Prior to the expiration of the deadlines established by this Consent Order, Respondents may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director shall grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under this Consent Order, but cannot meet deadlines due to unforeseen circumstances beyond their control.

11.0 SITE ACCESS

Respondents agree to provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under this Consent Order. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the property to view the areas where development is being performed pursuant to the requirements of the Consent Order for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of respondents in carrying out the terms of this Consent Order.

12.0 GOVERNMENT LIABILITIES

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by respondents in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by respondents or their agents in carrying out activities pursuant to this Consent Order. Respondents acknowledge and agree (a) to assume the risks to the property that is the subject of this Consent Order and damage from such hazards in connection with carrying out activities pursuant to this Consent Order; and (b) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents and employees for injury or damage from such hazards.

13.0 WAIVER OF RIGHT TO APPEAL AND SEEK STAY

Persons against whom the Commission issues a Cease and Desist and/or Restoration Order have the right pursuant to Section 30803(b) of the Coastal Act to seek a stay of the order. However, pursuant to the agreement of the parties as set forth in this Consent Order,

Respondents agree to waive whatever right they may have to challenge the issuance and enforceability of this Consent Order in a court of law.

14.0 SETTLEMENT OF CLAIMS

The Commission and respondents agree that this Consent Order settles all monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of this Consent Order, (specifically including but not limited to claims for civil penalties, fines, or damages under the Coastal Act, including Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of this Consent Order, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of this Consent Order. However, this Consent Order does not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of this order.

15.0 SUCCESSORS AND ASSIGNS

This Consent Order shall run with the land binding all successors in interest, future respondents of the property, interest and facility, heirs and assigns. Respondents shall provide notice to all successors, heirs and assigns of any remaining obligations under this Consent Order.

16.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 10.0, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

17.0 GOVERNMENTAL JURISDICTION

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

18.0 LIMITATION OF AUTHORITY

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

18.2 Correspondingly, Respondents have entered into this Consent Order and waived their right to contest the factual and legal basis for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce this Consent Order.

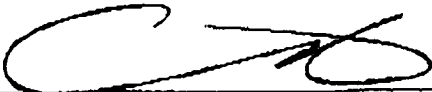
19.0 INTEGRATION

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

20.0 STIPULATION

Respondents and their representatives attest that they have reviewed the terms of this Consent Order and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:
On behalf of Respondents:



Kenneth Battram

2-27-09

Date

Executed in Monterey on behalf of the California Coastal Commission:

Peter Douglas, Executive Director

Date

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, 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. Waiver of Defenses form submitted to Commission staff dated February 27, 2004.

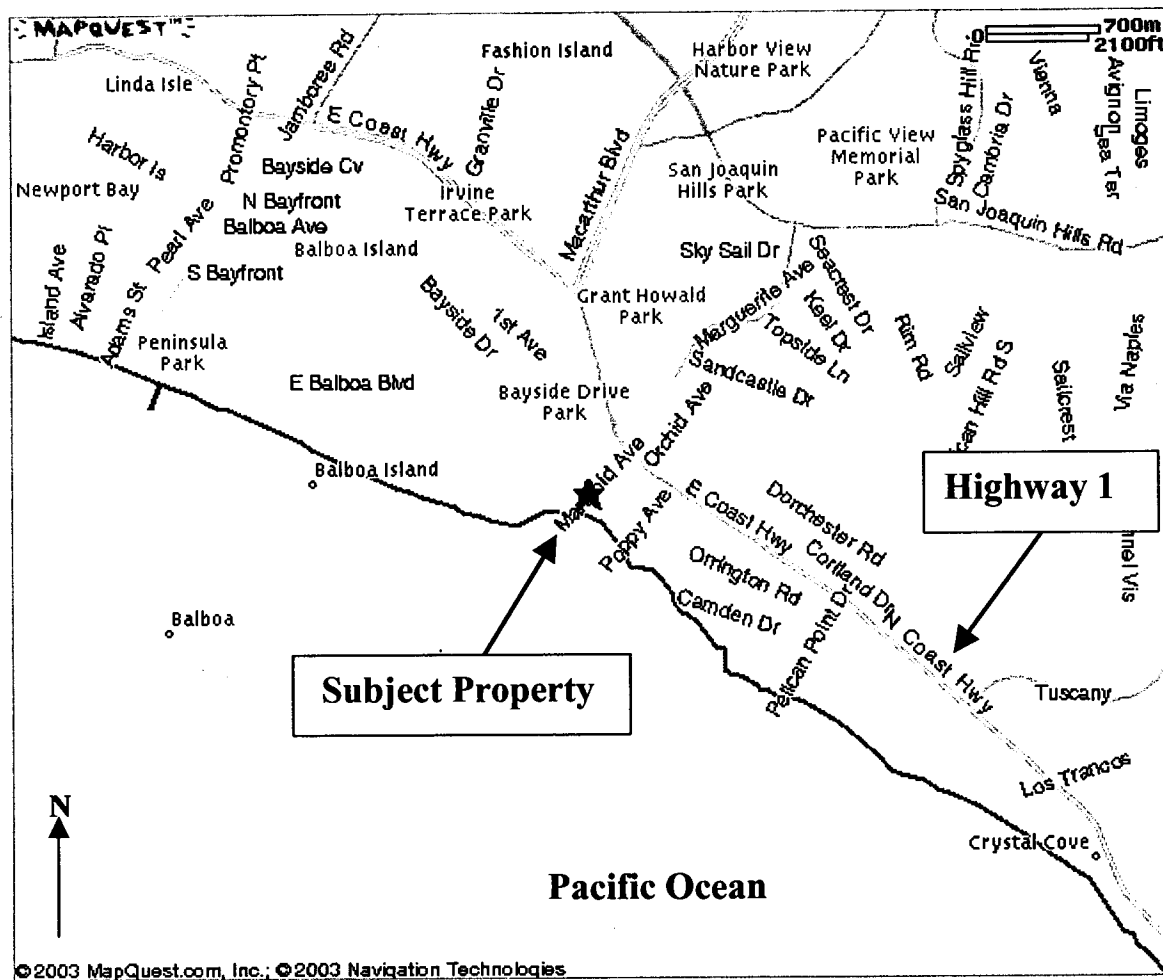


Exhibit 1. Area location map for subject property, Corona del Mar, Orange County.



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

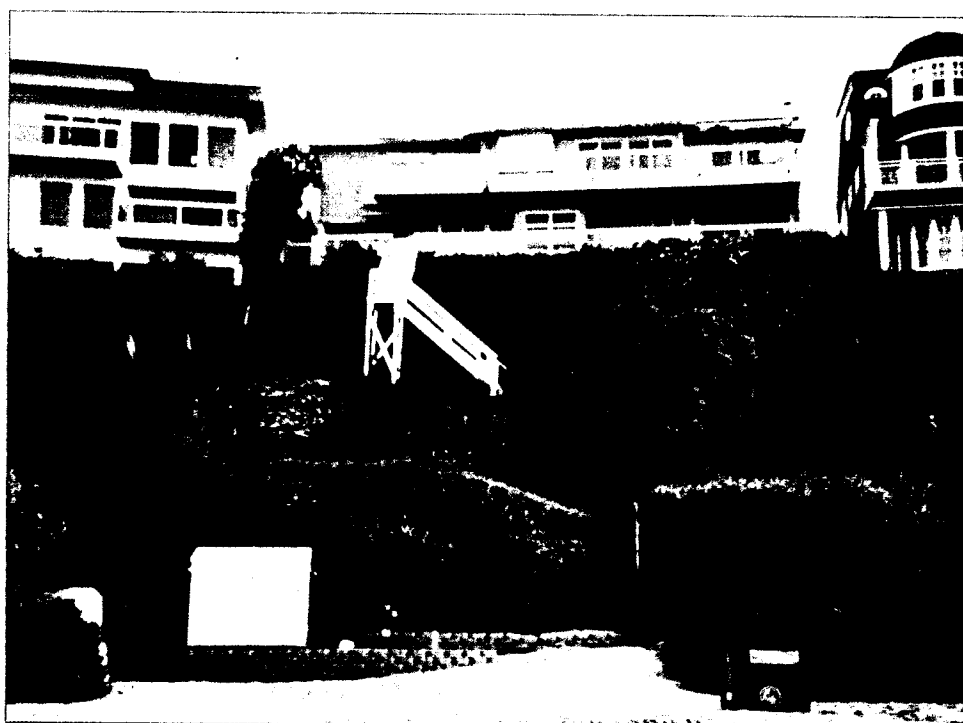


Exhibit 2b. March 2001 photograph of retaining walls, storage shed, stairway, and chain link fence on subject property.



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: [Signature]



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.

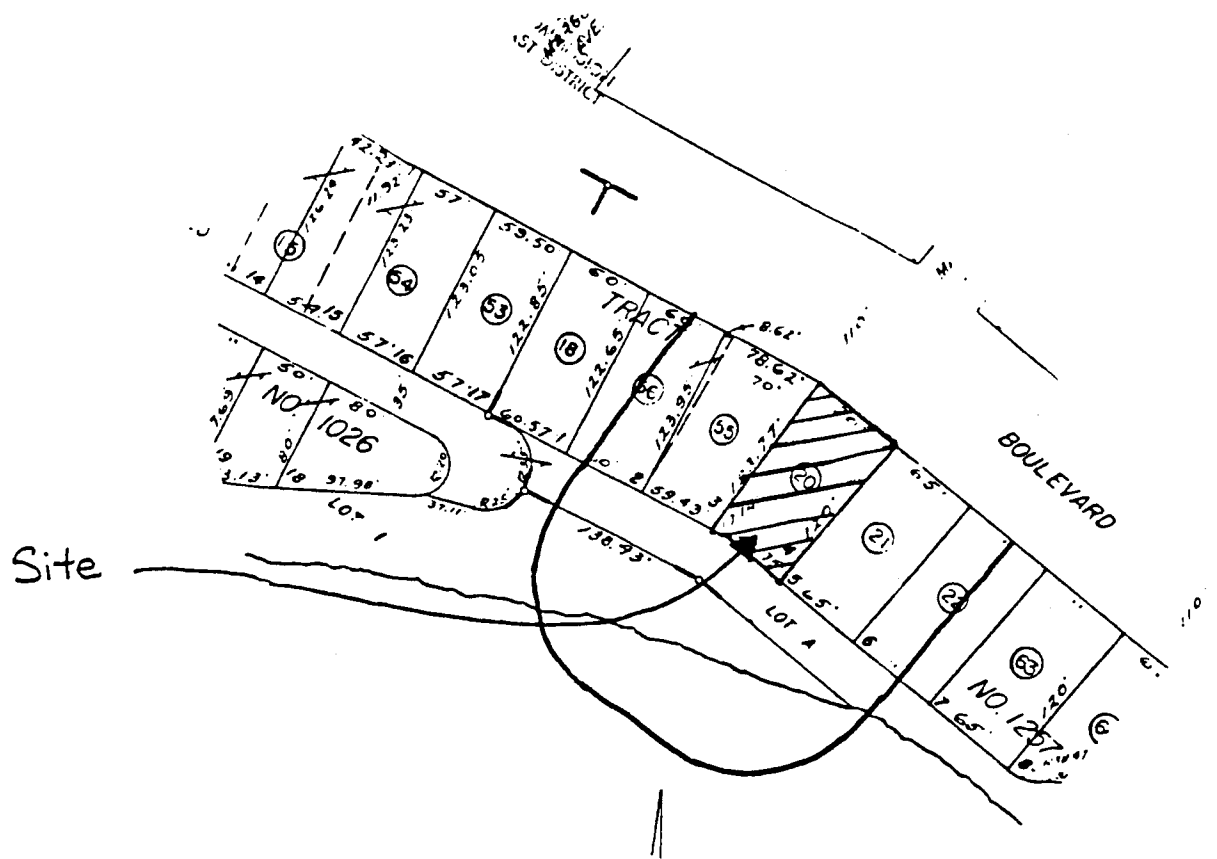
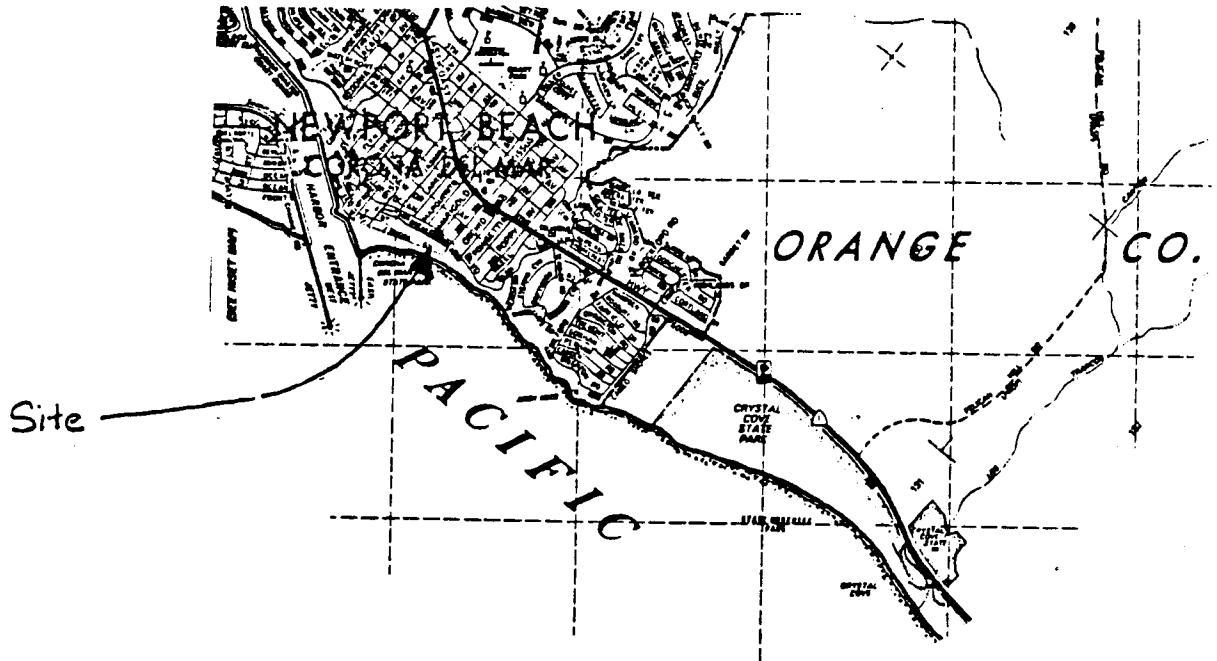
B. Coastal Views.

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.



bit 1
5-218
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: CR



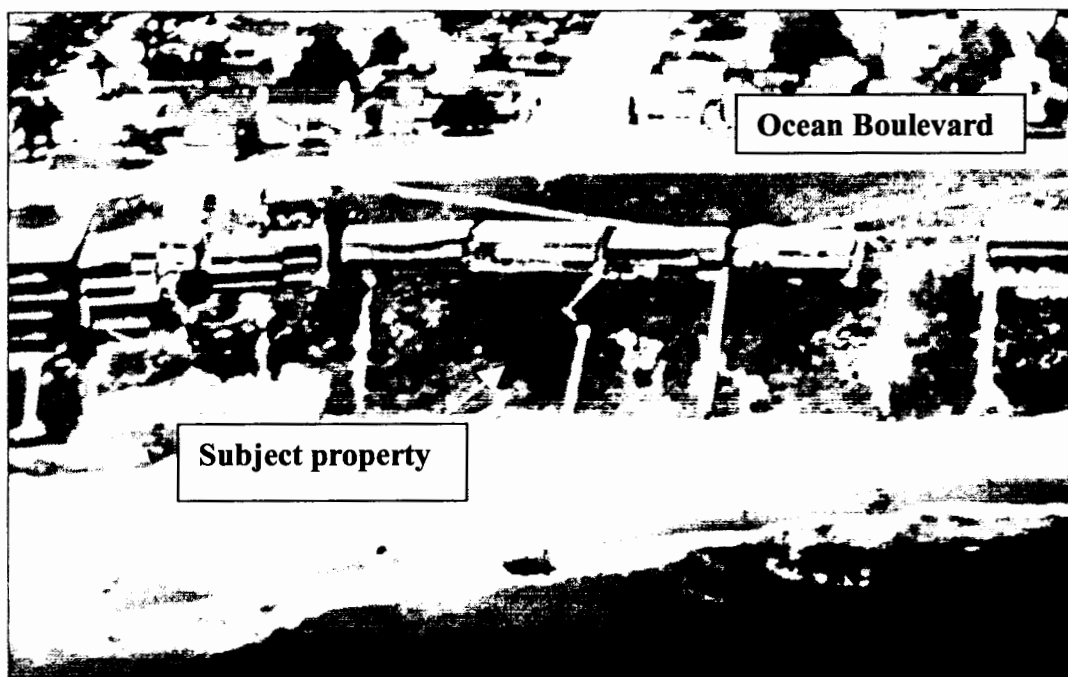


Image 723939, Dept. of Navigation and Ocean Development (now Dept. of Boating and Waterways).

Exhibit 4a. 1972 photograph of subject property.

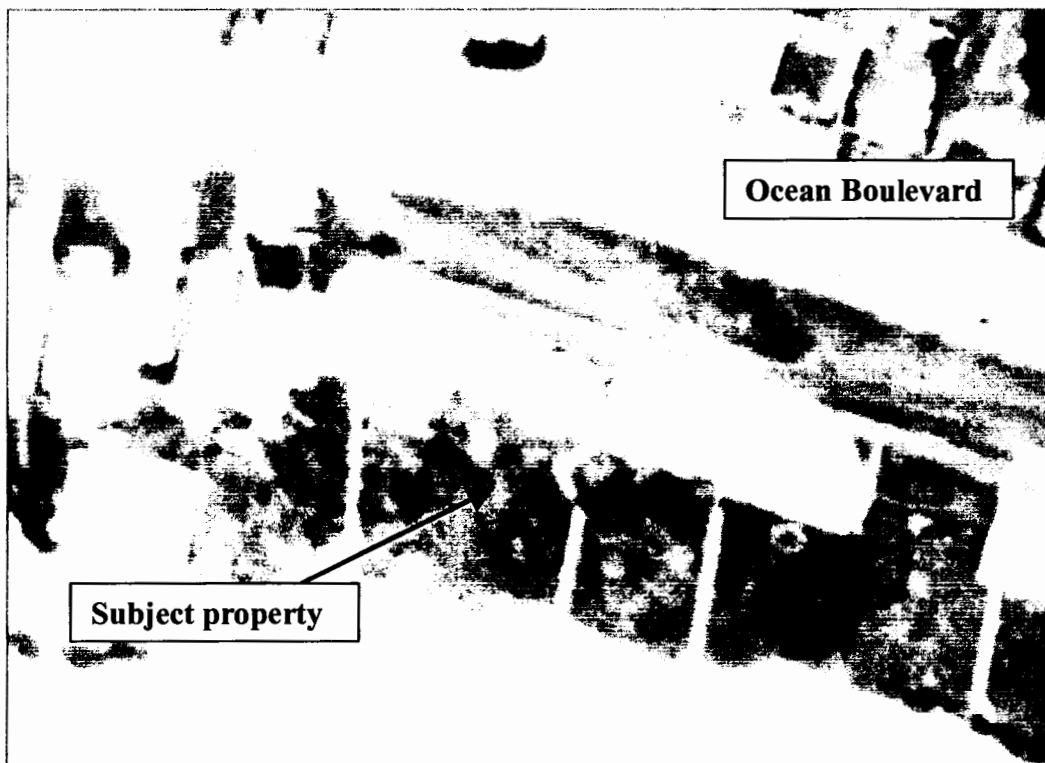


Image 4-23-78#203, California Dept. of Water Resources, April 23, 1978.

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

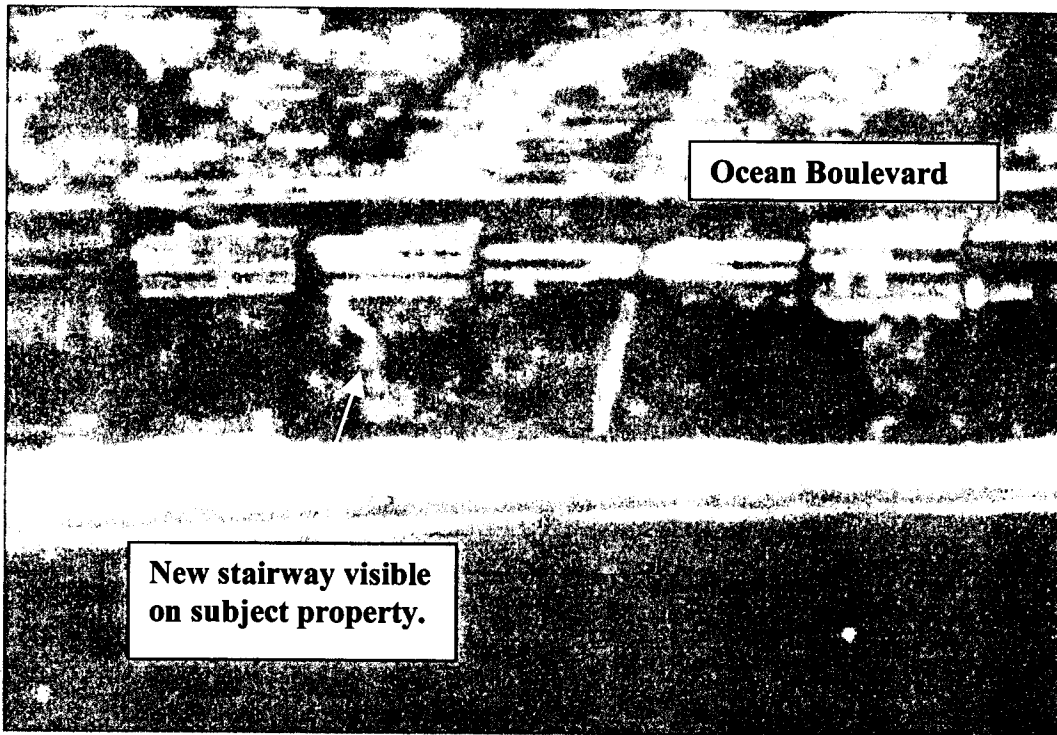


Image 1987-3-92, California Dept. of Water Resources, Summer 1987.

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

CALIFORNIA COASTAL COMMISSION

Coast Area Office
OceanGate, Suite 1000
Beach, CA 90802-4302
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
100 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
3000 Ocean Gate, Suite 1000
Long Beach, CA 90802-4302
(2) 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.

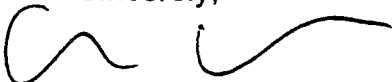
Page 2 of 2
V-5-00-048 (Battram)

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

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

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KEN BATTRAMPAGE 02
PAGE 01

STATE OF CALIFORNIA--THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION45 FERMONT, SUITE 2000
SAN FRANCISCO, CA 94105-3219
VOICE AND TDD (415) 504-3200
FAX (415) 904-5400**WAIVER OF DEFENSES**

Pursuant to Title 14 of the California Code of Regulations Public Resources Code Section 13181, respondents to a Coastal Commission Notice of Intent to Commence Cease and Desist Order Proceedings (NOI) are provided with the opportunity to assert a statement of defense contesting the Coastal Act violations alleged in the NOI or raise mitigating factors related to the alleged violations.

In light my desire to resolve the Coastal Act violations through settlement with the Coastal Commission, I have agreed to stipulate to the issuance by the Commission of a Consent Agreement and Cease and Desist Order ("Consent Order"). To facilitate this settlement, I hereby waive my right to assert defenses contesting the alleged Coastal Act violations alleged in the NOI and the Consent Order.

Kenneth Battram

2-27-04

Date