

CALIFORNIA COASTAL COMMISSION

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

RECORD PACKET COPY

**W 12**

Staff:
Staff Report:
Hearing Date:

SMR-SF
March 26, 2004
April 14, 2004

FINDINGS FOR CEASE AND DESIST ORDER NO. CCC-04-CD-02

CEASE AND DESIST ORDER: CCC-04-CD-02

RELATED VIOLATION FILE: V-5-00-050

PROPERTY LOCATION: 3329 Ocean Boulevard, Corona del Mar, Orange County, APN 0052-120-055 (**Exhibit 1**)

DESCRIPTION OF PROPERTY: 8194-square-foot (0.19-acre) oceanfront lot, immediately inland of Corona del Mar State Beach

PROPERTY OWNER: George M. McNamee

VIOLATION DESCRIPTION: Unpermitted grading and landform alteration of a coastal bluff and beach; unpermitted construction of a shed set into the toe of the bluff, a barbeque area, storage cabinets, kitchen and bathroom facilities, two concrete picnic tables/benches and a shade/canopy structure with four posts.

Non-compliance with terms and conditions of CDP No. 5-81-257.

SUBSTANTIVE FILE DOCUMENTS: Cease and desist order file No. CCC-04-CD-02
Coastal Development Permit File No. 5-81-257
Background Exhibits 1 through 27

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

I. SUMMARY

Staff recommends that the Commission approve and issue Commission Cease and Desist Order No. CCC-04-CD-02 ("Order") to remove unpermitted development at 3329 Ocean Boulevard, Corona del Mar ("subject property"). The unpermitted development consists of grading and landform alteration of a coastal bluff and beach and unpermitted construction of a shed set into the toe of the bluff, a barbeque area, storage cabinets, kitchen and bathroom facilities, two concrete picnic tables/benches and a shade/canopy structure with four posts. Mr. George McNamee is the owner of the subject property.

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

The unpermitted activity that has occurred on the subject property meets the definition of "development" set forth in §30106 of the Coastal Act (Public Resources Code). The development was undertaken without a coastal development permit, in violation of Public Resources Code §30600. As discussed further below, it was also undertaken in violation of conditions included in the 1981 CDP issued for the residence on the property. Therefore, the Commission may issue a Cease and Desist Order under §30810 of the Coastal Act. The proposed Cease and Desist Order would require the owners to remove all unpermitted development from the property and to restore and revegetate the toe of the bluff where unpermitted grading or disturbance has occurred.

II. HEARING PROCEDURES

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

For a cease and desist order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at

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

his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR §13186, incorporating by reference §13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions 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. MOTION

MOTION: I move that the Commission issue Cease and Desist Order No. CCC-04-CD-02 pursuant to the staff recommendation and adopt all the findings.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

RESOLUTION TO ISSUE CEASE AND DESIST ORDER:

The Commission hereby issues Cease and Desist Order number CCC-04-CD-02 set forth below and adopts the findings set forth below on grounds that development has occurred without a coastal development permit and is not in compliance with terms and conditions of CDP No. 5-81-257.

IV. PROPOSED FINDINGS

A. Description of Unpermitted Development

The violation consists of grading and landform alteration of a coastal bluff and beach and unpermitted construction of a shed set into the toe of the bluff, a barbeque area, storage cabinets, kitchen and bathroom facilities, two concrete picnic tables/benches and a shade/canopy structure with four posts (**Exhibit 2a-h**).

B. Background and Administrative Resolution Attempts

1. Permit History and Site Photographs

The original single-family residence on the subject property was constructed in 1956, prior to the enactment of the Coastal Act, and so did not require a Coastal Development Permit (CDP). Mr. McNamee purchased the property in 1978. On October 6, 1981, the Commission issued to Mr. McNamee CDP No. 5-81-257 for partial demolition of the existing 2-level single-family residence and remodeling and additions to same, resulting in a 2-level single-family residence with attached 2-car garage, a jacuzzi and decking on a bluff top lot. No other development on the subject property, including the above-referenced unpermitted development, was listed as part of the proposed project description of the application Mr. McNamee submitted on August 27, 1981, shown on the proposed or approved plans, or authorized by the Commission pursuant to its issuance of that permit.

In fact, CDP No. 5-81-257 includes Standard Condition 3 regarding compliance, and states "All construction must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval." Because the unpermitted development cited above is not authorized in approved plans, it violates Standard Condition 3 of CDP No. 5-81-257.

The 1981 CDP, which was issued on the Commission's Consent Calendar, also included Special Condition 1 requiring the submittal of revised plans showing no new development extending seaward of the existing deck. Approved plans in the permit file include this notation and are in accord with this special condition. The only existing development depicted on these plans that is seaward of the decks is a pre-Coastal stairway. Therefore, the unpermitted also development violates Special Condition 1 of the 1981 CDP.

No development is visible at the base of the bluff or on the sandy beach in 1970, 1972, 1978 and 1986 aerial photographs of the subject property (**Exhibit 3a-d**). The Commission has no record of any CDP being issued for the cited development, and as noted, the 1981 CDP specifically prohibited any new development seaward of the existing deck. Some development on the sandy beach portion of the property is visible in a 1993 aerial photograph of the site (**Exhibit 3e**). The Commission's Mapping/GIS Program has reviewed 1972 and 2002 photographs of the subject property and has commented that no structure or development (other than the pre-Coastal stairway) is visible in the 1972 photograph of the subject property (**Exhibit 4**). The aerial photographs of the subject property indicate that unpermitted development appeared on the beach some time between 1986 and 1993, after the issuance of the 1981 CDP and therefore in violation of Standard Condition 3 and Special Condition 1 of the CDP. The proposed Order would require removal of all of the unpermitted development on the subject property. Based on the resource protection policies of Chapter 3 of the Coastal Act, the unpermitted development is not consistent with the Coastal Act (see discussion in Section D, below) and staff could not recommend approval of an after-the-fact application to retain any of the unpermitted development.

2. Administrative Resolution Attempts

Commission staff first notified Mr. McNamee of the violation on the subject property in a letter dated March 13, 2001 (**Exhibit 5**). In this letter, staff informed Mr. McNamee that an application to retain the unpermitted development would likely be denied, and recommended that Mr. McNamee submit a CDP application for removal of the unpermitted development and restoration of the site. Mr. McNamee failed to submit a CDP application by the May 11, 2001 deadline. In a letter to Commission staff dated June 7, 2001, Mr. McNamee asserted that a previous owner had placed the cited development on the property (**Exhibit 6**). In a letter dated August 31, 2001, staff set a second deadline of September 28, 2001 for submittal of a CDP application, which Mr. McNamee also failed to meet (**Exhibit 7**). In a letter to Commission staff dated September 21, 2001, Mr. McNamee again asserted that a previous owner had placed the cited development on the property (**Exhibit 8**). In a letter dated April 28, 2003, staff indicated that even if a prior owner constructed the development, it couldn't remain on the site in violation of the Coastal Act and that as the legal property owner Mr. McNamee was responsible for resolving the Coastal Act violations on the subject property. Staff set a third deadline of May 29, 2003 for submittal of a CDP application, again recommending that Mr. McNamee apply to remove the unpermitted development and informing Mr. McNamee that staff would consider formal enforcement actions if Mr. McNamee did not resolve the violation administratively (**Exhibit 9**). Mr. McNamee failed to meet this deadline. South Coast District staff subsequently referred Violation File No. V-5-00-050 regarding this matter to Headquarters enforcement staff and recommended initiation of formal enforcement proceedings.

In a letter dated December 10, 2003, Commission staff issued a Notice of Intent (NOI) to commence Cease and Desist Order proceedings (**Exhibit 10**). The NOI set forth the basis for issuance of the proposed Order, stated that the matter was tentatively being placed on the Commission's February 2004 hearing agenda, and provided the opportunity for Mr. McNamee to respond to allegations in the NOI with a Statement of Defense form.

Mr. McNamee did not return the Statement of Defense by the January 7, 2004 deadline.² On January 9, 2004, staff received a letter from Mr. McNamee requesting additional time to respond to the NOI (**Exhibit 11**). In a letter dated January 9, 2004, staff extended the deadline for Mr. McNamee's submittal of a Statement of Defense until January 20, 2004 (**Exhibit 12**). Mr. McNamee failed to meet this deadline. On January 20, 2004, staff received a letter from Mr. McNamee, in which he requested a delay of the proposed enforcement proceedings (**Exhibit 13**). In a letter dated January 20, 2004, staff declined to postpone the proposed enforcement proceedings and granted a second deadline extension to January 26, 2004 for submittal of a Statement of Defense (**Exhibit 14**). On January 22, 2004, staff received a letter from the McNamees stating that they were in the process of selecting an attorney to represent them (**Exhibit 15**).

² The Commission's regulations provide 20 days for submittal of the Statement of Defense (California Code of Regulations, Title 14, §13181).

In a letter dated January 26, 2004, staff received a letter from the McNamee's attorney, requesting an extension for their submittal of a Statement of Defense on behalf of the McNamees and requesting to review photographs staff cited regarding the issue of unpermitted development on the subject property (**Exhibit 16**). In a letter dated January 26, 2004, staff granted a third extension for submittal of a Statement of Defense, setting a deadline of February 9, 2004 (**Exhibit 17**). In a letter dated January 30, 2004, staff provided copies of photographs to the McNamee's attorney in response to his request to review photographs (**Exhibit 18**). Staff received a Statement of Defense on February 9, 2004 (**Exhibit 19**).

The February 9, 2004 cover letter that accompanied the submittal of the Statement of Defense requested that the proposed enforcement matter be heard at the Commission's April 2004 hearing and requested to review the related Violation File for this matter (**Exhibit 20**). In a letter dated February 11, 2004, staff responded to these requests (**Exhibit 21**). Commission staff provided all non-exempt public records regarding the alleged violations to the McNamees on February 11, 2004. In a letter dated February 24, 2004, staff received a second request regarding review of the Violation File (**Exhibit 22**), and staff responded in a letter dated March 1, 2004 (**Exhibit 23**).

The February 9, 2004 Statement of Defense noted that the development on the subject property includes kitchen and bathroom facilities on the sandy beach portion of the subject property. Staff did not learn of the existence of this unpermitted development until the February 9, 2004 submittal of a Statement of Defense. Staff consequently mailed a supplemental Notice of Intent (NOI) letter to the McNamees on February 13, 2004, providing formal notice regarding this additional unpermitted development (**Exhibit 24**). Staff included a supplemental Statement of Defense form with the February 13 NOI to provide the McNamees with the opportunity to respond to allegations regarding the unpermitted kitchen and bathroom facilities, and set a deadline of March 8, 2004 for its submittal. Staff received a supplemental Statement of Defense on March 11, 2004 (**Exhibit 25**). The March 11, 2004 cover letter that accompanied the submittal of the supplemental Statement of Defense asserted that the Commission was denying the McNamees due process (**Exhibit 26**). Staff responded to this assertion in a letter dated March 15, 2004 (**Exhibit 27**).

C. Basis for Issuance of the Cease and Desist Order

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

- (a) *If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that... requires a permit from the Commission without securing the permit or 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 unpermitted activity that has occurred on the subject property meets the definition of "development" set forth in §30106 of the Coastal Act (Public Resources Code). The development was undertaken without a coastal development permit, in violation of Public Resources Code §30600. Aerial photographs indicate that the development did not exist prior to the Coastal Act and post-dates CDP No. 5-81-257 and is also in violation of the requirements of the conditions of this permit. Therefore, the Commission may issue a Cease and Desist Order under §30810 of the Coastal Act.

D. Inconsistency with Chapter 3 of the Coastal Act and Newport Beach Land Use Plan

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

1. Scenic Resources

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

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

The subject property is located along a bluff face immediately adjacent to Corona del Mar State Beach. Corona del Mar State Beach is a public beach that serves as a popular visitor destination point for recreational uses. Several hundred feet southeast (five properties down coast) of the subject property is a public bluff park known as Inspiration Point, which has a public access way from Inspiration Point to the beach below. The unpermitted development on the subject property is visible from the sandy beach and bluff park (**Exhibit 2g**).

The general pattern of development along this segment of Ocean Boulevard is such that structures are sited at the top of the bluff, while the bluff face remains largely undisturbed and vegetated except for some private bluff stairways that exist in the area, including a pre-Coastal stairway on the subject property. The unpermitted development on the subject property is inconsistent with Section 30251 because the shed, barbeque area, storage cabinets, kitchen and bathroom facilities, two concrete picnic tables/benches and a shade/canopy structure with four posts adversely affect public views of the vegetated bluff and beach area from the adjacent public beach and do not minimize the alteration of natural land forms. The unpermitted

development has resulted in a very visible intensification of use of the site as compared with its undeveloped state. The unpermitted development includes signs that read "George's Beach" and "Private Shower", which effectively discourage the public from using the adjacent public beach because of the perception of privatization (**Exhibit 2e and 2f**).

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

2. Public Access and Development Adjacent to Recreation Areas

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

Section 30211 states:

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

Section 30240(b) states:

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

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

The unpermitted development is inconsistent with Sections 30211 and 30240 because its presence encroaches seaward and discourages public use of the adjacent sandy beach. In addition to the direct occupation of sandy beach near the toe of the bluff, the unpermitted development has resulted in a very visible intensification of use of the site as compared with its

undeveloped state, and effectively discourages the public from using the adjacent public beach located seaward of the unpermitted development because of the perception of privatization of the entire area (**Exhibit 2a-g**). Beach-goers are less likely to utilize a segment of the beach that is physically restricted by a neighboring private property owner. The presence of the unpermitted development adversely affects the public's continued use of the beach.

3. Bluff Slope Development/Geologic Stability

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

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

In this case, the unpermitted development is inconsistent with Section 30253 because the unpermitted development at the base of the bluff has substantially altered the natural landform where the shed is set into the toe of the bluff (**Exhibit 2d-f**). The unpermitted grading and development has resulted in the removal of the previously existing bluff vegetation to the right of the stairway, and has cut into the base of the bluff where the shed is set into the toe of the bluff to the left of the stairway. These alterations can contribute to increased erosion and instability. Aerial photographs of the subject property indicate that unpermitted development appeared on the beach some time between 1986 and 1993.

4. Newport Beach Land Use Plan

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

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

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

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

The unpermitted development is inconsistent with the LUP because it is apparent that the base of the bluff face has been altered where a shed and other development were installed (**Exhibit**

2a, 2d and 2f) and neither of the exceptions in the LUP (emergency repairs and erosion-preventive devices) applies. The scenic value of the previously undisturbed and vegetation bluff face has been disturbed.

E. California Environmental Quality Act (CEQA)

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

F. Allegations

The Commission alleges the following:

1. Mr. George McNamee is the owner of the property located at 3329 Ocean Boulevard, Corona del Mar, CA, APN 0052-120-055.
2. Unpermitted development consisting of grading and landform alteration of a coastal bluff and beach and construction of a shed set into the toe of the bluff, a barbeque area, storage cabinets, kitchen and bathroom facilities, two concrete picnic tables/benches and a shade/canopy structure with four posts has occurred on the subject property.
3. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.
4. In letters dated March 13, 2001, August 31, 2001, and April 28, 2003, Commission staff informed Mr. McNamee that development had occurred on the subject property without benefit of a CDP and constitutes an ongoing violation of the Coastal Act.
5. The unpermitted development violates conditions of CDP No. 5-81-257.
6. Staff has explained to Mr. McNamee that it could not recommend after-the-fact approval of the unpermitted development. Commission staff has directed Mr. McNamee to apply for a CDP to remove the unpermitted development on the subject property and to restore the bluff face. Mr. McNamee has failed to do so.

The following section presents defenses set forth by Mr. McNamee in his February 9 and March 11, 2004 Statements of Defense and the Commission's response to each defense.

E. Violator's Defense and Commission Response

Owner's Defense:

1. The McNamees deny that they have performed any grading on the property other than the grading approved in connection with the reconstruction of the residence under Coastal Development Permit No. 5-81-257.

Commission's Response:

Photographs of the subject property indicate that the base of the bluff face has been altered where a shed and other development were installed (**Exhibit 2a, 2d and 2f**). None of the cited development is visible on the beach or at the base of the base of the bluff in 1970, 1972, 1978 and as late as 1986; some development is visible on the subject property in a 1993 aerial photograph (**Exhibit 3a-e**).

Owner's Defense:

2. The McNamees assert that at the time they bought the property in 1978, a shed, barbeque, storage lockers and picnic tables existed on the sandy beach portion of their property. "At the time the McNamees acquired the property in 1978, the shed appeared to be not less than 10 years old and was in a deteriorated condition. Between 1978 and the present date the McNamees have repaired and maintained the shed but have not done any grading of the property. Inside of the shed were both a sink and a toilet area. These facilities were connected to the main sewer connection from the main residence which was installed in 1956 and goes from the main residence to a City maintained sewer pipe located in Breakers Way, southwest of the McNamee property...Over the past 25 years the McNamees have repaired and replaced storage lockers and the barbeque and have replaced tables on the beach. The most recent replacement of tables was with concrete tables... All of the repair, maintenance and replacement which the McNamees have done has been conducted entirely on their private property and entirely without the use of any mechanized equipment. All of these activities are exempt from the permit requirements of the Coastal Act under Public Resources Code §30610(d)."

Commission's Response:

The Commission has received no evidence from the McNamees that the cited development was present on the subject property when they bought it in 1978. Photographs of the subject property indicate otherwise; no development other than the pre-Coastal stairway is visible in 1970, 1972, 1978 and 1986 aerial photographs of the subject property (**Exhibit 3a-d**). The City of Newport Beach and the Commission have no records of any building permits or CDPs being issued for the cited development. There is no record of local government approval for a bathroom and/or septic system on the beach.

The Commission also does not agree with the McNamee's assertion that the cited development is an existing improvement to the single-family residence that is exempt from permit requirements under the repair and maintenance section of the Commission's regulations (§13252). Rather, staff believes that the unpermitted development required a CDP under §13250(b) of the Commission's regulations, which state:

"Pursuant to Public Resources Code Section 30610(a), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effects: (1) Improvements to a single-family structure if the structure or improvement is located: on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, in an area designated as highly scenic in a certified land use plan, or within 50 feet of the edge of a coastal bluff. (2) Any significant alteration of natural land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas (3) the expansion or construction of water wells or septic systems."
(emphasis added)

In addition to meeting the definition of "development" set forth in §30106 of the Coastal Act (Public Resources Code), the unpermitted development is located on a beach and has altered natural landforms and therefore is subject to the permit requirements of the Coastal Act as set forth in §30610(a) of the Coastal Act and §13250(b) of the implementing regulations.

Owner's Defense:

3. "The delay of more than 20 years by the Coastal Commission in bringing enforcement proceedings has prejudiced the McNamees to their detriment and the Commission should decline to enforce because of the prejudice caused by its own inaction. The delay by the Coastal Commission in alleging that the improvements on the McNamee property are unpermitted and subject to removal has been unreasonable and caused prejudice to the McNamees."

Commission's Response:

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

The assertion of unreasonable delay and prejudice implies a defense based on the doctrine of laches. The doctrine of laches does not apply in this case. It is well settled that the equitable defense of laches "will not ordinarily be invoked to defeat policy adopted for the public

protection” (*City of San Francisco v. Pacello* (1978) 85 Cal.App.3d 637, 646.³) In this case, the cease and desist order proceedings were initiated to bring the subject violations into compliance with the Coastal Act, which was adopted to protect coastal resources for the benefit of the public.

Even if the doctrine were applicable to this proceeding, it is well established that “laches is an equitable defense that requires *both* unreasonable delay *and* prejudice resulting from the delay. The party asserting and seeking to benefit from the laches bar bears the burden of proof on these factors.” (*Mt. San Antonio Comm. Coll. Dist. v. Pub. Emp. Rel. Bd.* (1989) 210 Cal.App.3d 178.) Mr. McNamee has contributed to delay in this proceeding, because prior to the commencement of formal enforcement proceedings, Mr. McNamee failed to meet three deadlines over more than two years for the submittal of a CDP application regarding the unpermitted development. After the commencement of formal enforcement proceedings and at Mr. McNamee’s request, staff has extended deadlines three times for the submittal of a Statement of Defense, which has further delayed this proceeding. Mr. McNamee cannot show any prejudice from the Commission’s failure to bring this action at any earlier date; in fact, Mr. McNamee has actually benefited from many years of use of the unpermitted structures.

Owner’s Defense:

4. “The McNamees have made no use of their property which is dissimilar to the manner in which others have used their similar property including the State of California which owns the adjoining Corona del Mar State Beach.”

Commission’s Response:

In past permit and enforcement actions for similar nearby private properties, the Commission has denied an application for after-the-fact authorization of unpermitted development on the beach (Butterfield CDP No. 5-01-199; litigation is currently pending in this case), and has reached a settlement with another property owner who has agreed to remove unpermitted development from the beach (Battram CCC-04-CD-01). The proposed Cease and Desist Order is consistent with recent Commission actions regarding similar cases of unpermitted development.

Owner’s Defense:

5. “The Commission may not use the Cease and Desist Order Provisions of Public Resources Code §30810 to force a new property owner to restore property alleged to be altered by his predecessor.”

³ Accord: *Morrison v. California Horse Racing Board* (1988) 205 Cal.App.3d 211, 219 (“Where there is no showing of manifest injustice to the party asserting laches, and where application of the doctrine would nullify a policy adopted for the public protection, laches may not be raised against a governmental agency.”)

Commission's Response:

The photographic evidence indicates that the unpermitted development occurred after Mr. McNamee acquired the property in 1978. As discussed in Section B of the staff report and in Commission's Response to Defense #2, photographs of the subject property indicate that none of the cited development is visible on the beach or at the base of the base of the bluff in 1970, 1972, 1978 and as late as 1986; some development is visible on the subject property in a 1993 aerial photograph (**Exhibit 3a-e**). Photographs indicate that development appeared on the beach and base of bluff portion of the subject property after McNamees became owners of the property. Moreover, approved plans for the 1981 remodel CDP issued to Mr. McNamee indicate no existing development seaward of the house other than a pre-Coastal stairway. Because the unpermitted development cited above is not authorized in approved plans, it violates Standard Condition 3 of CDP No. 5-81-257. This permit also included a special condition prohibiting any new development seaward of the decks, and no permits from City of Newport Beach or Coastal Commission have been applied for or issued for any of the cited development on the beach and base of bluff portions of the subject property. These permit requirements clearly apply to Mr. McNamee.

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

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

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

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

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

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

Mr. McNamee purchased the property. The Commission is authorized under Section 30810 of the Coastal Act to order removal of the unpermitted development.

Owner's Defense:

6. "The McNamees have a right to use their home and their private property for reasonable uses which cause no harm to the environment or to the public. The improvements which have been constructed to facilitate those uses are modest and unassuming. No fences signs or other indicators exist which suggest that the public should not be in the vicinity of McNamee property and have never existed."

Commission's Response:

The Commission does not have to establish that there has been harm to people or the environment for it to enforce violations of the Coastal Act. In *Ojavan Investors, Inc. v. California Coastal Commission* (1987) 54 Cal.App.4th 373, the Court of Appeal ruled that, even though there was "very little or no physical damage to the properties involved," a judgment for injunctive relief and civil fines should be upheld,

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

Moreover, in many cases, after a complete application for a CDP is filed, the Commission reviews the consistency of proposed development with the standards and policies of the Coastal Act. In this particular case, as discussed in Section IV.D of these findings, staff has determined that Mr. McNamee's unpermitted development appears to be inconsistent with several Chapter 3 policies of the Coastal Act and thus, could potentially be causing adverse impacts to coastal resources.

In addition, as discussed in Section D2 of the staff report, the public resources of access and recreation are in fact endangered by the unpermitted development, because it encroaches seaward and adversely affects the public's continued use of the beach. The unpermitted development has resulted in a visible intensification of use of the site as compared with its undeveloped state, and effectively discourages the public from using the adjacent public beach because of the perception of privatization. Contrary to the statement in Defense #6, signs reading "George's Beach" and "Private Shower" are posted on and near the unpermitted development, which suggests that the public should not be in the vicinity of the subject property (**Exhibit 2e-f**). Beach-goers are less likely to utilize a segment of the beach that is physically restricted by a neighboring private property owner.

In addition, the development adversely affects other public resources protected by the Coastal Act, such as protection of scenic resources, bluff stability and compliance with the Coastal Act policies of the LUP (see further discussion in Section D of the staff report).

Finally, whether or not the unpermitted development is causing any harm, all of the cited development is unpermitted, and the Commission has the authority to order its removal on that basis alone under Section 30810 of the Coastal Act.

Owner's Defense:

7. "The Coastal Commission is unconstitutionally constituted. A majority of the members of the Coastal Commission are appointed by members of the State Legislature and not by the Governor. Such appointment authority places the Coastal Commission under the control of the State Legislature in violation of the separation of powers required by California Constitution, Article III, §3. As such the Coastal Commission should be enjoined from acting on permits and cease and desist orders. This issue is presently pending in the California Supreme Court in the case of *Marine Forests Society v. California Coastal Commission*, Docket No. S113466.

Commission's Response:

Mr. McNamee cites the pending CA Supreme Court case, *Marine Forests Society v. California Coastal Commission*, Docket No. S113466. Since the Supreme Court is hearing the case, the Court of Appeal's ruling in the case is depublished and has no legal effect. Mr. McNamee asserts that the appointment by the Legislature of a majority of Commissioners violates the separation of powers required by the California Constitution. The Commission believes that under the California Constitution and cases interpreting it, the current appointment structure of the Commission is constitutional. Unless and until there is a Court of Appeals decision directing otherwise, the Commission is required to continue implementing the Coastal Act. In response to the Court of Appeal's decision in the Marine Forests case, the Legislature amended the Coastal Act to address the constitutional problem the Court identified, by having the Commissioners who are appointed by legislators serve for fixed, four year terms.

Owner's Defense:

8. "Coastal Commission Regulations limiting the improvements which can be made to single family homes are invalid. The Coastal Act of 1976 exempted improvements to existing single family residences from the permit requirements of the Coastal Act. Public Resources Code §30610(a). The Coastal Commission adopted a regulation in 1977 seeking to limit the application of this provision to require permits for certain improvements and for residences in certain locations. California Code of Regulations, Title 14, §13250. The adoption of such regulation was invalid. The Coastal Commission, at the time of its adoption in 1977 and at the time of each subsequent amendment to §13250 (the last of which was in 1999) was an unconstitutionally constituted agency..."

Commission's Response:

This defense argues that because of the previously raised defense, which asserted that the Commission is unconstitutionally constituted, its adoption of and amendments to its regulations (California Code of Regulations, Title 14, Division 5.5) were invalid. The Commission does not agree that its regulations are invalid and no court has invalidated the Commission's regulations. See Commission's Response to Defense #8, above.

Owner's Defense:

9. "The Coastal Commission's Cease and Desist Order Proceedings deny due process to the McNamees...The Coastal Commission is not an unbiased trier of fact...The members of the Coastal Commission are not presented with all of the evidence which may be submitted in favor of a person accused of a violation but only a summary of that evidence compiled by its Executive Director."

Commission's Response:

Mr. McNamee asserts that the hearing procedures deny due process and constitute a "taking." Ordering removal of the unpermitted development on the beach would not be "taking" because even without those amenities on the beach, Mr. McNamee has residential use of his property and the existing residence on his property has significant economic value.

Contrary to his assertion, Mr. McNamee has obtained all evidence in the Commission's possession regarding the issue of whether or not there is illegal development on his property. As explained in a letter to Mr. McNamee's counsel dated March 15, 2004, the only records that Commission staff withheld were records created by Commission staff that contain staff deliberations or enforcement strategies. These records are not "evidence."

At the hearing, any witnesses who wish to present evidence on Mr. McNamee's behalf may do so. Alternatively, Mr. McNamee may submit a letter or statement from any witness who is unable or unwilling to attend the hearing. While Commission staff may summarize the evidence that an alleged violator submits for the convenience of the Commission and the public, the Commissioners also receive a complete copy of the documents/evidence submitted by the alleged violator, including the Statement of Defense, all exhibits attached to the Statement, as well as any letters or statements from witnesses or consultants or photographic evidence. Although Commission hearing procedures do not provide for cross examination of Commission staff, Mr. McNamee may present to Commissioners any evidence he has indicating that the Executive Director's legal or factual conclusions in the matter are wrong and may explain any perceived flaws in the evidence. Contrary to Mr. McNamee's assertion, there is no evidence that the Commissioners are biased, and it is not a denial of due process for Commissioners to decide this matter.

Accordingly, Mr. McNamee has not identified any failure to provide due process.

Owner's Defense:

10. "The Coastal Commission is required by the Americans with Disabilities Act to adjust its policies, practices and procedures to accommodate the disability of George McNamee. George McNamee suffers from heart conditions...and proclivity to melanoma. Due to the heart condition, Mr. McNamee cannot lift or carry heavy objects or repeatedly climb stairs. Due to the skin condition Mr. McNamee cannot endure exposure to the sun for extended periods of time. If the Coastal Commission forcibly compels Mr. McNamee to remove these accommodations [the unpermitted development], he is unable to use his home for the purposes for which it is suited and for which he has used it for the past 27 years. This would constitute a violation of the Americans with Disabilities Act. 42 U.S.C. §12131(2)."

Commission's Response:

The Americans With Disabilities Act does not exempt Mr. McNamee from the requirements of the Coastal Act that apply to all other property owners in the coastal zone. The issuance of an order that requires compliance with the permit requirements and resource protection policies of the Coastal Act, does not deny Mr. McNamee "the benefits of services, programs, or activities of a public entity" (42 U.S.C. section 12132). Nor is he being subject to discrimination by the Commission. The motivation for issuance of the proposed Cease and Desist Order is the Commission's duty under the Coastal Act to protect coastal resources for the benefit of the public. The Commission has no discriminatory purpose. Although the Order will require removal of the private recreational amenities on Mr. McNamee's property, these amenities are not government benefits, services, programs or activities and therefore, there is no violation of the Americans With Disabilities Act. As explained herein, the development on Mr. McNamee's property is not exempt from the coastal development permit requirements of the Coastal Act and does not meet the applicable standards for issuance of such a permit. Thus, Mr. McNamee is not a "qualified individual with a disability" under the Act because he is not an individual with a disability who "meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." (42 U.S.C. Section 12131(2)).

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

CEASE AND DESIST ORDER CCC-04-CD-02

Pursuant to its authority under PRC § 30810, the California Coastal Commission hereby authorizes and orders George McNamee, all his employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondents") to cease and desist from: (1) continuing to maintain any development on his property that violates the California Coastal Act and the requirements of the conditions to CDP No. 5-81-257; and (2) engaging in any further development activity on his property without first obtaining a coastal development permit which authorizes such activity. Accordingly, all persons subject to this order shall fully comply the following conditions:

- A. Within 60 days of issuance of the Cease and Desist Order, Respondents shall submit, for the review and approval of the Executive Director, two sets of a Removal and Restoration Plan prepared by a licensed landscape architect or qualified restoration specialist. The plan shall provide for the removal of all unpermitted development including the existing shed set into the toe of the bluff; a barbeque area, storage cabinets, kitchen, bathroom facilities and related utility/sewage lines, two concrete picnic tables/benches and a shade/canopy structure with four posts, from the subject property. The Removal and Restoration Plan shall also include a grading plan to restore the toe of the bluff where unpermitted grading or disturbance has occurred. Disturbed or graded areas of the toe of the bluff shall be restored to match the existing topography of the immediately adjacent undisturbed bluff slope areas. The Removal and Restoration plan shall also include a revegetation and erosion control plan to revegetate the portion of the bluff slope where grading and disturbance has occurred. The revegetation and erosion control plan shall include the following criteria:
- (1) An interim erosion control plan that provides for temporary erosion control measures such as geofabrics, silt fencing, sandbag barriers, or other measures to control erosion until revegetation of the restored slope is completed. These erosion control measures shall be required on the project site prior to and concurrent with the initial grading operations and shall be maintained throughout the process to minimize erosion and sediment to runoff waters during construction. All sediment shall be removed to an appropriate disposal site, approved by the Executive Director, either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
 - (2) A revegetation program prepared by a licensed landscape architect or qualified restoration specialist with credentials acceptable to the Executive Director that utilizes only drought-tolerant plant species native to coastal Orange County, and are consistent with the surrounding native plant community.
- B. Within 30 days after approval of the Removal and Restoration Plan by the Executive Director, Respondents shall:

- (1) Remove all unpermitted development, including the existing shed set into the toe of the bluff; a barbeque area, storage cabinets, kitchen, bathroom facilities and related utility/sewage lines, two concrete picnic tables/benches and a shade/canopy structure with four posts, from the subject property; and
 - (2) Complete all restorative grading consistent with the approved Removal and Restoration Plan; and
 - (3) Revegetate all disturbed and graded areas of the bluff slope consistent with the approved Removal and Restoration Plan.
- C. Within 60 days after approval of the Removal and Restoration Plan by the Executive Director, Commission staff will conduct a site visit to confirm compliance with the terms and conditions of the order.

PERSONS SUBJECT TO THE ORDER

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

IDENTIFICATION OF THE PROPERTY

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

3329 Ocean Boulevard, Corona del Mar, CA, APN 0052-120-055.

DESCRIPTION OF UNPERMITTED DEVELOPMENT

Unpermitted grading and landform alteration of a coastal bluff and beach and unpermitted construction of a shed set into the toe of the bluff; a barbeque area, storage cabinets, kitchen and bathroom facilities, two concrete picnic tables/benches and a shade/canopy structure with four posts.

EFFECTIVE DATE AND TERMS OF THE ORDER

The effective date of this order is April 14, 2004. This order shall remain in effect permanently unless and until rescinded by the Commission.

FINDINGS

This order is issued on the basis of the findings adopted by the Commission on April 14, 2004, as set forth in the attached document entitled "Findings for Cease and Desist Order No. CCC-04-CD-02."

COMPLIANCE OBLIGATION

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

DEADLINES

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

APPEAL

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

Executed in Santa Barbara on April 14, 2004, on behalf of the California Coastal Commission.

Peter Douglas, Executive Director

Exhibits

1. Locus map for the subject property.
2. September 2002 and February 2004 photographs of the subject property.
3. Aerial photographs of the subject property in 1970, 1972, 1978, 1986 and 1993.
4. Photo interpretation for 3329 Ocean Boulevard.
5. Letter dated March 13, 2001, from Commission staff to Mr. McNamee.
6. Letter dated June 7, 2001, from Mr. McNamee to Commission staff.
7. Letter dated August 31, 2001, from Commission staff to Mr. McNamee.
8. Letter dated September 21, 2001, from Mr. McNamee to Commission staff.
9. Letter dated April 28, 2003, from Commission staff to Mr. McNamee.
10. Letter dated December 10, 2003, from Commission staff issuing a Notice of Intent (NOI) to commence Cease and Desist Order proceedings.
11. Letter dated January 9, 2004, from Mr. McNamee to Commission staff, requesting additional time to respond to the NOI.
12. Letter dated January 9, 2004, from Commission staff to Mr. McNamee, extending deadline for submittal of Statement of Defense until January 20, 2004.
13. Letter received January 20, 2004, from Mr. McNamee to Commission staff, requesting a delay of the proposed enforcement proceedings.
14. Letter dated January 20, 2004, from Commission staff to Mr. McNamee, extending deadline for submittal of Statement of Defense until January 26, 2004.
15. Letter received January 22, 2004, from Mr. McNamee to Commission staff.
16. Letter dated January 26, 2004, from Mr. McNamee's attorney to Commission staff.
17. Letter dated January 26, 2004, from Commission staff to Mr. McNamee's attorney, extending deadline for submittal of Statement of Defense until February 9, 2004.
18. Letter dated January 30, 2004, from Commission staff to Mr. McNamee's attorney, responding to attorney's request to view photographs of the subject property.
19. Statement of Defense dated February 9, 2004, received on February 9, 2004.
20. Letter dated February 9, 2004, from Mr. McNamee's attorney to Commission staff, requesting delay of hearing and to review the Violation File.
21. Letter dated February 11, 2004, from Commission staff to Mr. McNamee's attorney, responding to attorney's requests regarding hearing date and Violation File.
22. Letter dated February 24, 2004, from Mr. McNamee's attorney to Commission staff, with second request regarding review of the Violation File.
23. Letter dated March 1, 2004, from Commission staff to Mr. McNamee's attorney, responding to attorney's second request regarding Violation File.
24. Letter dated February 13, 2004, from Commission staff issuing a supplemental Notice of Intent (NOI) to commence Cease and Desist Order proceedings.
25. Supplemental Statement of Defense dated March 11, 2004, received on March 11, 2004.
26. Letter dated March 11, 2004, from Mr. McNamee's attorney to Commission staff, asserting that the Commission was denying the McNamees due process.
27. Letter dated March 15, 2004, from Commission staff to Mr. McNamee's attorney, responding to March 11, 2004 letter.

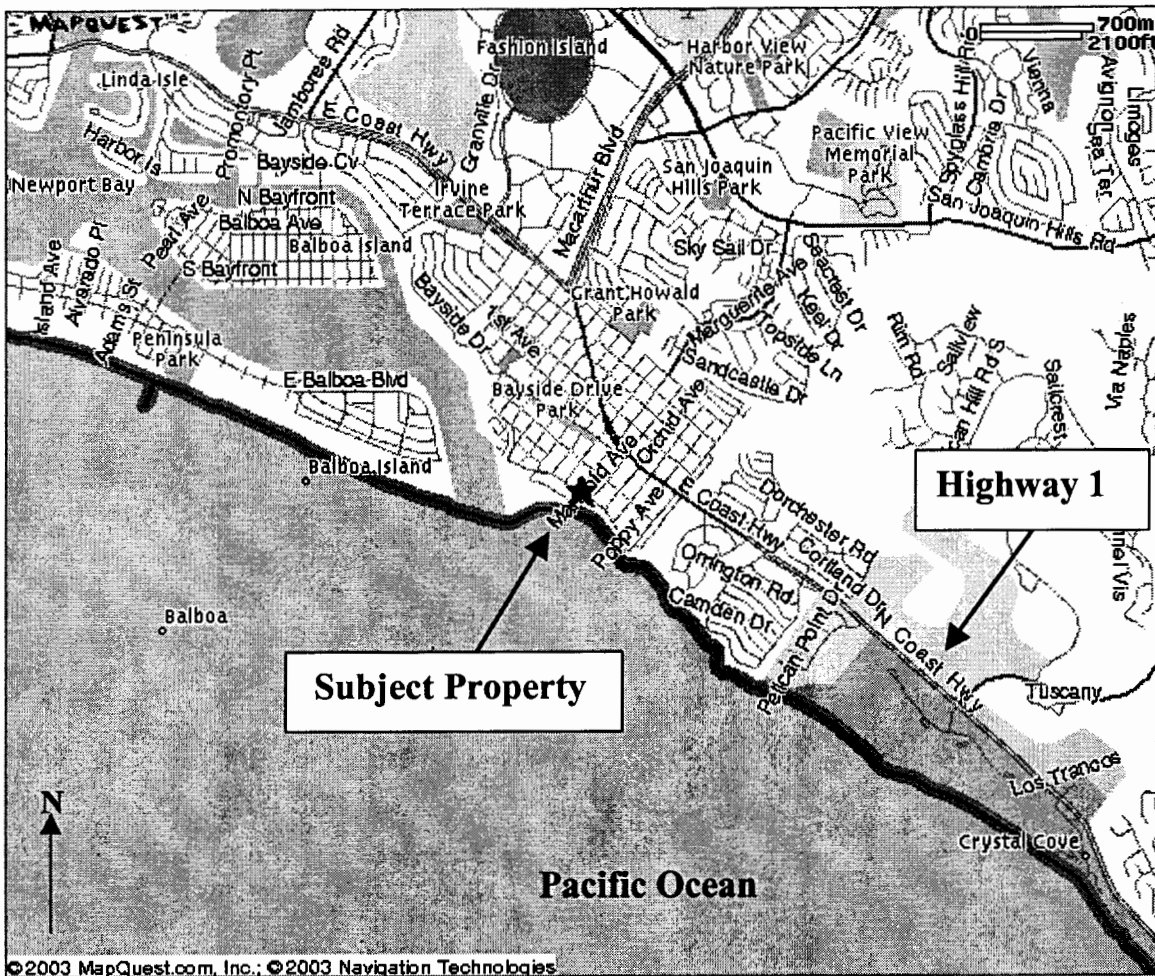


Exhibit 1. Area location map for subject property, Corona del Mar, Orange County.

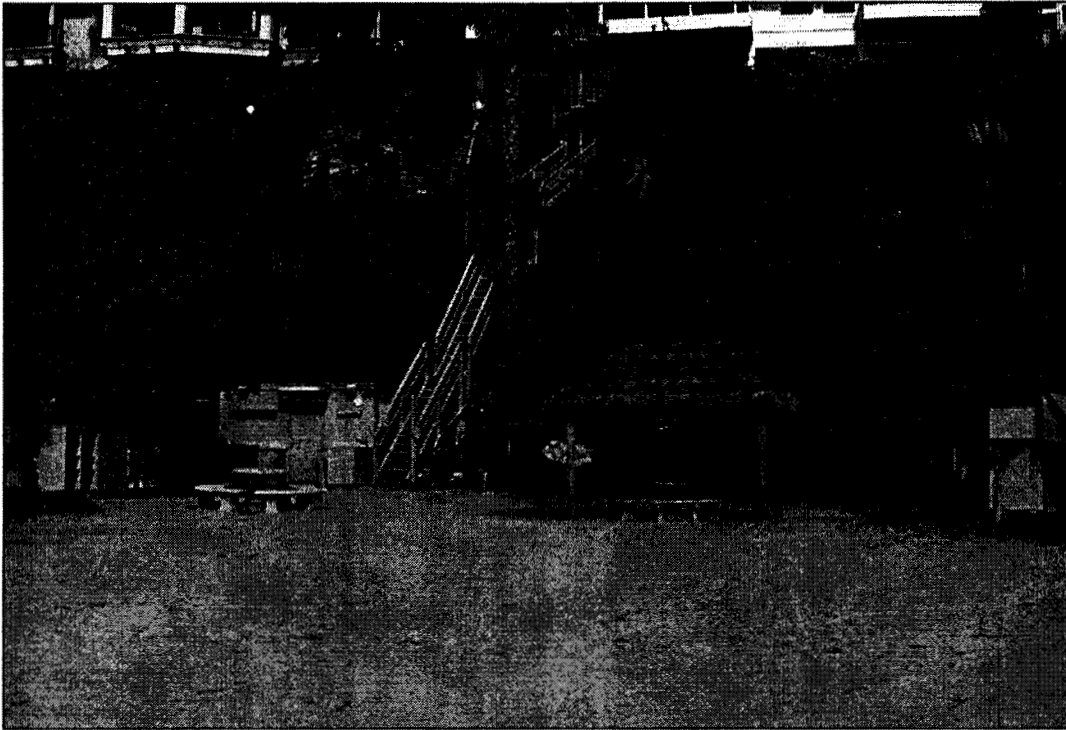


Exhibit 2a. February 2004 photograph of unpermitted shed, barbeque area, storage cabinets, concrete picnic tables and benches, and shade/canopy structure on subject property. Shed to the left of the stairway is set into graded toe of bluff; vegetation has been removed from the toe of bluff to the right of the stairway.

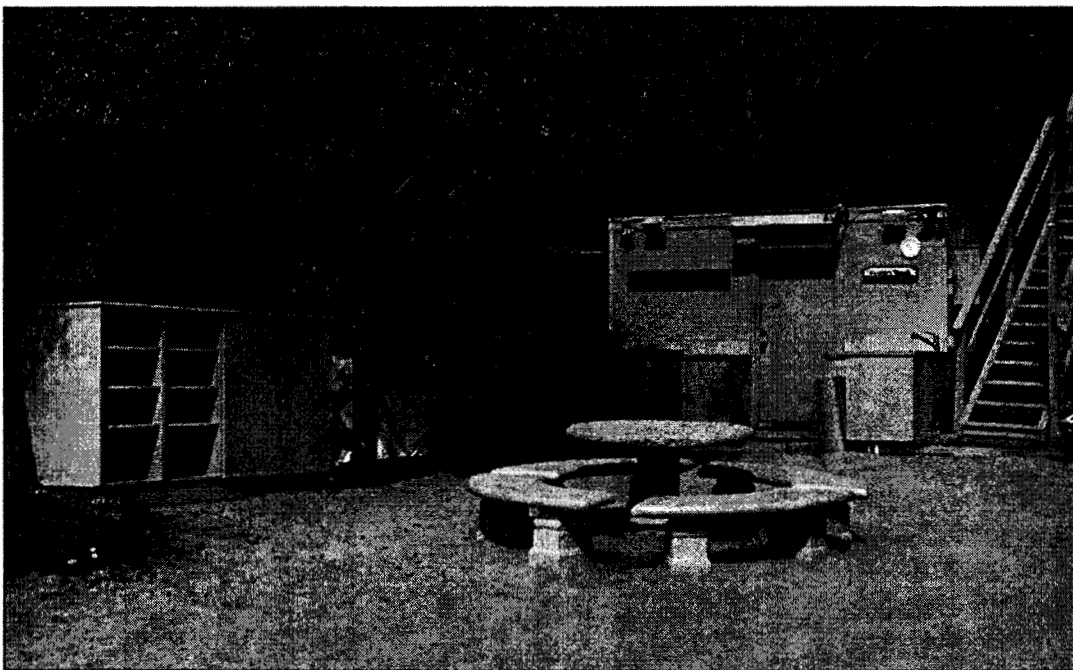


Exhibit 2b. February 2004 photograph of unpermitted storage cabinets, barbeque area, concrete picnic table and benches, and shed on subject property. Property owner has indicated that kitchen and bathroom facilities are located in the shed.

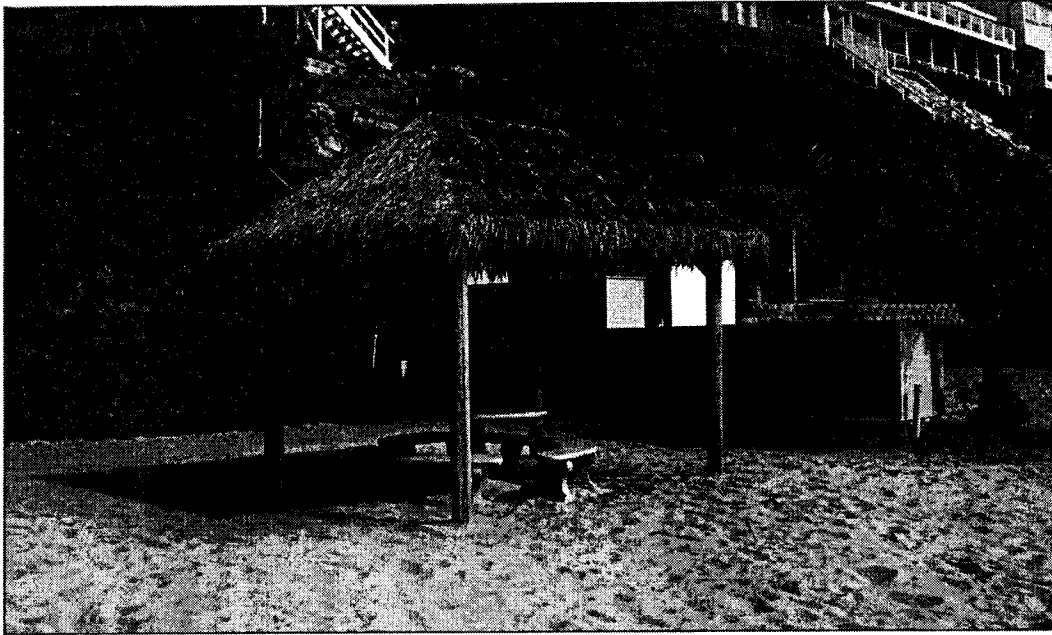


Exhibit 2c. February 2004 photograph of unpermitted storage cabinets, concrete picnic table and benches, and shade/canopy structure on subject property. Vegetation has been removed from toe of bluff.



Exhibit 2d. February 2004 photograph of unpermitted shed, barbeque area, storage cabinets, concrete picnic tables and benches, and shade/canopy structure on subject property. Shed to the left of the stairway is set into graded toe of bluff; vegetation has been removed from toe of bluff to the right of the stairway.

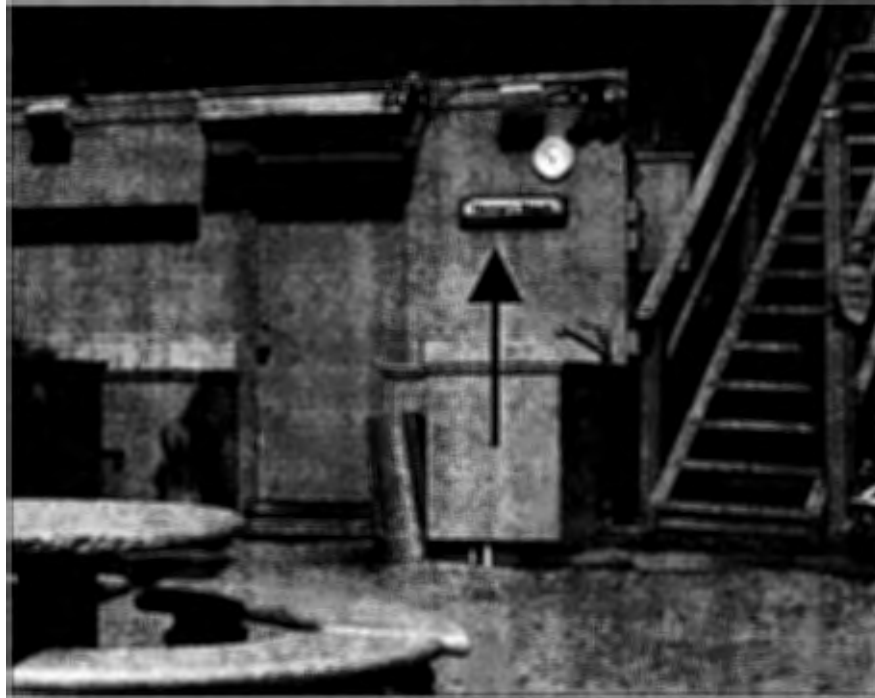


Exhibit 2e. February 2004 photograph of unpermitted development on subject property. Arrow is pointing at sign on shed that reads "George's Beach".



Exhibit 2f. February 2004 photograph of unpermitted development on subject property. Arrow is pointing at sign that reads "Private Shower".

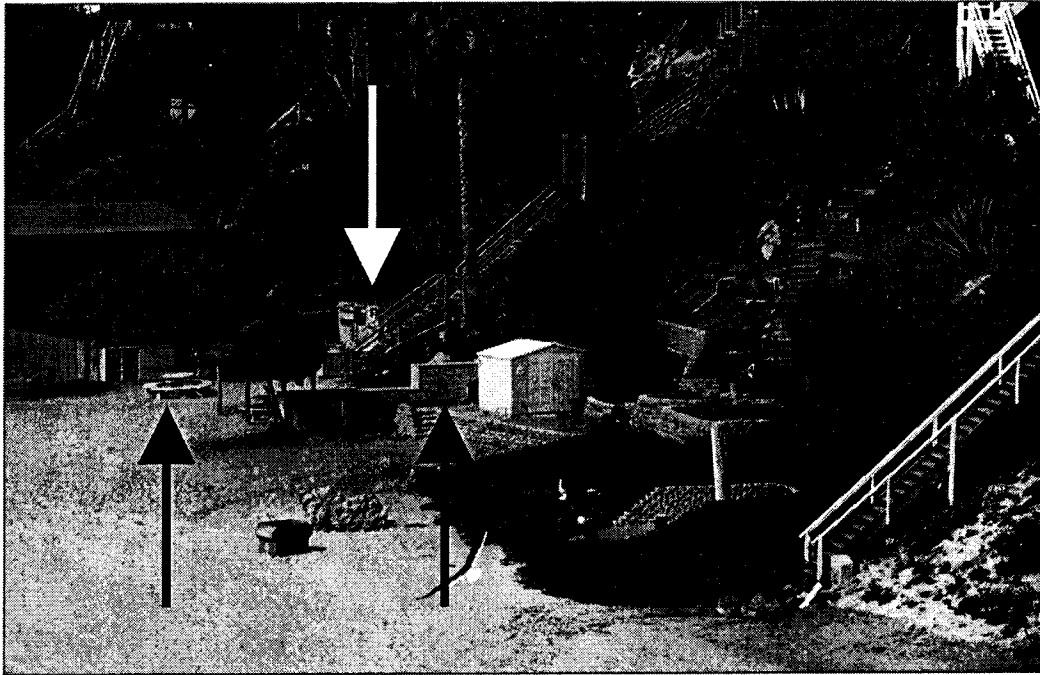
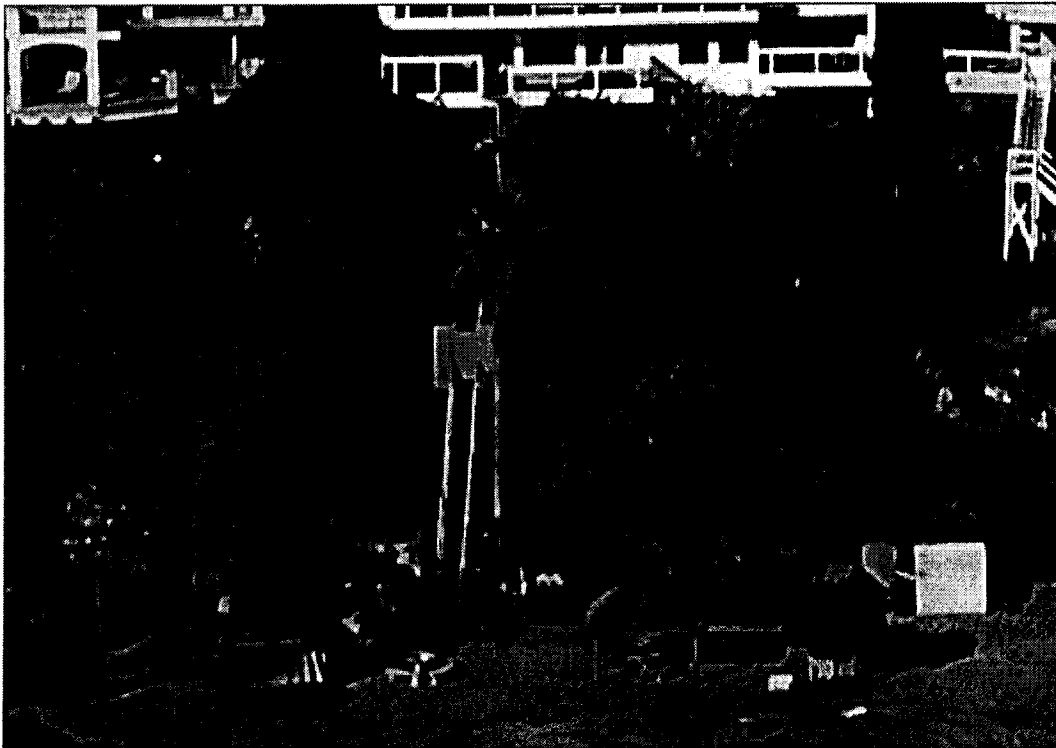


Exhibit 2g. February 2004 photograph of subject property taken from Inspiration Point, a public access and viewing area five properties down coast of the subject property. Arrows are pointing at unpermitted shed, picnic tables, canopy structure and storage cabinets that are visible to left and right of staircase.



Copyright(c) 2002-2004 Kenneth Adelman, California Coastal Records Project, www.californiacoastline.org

Exhibit 2h. September 2002 photograph of subject property.

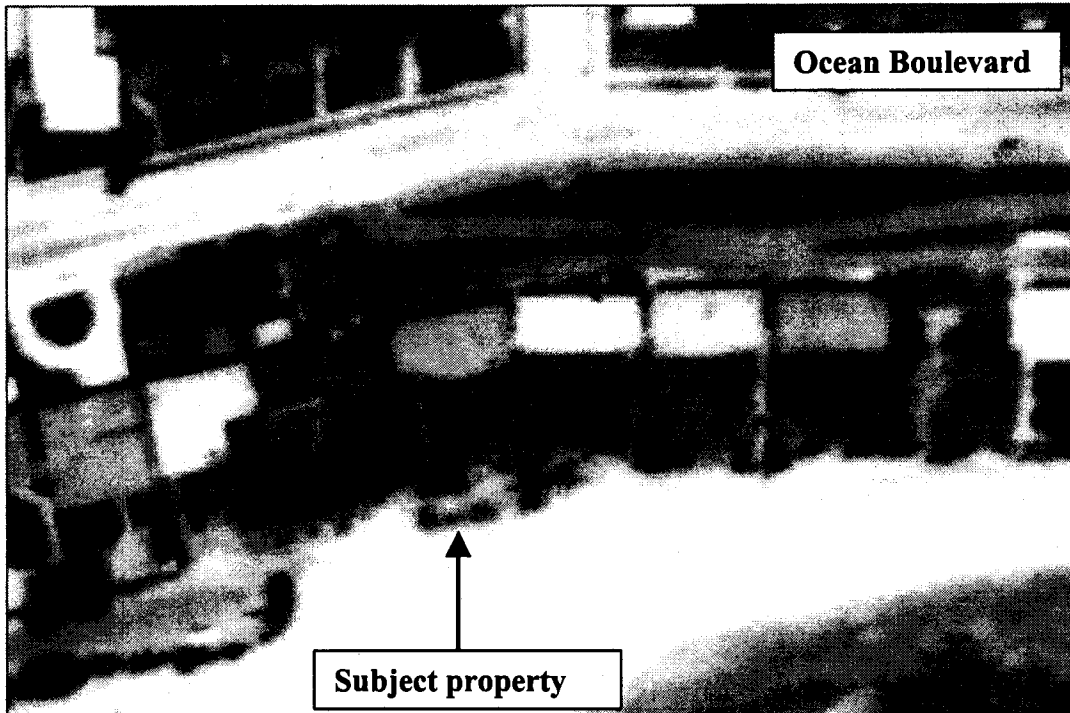


Image 76-1-264, Dept. of Navigation and Ocean Development (now Dept. of Boating and Waterways), April/May 1970.

Exhibit 3a. 1970 photograph of subject property. No development visible at base of bluff or on sandy beach portion of subject property.

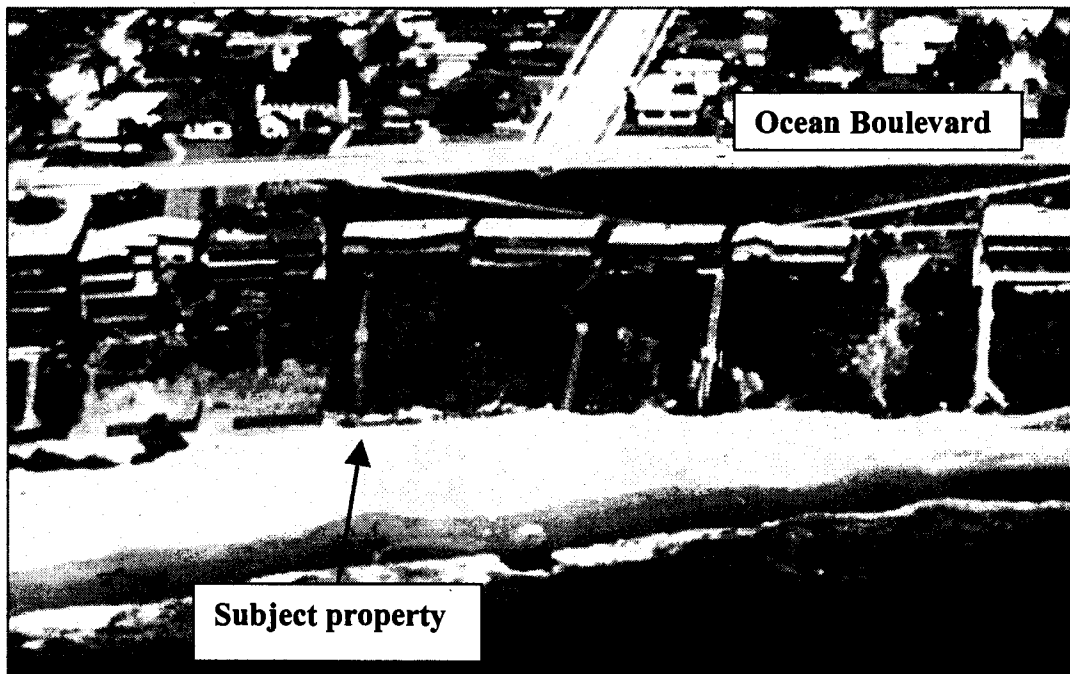


Image 723939, Dept. of Navigation and Ocean Development (now Dept. of Boating and Waterways), 1972.

Exhibit 3b. 1972 photograph of subject property. No development visible at base of bluff or on sandy beach portion of subject property.



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

Exhibit 3c. 1978 photograph of subject property. Vegetation at base of bluff has retreated or has been removed. No development visible at base of bluff or on sandy beach portion of subject property.

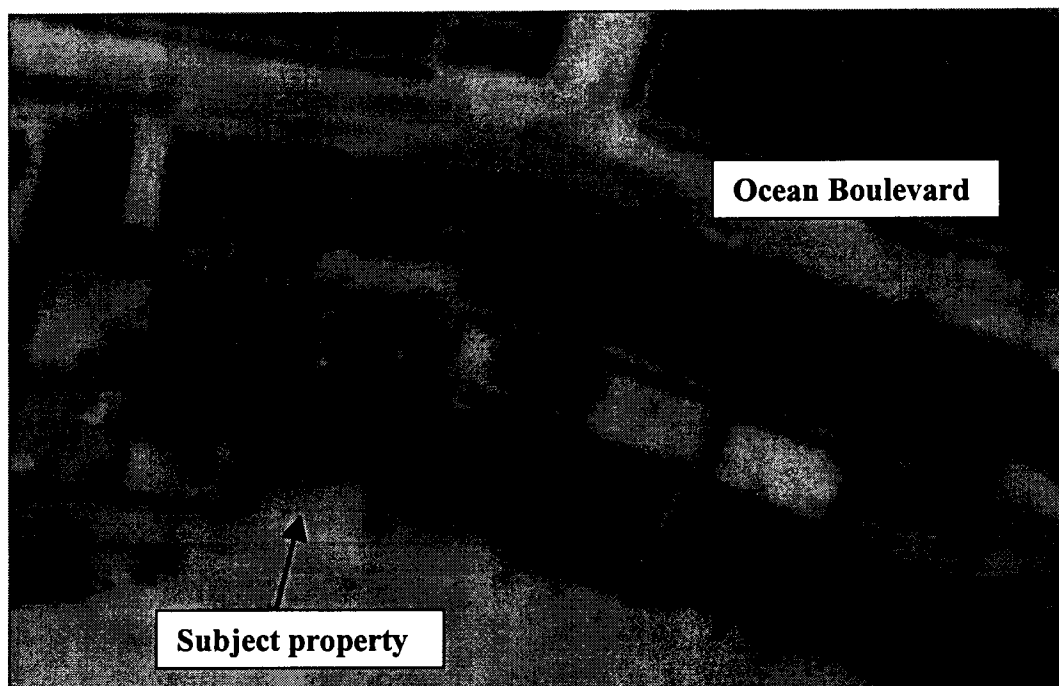


Image 5-13-86#373, California Dept. of Water Resources, May 13, 1986.

Exhibit 3d. 1986 photograph of subject property. Vegetation at base of bluff has retreated or has been removed. No development visible at base of bluff or on sandy beach portion of subject property.

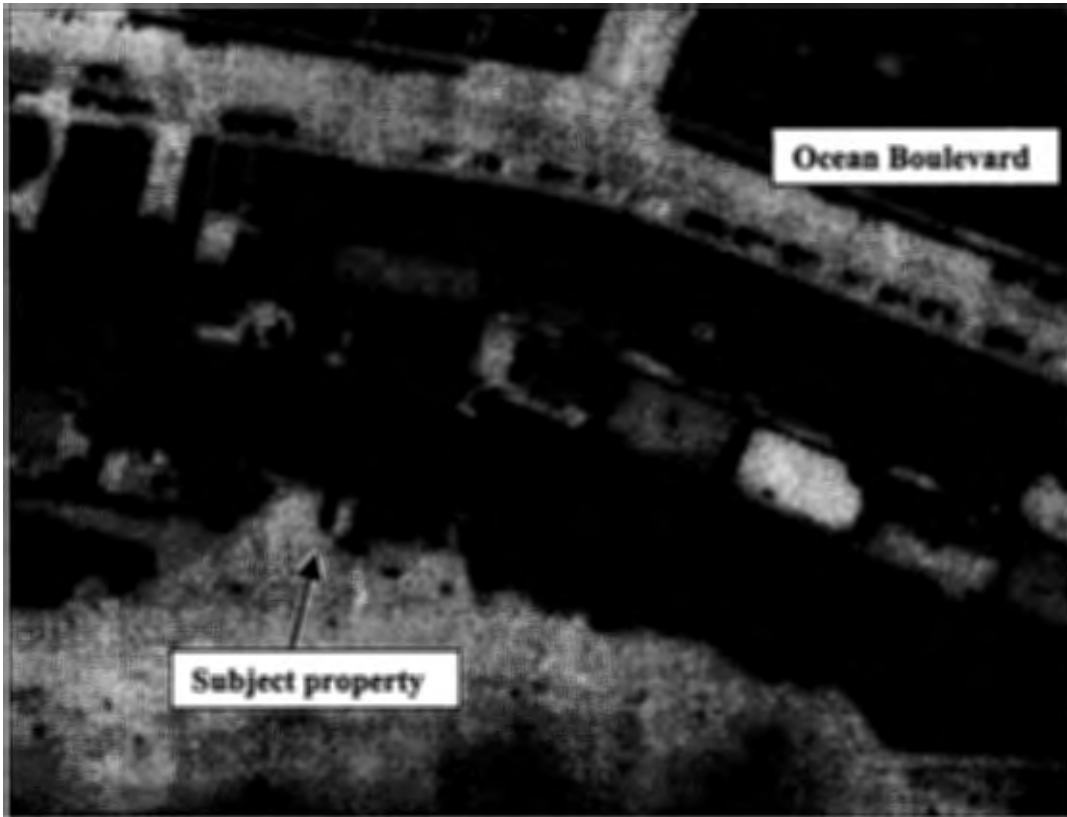


Image 4-14-93#31-2, California Dept. of Water Resources, April 14, 1993.

Exhibit 3e. 1993 photograph of subject property. Development is visible on sandy beach portion of subject property.

CALIFORNIA COASTAL COMMISSION

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

**MEMORANDUM**

DATE: March 25, 2004

TO: Sheila Ryan
Statewide Enforcement Unit

FROM: Jonathan Van Coops, Mapping/GIS Program Manager *JVC*
Darryl Rance, Coastal Program Analyst *D*

SUBJECT: **Photo Interpretation for 3329 and 3335 Ocean Blvd., Corona Del Mar,
Orange County APNs 052-120-055 and 052-120-020**

Below are comments in response to your request that we review our available materials for the above-referenced parcels

1. Regarding measurements of areas that have changed, it is not possible to do more than a rough estimate of area using an oblique aerial photo image;
2. You should request a copy of the "as-built" plans for the development for both properties so that we can determine the actual extent of what is there;
3. Specific comments:

APN 052-120-020

- In the 1972 image taken by the California Department of Navigation and Ocean Development (now the Department of Boating and Waterways), the stairway is at the southern part of the property, with the upper segments angling down the bluff to a third segment built straight down the fall line of the bluff to the beach. A gate or small landing may be present at the top of the lower segment of stairs. No other structure or development on the bluff face and beach portion of this parcel appears in the 1972 image.

- In the current image, which is actually Frame 4851 from a September 2002 oblique flight available from the California Coastal Records Project website managed by Ken Adelman, the stairway is at the northern side of the property and consists of a short straight top segment which descends to at least three angled sections that drop down to the beach. The lower part of the bluff apparent in the 1972 image has changed dramatically in this image, as it appears to have retreated significantly or been graded to the level of the beach along the northern segment of the property. Several structures have been erected on this leveled area, which is rectangular in shape and may be in excess of 500 square feet in size.

APN 052-120-055

-In the 1972 image, the stairway is at the northern part of the property, with the upper and lower segments built straight down the fall line of the bluff to the beach. A gate may be present about halfway up the stairway. No other structure or development on the bluff face and beach portion of this parcel appears in the 1972 image.

-In the 2002 image, the stairway is again at the northern side of the property and appears to be in substantially the same position as is depicted in the 1972 image, although the upper section looks a bit different. Similar to APN 052-120-020, the lower part of the bluff on this property has changed dramatically in this image, and also appears to have retreated significantly or been graded to the level of the beach all along the seaward edge of the parcel. What may be beach equipment or storage structures appears to have been erected or placed on or adjacent to this leveled area, which is rectangular in shape and may be in excess of 1000 square feet in size.

CALIFORNIA COASTAL COMMISSION

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

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL (Z584862963)**

March 13, 2001

Mr. and Mrs. George McNamee
3329 Ocean Boulevard
Corona del Mar, CA 92625

Violation File Number: V-5-00-050

Property location: 3329 Ocean Boulevard, Corona del Mar, Orange County

Unpermitted Development: Grading and construction of a shed set into the toe of the bluff, a barbecue area, storage cabinets, two concrete picnic tables/benches, and a shade canopy/structure with four posts on the sandy beach.

Dear: Mr. and Mrs. McNamee:

Our staff has confirmed that development consisting of grading and construction of a shed set into the toe of the bluff, a barbecue area, storage cabinets, two concrete picnic tables/benches, and a shade canopy/structure with four posts has occurred on the sandy beach on your property, which is located within the coastal zone. Commission staff has researched our permit files and concluded that no Coastal Development Permits have been issued for any of the above development. Pursuant to section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the coastal zone must obtain a Coastal Development Permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act as:

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

The above referenced grading and construction of a shed set into the toe of the bluff, a barbecue area, storage cabinets, two concrete picnic tables/benches, and a shade canopy/structure with four posts constitutes development under the Coastal Act and, therefore, require a Coastal Development Permit. Any development activity conducted in

the coastal zone without a valid Coastal Development Permit constitutes a violation of the Coastal Act.

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

Although you are entitled to submit a permit application to retain the unpermitted grading and structures at the toe of the bluff and on the sandy beach, please note that the above development does not appear to be consistent with the Chapter Three policies of the Coastal Act of 1976. Therefore, our staff is likely to recommend denial of such application. If the Commission denies an application to retain the unpermitted development described above, our enforcement staff would work to resolve this violation through the restoration of the site and possible monetary payments. In order to avoid a delay in resolution of this violation, and avoid the possibility of any monetary penalty or fine, we are requesting that you submit a completed Coastal Development Permit Application by **May 11, 2001**, for either removal of the unpermitted development and restoration of the site or to authorize the as-built development. For your convenience, a Coastal Development Permit Application has been enclosed.

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

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

Sincerely,



Grace Noh
Enforcement Investigator

Enclosures: Coastal Development Permit Application

cc: **Steve Hudson, Enforcement Supervisor, Southern Districts, CCC**
Teresa Henry, District Manager, South Coast District, CCC
Steve Rynas, Orange County Area Supervisor, CCC
Daniel K. Ohi, Deputy City Attorney, City of Newport Beach

McNamee
George and Sharlee
3329 Ocean Avenue
Corona Del Mar, California 92625

VIA UNITED STATES MAIL

June 7, 2001

Ms. Grace Noh
CALIFORNIA COASTAL COMMISSION
200 Oceangate Suite 1000
Long Beach, CA 90802-4302

Re: 3329 Ocean Boulevard
Corona Del Mar, California

RECEIVED
South Coast Region
JUN 13 2001
CALIFORNIA
COASTAL COMMISSION

Dear Ms. Noh:

I have reviewed your letter of May 13, 2001 and have spent considerable time doing research so I may give to you the most accurate information possible.

Our home at 3329 Ocean Boulevard has been our permanent residence since 1977. The improvements you refer to in your letter of March 13, 2001 were all constructed on the property (with the exception of the shade canopy) when my wife and I purchased our home. Records indicated that our home was subdivided in 1954 and constructed in 1956. We believe that the improvements you refer to were constructed shortly after the home was built.

The oldest available photos from the City of Newport Beach (1979) indicate the improvements were there at that time and in speaking to other long-time owners in the neighborhood, they remember the improvements always being there. Additionally, we received a Coastal Development Permit in 1981 for the remodel of our house. The CCC staff was allowed to inspect the site and no comments were made at that time.


Ms. Grace Noh
CALIFORNIA COASTAL COMMISSION
June 7, 2001
Page 2

Based on our research, we believe the facts to be:

1. The existing barbecue area, storage cabinets, 10 x 10 shed, picnic table and shade canopy are all located on private property. The improvements are not out of character with the other homes and improvements located on private property in the immediate neighborhood. If they were, we would have had them removed.
2. From time to time we have refurbished most of these improvements due to deterioration over the years, but we have not expanded their use on our private property. We just want our home to be appropriately maintained, given its location on the beach and surrounding property values. We have a strong pride of ownership.
3. Regarding the shade canopy and picnic table, we are not aware that these improvements require a permit.
4. The improvements referred to in your letter of March 13, 2001 appear to pre-date the effective date of Coastal Act and the California voters approval of Proposition 20 by several years.

We hope this information helps you and the CCC staff in re-evaluating this situation. Should you have any questions or comments, please call me at your convenience.

Sincerely,


George McNamee
949-675-7012 Home
949-225-4855 Office

CALIFORNIA COASTAL COMMISSION

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



August 31, 2001

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL (Z584862966)**

Mr. and Mrs. George McNamee
3329 Ocean Boulevard
Corona del Mar, CA 92625

Violation File Number: V-5-00-050

Property location: 3329 Ocean Boulevard, Orange County

Unpermitted Development: Grading and construction of a shed set into the toe of the bluff, a barbecue area, storage cabinets, two concrete picnic tables/benches, and a shade canopy/structure with four posts on the sandy beach.

Dear Mr. and Mrs. McNamee:

We have verified that you are in receipt of our letter to you dated March 13, 2001, which informed you that: (1) unpermitted development has occurred on your property and (2) in order to resolve this matter administratively and avoid the possibility of court-imposed fines and penalties, the deadline for you to submit a complete Coastal Development Permit Application to either authorize the as-built development or remove the unpermitted development and restore the site was May 11, 2001. As of this date, our office has not received an application for the above-unpermitted development.

Staff has received your letter regarding the development on your property, which asserts that because the above development is located on your private property, the development, therefore, does not require the issuance of a Coastal Development Permit from the California Coastal Commission.

As previously stated, the unpermitted development consisting of: grading and construction of a shed set into the toe of the bluff, a barbecue area, storage cabinets, two concrete picnic tables/benches, and a shade canopy/structure with four posts on the sandy beach on your property, which is located in the coastal zone, requires a Coastal Development Permit regardless of the fact that such development is located on public or private land. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a Coastal Development Permit. Any development performed without a coastal development permit constitutes a violation of the California Coastal Act.

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

In order to resolve this matter administratively, you were previously requested to submit an application by May 11, 2001, for approval of the unpermitted development or for removal of the unpermitted development and restoration the site to its previous condition. Although we would still prefer to resolve this matter administratively, please be aware that if such resolution is not reached in a timely manner, Coastal Act Section 30820 (a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty of up to \$30,000. In addition, to such penalty, Section 30820 (b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

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

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

Sincerely,



Grace Noh
Enforcement Officer

Enclosure: Coastal Development Permit Application

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

McNamee
George and Sharlee
3329 Ocean Avenue
Corona Del Mar, California 92625

VIA UNITED STATES MAIL

September 21, 2001

Ms. Grace Noh
CALIFORNIA COASTAL COMMISSION
200 OCEANGATE SUITE 1000
LONG BEACH, CA 90802-4302

RECEIVED
SEP 25 2001
CALIFORNIA
COASTAL COMMISSION

Re: 3329 Ocean Boulevard
Corona Del Mar, California 92625

Dear Ms. Noh:

I responded to your letter dated March 13, 2001. A copy of that letter is included with this one. You have indicated that I have not responded to your correspondence. I will reiterate the facts in hope of clearing up any misconceptions. The facts are that the grading and construction of a shed set into the toe of the bluff, the barbecue area, and the storage cabinets, and one cement table was on the property when I moved into the property. I moved in to 3329 Ocean Blvd. Corona del Mar, in February of 1977.

I remodeled the house in 1982 and secured a permit #5-81-257 from the Coastal Commission. Please note that the permit required me to give permission to the Commission staff to inspect the site. I received approval and sign off on the property. The items listed above were in place and met with the Coastal Commission's approval. As stated above, the shed, barbecue, storage cabinet, and a cement table were put in place pre Coastal Commission.

I recently added a shade canopy and an additional picnic table. My doctor, Dr. Richard Herano, recommended the shade canopy in order for me to get out of the sun because of my melanoma operation and several skin/cancer operations.

Do I need to fill out an application for a Development Permit for the shade canopy and the picnic table?

I also received and signed for your latest certified letter which I received on the 10th of September. I was away on vacation prior to this date.

Sincerely,

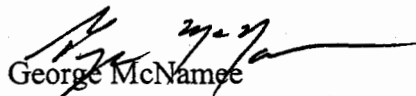

George McNamee
Resident and Tax Payer for 24 1/2 years
3329 Ocean Blvd
Corona del Mar, CA 92625

Exhibit 8
CCC-04-CD-02
(McNamee) Page 1 of 3

McNamee
George and Sharlee
3329 Ocean Avenue
Corona Del Mar, California 92625

VIA UNITED STATES MAIL

June 7, 2001

Ms. Grace Noh
CALIFORNIA COASTAL COMMISSION
200 Oceangate Suite 1000
Long Beach, CA 90802-4302

Re: 3329 Ocean Boulevard
Corona Del Mar, California

Dear Ms. Noh:

I have reviewed your letter of May 13, 2001 and have spent considerable time doing research so I may give to you the most accurate information possible.

Our home at 3329 Ocean Boulevard has been our permanent residence since 1977. The improvements you refer to in your letter of March 13, 2001 were all constructed on the property (with the exception of the shade canopy) when my wife and I purchased our home. Records indicated that our home was subdivided in 1954 and constructed in 1956. We believe that the improvements you refer to were constructed shortly after the home was built.

The oldest available photos from the City of Newport Beach (1979) indicate the improvements were there at that time and in speaking to other long-time owners in the neighborhood, they remember the improvements always being there. Additionally, we received a Coastal Development Permit in 1981 for the remodel of our house. The CCC staff was allowed to inspect the site and no comments were made at that time.

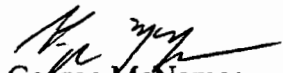
Ms. Grace Noh
CALIFORNIA COASTAL COMMISSION
June 7, 2001
Page 2

Based on our research, we believe the facts to be:

1. The existing barbecue area, storage cabinets, 10 x 10 shed, picnic table and shade canopy are all located on private property. The improvements are not out of character with the other homes and improvements located on private property in the immediate neighborhood. If they were, we would have had them removed.
2. From time to time we have refurbished most of these improvements due to deterioration over the years, but we have not expanded their use on our private property. We just want our home to be appropriately maintained, given its location on the beach and surrounding property values. We have a strong pride of ownership.
3. Regarding the shade canopy and picnic table, we are not aware that these improvements require a permit.
4. The improvements referred to in your letter of March 13, 2001 appear to pre-date the effective date of Coastal Act and the California voters approval of Proposition 20 by several years.

We hope this information helps you and the CCC staff in re-evaluating this situation. Should you have any questions or comments, please call me at your convenience.

Sincerely,


George McNamee
949-675-7012 Home
949-225-4855 Office

CALIFORNIA COASTAL COMMISSION

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

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

April 28, 2003

Mr. and Mrs. George McNamee
3329 Ocean Boulevard
Corona del Mar, CA 92625

Violation File Number: V-5-00-050

Property location: 3329 Ocean Boulevard, Orange County

Unpermitted Development: Grading of a coastal bluff, a shed set into the toe of the bluff, a barbecue area, storage cabinets, two concrete picnic tables/benches, and a shade canopy/structure with four posts on the sandy beach.

Dear Mr. and Mrs. McNamee:

Our records indicate that there are outstanding violations of the Coastal Act on your property. We are interested in working with you to resolve this matter. You have received two previous letters from Commission staff dated August 31, 2001 and March 13, 2001. These letters informed you that our staff has confirmed that unpermitted development has occurred and continues to exist on your property including grading of a coastal bluff, a shed set into the toe of the bluff, a barbecue area, storage cabinets, two concrete picnic tables/benches, and a shade canopy/structure with four posts on the sandy beach. In addition, our second letter to you dated August 31, 2001 informed you that in order to resolve this matter administratively and avoid the possibility of court imposed fines and penalties, the deadline for you to submit a complete coastal development permit application addressing the unpermitted development was **September 28, 2001**. As of this date, you have not submitted an application addressing the above unpermitted development.

Staff received your letters dated June 7 and September 21, 2001, which assert that the above development should not require the issuance of a coastal development permit from the California Coastal Commission because: 1) the development is located on your private property and you believe the development is consistent with the visual character of the surrounding area, 2) you were not aware that the shade structure and picnic table require a permit, 3) you believe the development was constructed prior to the effective date of the Coastal Act and the Coastal Zone Conservation Act of 1972 (Proposition 20) and you have not "expanded their use" since their construction, and 4) you believe the development was previously authorized by the Commission pursuant to its approval of Coastal Development Permit #5-81-257.

As we stated in our prior letters, the above referenced development on your property does constitute development under the Coastal Act and is subject to all coastal permit requirements. In response to your first assertion regarding location of the development on private property, the location of development on either public or private property is not relevant to the determination of whether a coastal permit is required for such development. Section 30600(a) of the Coastal Act states that any person wishing to perform or undertake any development in the Coastal Zone, regardless of whether it is located on private or public land, must obtain a coastal development permit. In addition, your assertion that the development is consistent with the visual character of the surrounding area, even if such assertion was correct (which we do not agree is the case), would not eliminate the need for a coastal development permit, but would only be relevant in determining whether a permit could be approved.

In response to your second assertion, the question of whether or not you were previously aware that a permit was required for the construction and installation of the concrete picnic tables/benches and the shade canopy/structure on the sandy beach is also not relevant to the determination of whether a coastal development is required. Any development performed without a coastal development permit constitutes a violation of the California Coastal Act. "Development" is defined by Section 30106 of the Coastal Act as:

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

The above referenced development, including the construction and installation of the shade canopy/structure and concrete picnic tables/benches on the sandy beach qualifies as the placement or erection of any solid material within the Coastal Zone. Grading that occurred on the property also is included in the definition of "development." In this case, all the above referenced development on site, including the shade canopy/structure and concrete table/bench constitutes illegal development because it has not been authorized in a coastal development permit.

In response to your third assertion that the above referenced development, with the exception of the shade canopy structure and one of the concrete picnic table/benches, was constructed prior to the effective date of the Coastal Act of 1976 and the Coastal Zone Conservation Act of 1972 (Proposition 20) and no expansion of the development has occurred since original construction, our staff has researched all available evidence, including historical aerial photographs of the site and Commission permit records and determined that the development did not exist on site prior to January 1, 1973, the

effective date of the Coastal Zone Conservation Act of 1972, and that no coastal permit was issued for the development after that date. You also assert that these structures were constructed prior to your ownership of the property in 1977. Regardless of who actually performed the development, as the legal property owner of the subject site where the development exists, you are responsible for resolving the violations of the Coastal Act that exist as a result of the unpermitted development.

In response to your final assertion, our records clearly indicate that the Commission's approval of Coastal Development Permit #5-81-257 did not authorize any of the above referenced development in any manner. Coastal Development Permit #5-81-257 was issued by the Commission on October 21, 1981 for the partial demolition and remodeling of a Single-Family-Dwelling resulting in a 2-level SFD, attached 2-car garage, a jacuzzi and decking on a bluff top lot only. No other development on site, including the above referenced development, was listed as part of the proposed project description of the application submitted by you on August 27, 1981, shown on the proposed or approved plans, or authorized by the Commission pursuant to its issuance of that permit

Therefore, as stated in our previous letters to you, the above referenced unpermitted development on your property, which is located in the Coastal Zone, requires a Coastal Development Permit. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a Coastal Development Permit. Any development performed without a coastal development permit constitutes a violation of the California Coastal Act.

In order to resolve this matter administratively, you were previously requested to submit an application by September 28, 2001, for removal of the unpermitted development and restoration of the site to its previous condition. As explained in our prior letter, Commission staff cannot recommend approval of the development at issue because it is not consistent with several policies of the Coastal Act, including but not limited to Sections 30211 and 30251 Public Resources Code. As of this date, we have still not received an application from you to resolve the outstanding violations on your property. We are still interested in resolving this matter administratively; however, in order to resolve the violation on your property in a timely manner and avoid further enforcement action and the possibility of any court-imposed monetary penalty or fine, please submit a complete Coastal Development Permit Application by no later than **May 29, 2003**, for removal of the unpermitted development and restoration of the site. Please contact me by no later than **May 15, 2003**, regarding how you intend to resolve this violation.

We hope that you will choose to cooperate in resolving this violation by submitting a permit application by May 29, 2003. If you do not, we will consider pursuing additional enforcement action against you. The Coastal Act contains many enforcement remedies for Coastal Act violations. Section 30803 of the Act authorizes the Commission to maintain a legal action for declaratory and equitable relief to restrain any violation of the Act. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity

permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to ensure compliance with the Coastal Act. Moreover, section 30811 authorizes the Commission to order restoration of a site where development occurred without a permit from the Commission, is inconsistent with the Coastal Act, and is causing continuing resource damage.

In addition, section 30821.6 provides that a violation of either type of cease and desist order or of a restoration order can result in the imposition of civil fines of up to \$6,000 for each day in which the violation persists. Finally, Section 30822 allows the Commission to maintain a legal action for exemplary damages, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

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

Sincerely,

Andrew Willis
Assistant Enforcement Officer

Enclosure: Coastal Development Permit Application

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

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 Domestic Mail Only; No Insurance Coverage Provided

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: McNamee

Street, Apt. No., or PO Box No. _____

City, State, ZIP+4 _____

PS Form 3800, January 2001

CALIFORNIA COASTAL COMMISSION

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



VIA CERTIFIED and REGULAR MAIL

December 10, 2003

Mr. George M. McNamee
3329 Ocean Boulevard
Corona del Mar, CA 92625

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

Violation No.: V-5-00-050

Location: 3329 Ocean Boulevard, Corona Del Mar, Orange County
(APN 0052-120-055)

Violation Description: Unpermitted grading and landform alteration of a coastal bluff and beach; unpermitted construction of a shed set into the toe of the bluff, a barbecue area, storage cabinets, two concrete picnic tables/benches, and a shade canopy/structure with four posts

Dear Mr. McNamee:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order for unpermitted development. The unpermitted development consists of grading and landform alteration of a coastal bluff and beach and construction of a shed set into the toe of the bluff, a barbecue area, storage cabinets, two concrete picnic tables/benches, and a

shade canopy/structure with four posts. This development is located at 3329 Ocean Boulevard, Corona Del Mar, Orange County, APN 0052-120-055 ("subject property"). You own the subject property.

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

History of the Violation Investigation

In a letter from the Commission dated March 13, 2001, you were notified that Commission staff had confirmed that unpermitted development consisting of grading of a coastal bluff and construction of a shed set into the toe of the bluff, a barbecue area, storage cabinets, two concrete picnic tables/benches, and a shade canopy/structure with four posts had occurred on the subject property. Based on a review of Commission records, Commission staff has determined that although a previously existing stairway was located on the bluff face on your property in 1972, none of the above-referenced unpermitted development pre-dates the Coastal Act.

A coastal development permit was neither applied for nor obtained before the unpermitted development was performed on the subject property. According to Commission records, no coastal development permit applications were filed for any of the above-described development on the subject property. Previously issued coastal development permit No. 5-81-257 authorized development on the subject property consisting of partial demolition of an existing two-level single family dwelling and remodel and addition resulting in a two-level 2445 square foot single family dwelling with two bedrooms, attached two-car garage, a jacuzzi and decking on the bluff top.

In order to try to resolve the matter administratively, Commission staff requested that you submit an application for a coastal development permit for the unpermitted development by May 11, 2001. You responded in a letter dated June 7, 2001, in which you asserted that the above-referenced development was located on private property and pre-dated the Coastal Act. Staff sent you another letter dated August 31, 2001, which explained that all development in the Coastal Zone, whether on public or private property, requires a coastal development permit. Staff requested that you submit an application for a coastal development permit for the unpermitted development by September 28, 2001. You responded in a letter dated September 21, 2001, and again asserted that the development pre-dated the Coastal Act. As noted above, Commission staff has determined that although a previously existing stairway was located on the bluff face on your property in 1972, staff is not aware of any evidence showing that the above-referenced unpermitted development pre-dates the Coastal Act. Staff sent you a third letter dated April 28, 2003, and repeated the request that you submit an application for a coastal development permit for the unpermitted development no later than May 29, 2003. As of this date, you have not submitted an application for the above-referenced unpermitted development.

Cease and Desist Order

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

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

The Executive Director of the Commission is issuing this notice of intent to commence Cease and Desist Order proceedings since unpermitted development has occurred at the subject property. This unpermitted development consists of grading and landform alteration of a coastal bluff and beach and construction of a shed set into the toe of the bluff, a barbecue area, storage cabinets, two concrete picnic tables/benches, and a shade canopy/structure with four posts. These activities and construction or placement of these structures constitutes "development" as defined in Section 30106 of the Coastal Act. The development requires a coastal development permit under Section 30600(a) of the Coastal Act. No coastal development permit was applied for nor obtained for the construction of the above-referenced development on the subject property.

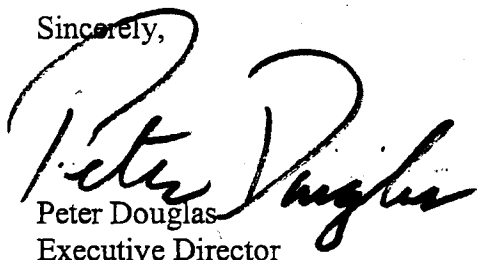
Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

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

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

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

Sincerely,



Peter Douglas
Executive Director

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

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

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 0.60
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.65

Sent To: GEORGE McNAMEE

Street, Apt. No.,
or PO Box No. 3329 OCEAN BLVD

City, State, ZIP+4 CORONA DEL MAR, CA 92625

PS Form 3800, June 2002 See Reverse for Instructions



Exhibit 10
CCC-04-CD-02
(McNamee) Page 4 of 7

CALIFORNIA COASTAL COMMISSION

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

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the Executive Director or a notice of intent to initiate cease and desist order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and return it no later than **January 7, 2004** to the Commission's enforcement staff at the following address:

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

If you have any questions, contact Sheila Ryan at (415) 597-5894.

- Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in the order or notice of intent):**

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

5. **Any other information, statement, etc. that you want to offer or make:**

6. **Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):**



**First American
Specialty Insurance
Company**

January 9, 2004

Sheila Ryan
California Coastal Commission
VIA FACSIMILE: 415-904-5235

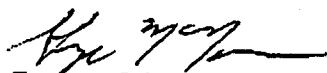
Dear Ms. Ryan:

Thank you for today's phone call. I received your letter dated December 10, 2003 on December 19th. With the holiday season, I have been unable to select an attorney to help me complete the forms. Currently I am interviewing attorneys.

I would like an extension of time to allow me to select an attorney.

If you have any questions, please call.

Sincerely,


George McNamee

tac

enc: *as noted*

CALIFORNIA COASTAL COMMISSION

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



VIA TELECOPY and REGULAR MAIL

January 9, 2004

Mr. George M. McNamee
3329 Ocean Boulevard
Corona del Mar, CA, 92625

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

Violation No.: V-5-00-050

Location: 3329 Ocean Boulevard, Corona Del Mar, Orange County
(APN 0052-120-055)

Violation Description: Unpermitted grading and landform alteration of a coastal bluff and beach; unpermitted construction of a shed set into the toe of the bluff; a barbeque area, storage cabinets, two concrete picnic tables/benches, and a shade/canopy structure with four posts

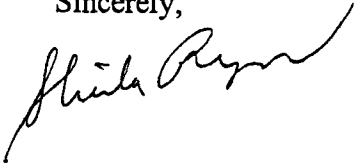
Dear Mr. McNamee:

Thank you for speaking with me earlier today. I am responding to your request for an extension of the deadline for submitting a Statement of Defense regarding the above-referenced matter.

The Coastal Commission's regulations regarding procedures for the issuance of cease and desist orders (CCR Section 13181) normally provide alleged violators a period of twenty days from the transmittal date of the Notice Of Intent (NOI) in which to respond. The January 7, 2004 deadline set in the Commission's December 10, 2003 NOI letter to you already factored in additional time for your submittal because of the holidays.

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

Sincerely,



Sheila Ryan
Headquarters Enforcement Officer

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



**First American
Specialty Insurance
Company**

FACSIMILE COVER SHEET

RECEIVED
JAN 20 2004

CALIFORNIA
COASTAL COMMISSION

DATE: Tuesday, January 20, 2004

TO: Sheila Ryan	FROM: George McNamee
COMPANY: California Coastal Commission	PHONE: 714-560-7855
FAX: 415-904-5400	FAX: 714-569-2838
PHONE: 555.555.5555	PAGES (INCLUDING COVER): 3

NOTES/COMMENTS:

Ms. Sheila Ryan
California Coastal commission
45 Fremont, Suite 2000
San Francisco, Ca. 94105-2219

1/15/2004

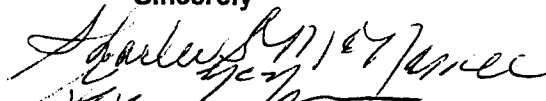
Dear Ms. Ryan:

We are writing today to request a delay of the procedures, of which you have notified us, regarding the use of our property at 3329 Ocean Blvd. in corona del Mar. We need time to contract for legal assistance in responding to the notice of intent to commence cease and desist order proceedings by the Coastal Commission. The delay of our response to the original letters from the commission was due to a series of events concerning our health. Mr. Mc Namee has had two major operations in the last three years requiring extended recovery time during which he was advised by his doctor to avoid stress above all, and as you can imagine the prospect of losing the freedom to use our back yard, which does in no way intrude on public property, is a source of great stress to him. Mrs. Mc Namee has been diagnosed with a severely disabling condition which is aggravated by stress as well.

We ask that you delay the required hearing until the currently pending action questioning the constitutionality of the Coastal Commission is permanently resolved. The reason is that no matter what we do at this time, we are subject to great loss. That is, if we contract to have the entire yard cleared now of the elements mentioned in your correspondence, all of which is essentially part of what was here when we bought the property, the cost would be prohibitive. And, if we do not do it, the Coastal Commission states that we can be fined up to \$6,000 a day for non-compliance. Yet, the question of the commission's authority which is before the appellate court now won't be settled before the middle of this year at the earliest, according to the answers to our inquiries. If the current finding is upheld, and we have already complied with the commission's order, there is very little chance of our recovering the costs we would have already incurred or of recovering any part of whatever fine we would have paid.

It is quite bewildering that we, as law abiding citizens who are good caretakers of our property should be held in this most constrained and odious position by an agency of our own government. Since there is no urgency to the question of the present status of the property, and it is essentially in the same state as it was when we moved here twenty-seven years ago, we therefore respectfully request that you grant a delay of the action now pending.

Sincerely



George & Sharlee Mc Namee

CALIFORNIA COASTAL COMMISSION

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



VIA TELECOPY and REGULAR MAIL

January 20, 2004

Mr. George M. McNamee
3329 Ocean Boulevard
Corona del Mar, CA, 92625

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

Violation No.: V-5-00-050

Location: 3329 Ocean Boulevard, Corona Del Mar, Orange County
(APN 0052-120-055)

Violation Description: Unpermitted grading and landform alteration of a coastal bluff and beach; unpermitted construction of a shed set into the toe of the bluff; a barbeque area, storage cabinets, two concrete picnic tables/benches, and a shade/canopy structure with four posts

Dear Mr. McNamee:

Today I received your request for another extension of the deadline for submitting a Statement of Defense regarding the above-referenced matter. You also request that the Commission delay a hearing in this matter until "the currently pending action questioning the constitutionality of the Coastal Commission is permanently resolved." We cannot grant such a request for the following reasons.

The issue of constitutionality that you raise is related to the appointment structure of the Commissioners, and as you may be aware, the State Legislature has already enacted, and the Governor signed into law, changes specifically designed to address this issue. A February 2003

legislative action removed the "at-will" status of the legislative Commission appointees and created four-year term lengths for these Commissioners. The Court of Appeal ruling is legally depublished and of no legal effect, and will be superseded by a new ruling from the Supreme Court. The Commission continues to hear enforcement matters and issue enforcement orders, and no hearing has been delayed on the basis of the issue you raise.

The permit requirements of the Coastal Act are in full force and effect and will continue to be, regardless of the Supreme Court's eventual ruling in this matter. Aerial photographs of your property clearly indicate that only the stairway existed on the bluff and no other development existed on the beach portions of your property in 1972 and 1976. You have asserted that most of the unpermitted development was already in place when you bought the property. Regardless of who placed the unpermitted development, under the Coastal Act the current owner is the party held responsible for Coastal Act permit requirements.

Staff is not inclined to grant you another deadline extension because we have no assurance that you will comply with a new deadline. Staff first notified you of this violation in March of 2001, and you subsequently failed to meet deadlines of May 2001, September 2001, and May 2003 for submittal of a Coastal Development Permit application. Staff also points out that you have already outlined a Statement of Defense in recent conversations with staff. You raised issues regarding property rights, the length of time the violation has existed, and constitutionality. The Statement of Defense form is brief and straightforward, and the letter I received from you today does not present any reasons why you cannot complete in written form what you have already outlined verbally.

Staff will grant a second extension for your submittal of a Statement of Defense. Please submit the Statement of Defense to my attention no later than **January 26, 2004**, and provide me with the contact information for your attorney as soon as possible. Please be aware that the Commission is not barred from proceeding with an enforcement hearing in this matter if you fail to take the opportunity to submit a Statement of Defense. If you have any questions please do not hesitate to contact me at 415-597-5894.

Sincerely,



Sheila Ryan
Headquarters Enforcement Officer

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

FACSIMILE

DATE: 1/21/04

TO: Sheila Ryan
California Coastal Commission

FAX No. 415-904-5235

FROM: Mr. & Mrs. George Mc Namee

FAX NO. 949-675-1166

CONCERNING: Statement Of Defense Form

NO. of PAGES IN THIS TRANSMISSION; 2 including cover page

JAN-22-04 02:18 PM SHARLEE MC NAMEE

Sheila Ryan
California Coastal Commission
Fax #415-904-5235

Dear Ms. Ryan:

We are not represented by an attorney at this time. We are reluctant to fill out the Statement of Defense Form without being represented by an attorney. We have interviewed two attorneys and have set up additional appointments. We think the selection of an attorney to represent us is very important. We are doing our best to accomplish this and ask for your patience while we are in the process. Thank you.

Sincerely,



George & Sharlee Mc Namee

FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG
REBECCA A. THOMPSON
NANCI S. STACEY
KIMBERLY RIBLE

LAW OFFICES OF
GAINES & STACEY
1111 BAYSIDE DRIVE, SUITE 150
CORONA DEL MAR, CALIFORNIA 92625

TELEPHONE
(949)219-2000
FAX
(949)219-9908

January 26, 2004

BY FAX-415-904-5235

Ms. Sheila Ryan
California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105

Re: George McNamee
Notice of Intent to Commence Cease and Desist Order Proceedings
Coastal Commission File No. V-5-00-050.

Dear Ms. Ryan:

On January 25, 2004, this office was retained by Mr. & Mrs. George McNamee to represent them in connection with your Violation File No. V-5-00-050 related to their property located at 3329 Ocean Boulevard, Corona del Mar. According to the Executive Director's Notice of Intent to Commence Cease and Desist Order Proceedings dated December 10, 2003, the Executive Director intends to schedule a proceeding from with a cease and desist order may be issued by the Commission at the Commission's hearing in La Jolla between February 18 and 20, 2004. Further, a Statement of Defense Form is due to be filed with the Commission today.

As I have only had the opportunity to meet with the McNamees for two hours yesterday and the issues which are related to the Executive Director's claim that improvements on the McNamees' property did not exist in 1972 are complex and required significant investigation into events which took place more than 30 years ago, I find that I am unable to appropriately respond to the Executive Director's allegations by today and that insufficient time between today and February 18 exists to adequately prepare for a hearing. Therefore, I request that the date for the filing of a Statement of Defense Form be continued to February 15, 2004, and that the hearing be continued to the Commission hearing in April in Santa Barbara.

Mr. & Mrs. McNamee have no familiarity with the proceedings or standards which would be applied to a cease and desist order, a permit or other action which might be taken by the Commission. Although they have sought to find counsel familiar with this proceeding, they had been unable to do so until yesterday. Despite the fact that the Commission has claimed that beach improvements which the McNamees have enjoyed since 1977 constitute unpermitted development, the McNamees have communicated consistently with the Commission that such

Ms. Sheila Ryan
January 26, 2004
Page 2

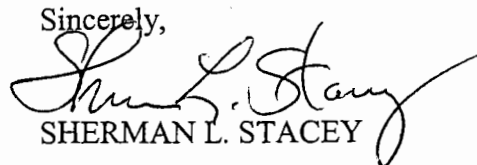
improvements existed at the time they purchased the property and that the appearance of such improvements in 1977 leads them reasonably to conclude that the improvements had existed for at least 10 years prior to 1977. However, the McNamees personal knowledge and observation has been rejected by the Executive Director because you claim contrary evidence in the form of photographs.

As I will be placed under a burden of seeking to prove facts which existed 30 years ago, I need time to locate and interview witnesses with personal knowledge, locate documents which exist, if at all, in closed and archived files, and otherwise obtain evidence of events which took place prior to 1972. This burden is made even more difficult because many (if not most) of the witnesses who might have assisted the McNamees had this claim been asserted by the Commission in 1981 when the McNamees obtained Coastal Development Permit No. 5-81-257, are now deceased or have moved from the area.

Further, I will need to obtain and evaluate the evidence which you claim to have in your possession and I hereby request an opportunity to review such evidence at the earliest possible time.

This request should cause no prejudice to the Commission. Although there may be a dispute as to whether or not the improvements cited by the Executive Director existed prior to 1972, the McNamees have lived at the property since 1977 and can and will attest that beach improvements existed and have been continuously maintained since that time. As the Commission did not claim that the improvements were unpermitted until 2001 (24 years after the McNamees moved into their home) and the impending proceedings were commenced only 45 days ago, a continuance for 60 days seems reasonable to entitle the McNamees to representation by counsel and to due process in the conduct of a serious hearing.

I would need to know by 12:00 noon today whether or not the Executive Director will agree to this request.

Sincerely,

SHERMAN L. STACEY

SLS/sh

cc: Sandy Goldberg, Esq.
Mr. Steve Hudson
Mr. & Mrs. George M. McNamee

CALIFORNIA COASTAL COMMISSION

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



VIA TELECOPY and REGULAR MAIL

January 26, 2004

Mr. Sherman L. Stacey
Law Office of Gaines and Stacey
1111 Bayside Drive, Suite 150
Corona del Mar, CA, 92625

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

Violation No.: V-5-00-050

Location: 3329 Ocean Boulevard, Corona Del Mar, Orange County
(APN 0052-120-055)

Violation Description: Unpermitted grading and landform alteration of a coastal bluff and beach; unpermitted construction of a shed set into the toe of the bluff; a barbeque area, storage cabinets, two concrete picnic tables/benches, and a shade/canopy structure with four posts

Dear Mr. Stacey:

Today I received your letter indicating that the McNamees have retained you to represent them in connection with the above referenced matter. You requested an extension for filing a Statement of Defense form, and staff hereby grants an extension for submittal of a Statement of Defense. Please submit the Statement of Defense to my attention in the Commission's San Francisco office no later than **February 9, 2004**. If you have any questions please do not hesitate to contact me at 415-597-5894.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheila Ryan".

Sheila Ryan
Headquarters Enforcement Officer

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

Exhibit 17
CCC-04-CD-02
(McNamee)

CALIFORNIA COASTAL COMMISSION

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



VIA REGULAR MAIL

January 30, 2004

Mr. Sherman L. Stacey
Law Office of Gaines and Stacey
1111 Bayside Drive, Suite 150
Corona del Mar, CA, 92625

Subject: Request for Aerial Photos

Violation No.: V-5-00-050

Location: 3329 Ocean Boulevard, Corona Del Mar, Orange County
(APN 0052-120-055)

Violation Description: Unpermitted grading and landform alteration of a coastal bluff and beach; unpermitted construction of a shed set into the toe of the bluff; a barbeque area, storage cabinets, two concrete picnic tables/benches, and a shade/canopy structure with four posts

Dear Mr. Stacey:

Regarding your request during our January 23, 2004 telephone conversation, please find attached copies of aerial photographs from 1970, 1972, 1978 and 1987 covering the Corona del Mar area. Source and date are noted on the backs of the photos. If you have any questions please do not hesitate to contact me at 415-597-5894.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheila Ryan".

Sheila Ryan
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement

Exhibit 18
CCC-04-CD-02
(McNamee)

CALIFORNIA COASTAL COMMISSION

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

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the Executive Director or a notice of intent to initiate cease and desist order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and return it no later than **January 7, 2004** to the Commission's enforcement staff at the following address:

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

If you have any questions, contact Sheila Ryan at (415) 597-5894.

- 1. Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in the order or notice of intent):**

See attached.

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

See attached.

5. **Any other information, statement, etc. that you want to offer or make:**

See attached.

6. **Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):**

See attached.

**STATEMENT OF DEFENSE OF
GEORGE MCNAMEE AND SHARLEE MCNAMEE
TO ALLEGATIONS CONTAINED IN
CALIFORNIA COASTAL COMMISSION
NOTICE OF INTENT TO COMMENCE
CEASE AND DESIST ORDER PROCEEDINGS**

COASTAL COMMISSION FILE NO. V-5-00-050

1. The McNamees admit the following:

George McNamee and Sharlee McNamee are the owners of the property located at 3329 Ocean Boulevard, Corona del Mar. The McNamees first occupied the property as lessees in 1977 and subsequently purchased the property in 1978.

2. The McNamees deny the following:

The McNamees deny that they have performed any grading on the property other than the grading approved in connection with the reconstruction of the residence under Coastal Development Permit No. 5-81-257.. Any grading which might have been performed on the property at the lower elevation which is the subject of the alleged violation was performed prior to 1977 when the McNamees first began to occupy the property. The allegations in the Notice of Intent are not specific as to where the alleged grading took place but it appears that the alleged grading is that which would have been necessary to construct the shed which is to the north of the stairs. The McNamees did not do any grading to the property in connection with the shed and the shed existed at the time the McNamees first saw the property in 1977.

Further, the McNamees deny that any grading was done to accommodate the construction of the shed in the first place. When the McNamees first observed the shed on the property in 1977, the shed was built on a level pad with no soil touching on its exterior walls. Over the years, the soil from the slope above has filled in the space between the rear and part of the side exterior walls making it appear that grading had taken place to construct the shed. The McNamees believe that no grading had been done to accommodate the shed when the shed was constructed.

3. Anything not admitted by the McNamees and not specifically denied is denied on the basis that the McNamees have no information to allow the McNamees to admit.

4. The McNamees additionally allege as follows:

At the time the McNamees acquired the property in 1978, the shed appeared to be not less than 10 years old and was in a deteriorated condition. Between 1978 and the present date the McNamees have repaired and maintained the shed but have not done any grading of the property.

At the time the McNamees acquired the property in 1978, there was a barbeque on the beach as well as storage lockers for beach equipment and picnic tables for eating. Over the past 25 years the McNamees have repaired and replaced storage lockers and the barbeque and have replaced tables on the beach. The most recent replacement of tables was with concrete tables similar to those used by local governments for beachfront locations because of their lack of easy portability, durability under heavy use and adverse climate of the oceanfront and general suitability to the environment.

All of the repair, maintenance and replacement which the McNamees have done has been conducted entirely on their private property and entirely without the use of any mechanized equipment. All of these activities are exempt from the permit requirements of the Coastal Act under Public Resources Code §30610(d).

5. The McNamees make the following additional statements and defenses:

- a. The delay of more than 20 years by the Coastal Commission in bringing enforcement proceedings has prejudiced the McNamees to their detriment and the Commission should decline to enforce because of the prejudice caused by its own inaction.

The delay by the Coastal Commission in alleging that the improvements on the McNamee property are unpermitted and subject to removal has been unreasonable and caused prejudice to the McNamees. The McNamees bought their home in 1977. In 1981, the Coastal Commission inspected the McNamee property in connection with an application for permit to reconstruct the primary residence. At the time of that application, the improvements now claimed to be unpermitted existed and were obvious to any observer. The improvements have been clearly visible from Corona del Mar State Beach which immediately abuts the McNamee property. No effort has been made by the McNamees to disguise or hide the improvements.

Despite the open and obvious existence of these improvements, the Coastal Commission made no allegation that the disputed improvements were not permitted or had been constructed subsequent to 1972. It was 20 years between the 1981 permit application and the Coastal Commission's March 13, 2001 letter to the McNamees. During these 20 years, witnesses who might have aided the McNamees have died and moved away and memories of dates and times have become less reliable. Further, documents which persons who have left the area might have possessed (which would aid the McNamees in proving the existence of the improvements) have

become more difficult, if not impossible, to find or acquire. Finally, the McNamees have invested substantial time, money and effort in the maintenance and repair of the facilities..

The Coastal Commission has no legitimate excuse for the delay. For the 24 years between 1977 and 2001, the Coastal Commission has had not less than 2 permit analysts assigned on a permanent basis to Orange County. The Coastal Commission has examined the McNamee property in detail in connection with Coastal Development Permit No. 5-81-257. The Coastal Commission has examined the area in which the McNamee property is located on numerous occasions in connection with permit applications for development along Ocean Boulevard. The Coastal Commission examined and evaluated all of the beach areas in Newport Beach in connection with the certification of the Newport Beach Land Use Plan. The Coastal Commission has had an assigned enforcement officer for Orange County.

At some point a period of limitations must exist as to efforts to force a property owner to remove long standing improvements which are not offensive, do not contribute to any environmental damage and are surrounded by similar uses including uses made by the State itself.

- b. The McNamees have made no use of their property which is dissimilar to the manner in which others have used their similar property including the State of California which owns the adjoining Corona del Mar State Beach.

The Commission should not fail to take into account the location of these improvements. This is not a remote or pristine beach area. The McNamee private property abuts Corona del Mar State Beach. The State Beach is heavily used by the public and has been so for more than 50 years. The McNamee improvements are entirely on their private property and are not dissimilar to improvements made by the state to enhance the use of the beach and protect the resource. The State maintains a massive paved parking lot on the sand, has constructed numerous restroom, food concession, picnic area and fire pits to accommodate public use of the public beach. This is reasonable. It is just as reasonable that McNamee is allowed to maintain similar improvements on private property to accommodate private use of that private property. It is not reasonable for the State, with one hand, to itself construct substantial improvements on the sand (including walls at the base of a bluff to protect those improvements) and then, with the other hand, deprive a private property owner of the same use of his private property on the grounds that such use produces an adverse effect on the environment.

- c. The Commission may not use the Cease and Desist Order Provisions of Public Resources Code §30810 to force a new property owner to restore property alleged to be altered by his predecessor.

Public Resources Code §30810 provides as follows:

“If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing a permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.” [emphasis added]

The Executive Director has no evidence that McNamee “has undertaken” any activity that requires a permit from the Commission. The McNamees have informed the Commission repeatedly that the shed, barbeque, storage lockers and tables existed on the property at the time they first saw it in 1977. The McNamees have repaired and replaced elements of these facilities but such repair and replacement are exempt from permit requirements under Public Resources Code §30610(d). McNamee has not placed any rocks, riprap, sand or other materials on the beach and has not used any mechanized equipment.

Accordingly, Public Resources Code §30810 does not authorize the Commission to proceed against the McNamees as to the alleged violation because the Commission has no evidence that the McNamees undertook the alleged unlawful development. Public Resources Code §30810 is clear that a cease and desist order must be directed against “that person” referring to the person who has undertaken or is threatening to undertake an activity. It does not authorize the Commission to proceed against “that person or its successor”.

What the Commission is trying to do is to use its power as an enforcement agency to enforce the action of one party against that party’s successor in interest without authorization from the Legislature. If homeowner A builds something without a permit for which a permit was required, homeowner A can be the subject of a cease and desist order. However, if the home is sold to homeowner B, the Commission cannot use Public Resources Code §30810 to force homeowner B to cease and desist from doing what homeowner B never did. This is a rational legislative scheme as the cease and desist order provisions are intended to allow the Commission to stop activities which violate the Coastal Act. This is not to say that the Commission is without remedies with regard to allegations that improvements were not permitted, only that the cease and desist order remedy cannot be applied against a new homeowner who is not shown to have engaged in the offending activity.

- d. The McNamees have a right to use their home and their private property for reasonable uses which cause no harm to the environment or to the public.

The uses which McNamee has made of the beach area of the property are reasonable and normal uses particularly suited to the location. The improvements which have been constructed to facilitate those uses are modest and unassuming. No fences signs or other indicators exist

which suggest that the public should not be in the vicinity of McNamee property and have never existed. No harm to the beach, to any species of plant or animal, to any use made by the public of public property or to the environment in general is caused by either the improvements or the uses by the McNamees.

As the property is their private property, the McNamees have a right to make reasonable use. Since the uses made are not unreasonable, the Coastal Commission has no basis on which to restrict those uses or to order the McNamees to cease making those uses..

e. The Coastal Commission is unconstitutionally constituted.

A majority of the members of the Coastal Commission are appointed by members of the State Legislature and not by the Governor. Such appointment authority places the Coastal Commission under the control of the State Legislature in violation of the separation of powers required by California Constitution, Article III, §3. As such the Coastal Commission should be enjoined from acting on permits and cease and desist orders. This issue is presently pending in the California Supreme Court in the case of *Marine Forests Society v. California Coastal Commission*, Docket No. S113466.

f. Coastal Commission Regulations limiting the improvements which can be made to single family homes are invalid.

The Coastal Act of 1976 exempted improvements to existing single family residences from the permit requirements of the Coastal Act. Public Resources Code §30610(a). The Coastal Commission adopted a regulation in 1977 seeking to limit the application of this provision to require permits for certain improvements and for residences in certain locations. California Code of Regulations, Title 14, §13250.

The adoption of such regulation was invalid. The Coastal Commission, at the time of its adoption in 1977 and at the time of each subsequent amendment to §13250 (the last of which was in 1999) was an unconstitutionally constituted agency, being under the control of the State Legislature in violation of the separation of powers required by the California Constitution, Article III, §3. Therefore, irrespective of the constitutionality of the Coastal Act, even if the prohibition on development without a permit was enforceable, the Legislature's exemption of improvements to existing single family residences remains in effect without modification by regulations which were invalidly adopted.

g. The Cease and Desist Order Proceedings deny due process to the McNamees.

The Coastal Commission's Cease and Desist Order proceedings deny due process to the McNamees. In these Cease and Desist Order proceedings, the McNamees are placed at risk of a loss of a significant and valuable part of their property, the taking of which cannot be done without due process of law. The McNamees are also placed at risk of substantial fines and penalties which fines become increased based upon the findings of fact which are made by the Coastal Commission in these proceedings.

However, in the conduct of these proceedings, the Coastal Commission does not even attempt to provide the most fundamental indicators of due process. The Coastal Commission hearing is limited to 15 minutes. The Coastal Commission is not an unbiased trier of fact. Evidence is received without any protection to its validity. Only the McNamees are required to provide evidence under oath. The McNamees cannot cross examine any persons who may offer evidence against them. The McNamees may not cross examine the member of the Coastal Commission's investigative staff who compiles the accusation and prepares the proposed findings. The Coastal Commission has not established a hearing officer procedure by which a person accused of a violation would have an adequate hearing before an unbiased hearing officer. The only hearing provided to a person accused of a violation is the 15 minute hearing before all 12 members of the Coastal Commission. The Coastal Commission does not provide for tools to allow the McNamees to obtain discovery, compel the attendance of witnesses, or obtain the production of documents. The members of the Coastal Commission are not presented with all of the evidence which may be submitted in favor of a person accused of a violation but only a summary of that evidence compiled by its Executive Director.

On information and belief, the McNamees assert that the Coastal Commission has never denied a cease and desist order sought by the Executive Director. On information and belief, the McNamees allege that the Executive Director refuses to disclose to a person accused of a violation the evidence which the Executive Director may possess against that person.

h. The Coastal Commission is required by the Americans with Disabilities Act to adjust its policies, practices and procedures to accommodate the disability of George McNamee.

George McNamee suffers from heart conditions including congestive heart failure due to mitrovalve insufficiency (which has been surgically repaired) and schlerosis of the aortic valve, complicated by high blood pressure and stress, and proclivity to melanoma (having had melanoma in 1985 of sufficient depth to give him a 50% chance of death within 5 years). These conditions constitute disabilities as defined in the Americans with Disabilities Act as they substantially limit one or more of his major life activities. Due to the heart condition, Mr.

McNamee cannot lift or carry heavy objects or repeatedly climb stairs. Due to the skin condition Mr. McNamee cannot endure exposure to the sun for extended periods of time.

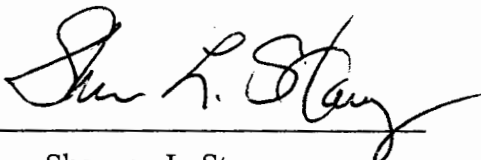
It is not possible for George McNamee to carry food, beverages, towels, chairs or other personal effects from his house down to the lower part of his private property which constitutes the beach and back to his house. In addition, it is not possible to climb the stairs repeatedly in order to use the bathroom or to get food or beverages. Further, he cannot sit out in the sun for extended periods.

Therefore, it is a reasonable modification to policies, practices and procedures of the Coastal Commission to refrain from forcing the removal of longstanding facilities on Mr. McNamee's private property which would accommodate Mr. McNamee's condition. These facilities include a small kitchen facility, barbeque, bathroom, storage lockers, and a shade structure. If the Coastal Commission forcibly compels Mr. McNamee to remove these accommodations, he is unable to use his home for the purposes for which is it suited and for which he has used it for the past 27 years. This would constitute a violation of the Americans with Disabilities Act. 42 U.S.C. §12131(2).

- i. The McNamees reserve the right to add or amend.

The McNamees reserve the right to add or amend this Statement of Defense to assert any other factual or legal claims which they may discover prior to the date of the hearing.

Respectfully submitted,
GAINES & STACEY, LLP

By 

Sherman L. Stacey
Attorneys for George McNamee
and Sharlee McNamee

FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG
REBECCA A. THOMPSON
NANCI S. STACEY
KIMBERLY RIBLE

LAW OFFICES OF
GAINES & STACEY
1111 BAYSIDE DRIVE, SUITE 150
CORONA DEL MAR, CALIFORNIA 92625

TELEPHONE
(949)219-2000
FAX
(949)219-9908

February 9, 2004

BY FAX-415-904-5235

Ms. Sheila Ryan
California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105

Re: George McNamee
Notice of Intent to Commence Cease and Desist Order Proceedings
Coastal Commission File No. V-5-00-050.

Dear Ms. Ryan:

I have attached to this letter a Statement of Defense on behalf of George McNamee and Sharlee McNamee. Although I have previously requested that the hearing on this matter be scheduled in Southern California in April 2004, you have indicated to me that the Executive Director intends to schedule the hearing in Monterey in March 2004. I again request that the hearing be set in April. There are no ongoing development activities on the McNamee property and all of the elements which your notices regarding the intended Cease and Desist Order have existed for more than 30 years. There is no prejudice to the Coastal Commission to the delay to provide convenience for witnesses and parties.

In addition, when seeking to research the evidence which the Executive Director has concerning his claim that development has taken place on the McNamee property without a permit and in violation of the Coastal Act, Nanci Stacey of this office requested an opportunity to review Violation File No. V-5-00-050 at the Commission's Long Beach Office. She was refused that opportunity on the grounds that the Coastal Commission has a policy that contents of Violation files are kept confidential and not disclosed, even to the person charged with the violation. I believe that such a policy violates the McNamees' right to due process.

There is no civil nor criminal proceeding in which the person prosecuting the proceeding can keep secret or refuse to disclose evidence which it may possess. Both civil discovery rules and criminal discovery rules compel a prosecutor to disclose to the defense all evidence which they may have subject only to the limitations of privilege in the Evidence Code. I again demand that all files pertaining to this matter be fully disclosed, and that any matters chosen not to be

Ms. Sheila Ryan
February 9, 2004
Page 2

disclosed be identified and the basis on which the refusal to disclose is made be stated in full.

Please advise me at the earliest possible date whether or not the Executive Director (i) will agree to my request to schedule this matter in April 2004 and (ii) will disclose all of the contents of Violation File No. V-5-00-050.

Sincerely,



SHERMAN L. STACEY

SLS/sh

cc: Mr. & Mrs. George McNamee
Nanci S. Stacey, Esq.

CALIFORNIA COASTAL COMMISSION

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



VIA REGULAR MAIL

February 11, 2004

Mr. Sherman L. Stacey
Law Office of Gaines and Stacey
1111 Bayside Drive, Suite 150
Corona del Mar, CA, 92625

Subject: **Your February 9, 2004 letter**

Violation No.: V-5-00-050

Location: 3329 Ocean Boulevard, Corona Del Mar, Orange County
(APN 0052-120-055)

Violation Description: Unpermitted grading and landform alteration of a coastal bluff and beach; unpermitted construction of a shed set into the toe of the bluff; a barbeque area, storage cabinets, two concrete picnic tables/benches, and a shade/canopy structure with four posts

Dear Mr. Stacey:

I am in receipt of your February 9, 2004 letter, which accompanied your submittal of a Statement of Defense on behalf of Mr. McNamee for the above referenced matter.

Staff has not yet placed this matter on a specific hearing agenda. Requirements for staff time related to other enforcement matters indicate that staff will not be scheduling this matter for the March Commission hearing. Staff intends to schedule this matter for the April hearing.

Regarding your comments about Violation File No. V-5-00-050, it is not true that violation files are never disclosed. Staff must first, however, review such files and examine whether they contain any documents that are exempt from disclosure under Public Records Act requests. The violation file is not in the Long Beach office, but is in the San Francisco office. Nanci Stacey left me a voicemail on January 30, 2004, inquiring whether another file related to this case, Coastal Development Permit (CDP) File No. 5-81-257, was available for review in the Commission's Long Beach office. Although our prior correspondence indicated you should

Exhibit 21
CCC-04-CD-02
(McNamee) Page 1 of 2

contact me for further information, she did not ask to review the violation file or mention it at all. I responded to her call on the same day, leaving her a message indicating that I had sent the CDP file to the Long Beach office and that it was available for her review. Since she did not mention or request the violation file, I did not inform her that it was not in the Long Beach office.

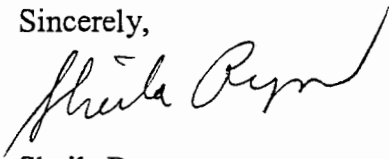
In any case, I can inform you that staff has reviewed the violation file and believes that Mr. McNamee already possesses most of its content, which consists primarily of correspondence between the Commission and Mr. McNamee, beginning with the first Notice of Violation letter from the Commission dated March 13, 2001. Copies of the other records in the violation file that are not exempt from production under Government Code 6254 are enclosed for your review. These consist of several photographs of Mr. McNamee's property and three letters from the City of Newport Beach to Mr. McNamee regarding the unpermitted development on his property.

In the Statement of Defense, you declared that there is a bathroom on the beach portion of Mr. McNamee's property. When was the bathroom constructed? What sort of septic treatment system (if any) exists for this facility and are there any plans detailing the bathroom's construction? Did Mr. McNamee receive building permits or any other permits from the City of Long Beach for the bathroom? Please provide this information to me, including copies of any plans or permits, as soon as possible.

Finally, staff does not agree with your assertion that "all of the elements which your notices regarding the intended Cease and Desist Order have existed for more than 30 years." Staff believes that the unpermitted development on the property was placed after the effective date of the Coastal Act. If you have any information to the contrary, please let us know.

If you have any questions please do not hesitate to contact me at 415-597-5894.

Sincerely,



Sheila Ryan
Headquarters Enforcement Officer

cc without enclosures: Lisa Haage, Chief of Enforcement
Sandy Goldberg, Staff Counsel

Enclosures: Letters dated September 26, 2000, February 27, 2001 and March 21, 2001 from City of Newport Beach to Mr. George McNamee

Five site photographs

FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG
NANCI S. STACEY

LAW OFFICES OF
GAINES & STACEY
1111 BAYSIDE DRIVE, SUITE 150
CORONA DEL MAR, CALIFORNIA 92625

TELEPHONE
(949)640-8999
FAX
(949)640-8330

February 24, 2004

Sheila Ryan
Headquarters Enforcement Officer
California Coastal Commission
43 Fremont, Suite 2000
San Francisco, California 94105

Re: Violation # V-5-00-050.

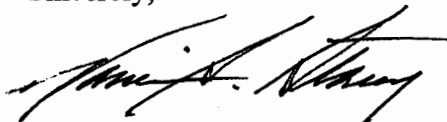
Dear Ms. Ryan:

I was advised by the California Coastal Commission Long Beach Office that it is your policy not to allow persons to review violation files. However, your letter of February 11, 2004 states that you do allow copies of violation files with the exception of those documents that are exempt from production under Government Code 6254. Although you believe that most of the documents are in the possession of the McNamees, I still wish to copy the file. In Long Beach, a litigation copy service does the copying. Please call Sherman or me at (949) 219-2000 and advise me of the telephone and facsimile number of the litigation copy service that your office allows to copy files.

Please remove the documents that you believe are covered under Government Code 6254 and provide me with a log identifying each excluded document and the reason why you consider each document to be exempt from production

Thank you very much.

Sincerely,



Nanci S. Stacey, Esq.
GAINES & STACEY, LLP

NSS/sh

cc: Mr. & Mrs. George McNamee

Exhibit 22
CCC-04-CD-02
(McNamee)

CALIFORNIA

COMMISSION

45 FREMONT
SAN FRANCISCO, CALIF.
VOICE AND TDD (415) 904-5400
FAX (415) 904-5400



VIA REGULAR MAIL

March 1, 2004

Nanci S. Stacey, Esq.
Law Office of Gaines and Stacey
1111 Bayside Drive, Suite 150
Corona del Mar, CA, 92625

Subject: Your February 24, 2004 letter

Violation No.: V-5-00-050

Location: 3329 Ocean Boulevard, Corona Del Mar, Orange County
(APN 0052-120-055)

Violation Description: Unpermitted grading and landform alteration of a coastal bluff and beach; unpermitted construction of a shed set into the toe of the bluff; a barbeque area, storage cabinets, kitchen and bathroom facilities, two concrete picnic tables/benches and a shade/canopy structure with four posts

Dear Ms. Stacey:

I am in receipt of your February 24, 2004 letter, regarding Violation File No. V-5-00-050. As I explained in my February 11, 2004 letter to your office, we have already provided you copies of everything in the violation file that is not exempt from disclosure under Government Code 6254. The only public documents added to the violation file since Mr. Stacey's February 9, 2004 disclosure request are publicly available City of Newport Beach permit files for 3329 Ocean Boulevard. I enclose copies for your review. The Commission is not required to provide you with a log or list of exempt file documents (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061; 112 Cal.Rptr.2d 80).

If you have any questions please do not hesitate to contact me at 415-597-5894.

Sincerely,

A handwritten signature in cursive script that reads "Sheila Ryan".

Sheila Ryan
Headquarters Enforcement Officer

cc without enclosures: Lisa Haage, Chief of Enforcement
Sandy Goldberg, Staff Counsel

Enclosures: City of Newport Beach permit files for 3329 Ocean Blvd.

Exhibit 23
CCC-04-CD-02
(McNamee)

CALIFORNIA COASTAL COMMISSION

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



VIA CERTIFIED and REGULAR MAIL

February 13, 2004

Mr. George M. McNamee
3329 Ocean Boulevard
Corona del Mar, CA 92625

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

Violation No.: V-5-00-050

Location: 3329 Ocean Boulevard, Corona Del Mar, Orange County (APN 0052-120-055)

Additional Violation Description: Unpermitted kitchen and bathroom facilities

Dear Mr. McNamee:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order for unpermitted development. The unpermitted development consists of kitchen and bathroom facilities, which were not previously cited in my December 10, 2003 Notice of Intent (NOI) letter to you. Staff became aware of this additional unpermitted

development on your property after reviewing your February 9, 2004 Statement of Defense regarding this matter, and is hereby supplementing the NOI sent to you on December 10, 2003 to include these additional items of development. This development is located at 3329 Ocean Boulevard, Corona Del Mar, Orange County, APN 0052-120-055 ("subject property"). You own the subject property.

The purpose of these enforcement proceedings is to obtain a Cease and Desist Order that directs you to cease and desist from constructing and/or maintaining any unpermitted development and compels the removal of unpermitted development.

Cease and Desist Order

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

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

The Executive Director of the Commission is issuing this notice of intent to commence Cease and Desist Order proceedings since unpermitted development has occurred at the subject property. The additional unpermitted development cited in this supplemental NOI consists of kitchen and bathroom facilities. The construction and placement of these structures constitutes "development" as defined in Section 30106 of the Coastal Act. The development requires a coastal development permit under Section 30600(a) of the Coastal Act. No coastal development permit was applied for nor obtained for the construction of the above-referenced development on the subject property.

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

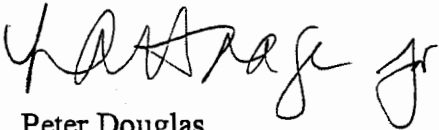
Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision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

In accordance with Section 13181(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations regarding the specific, additional unpermitted

development as set forth in this notice of intent to commence Cease and Desist Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Sheila Ryan, no later than March 8, 2004.**

The Commission staff is tentatively scheduling the hearing for the proposed Cease and Desist Order during the April 14-16, 2004 Commission meeting in Santa Barbara. The proposed Cease and Desist Order will address all unpermitted development on the subject property, including the development cited in the December 10, 2003 NOI and in this Supplemental NOI. If you have any questions regarding this letter or the enforcement case, please call Sheila Ryan at (415) 597-5894 or send correspondence to her attention at the address listed on the letterhead.

Sincerely,



Peter Douglas
Executive Director

- Encl.: Statement of Defense Form for Cease and Desist Order
- cc (without Encl):
Sheila Ryan, Headquarters Enforcement Officer
Lisa Haage, Chief of Enforcement
Sandy Goldberg, Staff Counsel
Steve Hudson, Southern California Enforcement Supervisor
Sherman Stacey, Attorney for Mr. McNamee

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 60
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$



Sent To	George McNamee
Street, Apt. No., or PO Box No.	3329 OCEAN BLVD.
City, State, ZIP+4	Corona del Mar, CA 92625

PS Form 3800, June 2002 See Reverse for Instructions

CALIFORNIA COASTAL COMMISSION

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



STATEMENT OF DEFENSE FORM

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the Executive Director or a notice of intent to initiate cease and desist order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and return it no later than **March 8, 2004** to the Commission's enforcement staff at the following address:

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

If you have any questions, contact Sheila Ryan at (415) 597-5894.

- 1. Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in the order or notice of intent):**

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

5. **Any other information, statement, etc. that you want to offer or make:**

6. **Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):**

**STATEMENT OF DEFENSE OF
GEORGE MCNAMEE AND SHARLEE MCNAMEE
TO ALLEGATIONS CONTAINED IN
CALIFORNIA COASTAL COMMISSION
NOTICE OF INTENT TO COMMENCE
CEASE AND DESIST ORDER PROCEEDINGS
AND SUPPLEMENTAL NOTICE OF INTENT**

COASTAL COMMISSION FILE NO. V-5-00-050

1. The McNamees admit the following:

George McNamee and Sharlee McNamee are the owners of the property located at 3329 Ocean Boulevard, Corona del Mar. The McNamees first occupied the property as lessees in 1977 and subsequently purchased the property in 1978.

2. The McNamees deny the following:

The McNamees deny that they have performed any grading on the property other than the grading approved in connection with the reconstruction of the residence under Coastal Development Permit No. 5-81-257.. Any grading which might have been performed on the property at the lower elevation which is the subject of the alleged violation was performed prior to 1977 when the McNamees first began to occupy the property. The allegations in the Notice of Intent are not specific as to where the alleged grading took place but it appears that the alleged grading is that which would have been necessary to construct the shed which is to the north of the stairs. The McNamees did not do any grading to the property in connection with the shed and the shed existed at the time the McNamees first saw the property in 1977.

Further, the McNamees deny that any grading was done to accommodate the construction of the shed in the first place. When the McNamees first observed the shed on the property in 1977, the shed was built on a level pad with no soil touching on its exterior walls. Over the years, the soil from the slope above has filled in the space between the rear and part of the side exterior walls making it appear that grading had taken place to construct the shed. The McNamees believe that no grading had been done to accommodate the shed when the shed was constructed.

3. Anything not admitted by the McNamees and not specifically denied is denied on the basis that the McNamees have no information to allow the McNamees to admit.

4. The McNamees additionally allege as follows:

At the time the McNamees acquired the property in 1978, the shed appeared to be not less than 10 years old and was in a deteriorated condition. Between 1978 and the present date the McNamees have repaired and maintained the shed but have not done any grading of the property. Inside of the shed were both a sink area and a toilet area. These facilities were connected to the main sewer connection from the main residence which was installed in 1956 and goes from the main residence to a City maintained sewer pipe located in Breakers Way, southwest of the McNamee property. This sewer line serves all of the residences along this area of Ocean Boulevard and Breakers way in addition to the public facilities at Corona del Mar State Beach. In repairing the shed and its facilities, the McNamees did not enlarge or otherwise change the sewer connection which had previously been installed.

At the time the McNamees acquired the property in 1978, there was a barbeque on the beach as well as storage lockers for beach equipment and picnic tables for eating. Over the past 25 years the McNamees have repaired and replaced storage lockers and the barbeque and have replaced tables on the beach. The most recent replacement of tables was with concrete tables similar to those used by local governments for beachfront locations because of their lack of easy portability, durability under heavy use and adverse climate of the oceanfront and general suitability to the environment.

All of the repair, maintenance and replacement which the McNamees have done has been conducted entirely on their private property and entirely without the use of any mechanized equipment. All of these activities are exempt from the permit requirements of the Coastal Act under Public Resources Code §30610(d).

5. The McNamees make the following additional statements and defenses:

- a. The delay of more than 20 years by the Coastal Commission in bringing enforcement proceedings has prejudiced the McNamees to their detriment and the Commission should decline to enforce because of the prejudice caused by its own inaction.

The delay by the Coastal Commission in alleging that the improvements on the McNamee property are unpermitted and subject to removal has been unreasonable and caused prejudice to the McNamees. The McNamees bought their home in 1977. In 1981, the Coastal Commission inspected the McNamee property in connection with an application for permit to reconstruct the primary residence. At the time of that application, the improvements now claimed to be unpermitted existed and were obvious to any observer. The improvements have been clearly visible from Corona del Mar State Beach which immediately abuts the McNamee property. No effort has been made by the McNamees to disguise or hide the improvements.

Despite the open and obvious existence of these improvements, the Coastal Commission made no allegation that the disputed improvements were not permitted or had been constructed

subsequent to 1972. It was 20 years between the 1981 permit application and the Coastal Commission's March 13, 2001 letter to the McNamees. During these 20 years, witnesses who might have aided the McNamees have died and moved away and memories of dates and times have become less reliable. Further, documents which persons who have left the area might have possessed (which would aid the McNamees in proving the existence of the improvements) have become more difficult, if not impossible, to find or acquire. Finally, the McNamees have invested substantial time, money and effort in the maintenance and repair of the facilities..

The Coastal Commission has no legitimate excuse for the delay. For the 24 years between 1977 and 2001, the Coastal Commission has had not less than 2 permit analysts assigned on a permanent basis to Orange County. The Coastal Commission has examined the McNamee property in detail in connection with Coastal Development Permit No. 5-81-257. The Coastal Commission has examined the area in which the McNamee property is located on numerous occasions in connection with permit applications for development along Ocean Boulevard. The Coastal Commission examined and evaluated all of the beach areas in Newport Beach in connection with the certification of the Newport Beach Land Use Plan. The Coastal Commission has had an assigned enforcement officer for Orange County.

At some point a period of limitations must exist as to efforts to force a property owner to remove long standing improvements which are not offensive, do not contribute to any environmental damage and are surrounded by similar uses including uses made by the State itself.

- b. The McNamees have made no use of their property which is dissimilar to the manner in which others have used their similar property including the State of California which owns the adjoining Corona del Mar State Beach.

The Commission should not fail to take into account the location of these improvements. This is not a remote or pristine beach area. The McNamee private property abuts Corona del Mar State Beach. The State Beach is heavily used by the public and has been so for more than 50 years. The McNamee improvements are entirely on their private property and are not dissimilar to improvements made by the state to enhance the use of the beach and protect the resource. The State maintains a massive paved parking lot on the sand, has constructed numerous restroom, food concession, picnic area and fire pits to accommodate public use of the public beach. This is reasonable. It is just as reasonable that McNamee is allowed to maintain similar improvements on private property to accommodate private use of that private property. It is not reasonable for the State, with one hand, to itself construct substantial improvements on the sand (including walls at the base of a bluff to protect those improvements) and then, with the other hand, deprive a private property owner of the same use of his private property on the grounds that such use produces an adverse effect on the environment.

- c. The Commission may not use the Cease and Desist Order Provisions of Public Resources Code §30810 to force a new property owner to restore property alleged to be altered by his predecessor.

Public Resources Code §30810 provides as follows:

“If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing a permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.” [emphasis added]

The Executive Director has no evidence that McNamee “has undertaken” any activity that requires a permit from the Commission. The McNamees have informed the Commission repeatedly that the shed, barbeque, storage lockers and tables existed on the property at the time they first saw it in 1977. The McNamees have repaired and replaced elements of these facilities but such repair and replacement are exempt from permit requirements under Public Resources Code §30610(d). McNamee has not placed any rocks, riprap, sand or other materials on the beach and has not used any mechanized equipment.

Accordingly, Public Resources Code §30810 does not authorize the Commission to proceed against the McNamees as to the alleged violation because the Commission has no evidence that the McNamees undertook the alleged unlawful development. Public Resources Code §30810 is clear that a cease and desist order must be directed against “that person” referring to the person who has undertaken or is threatening to undertake an activity. It does not authorize the Commission to proceed against “that person or its successor”.

What the Commission is trying to do is to use its power as an enforcement agency to enforce the action of one party against that party’s successor in interest without authorization from the Legislature. If homeowner A builds something without a permit for which a permit was required, homeowner A can be the subject of a cease and desist order. However, if the home is sold to homeowner B, the Commission cannot use Public Resources Code §30810 to force homeowner B to cease and desist from doing what homeowner B never did. This is a rational legislative scheme as the cease and desist order provisions are intended to allow the Commission to stop activities which violate the Coastal Act. This is not to say that the Commission is without remedies with regard to allegations that improvements were not permitted, only that the cease and desist order remedy cannot be applied against a new homeowner who is not shown to have engaged in the offending activity.

- d. The McNamees have a right to use their home and their private property for reasonable uses which cause no harm to the environment or to the public.

The uses which McNamee has made of the beach area of the property are reasonable and normal uses particularly suited to the location. The improvements which have been constructed to facilitate those uses are modest and unassuming. No fences signs or other indicators exist which suggest that the public should not be in the vicinity of McNamee property and have never existed. No harm to the beach, to any species of plant or animal, to any use made by the public of public property or to the environment in general is caused by either the improvements or the uses by the McNamees.

As the property is their private property, the McNamees have a right to make reasonable use. Since the uses made are not unreasonable, the Coastal Commission has no basis on which to restrict those uses or to order the McNamees to cease making those uses..

- e. The Coastal Commission is unconstitutionally constituted.

A majority of the members of the Coastal Commission are appointed by members of the State Legislature and not by the Governor. Such appointment authority places the Coastal Commission under the control of the State Legislature in violation of the separation of powers required by California Constitution, Article III, §3. As such the Coastal Commission should be enjoined from acting on permits and cease and desist orders. This issue is presently pending in the California Supreme Court in the case of *Marine Forests Society v. California Coastal Commission*, Docket No. S113466.

- f. Coastal Commission Regulations limiting the improvements which can be made to single family homes are invalid.

The Coastal Act of 1976 exempted improvements to existing single family residences from the permit requirements of the Coastal Act. Public Resources Code §30610(a). The Coastal Commission adopted a regulation in 1977 seeking to limit the application of this provision to require permits for certain improvements and for residences in certain locations. California Code of Regulations, Title 14, §13250.

The adoption of such regulation was invalid. The Coastal Commission, at the time of its adoption in 1977 and at the time of each subsequent amendment to §13250 (the last of which was in 1999) was an unconstitutionally constituted agency, being under the control of the State Legislature in violation of the separation of powers required by the California Constitution, Article III, §3. Therefore, irrespective of the constitutionality of the Coastal Act, even if the prohibition on development without a permit was enforceable, the Legislature's exemption of

improvements to existing single family residences remains in effect without modification by regulations which were invalidly adopted.

g. The Cease and Desist Order Proceedings deny due process to the McNamees.

The Coastal Commission's Cease and Desist Order proceedings deny due process to the McNamees. In these Cease and Desist Order proceedings, the McNamees are placed at risk of a loss of a significant and valuable part of their property, the taking of which cannot be done without due process of law. The McNamees are also placed at risk of substantial fines and penalties which fines become increased based upon the findings of fact which are made by the Coastal Commission in these proceedings.

However, in the conduct of these proceedings, the Coastal Commission does not even attempt to provide the most fundamental indicators of due process. The Coastal Commission hearing is limited to 15 minutes. The Coastal Commission is not an unbiased trier of fact. Evidence is received without any protection to its validity. Only the McNamees are required to provide evidence under oath. The McNamees cannot cross examine any persons who may offer evidence against them. The McNamees may not cross examine the member of the Coastal Commission's investigative staff who compiles the accusation and prepares the proposed findings. The Coastal Commission has not established a hearing officer procedure by which a person accused of a violation would have an adequate hearing before an unbiased hearing officer. The only hearing provided to a person accused of a violation is the 15 minute hearing before all 12 members of the Coastal Commission. The Coastal Commission does not provide for tools to allow the McNamees to obtain discovery, compel the attendance of witnesses, or obtain the production of documents. The members of the Coastal Commission are not presented with all of the evidence which may be submitted in favor of a person accused of a violation but only a summary of that evidence compiled by its Executive Director.

On information and belief, the McNamees assert that the Coastal Commission has never denied a cease and desist order sought by the Executive Director. On information and belief, the McNamees allege that the Executive Director refuses to disclose to a person accused of a violation the evidence which the Executive Director may possess against that person.

h. The Coastal Commission is required by the Americans with Disabilities Act to adjust its policies, practices and procedures to accommodate the disability of George McNamee.

George McNamee suffers from heart conditions including congestive heart failure due to mitrovalve insufficiency (which has been surgically repaired) and schlerosis of the aortic valve, complicated by high blood pressure and stress, and proclivity to melanoma (having had melanoma in 1985 of sufficient depth to give him a 50% chance of death within 5 years). These

conditions constitute disabilities as defined in the Americans with Disabilities Act as they substantially limit one or more of his major life activities. Due to the heart condition, Mr. McNamee cannot lift or carry heavy objects or repeatedly climb stairs. Due to the skin condition Mr. McNamee cannot endure exposure to the sun for extended periods of time.

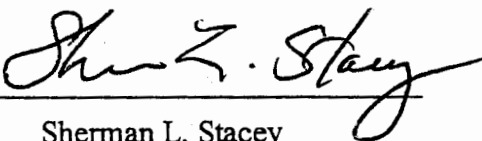
It is not possible for George McNamee to carry food, beverages, towels, chairs or other personal effects from his house down to the lower part of his private property which constitutes the beach and back to his house. In addition, it is not possible to climb the stairs repeatedly in order to use the bathroom or to get food or beverages. Further, he cannot sit out in the sun for extended periods.

Therefore, it is a reasonable modification to policies, practices and procedures of the Coastal Commission to refrain from forcing the removal of longstanding facilities on Mr. McNamee's private property which would accommodate Mr. McNamee's condition. These facilities include a small kitchen facility, barbeque, bathroom, storage lockers, and a shade structure. If the Coastal Commission forcibly compels Mr. McNamee to remove these accommodations, he is unable to use his home for the purposes for which is it suited and for which he has used it for the past 27 years. This would constitute a violation of the Americans with Disabilities Act. 42 U.S.C. §12131(2).

- i. The McNamees reserve the right to add or amend.

The McNamees reserve the right to add or amend this Statement of Defense to assert any other factual or legal claims which they may discover prior to the date of the hearing.

Respectfully submitted,
GAINES & STACEY, LLP

By 
Sherman L. Stacey
Attorneys for George McNamee
and Sharlee McNamee

FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG
REBECCA A. THOMPSON
NANCI S. STACEY
KIMBERLY RIBLE

LAW OFFICES OF
GAINES & STACEY
1111 BAYSIDE DRIVE, SUITE 150
CORONA DEL MAR, CALIFORNIA 92625

TELEPHONE
(949)219-2000
FAX
(949)219-9908

March 11, 2004

BY FAX-415-904-5235

Ms. Sheila Ryan
California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105

Re: George McNamee
Notice of Intent to Commence Cease and Desist Order Proceedings
Coastal Commission File No. V-5-00-050.

Dear Ms. Ryan:

I have enclosed the Statement of Defense on behalf of George and Sharlee McNamee which includes a response in Section 4 to the Supplemental Notice of Intent regarding the kitchen sink and bathroom facilities.

In addition, I am responding to your letter of March 1, 2004 regarding disclosure of documents. I can find no justification for the Commission staff to withhold any documents from an accused concerning the matter of which the person is accused. The Executive Director has chosen to accuse George McNamee of violation of the Coastal Act and is proceeding in an administrative process to prove the existence of the facts to support the violation to the Coastal Commission. Among the due process flaws which I see in this proceeding is that the Commission staff refuses to disclose all evidence which it may possess about the matter on the grounds that some evidence constitutes

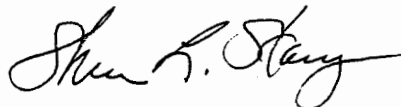
"[r]ecords of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes". California Government Code §6254(f).

Ms. Sheila Ryan
March 11, 2004
Page 2

When the Executive Director charges a party with unlawful activity and initiates a formal proceeding to prove such claim, the charged party is not limited to the Public Records Act to discover the basis of the charge against him or look for exculpatory evidence. Notions of fundamental fairness and due process require that the Commission disclose all evidence it may possess in any such case. The Commission has pointedly refused to do so.

The McNamees are not on a fishing expedition through someone else's files. I have sought only the evidence relating to their property and the claim of violation. I believe that the Executive Director's reliance upon the provisions of the Public Records Act is misplaced and object to the refusal to disclose all evidence which you possess.

Sincerely,



SHERMAN L. STACEY

SLS/sh

cc: Mr. & Mrs. George McNamee
Nanci S. Stacey, Esq.

CALIFORNIA COASTAL COMMISSION

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



VIA REGULAR MAIL

March 15, 2004

Sherman L. Stacey, Esq.
Law Office of Gaines and Stacey
1111 Bayside Drive, Suite 150
Corona del Mar, CA, 92625

Subject: Your March 11, 2004 letter

Violation No.: V-5-00-050

Location: 3329 Ocean Boulevard, Corona Del Mar, Orange County
(APN 0052-120-055)

Violation Description: Unpermitted grading and landform alteration of a coastal bluff and beach; unpermitted construction of a shed set into the toe of the bluff; a barbeque area, storage cabinets, kitchen and bathroom facilities, two concrete picnic tables/benches and a shade/canopy structure with four posts

Dear Mr. Stacey:

I am in receipt of your March 11, 2004 letter, regarding Violation File No. V-5-00-050. You assert that the Commission has denied due process by failing to disclose evidence. This is not true. We have not withheld any evidence regarding the issue of whether or not there is illegal development on the McNamee property. We have promptly provided copies of the photographs of the site in our possession, and permit records, as well as correspondence in the Violation File. We have only withheld records that were created by Commission staff and contain staff deliberations or enforcement strategies. These documents are not "evidence."

If you have any questions, please do not hesitate to contact me at 415-904-5894.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sheila Ryan".

Sheila Ryan
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement
Sandy Goldberg, Staff Counsel

Exhibit 27
CCC-04-CD-02
(McNamee)

