

## CALIFORNIA COASTAL COMMISSION

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## RECORD PACKET COPY

**Item F 11**

**Staff:** AM-SF  
**Staff Report:** Feb. 24, 2004  
**Hearing Date:** Mar. 19 2004

**STAFF RECOMMENDATIONS AND FINDINGS  
FOR CEASE AND DESIST ORDER**

**CEASE AND DESIST ORDER:** CCC-04-CD-03

**RELATED VIOLATION FILE:** V-3-03-013

**PROPERTY LOCATION:** 70 Geoffroy Drive, Live Oak area of Santa Cruz County

**DESCRIPTION OF PROPERTY** South-facing, oceanfront property atop an approximately 32-foot high seacliff located at the downcoast end of Twin Lakes State Beach, which is bounded by Black's Point (APN 028-143-035)

**PROPERTY OWNER and PERSON SUBJECT TO THIS ORDER:** Eugene and Daymel Shklar

**VIOLATION DESCRIPTION:** Unpermitted shoreline protective device including filling of a seacave with concrete, placement of 4 caissons installed approximately 8 feet into bedrock below the beach and bolted to the bluff face with tieback anchors, placement of reinforced concrete and "shotcrete" between the caissons, placement of a "whaler beam" across other portions of the coastal bluff and bolted to the bluff face with tieback anchors, construction of a bluff top gabion basket retaining wall, construction of a drainage system within the retaining wall, and associated grading.

**SUBSTANTIVE FILE DOCUMENTS:**

1. Coastal Development Permit 3-97-020
2. Coastal Development Permit Extension 3-97-020-E1

3. Emergency Permit 3-95-044-G
4. Emergency Permit 3-95-044-G-A
5. Emergency Permit 3-95-044-G-A2
6. CDP application 3-01-055 (returned)
7. Background Exhibits 1-19

**CEQA STATUS:**

Exempt (CEQA Guidelines (CG) §§ 15061 (b)(1) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308 and 15321)

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**I. SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission approve a Cease and Desist Order (as described below) to address an unpermitted seawall by compelling the submittal of a coastal development permit application to retain development after-the-fact. This development was originally authorized by the Executive Director under Emergency Permit 3-95-044-G-A2 (Exhibit #3).<sup>1</sup> The prior property owner submitted a follow-up coastal development permit application (as required in condition number 11 of the Emergency Permit and Section 13142 of the Commission's Regulations). The Commission approved Coastal Development Permit 3-97-020 with 9 Special Conditions to permanently authorize the emergency work undertaken to stabilize the seacliff on and adjacent to the subject property (Exhibit #4). Seven of the nine Special Conditions compelled the applicant to satisfy certain requirements prior to the issuance of the permit. These "prior to issuance" conditions were not completely satisfied; therefore, the permit was never issued. Coastal Development Permit 3-97-020 expired on June 11, 2000. Therefore all development on and below the bluff is unauthorized.

In this case, an emergency permit was issued to construct a shoreline protective device to protect the imminent threat to the existing property and public beach below. Section 13137 of the Commission's Regulations states, in part, "in some cases a person... may need to undertake work... before the provisions of the [Coastal Act] can be fully complied with." Because an emergency existed at 70 Geoffroy Drive that required action more quickly than allowable under the standard permit process, an emergency permit was issued. The emergency permit process does not allow time to review the development and ensure its compliance with the Chapter 3 provisions of the Coastal Act. Section 13142 of the Commission's Regulations allows the Executive Director to condition an emergency permit to establish a deadline for the submittal of a regular coastal development permit application to retain the development. This ensures that

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<sup>1</sup> Condition No. 11 of Emergency Permit 3-95-044-G-A2 required the submittal of a CDP application to retain the development within 60 days from completion of the emergency or work or no later than September 29, 1995. Condition No. 11 stated that if no such permit application was received, the emergency work was to be removed in its entirety within 150 days from the date of the Emergency Permit.

the development constructed under an emergency permit is not retained unless it is consistent with all Chapter 3 policies of the Coastal Act.

The unpermitted development consists of a shoreline protective device, which involved the filling of a seacave with concrete, placement of 4 caissons installed approximately 8 feet into bedrock below the beach and bolted to the bluff face with tieback anchors, placement of reinforced concrete and "shotcrete" between the caissons, placement of a "whaler beam" across other portions of the coastal bluff and bolted to the bluff face with tieback anchors, construction of a bluff top gabion basket retaining wall, construction of a drainage system within the retaining wall, and associated grading (Exhibit #9, #10, and #11).

In order to issue a Cease and Desist Order under Section 30810 of the Coastal Act, the Commission must find that the activity that is the subject of the order has occurred either without a required coastal development permit (CDP) or in violation of a previously granted CDP.

The unpermitted development activity that has occurred on the subject property meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a proposed Cease and Desist Order are set forth in section 13185 of the Commission's regulations. For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all alleged violators 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, in his or her discretion, to ask of any person, other than the violator or its representative. 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 will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13185 and 13186 incorporating by reference section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if

any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the 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. STAFF RECOMMENDATION**

Staff recommends that the Commission adopt the following motion:

**Motion:**

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

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-03, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit.

### **IV. RECOMMENDED FINDINGS FOR CEASE AND DESIST ORDER CCC-04-CD-03**

Staff recommends the Commission adopt the following findings of fact in support of its action.

#### **A. History of Commission Actions on Subject Property**

On April 14, 1995 the Executive Director of the Coastal Commission issued Emergency Permit 3-95-044-G to Richard and Wendy Lewis for the stabilization of a joint-bounded bedrock block failure of a coastal bluff, which jeopardized the stability of the subject property and the safety of beachgoers below the bluff. The emergency work authorized included plugging a seacave with concrete, covering the base and mouth of the filled seacave with shotcrete, and stabilizing the detached coastal bluff bedrock block. On May 9, 1995, Commission staff discovered that additional work, beyond the scope of authorized development under 3-95-044-G, had occurred, consisting of vertical steel beams installed in beach sand immediately adjacent to the coastal bluff. The project

consultant indicated that the previous design of bolting the rock joints together was infeasible and determined it was necessary to construct a retaining wall/seawall to properly stabilize the bluff. On May 15, 1995, Emergency Permit 3-95-044-G was amended to incorporate the additional development. On July 6, 1995, Emergency Permit 3-95-044 was amended a second time (Exhibit #3). This amendment authorized the installation of a horizontal beam ("whaler beam") immediately above the filled seacave. The project consultant determined that this project element was necessary to prevent the unstable portion of the bluff from collapsing on the roof of the seacave. The Emergency Permit issued by the Executive Director gave temporary approval only and required the property owners to apply for a regular CDP to retain the development by no later than September 29, 1995.

On September 29, 1995, Richard and Wendy Lewis submitted Coastal Development Permit application 3-97-020 as required in condition number 11 of the Emergency Permit and Section 13142 of the Commission's Regulations<sup>2</sup>. The Commission approved Coastal Development Permit 3-97-020 on June 11, 1997 with 9 special conditions. The 9 special conditions included: 1) notification that no additional development beyond what was authorized in the permit could take place on or seaward of the coastal bluff without a new permit or amendment to CDP 3-97-020, 2) submittal of a supplemental geotechnical report for the reengineering of the existing rock riprap, 3) submittal of construction plans and timing for the reengineering of the rock riprap, 4) informational guidance to reengineer the rock riprap below upcoast and downcoast properties, 5) monitoring and maintenance plan/report for the coastal protection structures (including the riprap, concrete seacave plug, vertical tieback seawall/retaining wall, and the tieback whaler beam), 6) submittal of all other agency approvals, 7) recordation of a deed restriction acknowledging that the site is subject to hazards and waiving any claims of liability on the part of the Commission and a deed restriction accepting the responsibility for reengineering the riprap, implementing the monitoring and maintenance report, and funding all costs of the project including the monitoring, maintenance, and repair<sup>3</sup>, 8) compliance with special conditions 2, 3, 5, 6, and 7 prior to issuance of the permit by January 1, 1998, unless otherwise extending by the Executive Director, and 9) notification to other agencies prior to commencement of construction (Exhibit #4).

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<sup>2</sup> Section 13142 of the Commission's Regulations states, in part, "The Executive Director may grant an emergency permit upon reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later..." Condition No 11 of Emergency Permit 3-95-044-G-A2 required the submittal of a complete coastal development permit application within 60 days of the completion of the emergency work or no later than September 29, 1995. Condition No. 11 also states that if no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of the emergency permit.

<sup>3</sup> The Lewis' recorded these deed restrictions on March 8, 2000. The deed restriction acknowledged that the site is subject to hazards and waived any claims of liability on the part of the Commission and required the applicant to accept the responsibility for reengineering the riprap, implement the monitoring and maintenance report, and fund all costs of the project including the monitoring, maintenance, and repair.

Coastal Development Permit 3-97-020 was valid for a period of two years, expiring on June 11, 1999 if development did not commence. Prior to the date of its expiration, Mr. Lewis contacted the Commission's Central Coast District office to request an extension for submittal of condition compliance established in Special Condition No. 8 and an extension of the permit. On July 12, 1999, the Executive Director extended the timeframe to satisfy condition compliance to January 1, 2000 (Exhibit #7). In addition, the Executive Director granted an extension of CDP 3-97-020 for one year, expiring on June 11, 2000 (Exhibit #8). However, condition compliance was not satisfied and the permit was never issued. On June 11, 2000, Coastal Development Permit 3-97-020 expired; and therefore all development on and below the bluff including, but not limited to, filling of a seacave with concrete, placement of 4 caissons installed approximately 8 feet into bedrock below the beach and bolted to the bluff face with tieback anchors, placement of reinforced concrete and "shotcrete" between the caissons, placement of a whaler beam across other portions of the coastal bluff and bolted to the bluff face with tieback anchors, construction of a bluff top gabion basket retaining wall, construction of a drainage system within the retaining wall, and associated grading is unauthorized.

## **B. History of Violation**

In March 2001, Eugene and Daymel Shklar (hereinafter "Shklar" or "the Shklars") purchased the subject property from the Lewis Trust and on June 14, 2001 submitted Coastal Development Permit application 3-01-055 to retain the development authorized by Emergency Permit 3-95-044-G-A2.<sup>4</sup> In a July 13, 2001 letter to Paul Bailey, Shklar's representative at the time, Commission Staff coastal planner Dan Carl indicated that staff could not file the application until Shklar submitted additional items, which were necessary to adequately review the project (Exhibit #12). A deadline of September 11, 2001 was given to submit such items and the letter informed Mr. Bailey that if the items were not received by that time the application would be returned.

On October 18, 2002, Commission staff returned Coastal Development Permit application 3-01-055 to Mr. Bailey. In an October 18, 2002 letter, Commission staff reiterated, "The temporary development installed under the emergency authorization is required to be removed absent a regular CDP. Because the CDP was never issued, and because the approval has long since expired, the development allowed by the emergency permit exists without benefit of a regular CDP. As such, it represents a violation of the Coastal Act's permitting requirements. The obligation for rectifying the violation runs with the land" (Exhibit #13). The letter gave the current property owner until November 1, 2002 to contact Commission staff and until December 18, 2002 to

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<sup>4</sup> Because a clear project description was never given in permit application 3-01-055, Commission staff assumes that the permit application was to retain the development approved under Emergency Permit 3-95-044-G-A2 as it references a letter from the prior Geotechnical engineer, which describes the emergency work and the re-engineering of the existing rock revetment. The permit application also included plans for a stairway from the property to the beach but was not included in their project description. A stairway from the property to the beach was not included in the development temporarily authorized by Emergency Permit 3-95-044-G-A2.

submit a complete permit application. On November 29, 2002, in a conversation at the Commission's Central Coast office, the Shklars indicated that they intended to pursue the submittal of a new application. However, no permit application was received.

In a letter dated March 12, 2003, Mr. Carl informed the Shklars that the Commission had not received a coastal development permit application to recognize the shoreline protective device and gave the Shklars yet another deadline to comply with the Coastal Act requirement for a permit (Exhibit #14). The Shklars were given until March 28, 2003 to respond before the matter was forwarded to the Commission's enforcement division. In a March 27, 2003 letter, Shklar indicated, among other things, that they were reluctant to submit a new CDP application for a new permit to recognize the development that was installed under the emergency permit and requested that the Commission reissue the previous coastal development permit. Commission staff responded in a April 7, 2003 letter to Shklar, which stated that while staff appreciates the circumstances involved in this project, there are no Coastal Act provisions or Commission regulations for legally "reviving" an expired coastal permit (Exhibit #15). Once again, the Shklars were advised to submit a permit application. In addition, they were informed that the Commission's enforcement unit would contact them separately to set deadlines for the submittal of an application.

On June 13, 2003, Commission enforcement staff contacted the Shklars and set a new deadline of July 14, 2003 to submit a permit application (Exhibit #16). On August 15, 2003, Commission enforcement staff addressed the concerns raised in the Shklars June 28, 2003 letter and extended the deadline for submittal of a permit application to no later than September 10, 2003 (Exhibit #17 & #18). As of this time Commission staff has not received a coastal development permit application to authorize the temporary emergency work constructed on and adjacent to the coastal bluff fronting the Shklar's property. Although Commission staff has spent a great deal of time on this matter, staff has been unable to obtain voluntary compliance with the Coastal Act

#### Notice of Intent to Commence Cease and Desist Order Proceedings

Because previous efforts were unable to compel the Shklars to submit a CDP application to retain development after-the-fact, on February 3, 2004, the Commission's statewide enforcement unit sent a *Notice of Intent to Commence Cease and Desist Order Proceedings* (NOI) to Eugene and Daymel Shklar.

The NOI states:

In accordance with Sections 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 (SOD) form. **The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Aaron McLendon, no later than February 24, 2004.**



On February 10, 2004, the Shklar's representative, Charlene Attack, contacted Commission staff to discuss the NOI for Cease and Desist Order proceedings that was sent to the Shklars on February 3, 2004. Between February 10 and February 13, Commission staff and Ms. Attack exchanged several voicemail messages but were unable to discuss the NOI for Cease and Desist Order proceedings. On February 13, 2004, Ms. Attack discussed the enforcement case with Commission staff and requested a continuance in order to review the files related to this matter. Because Commission staff has tried unsuccessfully to resolve this matter with the Shklars for almost three years, the Executive Director denied this request and continues to recommend a Cease and Desist Order to address the unpermitted shoreline protective device by compelling the submittal of a complete coastal development permit.

**C. Description of Unpermitted Development**

The unpermitted development, which is the subject matter of this Cease and Desist Order, consists of a shoreline protective device, which includes the filling of a seacave with concrete, placement of 4 caissons installed approximately 8 feet into bedrock below the beach and bolted to the bluff face with tieback anchors, placement of reinforced concrete and "shotcrete" between the caissons, placement of a "whaler beam" across other portions of the coastal bluff and bolted to the bluff face with tieback anchors, construction of a bluff top gabion basket retaining wall, construction of a drainage system within the retaining wall, and associated grading. The unpermitted development is located on and adjacent to an approximately 32-foot high seacliff located at the downcoast end of Twin Lakes State Beach, which is bounded by Black's Point, in the Live Oak area of Santa Cruz County.

**D. Basis for Issuance of 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 1) requires a permit from the commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist.*
- (b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

The following paragraphs set forth the basis for the issuance of the Cease and Desist Order by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 of the Coastal Act for the Commission to issue a Cease and Desist Order.



### **Development Has Occurred without a Coastal Development Permit ("CDP")**

The unpermitted development activity that is the subject of this Cease and Desist Order satisfies the definition of "development" contained in Section 30106 of the Coastal Act. This definition includes but is not limited to: the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials or change in the density or intensity of the use land. In this case, the unpermitted shoreline protective device, including all associated development (see above description of all unpermitted development) is "development" as defined by Section 30106.

Pursuant to Section 30600(a) of the Coastal Act, "development" requires a coastal development permit. In this case, no coastal development permit has been issued for the subject unpermitted development. The subject unpermitted development is also not exempt from the Coastal Act's permitting requirements.

The shoreline protective device was constructed under Emergency Permit 3-95-044-G-A2 (Exhibit #3). Section 13142 of the Commission's Regulations states, in part, "The Executive Director may grant an emergency permit upon reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later..." Condition No 11 of Emergency Permit 3-95-044-G-A2 specifically required the submittal of a complete coastal development permit application within 60 days of the completion of the emergency work or no later than September 29, 1995. Condition No. 11 also states that if no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of the emergency permit. The Commission granted Coastal Development Permit 3-97-020 to the previous property owner to retain the development that was temporarily authorized under the Emergency Permit. However, condition compliance was not satisfied, the permit was never issued, and the Commission's approval of CDP No. 3-97-020 expired. Therefore, there is no valid coastal development permit for the subject development. If approved, this Cease and Desist Order will compel the Shklars to submit a coastal development permit to authorize the development constructed under the Emergency Permit.

### **E. California Environmental Quality Act (CEQA)**

The Commission finds that issuance of a cease and desist order to compel the submittal of a coastal development permit 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 15061 (b)(1) through (3)), 15307, 15308 and 15321 of the CEQA Guidelines.

**F. Allegations**

1. Eugene and Daymel Shklar are the owners of 70 Geoffroy Drive (APN No. 028-143-035). The subject property is located on the southern portion of Twin Lakes State Beach, which is bounded by Black's Point.
2. The prior property owners received Emergency Permit 3-95-044-G-A2 that gave temporary authorization for a shoreline protective device at 70 Geoffroy Drive. Section 13142 of the Commission's Regulations and Condition No. 11 of Emergency Permit 3-95-044-G-A2 required the prior property owners to apply for a regular coastal development permit to retain the development undertaken by the Emergency Permit.
3. The prior property owners received Coastal Development Permit 3-97-020 for a shoreline protective device at 70 Geoffroy Drive. However, all "prior to issuance" conditions were not satisfied and the permit was never issued. Coastal Development Permit expired on June 11, 2000. Therefore, all development on and below the bluff at 70 Geoffroy Drive including, but not limited to, filling of a seacave with concrete, placement of 4 caissons installed approximately 8 feet into bedrock below the beach and bolted to the bluff face with tieback anchors, placement of reinforced concrete and "shotcrete" between the caissons, placement of a whaler beam across other portions of the coastal bluff and bolted to the bluff face with tieback anchors, construction of a bluff top gabion basket retaining wall, construction of a drainage system within the retaining wall, and associated grading is unauthorized.
4. Eugene and Daymel Shklar are maintaining unpermitted development, as defined by Coastal Act Section 30106, at the subject property, consisting of a shoreline protective device, which includes the filling of a seacave with concrete, placement of 4 caissons installed approximately 8 feet into bedrock below the beach and bolted to the bluff face with tieback anchors, placement of reinforced concrete and "shotcrete" between the caissons, placement of a "whaler beam" across other portions of the coastal bluff and bolted to the bluff face with tieback anchors, construction of a bluff top gabion basket retaining wall, construction of a drainage system within the retaining wall, and associated grading.
5. The Shklars have not complied with repeated requests that they apply for a coastal development permit for the above-described development and consequently, no coastal development permit has been issued. Therefore, the development is a violation of the Coastal Act.
6. The unpermitted development requires a coastal development permit. There are no exemptions in either the Coastal Act or the Commission's Regulations that would authorize the unpermitted development without a coastal development permit.

**G. Violators' Defenses and Commission's Response**

As of the date of this report, the Shklars have not responded to staff's allegations as set forth in the February 3, 2004 Notice of Intent to Commence Cease and Desist Order Proceedings. Since the completion of Section 13181's statement of defense form is mandatory, the Shklars have failed to raise and preserve any defenses that they may have.

**H. Actions in Accordance with Authority Granted to Commission and Staff**

The statutory authority for issuance of this Cease and Desist Order is provided in Section 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 1) requires a permit from the commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist.*
- (b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.*

The procedures for the issuance of Cease and Desist Orders are described in the Commission's regulations in Sections 13180 through 13188 of Title 14 of the California Code of Regulations. Accordingly, the purpose of this Cease and Desist Order is to order Eugene and Daymel Shklar to submit a Coastal Development Permit to authorize the develop after-the-fact.

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

## **CEASE AND DESIST ORDER**

Pursuant to its authority under Public Resource Code §30810, the California Coastal Commission hereby orders and authorizes Eugene and Daymel Shklar, their agents, contractors and employees, and any person acting in concert with any of the foregoing (hereinafter referred to as "Respondents") to cease and desist from maintaining on the subject property any structures or other development constructed or erected without a Coastal Development Permit. Accordingly, all persons subject to this order shall, within 90 days of its issuance, fully comply with paragraphs A and B as follows.

- A. Submit a complete Coastal Development Permit application to the Commission's Central Coast District office. The application shall include all unpermitted development constructed on the subject property, including but not necessarily limited to, all development authorized under Emergency Permit 3-95-044-G-A2.
- B. The Coastal Development Permit application shall include, at a minimum:
  - 1. All requirements listed in the Application for Coastal Development Permit.
  - 2. All requested documents included in Commission staff's July 13, 2001 letter to Paul Bailey (The Shklar's previous representative) as attached as Exhibit #12 to the staff report for CCC-04-CD-03.
  - 3. A site plan showing at least a) the entire property, b) all structures on it, including the residential structure, the seawall, gabion basket retaining wall, rock revetment, and subsurface drainage, c) all property lines, d) existing vegetation, e) all easements and/or property restrictions, and f) topography of the site including the bluff edge and the base of the bluff. If any structures go beyond the property lines then adjacent properties shall be shown as well.
  - 4. Updated geologic and engineering reports. The reports shall include an analysis of the erosion dangers with and without the shoreline protective device (including the seawall, rock revetment, and gabion basket retaining wall). Alternatives to each of the protective devices (seawall, rock revetment, and gabion basket retaining wall) shall be included.

### **I. Persons Subject to the Order**

Eugene and Daymel Shklar, and their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

## **II. Identification of the Property**

The property that is subject to this Restoration Order is described as follows: 70 Geoffroy Drive, Live Oak area of Santa Cruz County (APN 028-143-035)

## **III. Description of Unpermitted Development**

An unpermitted shoreline protective device including the filling of a seacave with concrete, placement of 4 caissons installed approximately 8 feet into bedrock below the beach and bolted to the bluff face with tieback anchors, placement of reinforced concrete and "shotcrete" between the caissons, placement of a "whaler beam" across other portions of the coastal bluff and bolted to the bluff face with tieback anchors, construction of a bluff top gabion basket retaining wall, construction of a drainage system within the retaining wall, and associated grading.

## **IV. Effective Date and Terms of the Order**

The effective date of the order is the date the order is issued by the Commission. This order shall remain in effect permanently unless and until modified or rescinded by the Commission.

## **V. Findings**

The order is issued on the basis of the findings adopted by the Commission at the March 2004 hearing, as set forth in the attached document entitled "Recommended Findings for Cease and Desist Order CCC-04-CD-03".

## **VI. Compliance Obligation**

Strict compliance with the order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the order including any deadline contained in the order 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, in addition to any other penalties authorized under Section 30820.

## **VII. 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.

**VIII. Appeal**

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

Executed in \_\_\_\_\_ on \_\_\_\_\_, on behalf of the California Coastal Commission.

Peter Douglas, Executive Director

By: \_\_\_\_\_

**CCC-04-CD-03**  
**Exhibit List**

<b>Exhibit Number</b>	<b>Description</b>
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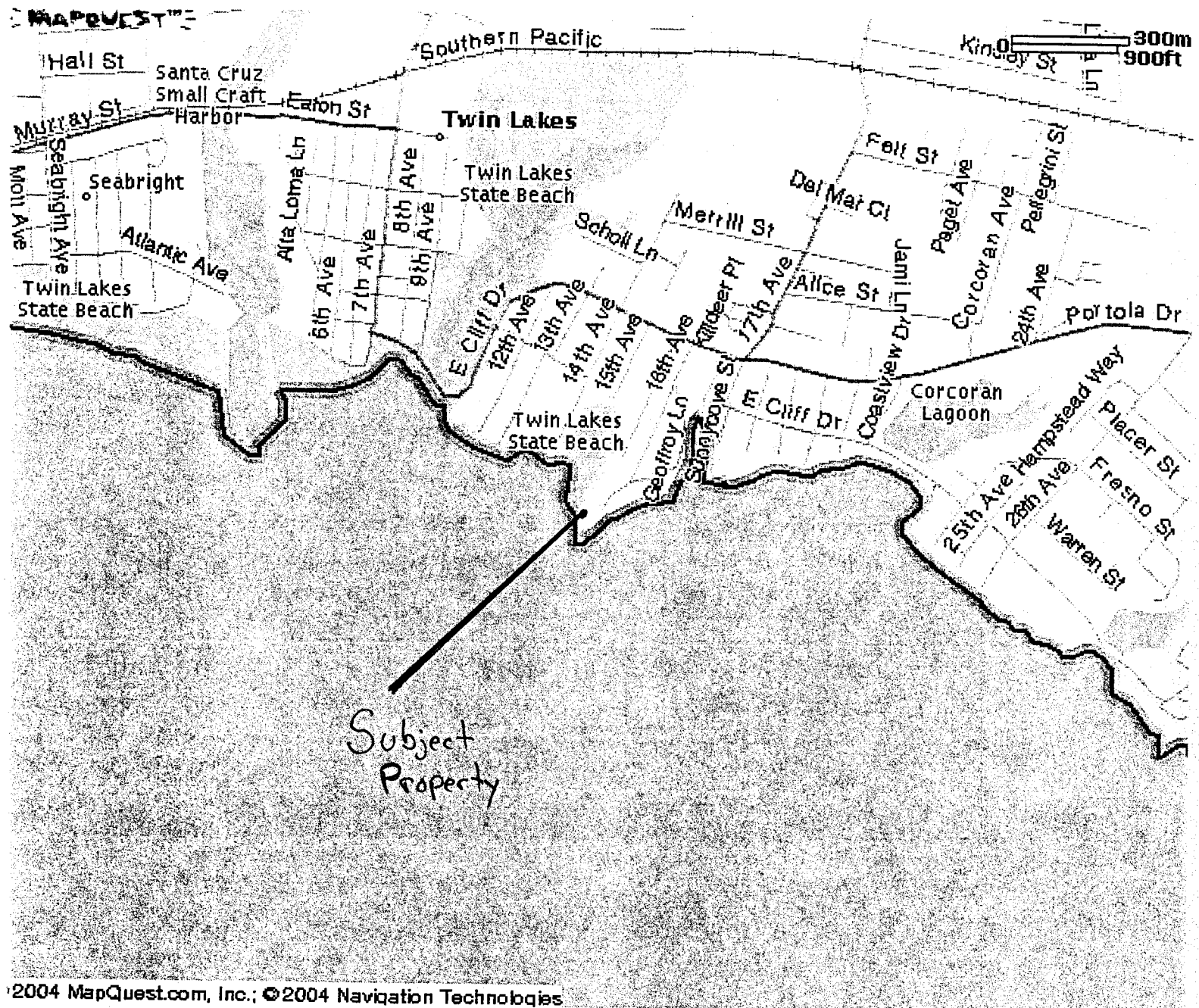
- |     |  |
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| 1.  | Site Map and Location  |
| 2.  | Project Location   |
| 3.  | Emergency Permit 3-95-044-G-A2   |
| 4.  | Special Conditions for CDP No. 3-97-020  |
| 5.  | NOI for CDP No. 3-97-020   |
| 6.  | 4/7/98 letter from Commission staff to Lewis regarding condition compliance  |
| 7.  | 7/12/98 letter from Commission staff to Lewis regarding extension of permit  |
| 8.  | Coastal Development Permit Extension No. 3-97-020-E1   |
| 9.  | Site plan and cross section of shoreline protective device   |
| 10. | Engineering plan for seawall and tiebacks  |
| 11. | Gabion wall plans  |
| 12. | 7/13/01 CDP application status letter from Commission staff to Paul Bailey   |
| 13. | 10/18/02 CDP application status letter from Commission staff to Margaret Maranta and Paul Bailey regarding the return of the CDP application and request for submittal of a complete CDP application |
| 14. | 3/12/03 letter from Commission staff to the Shklars requesting the submittal of a CDP application and informing them of unauthorized shoreline protective device on their property                   |
| 15. | 4/7/03 letter from Commission staff to the Shklars informing them of the expired CDP for the shoreline protective device and requesting the submittal of a CDP application                           |
| 16. | Initial violation letter sent to the Shklars on 6/13/03  |
| 17. | 6/28/03 letter from Eugene Shklar to Commission staff  |
| 18. | Second violation letter from Commission staff to the Shklars and response to the Shklars 6/28/03 letter  |
| 19. | 1/30/04 "Termination of Application for Assignment of Existing Rock Revetment" sent to Eugene and Daymel Shklar from the California State Lands Commission   |





[illegible]

Page 1 of 1



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Exhibit #2  
CCC-04-CD-03 (Shklar)

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE  
725 FRONT STREET, STE. 300  
SANTA CRUZ, CA 95060  
(408) 427-4863  
HEARING IMPAIRED: (415) 904-5200

EMERGENCY PERMIT7/6/95

Date

3-95-44-G-A-2

(Emergency Permit No.)

70 Geoffroy Drive, on the seaward side of the existing coastal bluff (Twin Lakes State Beach).

Location of Emergency Work

Plug seacave with concrete, shotcrete base and mouth of cave, remove the top portion of a detached coastal bluff pinnacle, and stabilize the fractured coastal bluff in danger of collapse through rock bolting and the installation of a retaining wall and whaler beam more specifically described in the application on file at the Commission's office.

Work Proposed

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of coastal bluff block fracture requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director hereby finds that:

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

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

Very Truly Yours,

Peter M. Douglas  
Executive Director

Exhibit #3  
CCC-04-CD-03 (Shklar)

By: *Les Honan*Title: *Supervisor of Marine Regulation*

CONDITIONS OF APPROVAL:

- \* 1. Prior to commencement of construction, the applicant shall submit to this office written approval from the adjacent property owner for the portion of the proposed emergency work which will take place on APN 028-143-37.
- \* 2. Prior to commencement of construction, the applicant shall submit to this office written approval for equipment access from the California Department of Parks and Recreation.
- 3. Prior to commencement of construction, the applicant shall fully secure the project site to prevent public access to the construction site. This barrier shall be maintained on a 24 hour basis during the entire construction period.
- 4. Prior to the commencement of construction, the enclosed Emergency Acceptance Form must be signed by the property owner and returned to our office.
- 5. No concrete or construction debris shall enter ocean waters. All construction materials and debris must be removed from the beach at the conclusion of the construction operation. All material (i.e., rip rap) which is not incorporated into a future shoreline structure per condition #10 shall be removed from the beach.
- 6. The applicant shall utilize marine resistant or poly-coated steel for the approved emergency work.
- 7. All visible shotcrete and concrete shall be colorized to match the adjacent natural bluff materials in accordance with condition II.1. of Santa Cruz County Emergency Permit No. 4907 E (amended June 26, 1995).
- 8. Only that work for the specific properties listed above, as described within the submitted information and plans prepared by John Kasunich and Eric Anderson and approved by the County of Santa Cruz on July 3, 1995, is authorized. Any additional work requires separate authorization from the Executive Director.
- 9. The work authorized by this permit must be completed July 31, 1995. All construction materials and equipment must be removed from the beach as of that date. No additional extensions shall be granted.
- 10. Within 15 days of the conclusion of the emergency construction activities, or no later than August 15, 1995, the applicant shall provide final reports, including:
  - a. As-built geologic and construction maps;
  - b. Construction observations; and
  - c. Evidence that the hazardous situation has been abated.

(note: \* = conditions previously complied with)

11. Within 60 days from the completion of the emergency work, or no later than September 29, 1995, the permittee shall submit a completed Coastal Development Permit application, including all necessary geologic reports required by the Commission's shoreline criteria for the construction of seawalls, to have the emergency work be considered permanent. If no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of this permit unless waived by the Director.
12. In exercising this permit the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
13. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.

Condition #11 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a Coastal permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act, and maybe conditioned accordingly. These conditions may require modifications to the emergency work, and include provisions for public access (such as an offer to dedicate an easement) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves.

If you have any questions about the provisions of this emergency permit, please call the Commission Area office.

Enclosures: 1) Acceptance Form; 2) Regular Permit Application Form

cc: Monterey Bay National Marine Sanctuary  
U.S. Army Corps of Engineers  
State Lands Commission  
California Department of Parks and Recreation  
Santa Cruz County Planning Department

0158M

Exhibit #3  
CCC-04-CD-03 (Shklar)

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE  
100 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(408) 427-4883  
FAXING: (415) 904-5200

**ADOPTED**

Filed: 01/17/97  
180th day: 07/06/97  
Staff: SM-SC  
Staff Report: 05/21/97  
Hearing Date: 06/11/97

**STAFF REPORT**  
**REGULAR CALENDAR**

ADOPTED WITH SPECIAL  
CONDITION 8 REVISED  
BY 6/6/97 MEMO

APPROVED ON CONSENT CALENDAR 12-0

APPLICATION NUMBER: 3-97-020

APPLICANT: RICHARD AND WENDY LEWIS

PROJECT LOCATION: 70 Geoffroy Drive, Black's Point at Twin Lakes State Beach, Santa Cruz County

PROJECT DESCRIPTION: Stabilization of coastal bluff by filling seacave with concrete, removing destabilized portion of bluff, building reinforced concrete seawall, installation of rock bolting on bluff face, and building bluff top gabion retaining wall and drainage system.

LOCAL APPROVALS RECEIVED: Santa Cruz County Permit No. 95-0198

SUBSTANTIVE FILE DOCUMENTS: Emergency Permit File No. 3-95-44-G; Foxx, Nielsen and Associates, "Geologic Investigation for 70 Geoffroy Drive", September, 1995; Haro, Kasunich and Associates, Inc., "Response to Coastal Commission Letter Dated 24 October 1995 Requesting Supplemental Geologic and Geotechnical Information", December 1, 1995; Haro, Kasunich and Associates, Inc., "Response to Coastal Commission's 2 August 1996 Letter Regarding Need for Riprap at Base of Structure and Wave Overtopping of Structure", January 15, 1997; Santa Cruz County 1994 General Plan and Local Coastal Program.

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**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **approval** of the project with special conditions which address future maintenance and monitoring of the shoreline structures, and provide for coordination with other agency approvals. As conditioned, the development will minimize adverse impacts to natural shoreline processes, will be compatible with the appearance of the surrounding bluffs, will not adversely impact beach access, and will abate geologic hazards posed to beachgoers and residents.

---

Exhibit #4  
CCC-04-CD-03 (Shklar)



**I. STAFF RECOMMENDATION**

The staff recommends that the Commission adopt the following resolution:

**Approval with conditions**

The commission hereby **grants** a permit for the proposed development, subject to the conditions below, on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the Coastal Act; is located between the nearest public road and the sea and conforms with public access and recreation policies of the Coastal Act; and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

**II. STANDARD CONDITIONS**

Attached as Exhibit 1.

**III. SPECIAL CONDITIONS**

1. Scope of Permit. This permit authorizes the filling of the seacave with concrete, removing the destabilized portion of bluff, building the reinforced concrete seawall, installation of rock bolting on the bluff face, and installing a "whaler beam", previously developed under Emergency Permit No. 3-95-44-G. In addition, this permit, once issued, authorizes the reengineering of the riprap revetment, and monitoring and maintenance activities, as required by Special Conditions 3 and 5, below. The gabion baskets located above and landward of the concrete seawall are within the coastal development permit jurisdiction of the County of Santa Cruz, and subject to County review and approval. Other than the reengineering of the riprap as required by Special Condition 3, and the monitoring and maintenance activities required by Special Condition 5, no additional development may take place on or seaward of the bluff face unless this permit is amended or a separate permit is issued by the Coastal Commission.

2. Supplemental Geotechnical Report. PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for Executive Director review and approval, a supplemental geotechnical report, prepared by a qualified geotechnical consultant, which provides the recommendations necessary to reengineer the existing rock armor (riprap) revetment fronting the applicant's property to a 2:1 horizontal to vertical slope.

3. Reengineering of Riprap Revetment. PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for Executive Director review and approval, construction plans prepared by a qualified geotechnical engineer, for reengineering the riprap revetment fronting the applicant's property to a 2:1 horizontal to vertical slope, in accordance with the supplemental geotechnical report required by Special Condition 2. At a minimum, the revetment construction plans shall provide the following:

a. Identification of the maximum area to be covered by the reengineered riprap, based upon a 2:1 slope from the toe of bluff, utilizing the permanent surveyed benchmark identified in the plans prepared by Dunbar and Craig dated November, 1995. More gradual slopes, at a maximum flatness of a 3:1 slope, may be allowed at either end of the revetment fronting the applicant's property if necessary to provide an effective tie-in to adjacent riprap.

Exhibit #4  
CCC-04-CD-03 (Shklar)

b. Timing of the reengineering, taking into account the infrequent periods during which the riprap is completely exposed. The permittee shall be responsible for reengineering the riprap revetment fronting the property as soon as beach conditions allow. In order to accomplish this, the revetment plan shall identify preliminary construction dates during low tide periods of the late winter/early spring months of 1998, when the rocks are most likely to be exposed. Two weeks prior to the preliminary construction dates identified by the revetment plan, the permittee shall either: initiate the notification procedures identified in part c. of this condition; or, provide, for Executive Director review and approval, written evidence that the project engineer has determined that site conditions will not allow such work to take place, accompanied by the basis for such a determination and the identification of subsequent construction periods anticipated to be appropriate. This procedure shall be repeated until the revetment has been properly reengineered. Unless this permit is amended to allow otherwise, reengineering of the riprap shall be completed within 5 years of this issuance of this permit.

c. Construction operations: The revetment plan shall identify the construction procedures that will be utilized to reengineer the riprap, which avoid adverse impacts to the marine environment and public access and recreation. At a minimum, the plan shall identify all areas subject to construction activities and staging, and include provisions to ensure that: construction materials and equipment do not enter Bay waters; that any of the existing rocks which can not be reused in the reengineered revetment are removed from the beach and recycled or disposed of in a landfill; and, that at the completion of construction, the site be restored to the natural beach condition which existed immediately prior to the commencement of construction. Copies of the final staff report, with this condition highlighted, shall be attached to the construction contract and to bid documents (if any are used), to insure that the contractors hired to perform the work have been made fully aware of the terms of this permit.

4. Extension of Riprap Reengineering. By future amendment to this permit, the reengineering of the riprap to a 2:1 slope should also be undertaken along portions of the revetment upcoast and downcoast of the portion fronting the permittee's property. Although not required by this permit, the permittee is strongly encouraged to inform the adjacent property owners (APN's 028-143-34, 028-143-37, and 028-143-29) of this option and the structural benefits of reengineering the entire riprap revetment as a uniform structure. Note: Applies only to reengineering of riprap on public lands within the Coastal Commission's original jurisdiction.

5. Monitoring and Maintenance Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for Executive Director review and approval, a Monitoring and Maintenance Plan which provides for the following:

a. Monitoring. The coastal protection structures (including the riprap revetment, the concrete seacave plug, vertical tiedback seawall/retaining wall, and the tiedback whaler beam) shall be inspected by qualified geotechnical consultant at least once a year at the end of the winter season, and after any major storm event. At a minimum, the monitoring component of this plan shall provide for the documentation of: any movement of riprap; spalling, cracking, and undermining of the concrete seawall and seacave plug; rust or loosening of the tieback anchors; exposure of the imbedded whaler beam; effectiveness of the installed drainage system, especially with respect to maintaining the structural integrity of the seawall; any impact to adjacent properties attributable to the structures; and, any change in coloration of exposed concrete.

Exhibit #4  
CCC-04-CD-03 (Shklar)

b. **Maintenance.** The maintenance component of the plan shall include provisions for: maintaining the reengineered riprap revetment within the maximum footprint identified by the revetment construction plan required by Special Condition 3; patching of any spalled, cracked, or discolored concrete with concrete or mortar patches colored to match the natural bluff; maintaining appropriate tensions of the tieback anchors; and, mitigating any adverse impacts to adjoining properties attributable to the shoreline structures. Implementation of these maintenance activities shall be subject to the reporting provisions of the Maintenance and Monitoring Plan, required by part c. of this condition. The potential need to expand the vertical seawall, construct a vertical cut-off wall, install additional reinforced concrete mats, or conduct any additional construction not contained in the monitoring and maintenance plan shall be subject to Coastal Commission review and approval, through either an amendment to this permit or the issuance of a new coastal development permit.

c. **Reporting.** The Monitoring and Maintenance Plan shall identify the requirement to notify the Executive Director of any proposed maintenance activity prior to implementation. All maintenance activities must be consistent with the Monitoring and Maintenance Plan as approved by the Executive Director. The reporting component of the plan shall also identify that those maintenance activities involving the movement of riprap or the presence of construction equipment on the beach shall be subject to the notification requirements and construction procedures contained in the revetment plan; and, that within 6 weeks following the completion of the riprap reengineering, the permittee shall submit a written report prepared by the project engineer, for Executive Director review and approval, confirming that the reengineering has taken place consistent with the approved plans required by Special Condition 3. Additionally, the reporting component of the Monitoring and Maintenance Plan shall identify that by **April 15, 2002** the permittee shall submit, for Executive Director review, an engineering inspection report prepared by a certified Geotechnical engineer, which incorporates all of the monitoring documentation required by part a. of this condition, as well as a detailed description of the maintenance activities undertaken pursuant to part b. of this condition, an evaluation of their effectiveness, and recommendations for any further corrective actions needed. The reporting component shall further identify that equivalent reports shall be submitted for Executive Director review every five years following the initial report, for the lifetime of the project.

6. **Other Agency Approvals.** PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for Executive Director review and approval, written evidence of authorization for the as-built seawall, as well as the reengineering of the revetment and maintenance and monitoring activities required by Special Conditions 3 and 4, or evidence that no such approvals are necessary, from the following agencies:

- a. US Army Corps of Engineers;
- b. Monterey Bay National Marine Sanctuary;
- c. State Lands Commission;
- d. California Department of Fish and Game;
- e. Regional Water Quality Control Board; and,
- f. Santa Cruz County Planning Department.

Exhibit #4  
CCC-04-CD-03 (Shklar)

7. Legal Documentation. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which runs with the land, binds all successors and assigns, is recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction, and provides the following:

a. Waiver of Liability: (1) that the applicant understand that the site may be subject to extraordinary hazard from waves during storms and from related erosion, and, (2) the permittees unconditionally waive any claim of liability on the part of the Commission or its successors in interest for damage from such hazards and agrees to indemnify and hold harmless the Commission, its offices, agents, and employees relative to the Commission's approval of the project.

b. Maintenance Agreement: that the applicant accepts the responsibility for reengineering the revetment, implementing the monitoring and maintenance requirements of this permit (as specifically described in Special Conditions 2, 3, and 5), and for funding all costs of the project including future monitoring, maintenance, and repair.

8. Timeframe for Compliance. Compliance with Special Conditions 2, 3, 5, 6, and 7 is required prior to the issuance of the permit, and shall be pursued in a diligent manner. These conditions shall be complied with by January 1, 1998, unless otherwise extended by the Coastal Commission (or Executive Director) through an amendment to this permit. Such amendment must be requested by the applicant, in a form which can be filed by the Commission consistent with 14 CCR 13166, no later than December 1, 1997.

*revised  
as per SM  
- by 6/6/97  
Memo  
(attached)*

9. Notification Requirements. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall provide, for Executive Director review and approval, evidence that the following agencies have been notified of the riprap revetment construction activities and time period: the California Coastal Commission Central Coast Area Office; Santa Cruz County Planning Department; California Department of Parks and Recreation; US Army Corps of Engineers; and, the Monterey Bay National Marine Sanctuary. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall also provide written evidence that the appropriate permit allowing for construction equipment access to the site has been obtained from the California Department of Parks and Recreation.

#### IV. FINDINGS AND DECLARATIONS

##### A. Project Background and Description:

On March 24, 1995, a large, joint bounded bedrock block failed from the coastal bluff on the seaward portion of the Lewis property, causing an open chasm in the Lewis yard, and creating a hazard to beach users due to the potential for further movement of the failed block and additional bluff failure.

The failed portion of the bluff, a block of approximately 15' wide, 25' long, and 25' high, was precariously located on rocks at the base of the bluff, and in danger of toppling over. In addition, the geotechnical consultants inspecting the site found evidence that an additional joint

## CALIFORNIA COASTAL COMMISSION

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

HEARD: (415) 904-5200



W16a

## MEMORANDUM

June 6, 1997

TO: Commissioners and Interested Parties

FROM: Tami Grove, Deputy Director  
Lee Otter, District Chief Planner *LO*  
Steve Monowitz, Coastal Planner *SM*

ADOPTED

RE: *Clarification to Recommended Special Condition 8 of Coastal Development Permit 3-97-020 (Lewis, Santa Cruz County, Item W16a)*

Staff is recommending the following clarification to Special Condition 8 of the above referenced permit (additions to the language contained in the staff report are indicated by underlines, deletions by ~~strikethroughs~~):

8. Timeframe for Compliance. Compliance with Special Conditions 2, 3, 5, 6, and 7 is required prior to the issuance of the permit, and shall be pursued in a diligent manner. These conditions shall be complied with by January 1, 1998, unless otherwise extended by the ~~Coastal Commission (or Executive Director)~~ through an amendment to this permit for good cause. Such amendment extension must be requested in writing by the applicant, in a form which ~~can be filed by the Commission consistent with 14 CCR 43166~~ explains the cause for such an extension request, no later than December 1, 1997.

The purpose of this revision is to clarify that an extension for compliance with "prior to issuance" conditions issued by the Executive Director, based on good cause, does not require an amendment to the permit.

As an alternative, the Commission could require that such extensions must be approved by the Commission, through an amendment to the permit. However, it is staff's opinion that the timeline for condition compliance can be appropriately managed at the staff level, and should not require Commission review.

It is noted that part b of Special Condition 2, which requires that the reengineering of the rip rap to a 2:1 horizontal to vertical slope, must be completed within 5 years of the issuance of the permit, unless amended by the Commission. This requirement is unaffected by the proposed change to Special Condition 8. (The last sentence of Special Condition 2b. correctly reads "Unless this permit is amended to allow otherwise, reengineering of the riprap shall be completed within 5 years of this the issuance of this permit.)

Exhibit #4  
CCC-04-CD-03 (Shklar)

Page 6 of 6

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(408) 427-4863  
HEARING IMPAIRED: (415) 904-5200

JUL 10 1997



CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Page 1 of 2Date: June 27, 1997Permit Application No. 3-97-020**NOTICE OF INTENT TO ISSUE PERMIT**

On June 11, 1997, by a vote of 12 to 0, the California Coastal Commission granted to Richard and Wendy Lewis, Permit #3-97-020, subject to the attached conditions, for development consisting of: stabilization of a coastal bluff by filling a seacave with concrete, removing a destabilized portions of the bluff, building a reinforced concrete seawall, installation of rock bolting on bluff face, and building bluff top gabion retaining wall and drainage system; more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Santa Cruz County at 70 Geoffroy Drive, Live Oak, (APN 028-143-35).

The actual development permit is being held in the Commission office until fulfillment of Special Conditions 2, 3, 5, 6, and 7 imposed by the Commission. Please note that Special Condition 8 requires compliance with these conditions by January 1, 1998, unless otherwise extended by the Executive Director. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

PETER DOUGLAS  
Executive Director

LEE OTTER  
District Chief Planner

**ACKNOWLEDGMENT:**

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 3-97-020, and fully understands its contents, including all conditions imposed.

July 7, 1997  
Date

Permittee

Please sign and return one copy of this form to the Commission office at the above Exhibit #5  
CCC-04-CD-03 (Shklar)

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST AREA OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(408) 427-4863  
HEARING IMPAIRED: (415) 904-5200



April 7, 1998

Dr. and Mrs. Richard Lewis  
70 Geoffroy Drive  
Santa Cruz, CA 95062

**RE: *Plans for Rip Rap Revetment Pursuant to Coastal Development Permit No. 3-97-020***

Dear Dr. and Mrs. Lewis:

Thank you for submitting plans for re-engineering the rip rap revetment fronting your property, as required by the Special Conditions of approval of Coastal Development Permit No. 3-97-020. The plans prepared by Haro, Kasunich and Associates dated 11/21/97 appear to be generally consistent with these requirements. However, there are some minor additions and clarifications that will need to be made to the plans in order to comply with the specific requirements of the approved Coastal Development Permit. These include:

- identification of the permanent surveyed benchmark on the revetment plans pursuant to Special Condition 3.a. (This benchmark must be the same benchmark previously indicated on the plans prepared by Dunbar and Craig dated November, 1995);
- revisions to the potential construction dates identified on the submitted plans, required by Special Condition 3.b. These dates should be scheduled as far enough in advance in order to provide adequate time to allow for Commission staff review and approval of the revised plans and issuance of the permit (as further discussed below). Also, please note that the permit requires that 2 weeks prior to the construction dates identified by the plans, you either: notify the Coastal Commission, Santa Cruz County Planning Department, California Department of Parks and Recreation, U.S. Army Corps of Engineers, and Monterey Bay National Marine Sanctuary of your intent to commence construction (Special Conditions 3.b. and 9); or, notify Commission staff that the project engineer has determined that site conditions will not allow for the commencement of construction, accompanied by a basis for this determination and the identification of subsequent construction periods anticipated to be appropriate (Special Condition 3.b.);
- clarification that construction equipment may not enter Bay waters (Special Condition 3.c.). If the project engineer determines that it is necessary to complete the required re-engineering of the revetment, it will be necessary to amend the permit to allow for this activity.

In addition to modifying the submitted plans as described above, there are additional permit requirements which must be satisfied before the permit is issued and re-engineering of the rip rap can commence. These include:

- submission of a monitoring and maintenance program for Executive Director review and approval (Special Condition 5);

Exhibit #6  
CCC-04-CD-03 (Shklar)

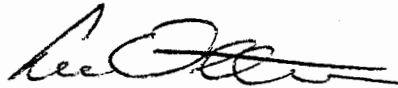


- written evidence of other agency approvals (Special Condition 6); and
- submission of a recorded Waiver of Liability and Maintenance Agreement (Special Condition 7).

We note that Special Condition 2 of the permit requires submission of a supplemental geotechnical report that provides the recommendations necessary to re-engineer the revetment to a 2:1 horizontal to vertical slope. Although we have not received a supplemental geotechnical *report* per se, we are willing to accept the submitted plan (with the revisions previously identified) as satisfying this condition on the basis that it identifies that the revetment will be constructed at a 2:1 slope, and provides recommendations regarding its construction as plan notes.

Thank you for your anticipated cooperation in providing the additional information necessary for Commission staff to issue the Coastal Development Permit and authorize the required revetment improvements. If you have any questions, please contact staff analyst Steve Monowitz at (408) 427-4863.

Sincerely,



Lee Otter  
District Chief Planner

enclosure: adopted Special Conditions of approval

cc: U.S. Army Corps of Engineers  
Scott Kathey, Monterey Bay National Marine Sanctuary  
Jane Smith, State Lands Commission  
Victor Roth, Department of Parks and Recreation  
Adam White, Regional Water Quality Control Board  
Joel Schwartz, Santa Cruz County Planning Division  
John Kasunich  
Mark Foxx

Exhibit #6  
CCC-04-CD-03 (Shklar)

## CALIFORNIA COASTAL COMMISSION

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



July 12, 1999

Dr. Richard Lewis  
70 Geoffroy Lane  
Santa Cruz, CA 95062

Subject: ***Extension of Coastal Development Permit No. 3-97-020***

Dear Dr. Lewis:

Thank you for your recent inquiries regarding the need to extend the above referenced permit, and for your ongoing efforts to complete the conditional requirements of this permit.

As you know, the timeframe for compliance established by Special Condition 8 of the permit has not been achieved. However, as provided by this condition, the Executive Director can extend this timeline for good cause. In response to various constraints associated with site conditions, the time it has taken to obtain other regulatory reviews and approvals, and because you have diligently pursued permit compliance, the timeframe established by Special Condition 8 is hereby extended to January 1, 2000.

In addition to the timeframe for compliance established by Special Condition 8, it is important to note that the permit itself is valid for a period of two years, and was set to expire on June 11, 1999 (two years from Commission approval). Section 13169 of the Commission's Administrative Regulations requires that an application to extend a permit must be made prior to the expiration date of the permit. In this case, your inquiries regarding the need to extend the permit preceded the permit's expiration date, in compliance with this requirement. Please submit the enclosed application form in order to complete the paperwork associated with your extension request.

Please contact me at (831) 427-4863 if you have any questions or would like to discuss these matters further.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Monowitz", written over a horizontal line.

Steve Monowitz  
Coastal Planner  
Central Coast District Office

Exhibit #7  
CCC-04-CD-03 (Shklar)

Page 1 of 1

## CALIFORNIA COASTAL COMMISSION

ENTRAL COAST AREA OFFICE  
25 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(31) 427-4863

August 12, 1999

COASTAL DEVELOPMENT PERMIT EXTENSION

Re: Extension Request for Permit	3-97-020-E1
Original Permit No.	3-97-020
Original Permit Expiration	June 11, 1999
Extended Permit Expiration	June 11, 2000

Richard & Wendy Lewis  
70 Geoffroy Drive  
Santa Cruz, CA

Dear Richard & Wendy Lewis,

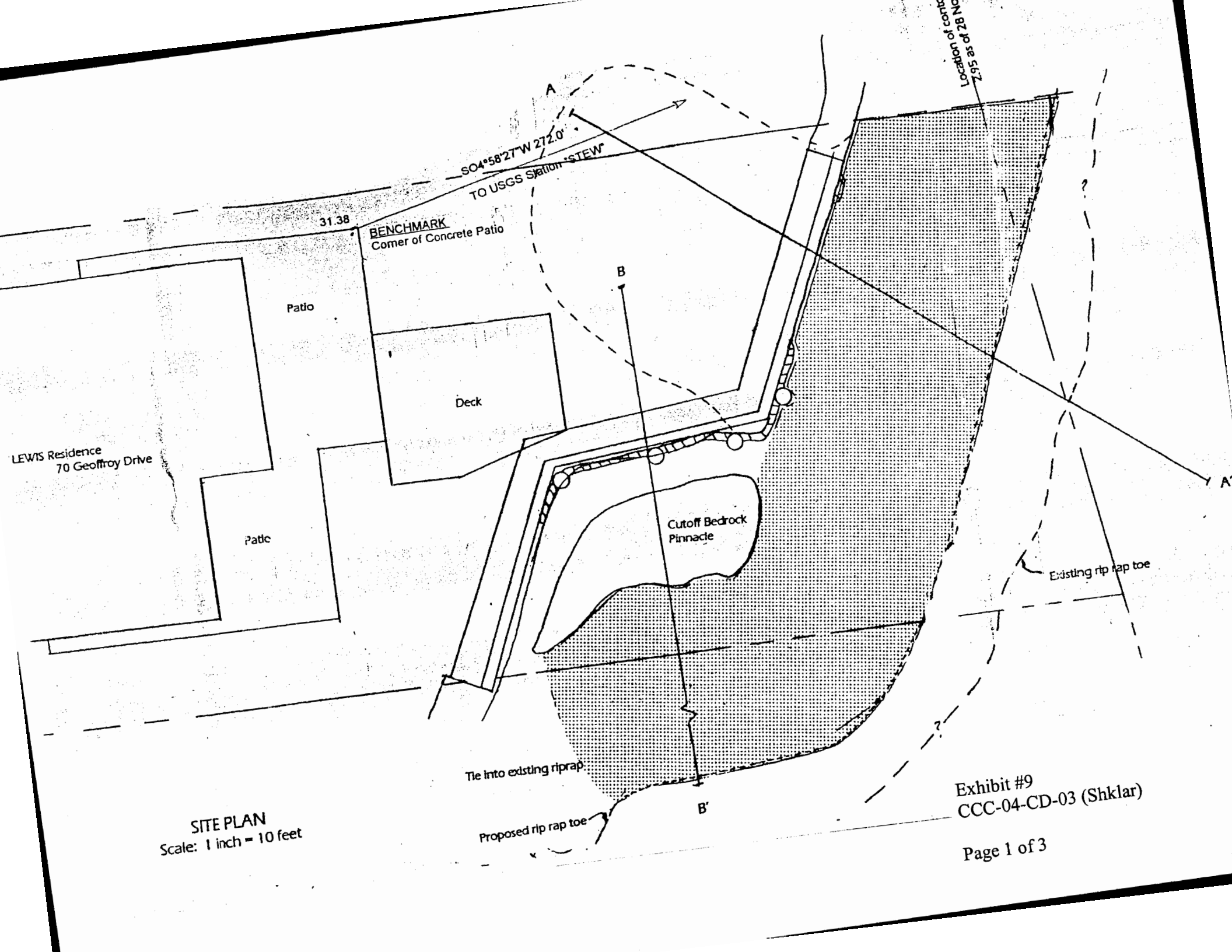
The Executive Director has determined that there are no changed circumstances affecting the conformity of the subject development with the California Coastal Act. No objections to this determination have been received at the Commission office. Therefore, the Executive Director

grants an extension of the subject Permit, subject to the same conditions approved by the Commission, to expire on the Extended Permit Expiration Date indicated above.

Sincerely,  
PETER M. DOUGLAS  
Executive Director

  
By: LEE OTTER  
District Chief Planner

Exhibit #8  
CCC-04-CD-03 (Shklar)



SITE PLAN  
Scale: 1 inch = 10 feet

Exhibit #9  
CCC-04-CD-03 (Shklar)

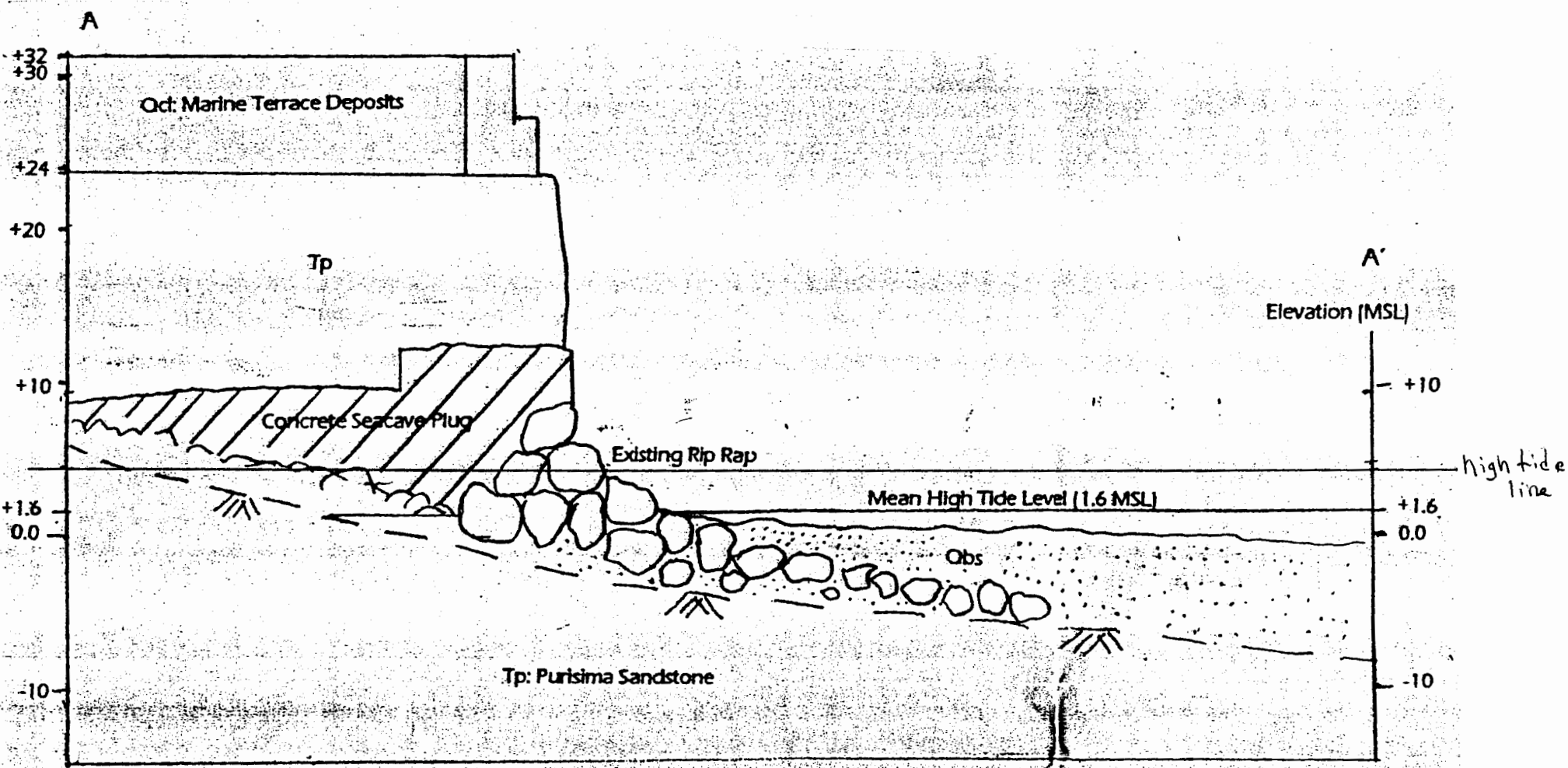


Exhibit #9  
CCC-04-CD-03 (Shklar)

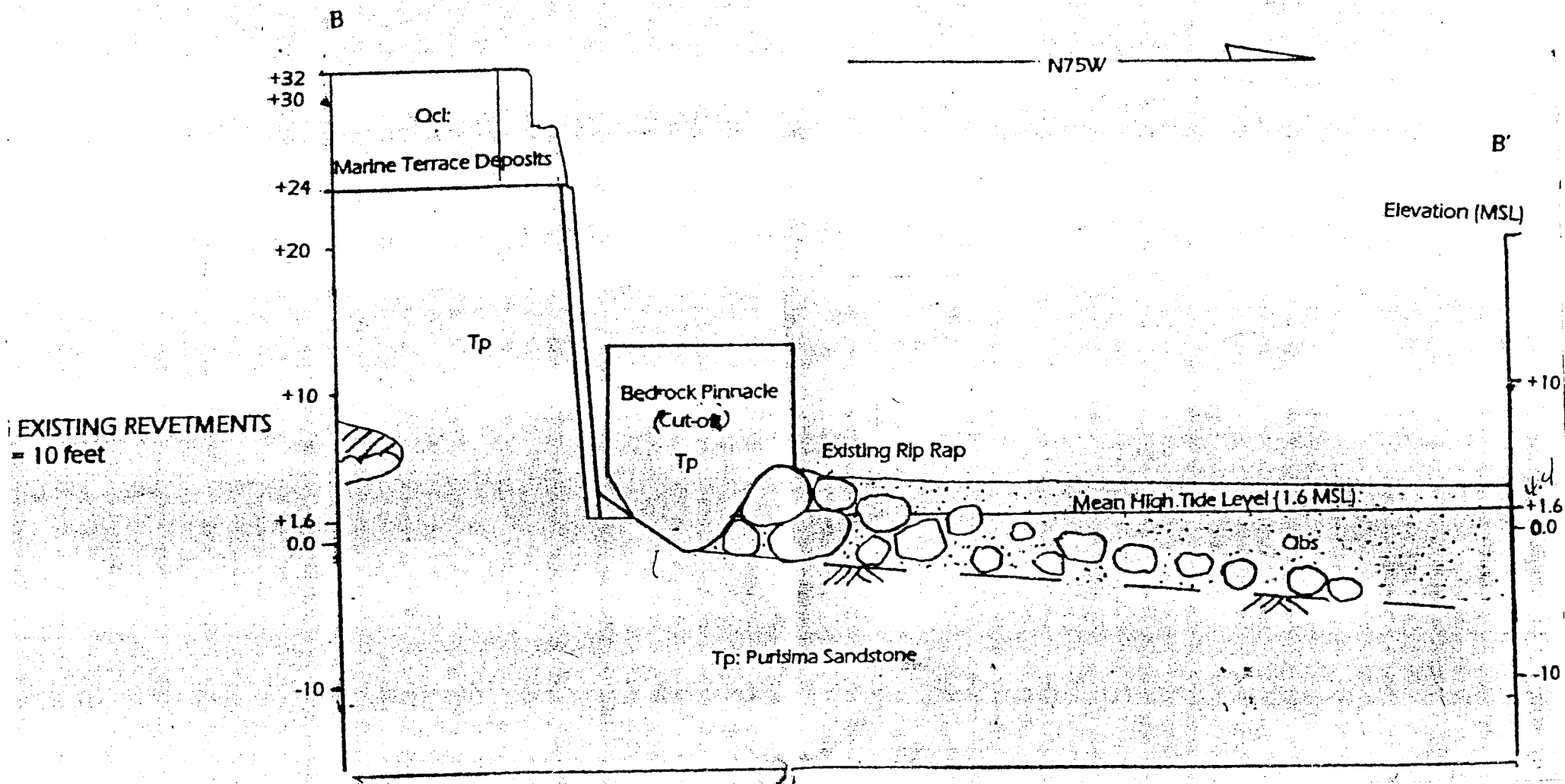
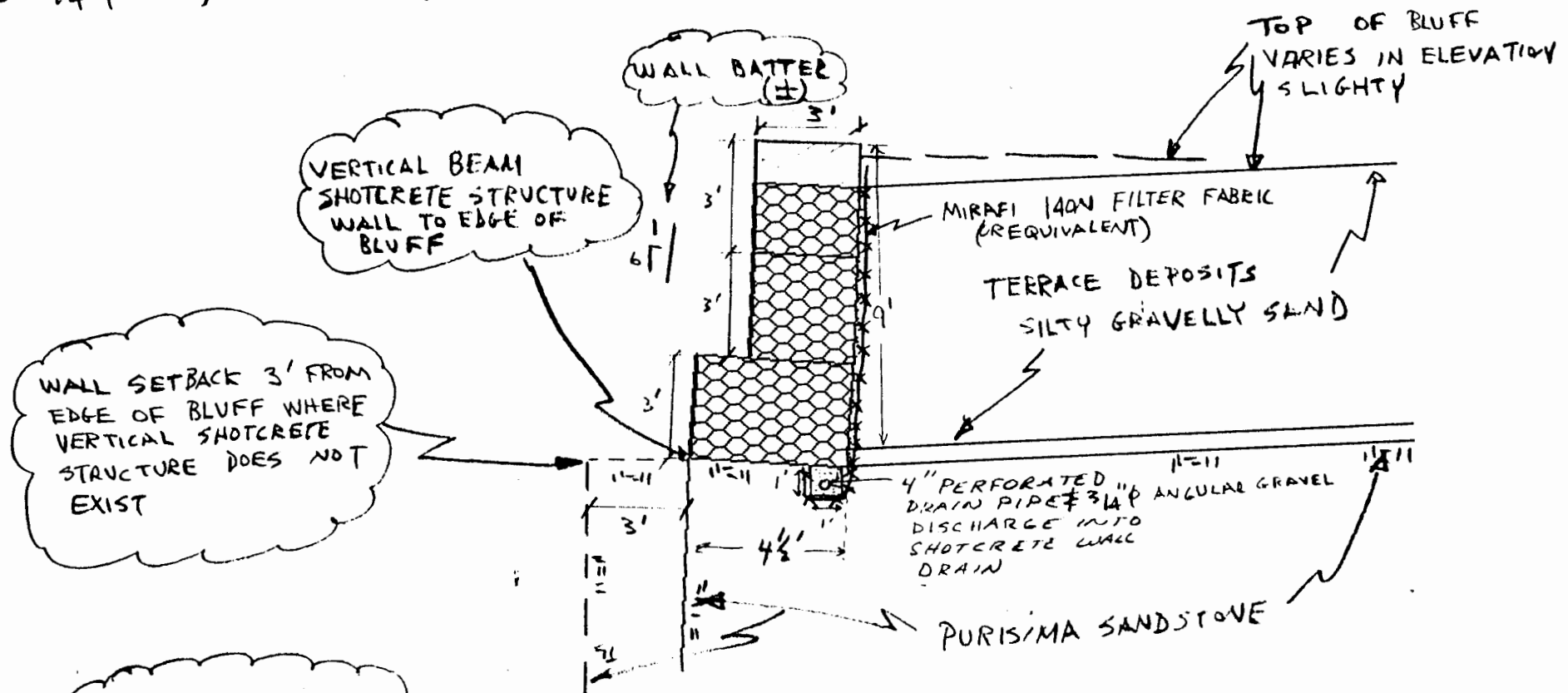


Exhibit #9  
CCC-04-CD-03 (Shklar)





1. WALL APPROXIMATELY 84 LIN. FEET IN LENGTH
2. WALL VOLUME APPROXIMATELY 100 CU. YDS
3. EXCAVATION FOR WALL APPROXIMATELY 70 CU. YDS.
4. TONNAGE OF GABION ROCK APPROXIMATELY 160 TONS
5. 3/4"  $\phi$  ANGULAR DRAIN ROCK APPROXIMATELY 4 CU. YDS.



REFER TO SITE  
PLAN FOR LAYOUT  
OF GABION WALL  
& ATTACHED NOTES  
FOR PVC COATED GABION  
WALL CONSTRUCTION

Project No: SC 4724	LEWIS COASTAL BLUFF STABILIZATION TO GEOFFROY DRIVE GABION WALL DETAILS	
Date: 25 JULY 95		
Scale: 1" = 10'		
Drawn by: JK		
HARO, KASUNICH & ASSOCIATES		Figure No. 2



**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877



July 13, 2001

Paul Bailey  
Bailey Properties Inc.  
9119 Soquel Drive  
Aptos, CA 95003

Subject: *Coastal Development Permit Application Number 3-01-055 (Shklar Revetment at Blacks Point in the Live Oak area of Santa Cruz County)*

Dear Mr. Bailey:

We have received the above-referenced coastal development permit application that you forwarded on behalf Eugene and Daymel Shklar. We have reviewed the materials that you have submitted to date and are in need of additional information to adequately analyze the proposed project for Coastal Act conformance. Towards this end, we are unable to file this application until the following is submitted:

1. Project Description. Please clarify the project description. The application refers to the letter and plans from Haro Kasunich. However, you have also submitted a set of plans from Ifland Engineers that define different project elements, including a stairway to the beach. We need to have a clear description of the work proposed. Please also provide photographs of the site from representative locations along the beach as well as from the blufftop. Needed to define project.
2. Project Plans. The project plans need to correspond to the clarified project description (see above). The plans should estimate the probable scour depth at this location, and should identify up and downcoast existing conditions (i.e., rip-rap, natural bluff, etc.). Plans in 11" x 17" format are preferred that include a graphic scale to allow for correct measurement should the plans be reduced or enlarged. For any shoreline armoring shown, the plans should indicate the permit number(s) that authorized such armoring. Needed to define project.
3. Engineering Geologic Report. The inland residence at this location appears to be protected along its entire bluff frontage by a vertical seawall. That being the case, we need to better understand the need for the proposed additional armoring in front of the seawall (i.e., the proposed revetment). The Commission has not been supportive of efforts to place armoring to protect other armoring. Please provide an engineering geologic report that provides evidence that a revetment is necessary at this location. Such report should include analysis of an alternative project that removes the boulders strewn on the beach to free up the beach for recreational beach use. This engineering geologic report must be prepared by a registered professional geologist or engineering geologist and must meet the professional standards

Exhibit #12  
CCC-04-CD-03 (Shklar)

Page 1 of 4

outlined in the Guidelines for Engineering Geologic Reports<sup>1</sup> or other comparable standard. The report should include at least two seasonal profiles of the proposed project site showing beach conditions during both a mild wave period and during a high wave energy period (often referred to as summer and winter profiles). Profiles should be superimposed on the cross sections for the existing condition, the proposed project, and the removal alternative. The survey information used to develop the profiles should be noted on the profile, along with any assumptions that were made while developing the profiles. If there is no information on a true "winter" profile, this profile may be extrapolated from available site information, provided the methodology is identified and all assumptions are provided in writing. The potential for scour and probable scour depth must be identified.

Needed to define project and to determine conformance with Coastal Act Sections 30210-30224, 30235 and 30253, and 30240.

4. Monitoring. The plans submitted indicate that monitoring shall take place at 5 year intervals, but provide little additional detail on monitoring. Should the revetment be permitted, you will need to submit a long-term monitoring and maintenance plan prepared by a registered professional geologist or engineering geologist. Such plan must include surveyed benchmark(s) to allow for long-term monitoring of the structural stability of the proposed structure; objectives listing the specific aspects or effects of the proposed project to be monitored; success standards to evaluate the performance of the proposed project; monitoring techniques and schedule; reporting techniques and schedule; and the expertise and professional qualifications required for the persons performing the monitoring. Needed to define project and to determine conformance with Coastal Act Section and 30253.
5. Construction Plan. The plans submitted indicated the work was to be done in 1999. Please provide an updated construction plan which identifies construction methods (including staging and stockpiling areas), expected duration of construction, timing for all activities (e.g., 8am to 5pm work day; 12 hours a day; 24 hours a day; Monday through Friday; just weekends; every day; etc. and indications if there is any flexibility in each activity), erosion control plans, and all measures to be taken to protect public beach access and resources during construction. Needed to define project and to determine conformance with Coastal Act Sections 30210, 30211, and 30240.
6. Local Government Approval. Please note that the proposed project constitutes "development" under the Santa Cruz County General Plan/Local Coastal Program. As such, though the project is located in the Coastal Commission's coastal permitting jurisdiction, the County must review and approve the entire project under their General Plan. Please submit copies of all Santa Cruz County approvals and permits received for the proposed project

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<sup>1</sup> Prepared by the State Board of Registration for Geologists and Geophysicists (Rev. 11/93, or as updated); available from the State of California Department of Consumer Affairs 2535 Capitol Oaks Drive, Suite 300A, Sacramento CA 95833, or [www.dca.ca.gov/geology](http://www.dca.ca.gov/geology).

including all staff reports, CEQA documents, findings, conditions, and resolutions authorizing the proposed project. After the appropriate Santa Cruz County official has completed and signed CDP Application Appendix B, Local Agency Review Form (enclosed), please submit the completed form. Needed to substantiate local agency review.

7. Other Agency Approval. The Monterey Bay National Marine Sanctuary (MBNMS) authorization that you provided expired April 30, 2001. Also, in order to access this site, you will need to use State Park's beach property. Please submit evidence of all permits, permissions or approvals applied for and/or granted from the Sanctuary and State Parks.
8. Public Notice. Please submit a public notice mailing list (in address label sheet format) containing the names, addresses and assessor's parcel numbers (APNs only for property owners and occupants within 100 feet) for the following: (a) the Applicant; (b) yourself; (c) each property owner and occupant of property situated within 100 feet of the property lines of the property(ies) involved (excluding roads); (d) all other parties known to be interested in the proposed development (e.g., persons expressing interest at Santa Cruz County hearings, etc.); (e) Dave Vincent at California Department of State Parks; (f) Supervisor Jan Beautz's office; (g) Rachel Lather at the Santa Cruz County Planning Department; (h) and Scott Kathey at MBNMS. Please submit plain (i.e., no return address) regular business size (9½" x 4½") envelopes stamped with first class postage (metered postage is not acceptable) for each address identified on your mailing list. Needed to provide public notice.
9. Posting Notice. Your application omits the declaration of posting (CDP Appendix D). Once we have received an adequate project description, we will forward you an appropriate CDP application notice to post at representative locations surrounding the project site and an Appendix D to complete and return. Needed to provide public notice.
10. Permit Application Fee. Finally, the \$200 fee submitted is correct if this application is eventually processed as a Coastal Development Permit Waiver or Immaterial Amendment. Please note that after staff has reviewed the materials requested herein, a determination on applicable processing will be forwarded to you. If the project is processed as other than a waiver or immaterial amendment, there may be an additional fee. We will keep you informed as to any such additional fees necessary. Needed for permit application.

We will hold your client's application for 60 days pending receipt of these materials. After we have received these application materials, your client's application will again be reviewed and will be filed if all is in order (Gov't Code Section 65943(a)). If these materials are not received within the specified time frame, we will return this application to you.

In any case, please note that there is an involved permitting history for this site. We are in the process of reviewing our files to determine the appropriate processing status for your client's proposal. We may have additional information requests and/or directions for you after we have

Exhibit #12  
CCC-04-CD-03 (Shklar)

Paul Bailey, Bailey Properties, Inc. (Representative for Eugene and Dayme Shklar)  
Coastal Development Permit Application Number 3-00-055 Status Letter  
July 13, 2001  
Page 4

completed this file review. If you have any questions regarding your client's application, please contact me at the address and phone number listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "DAN CARL", written in a cursive, stylized font.

Dan Carl  
Coastal Planner

Enclosure: CDP Application Appendix B (Local Agency Review Form)

Exhibit #12  
CCC-04-CD-03 (Shklar)

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4883  
FAX: (831) 427-4877

Page 1 of 2



October 18, 2002

Margaret M. Maranta 2001 Trust  
(Owner of APN 028-143-35)  
1734 Delaware Avenue  
Santa Cruz, CA 95060-6302

Paul Bailey  
Bailey Properties Inc.  
(Representative for Eugene and Daymel Shklar)  
9119 Soquel Drive  
Aptos, CA 95003

Subject: *Coastal Development Permit Application Number 3-01-055 (Shklar Shoreline Armoring at Blacks Point in the Live Oak area of Santa Cruz County)*

Dear Maranta Trust and Mr. Bailey:

On June 14, 2001, we received the above-referenced coastal development permit application that Mr. Bailey forwarded on behalf of Eugene and Daymel Shklar involving APN 028-143-35. On July 13, 2001 we informed Mr. Bailey that we could not file the application because it was missing substantive materials necessary to adequately analyze the proposed project for Coastal Act conformance (see letter enclosed). Mr. Bailey was asked to submit the requested materials by September 11, 2001; if they were not received by that date, Mr. Bailey was informed that the application would be returned. It is now over a year since the September deadline and we have not to date received any materials, nor have we heard from Mr. Bailey or any representatives for the property at all. Typically, that would mean that the application would be returned and the matter would be closed.

However, this is an atypical case. As indicated to Mr. Bailey in our July 13, 2001 letter, there is an involved permitting history for this site. In sum, the then property owners (Richard and Wendy Lewis) were granted an emergency coastal development permit in 1995, subject to terms and conditions, to construct temporary shoreline armoring on the bluff fronting the property. Mr. and Mrs. Lewis subsequently applied for a regular coastal development permit (CDP) to recognize the installed temporary armoring as permanent. In 1997, the Coastal Commission approved a conditional regular CDP subject to 7 standard and 9 special conditions; 5 of the special conditions were required to be satisfied prior to a CDP being issued. Mr. and Mrs. Lewis were unable to comply with the required conditions and in 1999 applied for, and were granted, a one year extension of the CDP approval expiration date (extending the expiration date until June 11, 2000). Again, the required conditions were never met and the CDP ultimately expired on June 11, 2000.

The temporary development installed under the emergency authorization is required to be removed absent a regular CDP. Because the CDP was never issued, and because the approval has

long since expired, the development allowed by emergency permit exists without benefit of a regular CDP. As such, it represents a violation of the Coastal Act's permitting requirements. The obligation for rectifying the violation runs with the land. Although Mr. Bailey's original June 14, 2001 submittal included a grant deed indicating that the Shklars were the owners of APN 028-143-35 at that time, our property ownership data indicates that the current owner of APN 028-143-35 is the Margaret M. Maranta 2001 Trust, and thus this letter is being sent to all known involved parties.

Therefore, the current application is considered withdrawn (and is being returned – see enclosed) and the current property owner will need to submit an updated CDP application to recognize the development installed under the emergency permit (see application enclosed). Such application will need to clearly describe all aspects of the proposed project, will need to include clear plans describing the project in relation to the subject property's (and immediately surrounding properties') physical attributes, structures, and legal restrictions, and will need to be accompanied by up-to-date sufficient geologic and geotechnical evidence showing that the project is the least environmentally damaging feasible alternative to protect an existing principal structure in danger from erosion. All questions and concerns addressed to Mr. Bailey in our July 13, 2001 letter need be addressed in this new application context. Depending on the nature of the proposed project and the new application, there may be other areas of information necessary. Once we have seen an application, we will be able to provide you with a clear description of any materials necessary to file the application and take the matter to a hearing.

Please have the current property owner contact me by November 1, 2002 to inform me of their intended course of action. If the current property owner intends to make an application to retain the temporary development installed under emergency permit, then we would expect that a completed application be submitted within 2 months (i.e., by December 18, 2002). If the current property owner does not intend to submit such an application, then this matter will be directed to our enforcement unit for appropriate action.

If you have any questions regarding this matter, please contact me at the address and phone number listed above. Thank you for your expected cooperation.

Sincerely,



Dan Carl  
Coastal Planner

Enclosures: (1) July 13, 2001 Non-Filing Letter for Application 3-01-055  
(2) Application 3-01-055  
(3) CDP Application Form

cc (without enclosures): Eugene and Daymel Shklar

Exhibit #13  
CCC-04-CD-03 (Shklar)



**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877



March 12, 2003

Eugene and Daymel Shklar  
70 Geoffroy Drive  
Santa Cruz, CA 95062

Subject: *Shoreline Armoring at Blacks Point in the Live Oak area of Santa Cruz County*

Dear Mr. and Mrs. Shklar:

The purpose of this letter is to inform you that we have not to date received an application for a coastal development permit to recognize the shoreline armoring fronting your property. When I last discussed this matter with Mr. Shklar in the Commission's office in early November of last year, Mr. Shklar indicated that he would be submitting the required application by the deadline that had been established (i.e., by December 18, 2002). We have not received any application materials, and we have not otherwise heard from you since last November.

Please immediately contact me at the address and phone number above to let me know the status of your current efforts. Unless there are (or have been) extenuating circumstances, we would expect you to submit the required application immediately.

As you have previously been informed, the shoreline armoring fronting your property represents a violation of the Coastal Act's permitting requirements. I hope that we can resolve this matter administratively. If I have not heard from you by Friday, March 28, 2003, I will be forced to forward this matter to our enforcement division for further action.

Thank you in advance for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Carl", is written over a horizontal line.

Dan Carl  
Coastal Planner

cc: Sharif Traylor, California Coastal Commission Enforcement Program

Exhibit #14  
CCC-04-CD-03 (Shklar)

Page 1 of 1

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877



April 7, 2003

Eugene Shklar  
70 Geoffroy Drive  
Santa Cruz, CA 95062

Subject: *Shoreline Armoring at Blacks Point in the Live Oak area of Santa Cruz County*

Dear Mr. Shklar:

We received your letter dated March 27, 2003. We can appreciate that circumstances relevant to this site and its history of ownership, development, and coastal permits have been complicated by the events detailed in your letter. However, after consultation with management, legal counsel, and the planner who handled the previous permit application (as you requested), our conclusion regarding the status of the previous permit remains the same. The previous coastal permit approval has expired and there are no provisions in either the Coastal Act or our regulations for reviving an expired coastal permit. Because of this, there is no longer a coastal permit to issue for your project. As previously informed, you will need to submit a new coastal permit application. Our enforcement unit will be contacting you separately regarding submission deadlines and next steps in this process.

Sincerely,

A handwritten signature in black ink, appearing to read "DAN CARL".

Dan Carl  
Coastal Planner

cc: Sharif Traylor, California Coastal Commission Enforcement Program

Exhibit #15  
CCC-04-CD-03 (Shklar)

**CALIFORNIA COASTAL COMMISSION**

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

Page 1 of 2



**Sent via Regular and Certified Mail (7000 1530 0003 5913 9910)**

**June 13, 2003**

Eugene Shklar  
70 Geoffroy Drive  
Santa Cruz, CA 95062

**Subject: *Shoreline Armoring Fronting APN 028-143-35 at Black's Point in the Live Oak area of Santa Cruz County (Violation File Number V-3-03-013)***

Dear Mr. Shklar:

You currently have unpermitted shoreline armoring in existence on your property at the above-cited property. You have been informed on multiple occasions by Coastal Commission planning staff that you need to submit a complete coastal development permit (CDP) application and receive Commission action on your CDP application if you intend on retaining the shoreline armoring fronting your property. This has been made clear to you in multiple meetings between yourself and Commission staff person Dan Carl at the Commission's Santa Cruz office, and in multiple letters regarding this issue (see enclosed letters dated July 13, 2001, October 18, 2002, March 12, 2003, and April 7, 2003).

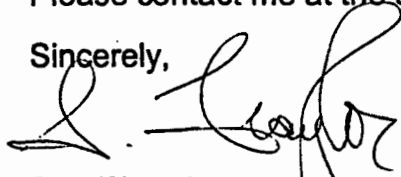
The purpose of this letter is to reiterate once more the points made to you in the above meetings and letters, and to establish an enforcement program deadline for resolving this matter. In sum, and as you have been previously informed, the shoreline armoring fronting your property represents a violation of the Coastal Act's permitting requirements. If you wish to keep the shoreline armoring, then it must be recognized by a valid CDP. In order to obtain a valid CDP, you must first submit a complete CDP application. We first informed your project representative, Betty Cost, of these requirements for filing approximately two years ago. Further, we personally informed you of these requirements almost 9 months ago. Thus, you have been given ample time and direction to develop the necessary materials for such an application. To date, we have not received any of the requested application materials.

In order to resolve this matter administratively, please submit a CDP application (enclosed) for the shoreline armoring **no later than July 14, 2003**. Such application must be responsive to the information requested in the above-listed letters and in our personal communications with you and/or your representative. Please contact me **no later than June 30, 2003** to inform me of your intended course of action. If I have not heard from you by June 30, 2003, then I will presume that you are not interested in administrative resolution of this matter. Your failure to submit the CDP application may result in more formal action by the Commission to resolve this Coastal Act violation. I am obligated to notify you that the formal action could include a civil lawsuit, the

issuance of a cease and desist order or restoration order, and/or the imposition of monetary penalties pursuant to Chapter 9 of the Coastal Act.

Please contact me at the address and phone number above if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sharif Traylor', written over the word 'Sincerely,'.

Sharif Traylor  
Enforcement Officer  
Central Coast District Office

cc: Dave Laughlin, Santa Cruz County, Enforcement Supervisor  
Nancy Cave, Northern California, Enforcement Supervisor

Enclosures

*Eugene and Daymel Shklar.*  
70 Geoffroy Drive  
Santa Cruz, CA 95062  
(831) 476-6700  
gene@shklar.com

Exhibit #17  
CCC-04-CD-03 (Shklar)

Page 1 of 2

**RECEIVED**

28 June 2003

JUN 30 2003

California Coastal Commission  
Attn: Sharif Traylor, Enforcement Officer  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Dear Mr. Traylor:

Your letter of June 13 omitted any mention of the points and conclusions from my own letter of March 27 to Dan Carl. Enclosed for your reference is a copy of that letter. In addition, here is an outline of the key points of this issue.

1. The Coastal Commission erred in not "issuing" development permit # 3-97-020.

- The bluff armoring was properly and legally installed in 1995 under an emergency permit.
- After a comprehensive staff report and public hearing, the Commission granted the formal development permit, with conditions, to property owner Richard Lewis to cover the work that had been performed under the emergency permit.
- Lewis applied on 7/10/99 for an extension to meet what he certified was the one remaining unmet condition of the permit, namely an authorization from the Monterey Bay National Marine Sanctuary (MBNMS) for rip-rap revetment in front of the property as part of the granted permit.
- Lewis obtained that authorization in April 2000 and sent a copy to the Commission.
- Lewis died unexpectedly in July 2000 before being able to follow up about the "issuing" of the permit.

2. The Coastal Commission erred in not timely following up with Lewis or subsequent property owners.

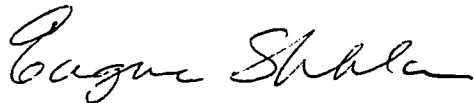
- We purchased the property from Lewis' widow in April 2001.
- Through the seller's real-estate agent, we initiated what we believed would be a simple process to obtain from MBNMS an extension to their authorization due to expire on 4/30/01. This eventually brought the permit status to the renewed attention of the Commission staff.
- The Commission issued no communication about the status of the permit from the time of Lewis's extension application on 7/10/99 until its own letter to us more than three years later on 10/18/02, and recorded no documents to notify subsequent property owners of any permit obligations that might be attached to the property instead of to its then-current owner.

3. Instead of now simply correcting these administrative errors itself, the Commission threatens legal action to force us to remove the armoring installed by Lewis unless we submit and obtain approval of a new coastal development permit application with the County and the Coastal Commission.

- The armoring work has already been properly engineered, installed, analyzed, approved, and permitted by the Commission under permit #3-97-020.
- A redundant application now would result in great expenditure of time and money, for engineers, land-use consultants, and lawyers, by us and by the county and state.
- The Commission wants the new application to be responsive to new conditions and requirements, instead of to original requirements, and without assurance that such an application would even be approved. Recent Coastal Commission history indicates that it would not.
- The threatened actions are not only unfair to us as the current property owners, they are also not even required by any law or regulation.
- Nothing in law or regulation prohibits the Commission from correcting the errors outlined above and simply "issuing" the permit.

I am eager to discuss this issue with you or your supervisors in person in the hope that we can prevent its escalation to the next level. After you have had a couple of days to digest and discuss this letter, I will call you set up such a meeting appointment. In the meantime, please call, write or email if I can provide additional written information or perspectives.

Yours truly,

A handwritten signature in cursive script, appearing to read "Eugene Shklar".

Eugene Shklar

cc: Dave Laughlin, Santa Cruz County Enforcement Supervisor  
Nancy Cave, Northern California Enforcement Supervisor

Enclosure

Exhibit #17  
CCC-04-CD-03 (Shklar)

**CALIFORNIA COASTAL COMMISSION**

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



Sent via Regular and Certified Mail (7000 1530 0003 5913 9996)

August 15, 2003

Eugene Shklar  
70 Geoffroy Drive  
Santa Cruz, CA 95062

Subject: ***Shoreline Armoring Fronting APN 028-143-35 at Black's Point in the Live Oak area of Santa Cruz County (Violation File Number V-3-03-013)***

Dear Mr. Shklar:

Thank you for your letter dated June 28, 2003, responding to my letter dated June 13, 2003 that asked you to submit a complete CDP application for the unpermitted shoreline armoring fronting APN 028-143-35 at Black's Point in the Live Oak area of Santa Cruz County. In your letter, you state that since there was only one condition -- authorization from the Monterey Bay National Marine Sanctuary (Sanctuary) -- that had not been met when you obtained ownership of the property from Mrs. Lewis, the previous owner, that the Coastal Commission (Commission) should issue you CDP No. 3-97-020. In previous correspondence dated March 12, 2003, April 7, 2003 and June 13, 2003, we have informed you that CDP No. 3-97-020 was never issued to Mr. and Mrs. Lewis because conditions of approval were not completely met by Mr. and Mrs. Lewis and consequently CDP No. 3-97-020 has expired. After receiving your June 28 letter, I conducted a thorough review and analysis of the permit. The unmet conditions include:

- **Special Condition 6: Other Agency Approvals.** PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for Executive Director review and approval, written evidence of authorization for the as-built seawall, as well as the reengineering of the revetment and maintenance and monitoring activities required by special conditions 3 and 4, or evidence that no such approvals are necessary, from the US Army Corps of Engineering (ACOE); Sanctuary; State Lands Commission (SLC); Department of Fish and Game (CDFG); Regional Water Quality Control Board (RWQCB), and Santa Cruz County Planning Department.); and
- **Special Condition 8: Timeframe for Compliance.** Compliance with Special Conditions 2, 3, 4, 5, 6 and 7 is required prior to issuance of the permit, and shall be pursued in a diligent manner. These conditions shall be complied with by January 1, 1998, unless otherwise extended by the Executive Director for good cause. Such extension must be requested in writing by the applicant, in a form which explains the cause for such an extension request, no later than December 1, 1997.

Exhibit #18  
CCC-04-CD-03 (Shklar)

With respect to special condition 6, we do not have evidence that you or Mr. and Mrs. Lewis ever received approvals from the CDFG, RWQCB or Santa Cruz County Planning Department. Also, the approvals from the SLC expired on June 6, 1999, ACOE expired on November 3, 2000, and the approval from the Sanctuary expired on April 4, 2001. The failure to comply with Condition 6 also constitutes failure to comply with Condition 8.

We also respectfully disagree with your assertion that nothing in law or regulation prohibits the Commission from simply "issuing" the permit. Coastal Act policies and our regulations (Title 14, Division 5.5) do not allow the issuance of CDPs until all the prior-to-issuance conditions have been met, and do not allow the issuance of CDPs that have expired prior to issuance. You mention in your letter that the Commission made administrative errors, like not recording any documents to notify subsequent property owners of any permit obligations that might be attached to the property. The conditions of approval on CDP No. 3-97-020 did not require such recordation and we did not have legal authority to do such a recordation.<sup>1</sup>

You also mention in your letter that in light of the old CDP expiring and the Commission staff requiring you to submit a new CDP for unpermitted shoreline armoring, the Commission wants the new application to be responsive to new conditions and requirements, instead of to original conditions and requirements, and without any assurance that such an application would even be approved. As we have discussed in this letter, prior-to-issuance conditions for CDP 3-97-020 were never met and the permit expired on June 11, 2000, over three years ago. It is entirely appropriate to ask you to submit a new CDP application that responds to current conditions at your property. In fact, the permit required completion of the project in a timely manner (6 months to satisfy the prior to issuance conditions [Condition 8] and 5 years to complete the revetment reengineering [Condition 3b]), and since that did not occur, it is entirely appropriate to re-evaluate the conditions on-site. In addition, the Commission staff can never provide "assurances" of Commission action. The staff makes recommendations and the Commission, after a public hearing, decides whether or not to accept its staff recommendation. Commission staff cannot pre-commit the Commission, who are the decision-makers on your proposal. In reviewing an application for a seawall and/or revetment, the Commission must determine if approval of the structure(s) is required under Section 30235 of the Coastal Act. This section 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 in danger from erosion, and when

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<sup>1</sup> In January 2003, the Commission received new legal authority that allows the recordation of a Notice of Violation against a property that contains an actively known and unresolved violation, so that warning can be provided to potential new owners of the property. The Commission is not able to retroactively apply this new authority and did not have the ability to so record at the time of Mr. Lewis' death or when the permit expired.

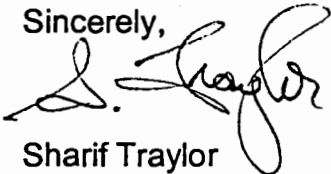


designed to eliminate or mitigate adverse impacts on local shoreline sand supply."

Therefore, we must ask that you submit a new, complete CDP application for the unpermitted shoreline armoring fronting your property. We must process your new application based on conditions that exist at the time the complete application is submitted. In your letter, you state that you would like to meet with Commission staff regarding this case. If you want to schedule a meeting to discuss a CDP application for the unpermitted development on the property, please contact Dan Carl at the above address or phone number as soon as possible. Dan is available for a meeting during the last week of August.

We also note that you have missed the previous deadline to submit a new CDP application to resolve this matter. My previous letter to you asked that you submit a new CDP application no later than July 14, 2003. We are willing to extend you one final opportunity to submit a new CDP application **no later than September 10, 2003**. If you do not submit a complete permit application to resolve this matter, the Commission reserves its right to pursue all legal remedies provided in Ch. 9 of the Coastal Act. I have enclosed another CDP application with this letter for your convenience. Please contact me at the address and phone number above if you have any questions.

Sincerely,



Sharif Traylor  
Enforcement Officer  
Central Coast District Office

Enclosure

cc: Dave Laughlin, Santa Cruz County, Enforcement Supervisor  
Nancy Cave, Northern California Enforcement Supervisor, California Coastal Commission  
Dan Carl, Coastal Planner, California Coastal Commission  
Betty Cost, Representative for Eugene Shklar

Exhibit #18  
CCC-04-CD-03 (Shklar)

02/03/2004 09:56 831-4274877

CALIF COASTAL COMM

PAGE 01/01

DC/ST

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA STATE LANDS COMMISSION  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

PAUL D. THAYER, Executive Officer  
(916) 574-1800 FAX (916) 574-1810

California Relay Service From TDD Phone 1-800-735-2922  
from Voice Phone 1-800-735-2929

**RECEIVED**

FEB 02 2004

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA



January 30, 2004

Contact Phone: 916.574.1862  
Contact FAX: 916.574.1925

File Ref: WP 8000

Eugene and Daymel Shklar  
70 Geoffroy Drive  
Santa Cruz, CA 95062

Dear Mr. &amp; Mrs. Shklar:

SUBJECT: Termination of Application for Assignment of Existing Rock  
Revetment in city of Santa Cruz, Santa Cruz County

This office has not received any correspondence from you within the thirty days from my letter dated December 23, 2003. Therefore, pursuant to Page V "Notice", of your application the application is hereby terminated and all fees submitted with the application will be forfeited, subject only to the return of any unused deposit of processing fees.

Since the existing rock revetment encroaches onto sovereign lands and is considered unauthorized, I will forward your file to our legal unit for further action.

Should you have any questions or require additional information please do not hesitate to contact me at (916) 574-1862.

Sincerely,

NANCI SMITH  
Public Land Management Specialist

cc: Coastal Commission

Exhibit #19  
CCC-04-CD-03 (Shklar)